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U K A Z
O RAZGLASITVI ZAKONA O RATIFIKACIJI MARAKEŠKEGA SPORAZUMA O USTANOVITVI SVETOVNE TRGOVINSKE ORGANIZACIJE

Razglašam Zakon o ratifikaciji Marakeškega sporazuma o ustanovitvi Svetovne trgovinske organizacije, ki ga je sprejel Državni zbor Republike Slovenije na seji dne 20. junija 1995.

Št. 012-01/95-51
Ljubljana, dne 28. junija 1995

Predsednik
Republike Slovenije
Milan Kučan l. r.

Z A K O N

O RATIFIKACIJI MARAKEŠKEGA SPORAZUMA O USTANOVITVI SVETOVNE TRGOVINSKE ORGANIZACIJE

1. člen

Ratificira se Marakeški sporazum o ustanovitvi Svetovne trgovinske organizacije z aneksi 1A, 1B, 1C, 2 in 3, sprejet v Marakešu 15. aprila 1994.

2. člen

Marakeški sporazum o ustanovitvi Svetovne trgovinske organizacije, kot je določen v 1. členu tega zakona, se v izvirniku v angleškem jeziku in v prevodu v slovenskem jeziku glasi:

MARRAKESH AGREEMENT ESTABLISHING THE WORLD TRADE ORGANIZATION

The *Parties* to this Agreement,

Recognizing that their relations in the field of trade and economic endeavour should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, and expanding the production of and trade in goods and services, while allowing for the optimal use of the world's resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development,

Recognizing further that there is need for positive efforts designed to ensure that developing countries, and especially the least developed among them, secure a share in the growth in international trade commensurate with the needs of their economic development,

Being desirous of contributing to these objectives by entering into reciprocal and mutually advantageous arrangements directed to the substantial reduction of tariffs and other barriers to trade and to the elimination of discriminatory treatment in international trade relations,

Resolved, therefore, to develop an integrated, more viable and durable multilateral trading system encompassing the General Agreement on Tariffs and Trade, the results of past trade liberalization efforts, and all of the results of the Uruguay Round of Multilateral Trade Negotiations,

Determined to preserve the basic principles and to further the objectives underlying this multilateral trading system,

Agree as follows:

Article I

Establishment of the Organization

The World Trade Organization (hereinafter referred to as "the WTO") is hereby established.

Article II

Scope of the WTO

1. The WTO shall provide the common institutional framework for the conduct of trade relations among its Members in matters related to the agreements and associated legal instruments included in the Annexes to this Agreement.

2. The agreements and associated legal instruments included in Annexes 1, 2 and 3 (hereinafter referred to as "Multilateral Trade Agreements") are integral parts of this Agreement, binding on all Members.

3. The agreements and associated legal instruments included in Annex 4 (hereinafter referred to as "Plurilateral Trade Agreements") are also part of this Agreement for those Members that have

accepted them, and are binding on those Members. The Plurilateral Trade Agreements do not create either obligations or rights for Members that have not accepted them.

4. The General Agreement on Tariffs and Trade 1994 as specified in Annex 1A (hereinafter referred to as "GATT 1994") is legally distinct from the General Agreement on Tariffs and Trade, dated 30 October 1947, annexed to the Final Act Adopted at the Conclusion of the Second Session of the Preparatory Committee of the United Nations Conference on Trade and Employment, as subsequently rectified, amended or modified (hereinafter referred to as "GATT 1947").

Article III

Functions of the WTO

1. The WTO shall facilitate the implementation, administration and operation, and further the objectives, of this Agreement and of the Multilateral Trade Agreements, and shall also provide the framework for the implementation, administration and operation of the Plurilateral Trade Agreements.

2. The WTO shall provide the forum for negotiations among its Members concerning their multilateral trade relations in matters dealt with under the agreements in the Annexes to this Agreement. The WTO may also provide a forum for further negotiations among its Members concerning their multilateral trade relations, and a framework for the implementation of the results of such negotiations, as may be decided by the Ministerial Conference.

3. The WTO shall administer the Understanding on Rules and Procedures Governing the Settlement of Disputes (hereinafter referred to as the "Dispute Settlement Understanding" or "DSU") in Annex 2 to this Agreement.

4. The WTO shall administer the Trade Policy Review Mechanism (hereinafter referred to as the "TPRM") provided for in Annex 3 to this Agreement.

5. With a view to achieving greater coherence in global economic policy-making, the WTO shall cooperate, as appropriate, with the International Monetary Fund and with the International Bank for Reconstruction and Development and its affiliated agencies.

Article IV

Structure of the WTO

1. There shall be a Ministerial Conference composed of representatives of all the Members, which shall meet at least once every two years. The Ministerial Conference shall carry out the functions of the WTO and take actions necessary to this effect. The Ministerial Conference shall have the authority to take decisions on all matters under any of the Multilateral Trade Agreements, if so requested by a Member, in accordance with the specific requirements for decision-making in this Agreement and in the relevant Multilateral Trade Agreement.

2. There shall be a General Council composed of representatives of all the Members, which shall meet as appropriate. In the intervals between meetings of the Ministerial Conference, its functions shall be conducted by the General Council. The General Council shall also carry out the functions assigned to it by this Agreement. The General Council shall establish its rules of procedure and approve the rules of procedure for the Committees provided for in paragraph 7.

3. The General Council shall convene as appropriate to discharge the responsibilities of the Dispute Settlement Body provided for in the Dispute Settlement Understanding. The Dispute Settlement Body may have its own chairman and shall establish such rules of procedure as it deems necessary for the fulfilment of those responsibilities.

4. The General Council shall convene as appropriate to discharge the responsibilities of the Trade Policy Review Body provided for in the TPRM. The Trade Policy Review Body may have its own chairman and shall establish such rules of procedure as it deems necessary for the fulfilment of those responsibilities.

5. There shall be a Council for Trade in Goods, a Council for Trade in Services and a Council for Trade-Related Aspects of Intellectual Property Rights (hereinafter referred to as the "Council for TRIPS"), which shall operate under the general guidance of the General Council. The Council for Trade in Goods shall oversee the functioning of the Multilateral Trade Agreements in Annex 1A. The Council for Trade in Services shall oversee the functioning of the General Agreement on Trade in Services (hereinafter referred to as "GATS"). The Council for TRIPS shall oversee the functioning of the Agreement on Trade-Related Aspects of Intellectual Property Rights (hereinafter referred to as the "Agreement on TRIPS"). These Councils shall carry out the functions assigned to them by their respective agreements and by the General Council. They shall establish their respective rules of procedure subject to the approval of the General Council. Membership in these Councils shall be open to representatives of all Members. These Councils shall meet as necessary to carry out their functions.

6. The Council for Trade in Goods, the Council for Trade in Services and the Council for TRIPS shall establish subsidiary bodies as required. These subsidiary bodies shall establish their respective rules of procedure subject to the approval of their respective Councils.

7. The Ministerial Conference shall establish a Committee on Trade and Development, a Committee on Balance-of-Payments Restrictions and a Committee on Budget, Finance and Administration, which shall carry out the functions assigned to them by this Agreement and by the Multilateral Trade Agreements, and any additional functions assigned to them by the General Council, and may establish such additional Committees with such functions as it may deem appropriate. As part of its functions, the Committee on Trade and Development shall periodically review the special provisions in the Multilateral Trade Agreements in favour of the least-developed country Members and report to the General Council for appropriate action. Membership in these Committees shall be open to representatives of all Members.

8. The bodies provided for under the Plurilateral Trade Agreements shall carry out the functions assigned to them under those Agreements and shall operate within the institutional framework of the WTO. These bodies shall keep the General Council informed of their activities on a regular basis.

Article V

Relations with Other Organizations

1. The General Council shall make appropriate arrangements for effective cooperation with other intergovernmental organizations that have responsibilities related to those of the WTO.

2. The General Council may make appropriate arrangements for consultation and cooperation with non-governmental organizations concerned with matters related to those of the WTO.

Article VI

The Secretariat

1. There shall be a Secretariat of the WTO (hereinafter referred to as "the Secretariat") headed by a Director-General.

2. The Ministerial Conference shall appoint the Director-General and adopt regulations setting out the powers, duties, conditions of service and term of office of the Director-General.

3. The Director-General shall appoint the members of the staff of the Secretariat and determine their duties and conditions of service in accordance with regulations adopted by the Ministerial Conference.

4. The responsibilities of the Director-General and of the staff of the Secretariat shall be exclusively international in character. In the discharge of their duties, the Director-General and the staff of the Secretariat shall not seek or accept instructions from any government or any other authority external to the WTO. They shall refrain from any action which might adversely reflect on their position as international officials. The Members of the WTO shall respect the international character of the responsibilities of the Director-General and of the staff of the Secretariat and shall not seek to influence them in the discharge of their duties.

Article VII

Budget and Contributions

1. The Director-General shall present to the Committee on Budget, Finance and Administration the annual budget estimate and financial statement of the WTO. The Committee on Budget, Finance and Administration shall review the annual budget estimate and the financial statement presented by the Director-General and make recommendations thereon to the General Council. The annual budget estimate shall be subject to approval by the General Council.

2. The Committee on Budget, Finance and Administration shall propose to the General Council financial regulations which shall include provisions setting out:

(a) the scale of contributions apportioning the expenses of the WTO among its Members; and

(b) the measures to be taken in respect of Members in arrears.

The financial regulations shall be based, as far as practicable, on the regulations and practices of GATT 1947.

3. The General Council shall adopt the financial regulations and the annual budget estimate by a two-thirds majority comprising more than half of the Members of the WTO.

4. Each Member shall promptly contribute to the WTO its share in the expenses of the WTO in accordance with the financial regulations adopted by the General Council.

Article VIII

Status of the WTO

1. The WTO shall have legal personality, and shall be accorded by each of its Members such legal capacity as may be necessary for the exercise of its functions.

2. The WTO shall be accorded by each of its Members such privileges and immunities as are necessary for the exercise of its functions.

3. The officials of the WTO and the representatives of the Members shall similarly be accorded by each of its Members such privileges and immunities as are necessary for the independent exercise of their functions in connection with the WTO.

4. The privileges and immunities to be accorded by a Member to the WTO, its officials, and the representatives of its Members shall be similar to the privileges and immunities stipulated in the Convention on the Privileges and Immunities of the Specialized Agencies, approved by the General Assembly of the United Nations on 21 November 1947.

5. The WTO may conclude a headquarters agreement.

Article IX

Decision-Making

1. The WTO shall continue the practice of decision-making by consensus followed under GATT 1947.[1] Except as otherwise provided, where a decision cannot be arrived at by consensus, the matter at issue shall be decided by voting. At meetings of the Ministerial Conference and the General Council, each Member of the WTO shall have one vote. Where the European Communities exercise their right to vote, they shall have a number of votes equal to the number of their member States[2] which are Members of the WTO. Decisions of the Ministerial Conference and the General Council shall be taken by a majority of the votes cast, unless otherwise provided in this Agreement or in the relevant Multilateral Trade Agreement.[3]

2. The Ministerial Conference and the General Council shall have the exclusive authority to adopt interpretations of this Agreement and of the Multilateral Trade Agreements. In the case of an interpretation of a Multilateral Trade Agreement in Annex 1, they shall exercise their authority on the basis of a recommendation by the Council overseeing the functioning of that Agreement. The decision to adopt an interpretation shall be taken by a three-fourths majority of the Members. This paragraph shall not be used in a manner that would undermine the amendment provisions in Article X.

3. In exceptional circumstances, the Ministerial Conference may decide to waive an obligation imposed on a Member by this Agreement or any of the Multilateral Trade Agreements, provided that

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[1] The body concerned shall be deemed to have decided by consensus on a matter submitted for its consideration, if no Member, present at the meeting when the decision is taken, formally objects to the proposed decision.

[2] The number of votes of the European Communities and their member States shall in no case exceed the number of the member States of the European Communities.

[3] Decisions by the General Council when convened as the Dispute Settlement Body shall be taken only in accordance with the provisions of paragraph 4 of Article 2 of the Dispute Settlement Understanding.

any such decision shall be taken by three fourths[4] of the Members unless otherwise provided for in this paragraph.

(a) A request for a waiver concerning this Agreement shall be submitted to the Ministerial Conference for consideration pursuant to the practice of decision-making by consensus. The Ministerial Conference shall establish a time-period, which shall not exceed 90 days, to consider the request. If consensus is not reached during the time-period, any decision to grant a waiver shall be taken by three fourths[4] of the Members.

(b) A request for a waiver concerning the Multilateral Trade Agreements in Annexes 1A or 1B or 1C and their annexes shall be submitted initially to the Council for Trade in Goods, the Council for Trade in Services or the Council for TRIPS, respectively, for consideration during a time-period which shall not exceed 90 days. At the end of the time-period, the relevant Council shall submit a report to the Ministerial Conference.

4. A decision by the Ministerial Conference granting a waiver shall state the exceptional circumstances justifying the decision, the terms and conditions governing the application of the waiver, and the date on which the waiver shall terminate. Any waiver granted for a period of more than one year shall be reviewed by the Ministerial Conference not later than one year after it is granted, and thereafter annually until the waiver terminates. In each review, the Ministerial Conference shall examine whether the exceptional circumstances justifying the waiver still exist and whether the terms and conditions attached to the waiver have been met. The Ministerial Conference, on the basis of the annual review, may extend, modify or terminate the waiver.

5. Decisions under a Plurilateral Trade Agreement, including any decisions on interpretations and waivers, shall be governed by the provisions of that Agreement.

Article X

Amendments

1. Any Member of the WTO may initiate a proposal to amend the provisions of this Agreement or the Multilateral Trade Agreements in Annex 1 by submitting such proposal to the Ministerial Conference. The Councils listed in paragraph 5 of Article IV may also submit to the Ministerial Conference proposals to amend the provisions of the corresponding Multilateral Trade Agreements in Annex 1 the functioning of which they oversee. Unless the Ministerial Conference decides on a longer period, for a period of 90 days after the proposal has been tabled formally at the Ministerial Conference any decision by the Ministerial Conference to submit the proposed amendment to the Members for acceptance shall be taken by consensus. Unless the provisions of paragraphs 2, 5 or 6 apply, that decision shall specify whether the provisions of paragraphs 3 or 4 shall apply. If consensus is reached, the Ministerial Conference shall forthwith submit the proposed amendment to the Members for acceptance. If consensus is not reached at a meeting of the Ministerial Conference within the established period, the Ministerial Conference shall decide by a two-thirds majority of the Members whether to submit the proposed amendment to the Members for acceptance. Except as provided in paragraphs 2, 5 and 6, the provisions of paragraph 3 shall apply to the proposed amendment, unless the Ministerial Conference decides by a three-fourths majority of the Members that the provisions of paragraph 4 shall apply.

[4] A decision to grant a waiver in respect of any obligation subject to a transition period or a period for staged implementation that the requesting Member has not performed by the end of the relevant period shall be taken only by consensus.

2. Amendments to the provisions of this Article and to the provisions of the following Articles shall take effect only upon acceptance by all Members:

Article IX of this Agreement;
Articles I and II of GATT 1994;
Article II:1 of GATS;
Article 4 of the Agreement on TRIPS.

3. Amendments to provisions of this Agreement, or of the Multilateral Trade Agreements in Annexes 1A and 1C, other than those listed in paragraphs 2 and 6, of a nature that would alter the rights and obligations of the Members, shall take effect for the Members that have accepted them upon acceptance by two thirds of the Members and thereafter for each other Member upon acceptance by it. The Ministerial Conference may decide by a three-fourths majority of the Members that any amendment made effective under this paragraph is of such a nature that any Member which has not accepted it within a period specified by the Ministerial Conference in each case shall be free to withdraw from the WTO or to remain a Member with the consent of the Ministerial Conference.

4. Amendments to provisions of this Agreement or of the Multilateral Trade Agreements in Annexes 1A and 1C, other than those listed in paragraphs 2 and 6, of a nature that would not alter the rights and obligations of the Members, shall take effect for all Members upon acceptance by two thirds of the Members.

5. Except as provided in paragraph 2 above, amendments to Parts I, II and III of GATS and the respective annexes shall take effect for the Members that have accepted them upon acceptance by two thirds of the Members and thereafter for each Member upon acceptance by it. The Ministerial Conference may decide by a three-fourths majority of the Members that any amendment made effective under the preceding provision is of such a nature that any Member which has not accepted it within a period specified by the Ministerial Conference in each case shall be free to withdraw from the WTO or to remain a Member with the consent of the Ministerial Conference. Amendments to Parts IV, V and VI of GATS and the respective annexes shall take effect for all Members upon acceptance by two thirds of the Members.

6. Notwithstanding the other provisions of this Article, amendments to the Agreement on TRIPS meeting the requirements of paragraph 2 of Article 71 thereof may be adopted by the Ministerial Conference without further formal acceptance process.

7. Any Member accepting an amendment to this Agreement or to a Multilateral Trade Agreement in Annex 1 shall deposit an instrument of acceptance with the Director-General of the WTO within the period of acceptance specified by the Ministerial Conference.

8. Any Member of the WTO may initiate a proposal to amend the provisions of the Multilateral Trade Agreements in Annexes 2 and 3 by submitting such proposal to the Ministerial Conference. The decision to approve amendments to the Multilateral Trade Agreement in Annex 2 shall be made by consensus and those amendments shall take effect for all Members upon approval by the Ministerial Conference. Decisions to approve amendments to the Multilateral Trade Agreement in Annex 3 shall take effect for all Members upon approval by the Ministerial Conference.

9. The Ministerial Conference, upon the request of the Members parties to a trade agreement, may decide exclusively by consensus to add that agreement to Annex 4. The Ministerial Conference, upon the request of the Members parties to a Plurilateral Trade Agreement, may decide to delete that Agreement from Annex 4.

10. Amendments to a Plurilateral Trade Agreement shall be governed by the provisions of that Agreement.

Article XI

Original Membership

1. The contracting parties to GATT 1947 as of the date of entry into force of this Agreement, and the European Communities, which accept this Agreement and the Multilateral Trade Agreements and for which Schedules of Concessions and Commitments are annexed to GATT 1994 and for which Schedules of Specific Commitments are annexed to GATS shall become original Members of the WTO.

2. The least-developed countries recognized as such by the United Nations will only be required to undertake commitments and concessions to the extent consistent with their individual development, financial and trade needs or their administrative and institutional capabilities.

Article XII

Accession

1. Any State or separate customs territory possessing full autonomy in the conduct of its external commercial relations and of the other matters provided for in this Agreement and the Multilateral Trade Agreements may accede to this Agreement, on terms to be agreed between it and the WTO. Such accession shall apply to this Agreement and the Multilateral Trade Agreements annexed thereto.

2. Decisions on accession shall be taken by the Ministerial Conference. The Ministerial Conference shall approve the agreement on the terms of accession by a two-thirds majority of the Members of the WTO.

3. Accession to a Plurilateral Trade Agreement shall be governed by the provisions of that Agreement.

Article XIII

Non-Application of Multilateral Trade Agreements between Particular Members

1. This Agreement and the Multilateral Trade Agreements in Annexes 1 and 2 shall not apply as between any Member and any other Member if either of the Members, at the time either becomes a Member, does not consent to such application.

2. Paragraph 1 may be invoked between original Members of the WTO which were contracting parties to GATT 1947 only where Article XXXV of that Agreement had been invoked earlier and was effective as between those contracting parties at the time of entry into force for them of this Agreement.

3. Paragraph 1 shall apply between a Member and another Member which has acceded under Article XII only if the Member not consenting to the application has so notified the Ministerial Conference before the approval of the agreement on the terms of accession by the Ministerial Conference.

4. The Ministerial Conference may review the operation of this Article in particular cases at the request of any Member and make appropriate recommendations.

5. Non-application of a Plurilateral Trade Agreement between parties to that Agreement shall be governed by the provisions of that Agreement.

Article XIV

Acceptance, Entry into Force and Deposit

1. This Agreement shall be open for acceptance, by signature or otherwise, by contracting parties to GATT 1947, and the European Communities, which are eligible to become original Members of the WTO in accordance with Article XI of this Agreement. Such acceptance shall apply to this Agreement and the Multilateral Trade Agreements annexed hereto. This Agreement and the Multilateral Trade Agreements annexed hereto shall enter into force on the date determined by Ministers in accordance with paragraph 3 of the Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations and shall remain open for acceptance for a period of two years following that date unless the Ministers decide otherwise. An acceptance following the entry into force of this Agreement shall enter into force on the 30th day following the date of such acceptance.

2. A Member which accepts this Agreement after its entry into force shall implement those concessions and obligations in the Multilateral Trade Agreements that are to be implemented over a period of time starting with the entry into force of this Agreement as if it had accepted this Agreement on the date of its entry into force.

3. Until the entry into force of this Agreement, the text of this Agreement and the Multilateral Trade Agreements shall be deposited with the Director-General to the CONTRACTING PARTIES to GATT 1947. The Director-General shall promptly furnish a certified true copy of this Agreement and the Multilateral Trade Agreements, and a notification of each acceptance thereof, to each government and the European Communities having accepted this Agreement. This Agreement and the Multilateral Trade Agreements, and any amendments thereto, shall, upon the entry into force of this Agreement, be deposited with the Director-General of the WTO.

4. The acceptance and entry into force of a Plurilateral Trade Agreement shall be governed by the provisions of that Agreement. Such Agreements shall be deposited with the Director-General to the CONTRACTING PARTIES to GATT 1947. Upon the entry into force of this Agreement, such Agreements shall be deposited with the Director-General of the WTO.

Article XV

Withdrawal

1. Any Member may withdraw from this Agreement. Such withdrawal shall apply both to this Agreement and the Multilateral Trade Agreements and shall take effect upon the expiration of six months from the date on which written notice of withdrawal is received by the Director-General of the WTO.

2. Withdrawal from a Plurilateral Trade Agreement shall be governed by the provisions of that Agreement.

Article XVI

Miscellaneous Provisions

1. Except as otherwise provided under this Agreement or the Multilateral Trade Agreements, the WTO shall be guided by the decisions, procedures and customary practices followed by the CONTRACTING PARTIES to GATT 1947 and the bodies established in the framework of GATT 1947.

2. To the extent practicable, the Secretariat of GATT 1947 shall become the Secretariat of the WTO, and the Director-General to the CONTRACTING PARTIES to GATT 1947, until such time as the Ministerial Conference has appointed a Director-General in accordance with paragraph 2 of Article VI of this Agreement, shall serve as Director-General of the WTO.

3. In the event of a conflict between a provision of this Agreement and a provision of any of the Multilateral Trade Agreements, the provision of this Agreement shall prevail to the extent of the conflict.

4. Each Member shall ensure the conformity of its laws, regulations and administrative procedures with its obligations as provided in the annexed Agreements.

5. No reservations may be made in respect of any provision of this Agreement. Reservations in respect of any of the provisions of the Multilateral Trade Agreements may only be made to the extent provided for in those Agreements. Reservations in respect of a provision of a Plurilateral Trade Agreement shall be governed by the provisions of that Agreement.

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

DONE at Marrakesh this fifteenth day of April one thousand nine hundred and ninety-four, in a single copy, in the English, French and Spanish languages, each text being authentic.

Explanatory Notes:

The terms "country" or "countries" as used in this Agreement and the Multilateral Trade Agreements are to be understood to include any separate customs territory Member of the WTO.

In the case of a separate customs territory Member of the WTO, where an expression in this Agreement and the Multilateral Trade Agreements is qualified by the term "national", such expression shall be read as pertaining to that customs territory, unless otherwise specified.

LIST OF ANNEXES

ANNEX 1

ANNEX 1A: Multilateral Agreements on Trade in Goods

General Agreement on Tariffs and Trade 1994
Agreement on Agriculture
Agreement on the Application of Sanitary and Phytosanitary Measures
Agreement on Textiles and Clothing
Agreement on Technical Barriers to Trade
Agreement on Trade-Related Investment Measures
Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994
Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994
Agreement on Preshipment Inspection
Agreement on Rules of Origin
Agreement on Import Licensing Procedures
Agreement on Subsidies and Countervailing Measures
Agreement on Safeguards

ANNEX 1B: General Agreement on Trade in Services and Annexes

ANNEX 1C: Agreement on Trade-Related Aspects of Intellectual Property Rights

ANNEX 2

Understanding on Rules and Procedures Governing the Settlement of Disputes

ANNEX 3

Trade Policy Review Mechanism

ANNEX 4

Plurilateral Trade Agreements

Agreement on Trade in Civil Aircraft
Agreement on Government Procurement
International Dairy Agreement
International Bovine Meat Agreement

ANNEX 1

ANNEX 1A

MULTILATERAL AGREEMENTS ON TRADE IN GOODS

General interpretative note to Annex 1A:

In the event of conflict between a provision of the General Agreement on Tariffs and Trade 1994 and a provision of another agreement in Annex 1A to the Agreement Establishing the World Trade Organization (referred to in the agreements in Annex 1A as the "WTO Agreement"), the provision of the other agreement shall prevail to the extent of the conflict.

GENERAL AGREEMENT ON TARIFFS AND TRADE 1994

1. The General Agreement on Tariffs and Trade 1994 ("GATT 1994") shall consist of:

(a) the provisions in the General Agreement on Tariffs and Trade, dated 30 October 1947, annexed to the Final Act Adopted at the Conclusion of the Second Session of the Preparatory Committee of the United Nations Conference on Trade and Employment (excluding the Protocol of Provisional Application), as rectified, amended or modified by the terms of legal instruments which have entered into force before the date of entry into force of the WTO Agreement;

(b) the provisions of the legal instruments set forth below that have entered into force under the GATT 1947 before the date of entry into force of the WTO Agreement:

(i) protocols and certifications relating to tariff concessions;

(ii) protocols of accession (excluding the provisions (*a*) concerning provisional application and withdrawal of provisional application and (*b*) providing that Part II of GATT 1947 shall be applied provisionally to the fullest extent not inconsistent with legislation existing on the date of the Protocol);

(iii) decisions on waivers granted under Article XXV of GATT 1947 and still in force on the date of entry into force of the WTO Agreement[1];

(iv) other decisions of the CONTRACTING PARTIES to GATT 1947;

(c) the Understandings set forth below:

(i) Understanding on the Interpretation of Article II:1(b) of the General Agreement on Tariffs and Trade 1994;

(ii) Understanding on the Interpretation of Article XVII of the General Agreement on Tariffs and Trade 1994;

(iii) Understanding on Balance-of-Payments Provisions of the General Agreement on Tariffs and Trade 1994;

(iv) Understanding on the Interpretation of Article XXIV of the General Agreement on Tariffs and Trade 1994;

(v) Understanding in Respect of Waivers of Obligations under the General Agreement on Tariffs and Trade 1994;

(vi) Understanding on the Interpretation of Article XXVIII of the General Agreement on Tariffs and Trade 1994; and

(d) the Marrakesh Protocol to GATT 1994.

2. *Explanatory Notes*

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[1]The waivers covered by this provision are listed in footnote 7 on pages 11 and 12 in Part II of document MTN/FA of 15 December 1993 and in MTN/FA/Corr.6 of 21 March 1994. The Ministerial Conference shall establish at its first session a revised list of waivers covered by this provision that adds any waivers granted under GATT 1947 after 15 December 1993 and before the date of entry into force of the WTO Agreement, and deletes the waivers which will have expired by that time.

(a) The references to "contracting party" in the provisions of GATT 1994 shall be deemed to read "Member". The references to "less-developed contracting party" and "developed contracting party" shall be deemed to read "developing country Member" and "developed country Member". The references to "Executive Secretary" shall be deemed to read "Director-General of the WTO".

(b) The references to the CONTRACTING PARTIES acting jointly in Articles XV:1, XV:2, XV:8, XXXVIII and the Notes *Ad* Article XII and XVIII; and in the provisions on special exchange agreements in Articles XV:2, XV:3, XV:6, XV:7 and XV:9 of GATT 1994 shall be deemed to be references to the WTO. The other functions that the provisions of GATT 1994 assign to the CONTRACTING PARTIES acting jointly shall be allocated by the Ministerial Conference.

(c) (i) The text of GATT 1994 shall be authentic in English, French and Spanish.

(ii) The text of GATT 1994 in the French language shall be subject to the rectifications of terms indicated in Annex A to document MTN.TNC/41.

(iii) The authentic text of GATT 1994 in the Spanish language shall be the text in Volume IV of the Basic Instruments and Selected Documents series, subject to the rectifications of terms indicated in Annex B to document MTN.TNC/41.

3. (a) The provisions of Part II of GATT 1994 shall not apply to measures taken by a Member under specific mandatory legislation, enacted by that Member before it became a contracting party to GATT 1947, that prohibits the use, sale or lease of foreign-built or foreign-reconstructed vessels in commercial applications between points in national waters or the waters of an exclusive economic zone. This exemption applies to: (*a*) the continuation or prompt renewal of a non-conforming provision of such legislation; and (*b*) the amendment to a non-conforming provision of such legislation to the extent that the amendment does not decrease the conformity of the provision with Part II of GATT 1947. This exemption is limited to measures taken under legislation described above that is notified and specified prior to the date of entry into force of the WTO Agreement. If such legislation is subsequently modified to decrease its conformity with Part II of GATT 1994, it will no longer qualify for coverage under this paragraph.

(b) The Ministerial Conference shall review this exemption not later than five years after the date of entry into force of the WTO Agreement and thereafter every two years for as long as the exemption is in force for the purpose of examining whether the conditions which created the need for the exemption still prevail.

(c) A Member whose measures are covered by this exemption shall annually submit a detailed statistical notification consisting of a five-year moving average of actual and expected deliveries of relevant vessels as well as additional information on the use, sale, lease or repair of relevant vessels covered by this exemption.

(d) A Member that considers that this exemption operates in such a manner as to justify a reciprocal and proportionate limitation on the use, sale, lease or repair of vessels constructed in the territory of the Member invoking the exemption shall be free to introduce such a limitation subject to prior notification to the Ministerial Conference.

(e) This exemption is without prejudice to solutions concerning specific aspects of the legislation covered by this exemption negotiated in sectoral agreements or in other fora.

UNDERSTANDING ON THE INTERPRETATION OF ARTICLE II:1(b) OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE 1994

Members hereby *agree* as follows:

1. In order to ensure transparency of the legal rights and obligations deriving from paragraph 1(b) of Article II, the nature and level of any "other duties or charges" levied on bound tariff items, as referred to in that provision, shall be recorded in the Schedules of concessions annexed to GATT 1994 against the tariff item to which they apply. It is understood that such recording does not change the legal character of "other duties or charges".

2. The date as of which "other duties or charges" are bound, for the purposes of Article II, shall be 15 April 1994. "Other duties or charges" shall therefore be recorded in the Schedules at the levels applying on this date. At each subsequent renegotiation of a concession or negotiation of a new concession the applicable date for the tariff item in question shall become the date of the incorporation of the new concession in the appropriate Schedule. However, the date of the instrument by which a concession on any particular tariff item was first incorporated into GATT 1947 or GATT 1994 shall also continue to be recorded in column 6 of the Loose-Leaf Schedules.

3. "Other duties or charges" shall be recorded in respect of all tariff bindings.

4. Where a tariff item has previously been the subject of a concession, the level of "other duties or charges" recorded in the appropriate Schedule shall not be higher than the level obtaining at the time of the first incorporation of the concession in that Schedule. It will be open to any Member to challenge the existence of an "other duty or charge", on the ground that no such "other duty or charge" existed at the time of the original binding of the item in question, as well as the consistency of the recorded level of any "other duty or charge" with the previously bound level, for a period of three years after the date of entry into force of the WTO Agreement or three years after the date of deposit with the Director-General of the WTO of the instrument incorporating the Schedule in question into GATT 1994, if that is a later date.

5. The recording of "other duties or charges" in the Schedules is without prejudice to their consistency with rights and obligations under GATT 1994 other than those affected by paragraph 4. All Members retain the right to challenge, at any time, the consistency of any "other duty or charge" with such obligations.

6. For the purposes of this Understanding, the provisions of Articles XXII and XXIII of GATT 1994 as elaborated and applied by the Dispute Settlement Understanding shall apply.

7. "Other duties or charges" omitted from a Schedule at the time of deposit of the instrument incorporating the Schedule in question into GATT 1994 with, until the date of entry into force of the WTO Agreement, the Director-General to the CONTRACTING PARTIES to GATT 1947 or, thereafter, with the Director-General of the WTO, shall not subsequently be added to it and any "other duty or charge" recorded at a level lower than that prevailing on the applicable date shall not be restored to that level unless such additions or changes are made within six months of the date of deposit of the instrument.

8. The decision in paragraph 2 regarding the date applicable to each concession for the purposes of paragraph 1(b) of Article II of GATT 1994 supersedes the decision regarding the applicable date taken on 26 March 1980 (BISD 27S/24).

UNDERSTANDING ON THE INTERPRETATION OF ARTICLE XVII OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE 1994

Members,

Noting that Article XVII provides for obligations on Members in respect of the activities of the state trading enterprises referred to in paragraph 1 of Article XVII, which are required to be consistent with the general principles of non-discriminatory treatment prescribed in GATT 1994 for governmental measures affecting imports or exports by private traders;

Noting further that Members are subject to their GATT 1994 obligations in respect of those governmental measures affecting state trading enterprises;

Recognizing that this Understanding is without prejudice to the substantive disciplines prescribed in Article XVII;

Hereby *agree* as follows:

1. In order to ensure the transparency of the activities of state trading enterprises, Members shall notify such enterprises to the Council for Trade in Goods, for review by the working party to be set up under paragraph 5, in accordance with the following working definition:

> "Governmental and non-governmental enterprises, including marketing boards, which have been granted exclusive or special rights or privileges, including statutory or constitutional powers, in the exercise of which they influence through their purchases or sales the level or direction of imports or exports."

This notification requirement does not apply to imports of products for immediate or ultimate consumption in governmental use or in use by an enterprise as specified above and not otherwise for resale or use in the production of goods for sale.

2. Each Member shall conduct a review of its policy with regard to the submission of notifications on state trading enterprises to the Council for Trade in Goods, taking account of the provisions of this Understanding. In carrying out such a review, each Member should have regard to the need to ensure the maximum transparency possible in its notifications so as to permit a clear appreciation of the manner of operation of the enterprises notified and the effect of their operations on international trade.

3. Notifications shall be made in accordance with the questionnaire on state trading adopted on 24 May 1960 (BISD 9S/184–185), it being understood that Members shall notify the enterprises referred to in paragraph 1 whether or not imports or exports have in fact taken place.

4. Any Member which has reason to believe that another Member has not adequately met its notification obligation may raise the matter with the Member concerned. If the matter is not satisfactorily resolved it may make a counter-notification to the Council for Trade in Goods, for consideration by the working party set up under paragraph 5, simultaneously informing the Member concerned.

5. A working party shall be set up, on behalf of the Council for Trade in Goods, to review notifications and counter-notifications. In the light of this review and without prejudice to paragraph 4(c) of Article XVII, the Council for Trade in Goods may make recommendations with regard to the adequacy of notifications and the need for further information. The working party shall also review, in the light of the notifications received, the adequacy of the above-mentioned questionnaire on state trading and the coverage of state trading enterprises notified under paragraph 1. It shall also develop an illustrative list showing the kinds of relationships between governments and enterprises, and the kinds of activities,

engaged in by these enterprises, which may be relevant for the purposes of Article XVII. It is understood that the Secretariat will provide a general background paper for the working party on the operations of state trading enterprises as they relate to international trade. Membership of the working party shall be open to all Members indicating their wish to serve on it. It shall meet within a year of the date of entry into force of the WTO Agreement and thereafter at least once a year. It shall report annually to the Council for Trade in Goods.[1]

[1]The activities of this working party shall be coordinated with those of the working group provided for in Section III of the Ministerial Decision on Notification Procedures adopted on 15 April 1994.

UNDERSTANDING ON THE BALANCE-OF-PAYMENTS PROVISIONS OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE 1994

Members,

Recognizing the provisions of Articles XII and XVIII:B of GATT 1994 and of the Declaration on Trade Measures Taken for Balance-of-Payments Purposes adopted on 28 November 1979 (BISD 26S/205-209, referred to in this Understanding as the "1979 Declaration") and in order to clarify such provisions[1];

Hereby *agree* as follows:

Application of Measures

1. Members confirm their commitment to announce publicly, as soon as possible, time-schedules for the removal of restrictive import measures taken for balance-of-payments purposes. It is understood that such time-schedules may be modified as appropriate to take into account changes in the balance-of-payments situation. Whenever a time-schedule is not publicly announced by a Member, that Member shall provide justification as to the reasons therefor.

2. Members confirm their commitment to give preference to those measures which have the least disruptive effect on trade. Such measures (referred to in this Understanding as "price-based measures") shall be understood to include import surcharges, import deposit requirements or other equivalent trade measures with an impact on the price of imported goods. It is understood that, notwithstanding the provisions of Article II, price-based measures taken for balance-of-payments purposes may be applied by a Member in excess of the duties inscribed in the Schedule of that Member. Furthermore, that Member shall indicate the amount by which the price-based measure exceeds the bound duty clearly and separately under the notification procedures of this Understanding.

3. Members shall seek to avoid the imposition of new quantitative restrictions for balance-of-payments purposes unless, because of a critical balance-of-payments situation, price-based measures cannot arrest a sharp deterioration in the external payments position. In those cases in which a Member applies quantitative restrictions, it shall provide justification as to the reasons why price-based measures are not an adequate instrument to deal with the balance-of-payments situation. A Member maintaining quantitative restrictions shall indicate in successive consultations the progress made in significantly reducing the incidence and restrictive effect of such measures. It is understood that not more than one type of restrictive import measure taken for balance-of-payments purposes may be applied on the same product.

4. Members confirm that restrictive import measures taken for balance-of-payments purposes may only be applied to control the general level of imports and may not exceed what is necessary to address the balance-of-payments situation. In order to minimize any incidental protective effects, a Member shall administer restrictions in a transparent manner. The authorities of the importing Member shall provide adequate justification as to the criteria used to determine which products are subject to restriction. As provided in paragraph 3 of Article XII and paragraph 10 of Article XVIII, Members may, in the

[1]Nothing in this Understanding is intended to modify the rights and obligations of Members under Articles XII or XVIII:B of GATT 1994. The provisions of Articles XXII and XXIII of GATT 1994 as elaborated and applied by the Dispute Settlement Understanding may be invoked with respect to any matters arising from the application of restrictive import measures taken for balance-of-payments purposes.

case of certain essential products, exclude or limit the application of surcharges applied across the board or other measures applied for balance-of-payments purposes. The term "essential products" shall be understood to mean products which meet basic consumption needs or which contribute to the Member's effort to improve its balance-of-payments situation, such as capital goods or inputs needed for production. In the administration of quantitative restrictions, a Member shall use discretionary licensing only when unavoidable and shall phase it out progressively. Appropriate justification shall be provided as to the criteria used to determine allowable import quantities or values.

Procedures for Balance-of-Payments Consultations

5. The Committee on Balance-of-Payments Restrictions (referred to in this Understanding as the "Committee") shall carry out consultations in order to review all restrictive import measures taken for balance-of-payments purposes. The membership of the Committee is open to all Members indicating their wish to serve on it. The Committee shall follow the procedures for consultations on balance-of-payments restrictions approved on 28 April 1970 (BISD 18S/48-53, referred to in this Understanding as "full consultation procedures"), subject to the provisions set out below.

6. A Member applying new restrictions or raising the general level of its existing restrictions by a substantial intensification of the measures shall enter into consultations with the Committee within four months of the adoption of such measures. The Member adopting such measures may request that a consultation be held under paragraph 4(a) of Article XII or paragraph 12(a) of Article XVIII as appropriate. If no such request has been made, the Chairman of the Committee shall invite the Member to hold such a consultation. Factors that may be examined in the consultation would include, *inter alia*, the introduction of new types of restrictive measures for balance-of-payments purposes, or an increase in the level or product coverage of restrictions.

7. All restrictions applied for balance-of-payments purposes shall be subject to periodic review in the Committee under paragraph 4(b) of Article XII or under paragraph 12(b) of Article XVIII, subject to the possibility of altering the periodicity of consultations in agreement with the consulting Member or pursuant to any specific review procedure that may be recommended by the General Council.

8. Consultations may be held under the simplified procedures approved on 19 December 1972 (BISD 20S/47-49, referred to in this Understanding as "simplified consultation procedures") in the case of least-developed country Members or in the case of developing country Members which are pursuing liberalization efforts in conformity with the schedule presented to the Committee in previous consultations. Simplified consultation procedures may also be used when the Trade Policy Review of a developing country Member is scheduled for the same calendar year as the date fixed for the consultations. In such cases the decision as to whether full consultation procedures should be used will be made on the basis of the factors enumerated in paragraph 8 of the 1979 Declaration. Except in the case of least-developed country Members, no more than two successive consultations may be held under simplified consultation procedures.

Notification and Documentation

9. A Member shall notify to the General Council the introduction of or any changes in the application of restrictive import measures taken for balance-of-payments purposes, as well as any modifications in time-schedules for the removal of such measures as announced under paragraph 1. Significant changes shall be notified to the General Council prior to or not later than 30 days after their announcement. On a yearly basis, each Member shall make available to the Secretariat a consolidated notification, including all changes in laws, regulations, policy statements or public notices, for examination by Members. Notifications shall include full information, as far as possible, at the tariff-line level, on the type of measures applied, the criteria used for their administration, product coverage and trade flows affected.

10. At the request of any Member, notifications may be reviewed by the Committee. Such reviews would be limited to the clarification of specific issues raised by a notification or examination of whether a consultation under paragraph 4(a) of Article XII or paragraph 12(a) of Article XVIII is required. Members which have reasons to believe that a restrictive import measure applied by another Member was taken for balance-of-payments purposes may bring the matter to the attention of the Committee. The Chairman of the Committee shall request information on the measure and make it available to all Members. Without prejudice to the right of any member of the Committee to seek appropriate clarifications in the course of consultations, questions may be submitted in advance for consideration by the consulting Member.

11. The consulting Member shall prepare a Basic Document for the consultations which, in addition to any other information considered to be relevant, should include: *(a)* an overview of the balance-of-payments situation and prospects, including a consideration of the internal and external factors having a bearing on the balance-of-payments situation and the domestic policy measures taken in order to restore equilibrium on a sound and lasting basis; *(b)* a full description of the restrictions applied for balance-of-payments purposes, their legal basis and steps taken to reduce incidental protective effects; *(c)* measures taken since the last consultation to liberalize import restrictions, in the light of the conclusions of the Committee; *(d)* a plan for the elimination and progressive relaxation of remaining restrictions. References may be made, when relevant, to the information provided in other notifications or reports made to the WTO. Under simplified consultation procedures, the consulting Member shall submit a written statement containing essential information on the elements covered by the Basic Document.

12. The Secretariat shall, with a view to facilitating the consultations in the Committee, prepare a factual background paper dealing with the different aspects of the plan for consultations. In the case of developing country Members, the Secretariat document shall include relevant background and analytical material on the incidence of the external trading environment on the balance-of-payments situation and prospects of the consulting Member. The technical assistance services of the Secretariat shall, at the request of a developing country Member, assist in preparing the documentation for the consultations.

Conclusions of Balance-of-Payments Consultations

13. The Committee shall report on its consultations to the General Council. When full consultation procedures have been used, the report should indicate the Committee's conclusions on the different elements of the plan for consultations, as well as the facts and reasons on which they are based. The Committee shall endeavour to include in its conclusions proposals for recommendations aimed at promoting the implementation of Articles XII and XVIII:B, the 1979 Declaration and this Understanding. In those cases in which a time-schedule has been presented for the removal of restrictive measures taken for balance-of-payments purposes, the General Council may recommend that, in adhering to such a time-schedule, a Member shall be deemed to be in compliance with its GATT 1994 obligations. Whenever the General Council has made specific recommendations, the rights and obligations of Members shall be assessed in the light of such recommendations. In the absence of specific proposals for recommendations by the General Council, the Committee's conclusions should record the different views expressed in the Committee. When simplified consultation procedures have been used, the report shall include a summary of the main elements discussed in the Committee and a decision on whether full consultation procedures are required.

UNDERSTANDING ON THE INTERPRETATION OF ARTICLE XXIV OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE 1994

Members,

Having regard to the provisions of Article XXIV of GATT 1994;

Recognizing that customs unions and free trade areas have greatly increased in number and importance since the establishment of GATT 1947 and today cover a significant proportion of world trade;

Recognizing the contribution to the expansion of world trade that may be made by closer integration between the economies of the parties to such agreements;

Recognizing also that such contribution is increased if the elimination between the constituent territories of duties and other restrictive regulations of commerce extends to all trade, and diminished if any major sector of trade is excluded;

Reaffirming that the purpose of such agreements should be to facilitate trade between the constituent territories and not to raise barriers to the trade of other Members with such territories; and that in their formation or enlargement the parties to them should to the greatest possible extent avoid creating adverse effects on the trade of other Members;

Convinced also of the need to reinforce the effectiveness of the role of the Council for Trade in Goods in reviewing agreements notified under Article XXIV, by clarifying the criteria and procedures for the assessment of new or enlarged agreements, and improving the transparency of all Article XXIV agreements;

Recognizing the need for a common understanding of the obligations of Members under paragraph 12 of Article XXIV;

Hereby *agree* as follows:

1. Customs unions, free-trade areas, and interim agreements leading to the formation of a customs union or free-trade area, to be consistent with Article XXIV, must satisfy, *inter alia*, the provisions of paragraphs 5, 6, 7 and 8 of that Article.

Article XXIV:5

2. The evaluation under paragraph 5(a) of Article XXIV of the general incidence of the duties and other regulations of commerce applicable before and after the formation of a customs union shall in respect of duties and charges be based upon an overall assessment of weighted average tariff rates and of customs duties collected. This assessment shall be based on import statistics for a previous representative period to be supplied by the customs union, on a tariff-line basis and in values and quantities, broken down by WTO country of origin. The Secretariat shall compute the weighted average tariff rates and customs duties collected in accordance with the methodology used in the assessment of tariff offers in the Uruguay Round of Multilateral Trade Negotiations. For this purpose, the duties and charges to be taken into consideration shall be the applied rates of duty. It is recognized that for the purpose of the overall assessment of the incidence of other regulations of commerce for which quantification and aggregation are difficult, the examination of individual measures, regulations, products covered and trade flows affected may be required.

3. The "reasonable length of time" referred to in paragraph 5(c) of Article XXIV should exceed 10 years only in exceptional cases. In cases where Members parties to an interim agreement believe that 10 years would be insufficient they shall provide a full explanation to the Council for Trade in Goods of the need for a longer period.

Article XXIV:6

4. Paragraph 6 of Article XXIV establishes the procedure to be followed when a Member forming a customs union proposes to increase a bound rate of duty. In this regard Members reaffirm that the procedure set forth in Article XXVIII, as elaborated in the guidelines adopted on 10 November 1980 (BISD 27S/26-28) and in the Understanding on the Interpretation of Article XXVIII of GATT 1994, must be commenced before tariff concessions are modified or withdrawn upon the formation of a customs union or an interim agreement leading to the formation of a customs union.

5. These negotiations will be entered into in good faith with a view to achieving mutually satisfactory compensatory adjustment. In such negotiations, as required by paragraph 6 of Article XXIV, due account shall be taken of reductions of duties on the same tariff line made by other constituents of the customs union upon its formation. Should such reductions not be sufficient to provide the necessary compensatory adjustment, the customs union would offer compensation, which may take the form of reductions of duties on other tariff lines. Such an offer shall be taken into consideration by the Members having negotiating rights in the binding being modified or withdrawn. Should the compensatory adjustment remain unacceptable, negotiations should be continued. Where, despite such efforts, agreement in negotiations on compensatory adjustment under Article XXVIII as elaborated by the Understanding on the Interpretation of Article XXVIII of GATT 1994 cannot be reached within a reasonable period from the initiation of negotiations, the customs union shall, nevertheless, be free to modify or withdraw the concessions; affected Members shall then be free to withdraw substantially equivalent concessions in accordance with Article XXVIII.

6. GATT 1994 imposes no obligation on Members benefiting from a reduction of duties consequent upon the formation of a customs union, or an interim agreement leading to the formation of a customs union, to provide compensatory adjustment to its constituents.

Review of Customs Unions and Free-Trade Areas

7. All notifications made under paragraph 7(a) of Article XXIV shall be examined by a working party in the light of the relevant provisions of GATT 1994 and of paragraph 1 of this Understanding. The working party shall submit a report to the Council for Trade in Goods on its findings in this regard. The Council for Trade in Goods may make such recommendations to Members as it deems appropriate.

8. In regard to interim agreements, the working party may in its report make appropriate recommendations on the proposed time-frame and on measures required to complete the formation of the customs union or free-trade area. It may if necessary provide for further review of the agreement.

9. Members parties to an interim agreement shall notify substantial changes in the plan and schedule included in that agreement to the Council for Trade in Goods and, if so requested, the Council shall examine the changes.

10. Should an interim agreement notified under paragraph 7(a) of Article XXIV not include a plan and schedule, contrary to paragraph 5(c) of Article XXIV, the working party shall in its report recommend such a plan and schedule. The parties shall not maintain or put into force, as the case may be, such agreement if they are not prepared to modify it in accordance with these recommendations. Provision shall be made for subsequent review of the implementation of the recommendations.

11. Customs unions and constituents of free-trade areas shall report periodically to the Council for Trade in Goods, as envisaged by the CONTRACTING PARTIES to GATT 1947 in their instruction to the GATT 1947 Council concerning reports on regional agreements (BISD 18S/38), on the operation of the relevant agreement. Any significant changes and/or developments in the agreements should be reported as they occur.

Dispute Settlement

12. The provisions of Articles XXII and XXIII of GATT 1994 as elaborated and applied by the Dispute Settlement Understanding may be invoked with respect to any matters arising from the application of those provisions of Article XXIV relating to customs unions, free-trade areas or interim agreements leading to the formation of a customs union or free-trade area.

Article XXIV:12

13. Each Member is fully responsible under GATT 1994 for the observance of all provisions of GATT 1994, and shall take such reasonable measures as may be available to it to ensure such observance by regional and local governments and authorities within its territory.

14. The provisions of Articles XXII and XXIII of GATT 1994 as elaborated and applied by the Dispute Settlement Understanding may be invoked in respect of measures affecting its observance taken by regional or local governments or authorities within the territory of a Member. When the Dispute Settlement Body has ruled that a provision of GATT 1994 has not been observed, the responsible Member shall take such reasonable measures as may be available to it to ensure its observance. The provisions relating to compensation and suspension of concessions or other obligations apply in cases where it has not been possible to secure such observance.

15. Each Member undertakes to accord sympathetic consideration to and afford adequate opportunity for consultation regarding any representations made by another Member concerning measures affecting the operation of GATT 1994 taken within the territory of the former.

UNDERSTANDING IN RESPECT OF WAIVERS OF OBLIGATIONS UNDER THE GENERAL AGREEMENT ON TARIFFS AND TRADE 1994

Members hereby *agree* as follows:

1. A request for a waiver or for an extension of an existing waiver shall describe the measures which the Member proposes to take, the specific policy objectives which the Member seeks to pursue and the reasons which prevent the Member from achieving its policy objectives by measures consistent with its obligations under GATT 1994.

2. Any waiver in effect on the date of entry into force of the WTO Agreement shall terminate, unless extended in accordance with the procedures above and those of Article IX of the WTO Agreement, on the date of its expiry or two years from the date of entry into force of the WTO Agreement, whichever is earlier.

3. Any Member considering that a benefit accruing to it under GATT 1994 is being nullified or impaired as a result of:

(a) the failure of the Member to whom a waiver was granted to observe the terms or conditions of the waiver, or

(b) the application of a measure consistent with the terms and conditions of the waiver

may invoke the provisions of Article XXIII of GATT 1994 as elaborated and applied by the Dispute Settlement Understanding.

UNDERSTANDING ON THE INTERPRETATION OF ARTICLE XXVIII OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE 1994

Members hereby *agree* as follows:

1. For the purposes of modification or withdrawal of a concession, the Member which has the highest ratio of exports affected by the concession (i.e. exports of the product to the market of the Member modifying or withdrawing the concession) to its total exports shall be deemed to have a principal supplying interest if it does not already have an initial negotiating right or a principal supplying interest as provided for in paragraph 1 of Article XXVIII. It is however agreed that this paragraph will be reviewed by the Council for Trade in Goods five years from the date of entry into force of the WTO Agreement with a view to deciding whether this criterion has worked satisfactorily in securing a redistribution of negotiating rights in favour of small and medium-sized exporting Members. If this is not the case, consideration will be given to possible improvements, including, in the light of the availability of adequate data, the adoption of a criterion based on the ratio of exports affected by the concession to exports to all markets of the product in question.

2. Where a Member considers that it has a principal supplying interest in terms of paragraph 1, it should communicate its claim in writing, with supporting evidence, to the Member proposing to modify or withdraw a concession, and at the same time inform the Secretariat. Paragraph 4 of the "Procedures for Negotiations under Article XXVIII" adopted on 10 November 1980 (BISD 27S/26-28) shall apply in these cases.

3. In the determination of which Members have a principal supplying interest (whether as provided for in paragraph 1 above or in paragraph 1 of Article XXVIII) or substantial interest, only trade in the affected product which has taken place on an MFN basis shall be taken into consideration. However, trade in the affected product which has taken place under non-contractual preferences shall also be taken into account if the trade in question has ceased to benefit from such preferential treatment, thus becoming MFN trade, at the time of the negotiation for the modification or withdrawal of the concession, or will do so by the conclusion of that negotiation.

4. When a tariff concession is modified or withdrawn on a new product (i.e. a product for which three years' trade statistics are not available) the Member possessing initial negotiating rights on the tariff line where the product is or was formerly classified shall be deemed to have an initial negotiating right in the concession in question. The determination of principal supplying and substantial interests and the calculation of compensation shall take into account, *inter alia*, production capacity and investment in the affected product in the exporting Member and estimates of export growth, as well as forecasts of demand for the product in the importing Member. For the purposes of this paragraph, "new product" is understood to include a tariff item created by means of a breakout from an existing tariff line.

5. Where a Member considers that it has a principal supplying or a substantial interest in terms of paragraph 4, it should communicate its claim in writing, with supporting evidence, to the Member proposing to modify or withdraw a concession, and at the same time inform the Secretariat. Paragraph 4 of the above-mentioned "Procedures for Negotiations under Article XXVIII" shall apply in these cases.

6. When an unlimited tariff concession is replaced by a tariff rate quota, the amount of compensation provided should exceed the amount of the trade actually affected by the modification of the concession. The basis for the calculation of compensation should be the amount by which future trade prospects exceed the level of the quota. It is understood that the calculation of future trade prospects should be based on the greater of:

(a) the average annual trade in the most recent representative three-year period, increased by the average annual growth rate of imports in that same period, or by 10 per cent, whichever is the greater; or

(b) trade in the most recent year increased by 10 per cent.

In no case shall a Member's liability for compensation exceed that which would be entailed by complete withdrawal of the concession.

7. Any Member having a principal supplying interest, whether as provided for in paragraph 1 above or in paragraph 1 of Article XXVIII, in a concession which is modified or withdrawn shall be accorded an initial negotiating right in the compensatory concessions, unless another form of compensation is agreed by the Members concerned.

MARRAKESH PROTOCOL TO THE GENERAL AGREEMENT ON TARIFFS AND TRADE 1994

Members,

Having carried out negotiations within the framework of GATT 1947, pursuant to the Ministerial Declaration on the Uruguay Round,

Hereby *agree* as follows:

1. The schedule annexed to this Protocol relating to a Member shall become a Schedule to GATT 1994 relating to that Member on the day on which the WTO Agreement enters into force for that Member. Any schedule submitted in accordance with the Ministerial Decision on measures in favour of least-developed countries shall be deemed to be annexed to this Protocol.

2. The tariff reductions agreed upon by each Member shall be implemented in five equal rate reductions, except as may be otherwise specified in a Member's Schedule. The first such reduction shall be made effective on the date of entry into force of the WTO Agreement, each successive reduction shall be made effective on 1 January of each of the following years, and the final rate shall become effective no later than the date four years after the date of entry into force of the WTO Agreement, except as may be otherwise specified in that Member's Schedule. Unless otherwise specified in its Schedule, a Member that accepts the WTO Agreement after its entry into force shall, on the date that Agreement enters into force for it, make effective all rate reductions that have already taken place together with the reductions which it would under the preceding sentence have been obligated to make effective on 1 January of the year following, and shall make effective all remaining rate reductions on the schedule specified in the previous sentence. The reduced rate should in each stage be rounded off to the first decimal. For agricultural products, as defined in Article 2 of the Agreement on Agriculture, the staging of reductions shall be implemented as specified in the relevant parts of the schedules.

3. The implementation of the concessions and commitments contained in the schedules annexed to this Protocol shall, upon request, be subject to multilateral examination by the Members. This would be without prejudice to the rights and obligations of Members under Agreements in Annex 1A of the WTO Agreement.

4. After the schedule annexed to this Protocol relating to a Member has become a Schedule to GATT 1994 pursuant to the provisions of paragraph 1, such Member shall be free at any time to withhold or to withdraw in whole or in part the concession in such Schedule with respect to any product for which the principal supplier is any other Uruguay Round participant the schedule of which has not yet become a Schedule to GATT 1994. Such action can, however, only be taken after written notice of any such withholding or withdrawal of a concession has been given to the Council for Trade in Goods and after consultations have been held, upon request, with any Member, the relevant schedule relating to which has become a Schedule to GATT 1994 and which has a substantial interest in the product involved. Any concessions so withheld or withdrawn shall be applied on and after the day on which the schedule of the Member which has the principal supplying interest becomes a Schedule to GATT 1994.

5. (a) Without prejudice to the provisions of paragraph 2 of Article 4 of the Agreement on Agriculture, for the purpose of the reference in paragraphs 1:(b) and 1(c) of Article II of GATT 1994 to the date of that Agreement, the applicable date in respect of each product which is the subject of a concession provided for in a schedule of concessions 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 GATT 1994 to the date of that Agreement, the applicable date in respect of a schedule of concessions annexed to this Protocol shall be the date of this Protocol.

6. In cases of modification or withdrawal of concessions relating to non-tariff measures as contained in Part III of the schedules, the provisions of Article XXVIII of GATT 1994 and the "Procedures for Negotiations under Article XXVIII" adopted on 10 November 1980 (BISD 27S/26-28) shall apply. This would be without prejudice to the rights and obligations of Members under GATT 1994.

7. In each case in which a schedule annexed to this Protocol results for any product in treatment less favourable than was provided for such product in the Schedules of GATT 1947 prior to the entry into force of the WTO Agreement, the Member to whom the schedule relates shall be deemed to have taken appropriate action as would have been otherwise necessary under the relevant provisions of Article XXVIII of GATT 1947 or 1994. The provisions of this paragraph shall apply only to Egypt, Peru, South Africa and Uruguay.

8. The Schedules annexed hereto are authentic in the English, French or Spanish language as specified in each Schedule.

9. The date of this Protocol is 15 April 1994.

AGREEMENT ON AGRICULTURE

Members,

Having decided to establish a basis for initiating a process of reform of trade in agriculture in line with the objectives of the negotiations as set out in the Punta del Este Declaration;

Recalling that their long-term objective as agreed at the Mid-Term Review of the Uruguay Round "is to establish a fair and market-oriented agricultural trading system and that a reform process should be initiated through the negotiation of commitments on support and protection and through the establishment of strengthened and more operationally effective GATT rules and disciplines";

Recalling further that "the above-mentioned long-term objective is to provide for substantial progressive reductions in agricultural support and protection sustained over an agreed period of time, resulting in correcting and preventing restrictions and distortions in world agricultural markets";

Committed to achieving specific binding commitments in each of the following areas: market access; domestic support; export competition; and to reaching an agreement on sanitary and phytosanitary issues;

Having agreed that in implementing their commitments on market access, developed country Members would take fully into account the particular needs and conditions of developing country Members by providing for a greater improvement of opportunities and terms of access for agricultural products of particular interest to these Members, including the fullest liberalization of trade in tropical agricultural products as agreed at the Mid-Term Review, and for products of particular importance to the diversification of production from the growing of illicit narcotic crops;

Noting that commitments under the reform programme should be made in an equitable way among all Members, having regard to non-trade concerns, including food security and the need to protect the environment; having regard to the agreement that special and differential treatment for developing countries is an integral element of the negotiations, and taking into account the possible negative effects of the implementation of the reform programme on least-developed and net food-importing developing countries;

Hereby *agree* as follows:

Part I

Article 1

Definition of Terms

In this Agreement, unless the context otherwise requires:

(a) "Aggregate Measurement of Support" and "AMS" mean the annual level of support, expressed in monetary terms, provided for an agricultural product in favour of the producers of the basic agricultural product or non-product-specific support provided in favour of agricultural producers in general, other than support provided under programmes that qualify as exempt from reduction under Annex 2 to this Agreement, which is:

(i) with respect to support provided during the base period, specified in the relevant tables of supporting material incorporated by reference in Part IV of a Member's Schedule; and

(ii) with respect to support provided during any year of the implementation period and thereafter, calculated in accordance with the provisions of Annex 3 of this Agreement and taking into account the constituent data and methodology used in the tables of supporting material incorporated by reference in Part IV of the Member's Schedule;

(b) "basic agricultural product" in relation to domestic support commitments is defined as the product as close as practicable to the point of first sale as specified in a Member's Schedule and in the related supporting material;

(c) "budgetary outlays" or "outlays" includes revenue foregone;

(d) "Equivalent Measurement of Support" means the annual level of support, expressed in monetary terms, provided to producers of a basic agricultural product through the application of one or more measures, the calculation of which in accordance with the AMS methodology is impracticable, other than support provided under programmes that qualify as exempt from reduction under Annex 2 to this Agreement, and which is:

(i) with respect to support provided during the base period, specified in the relevant tables of supporting material incorporated by reference in Part IV of a Member's Schedule; and

(ii) with respect to support provided during any year of the implementation period and thereafter, calculated in accordance with the provisions of Annex 4 of this Agreement and taking into account the constituent data and methodology used in the tables of supporting material incorporated by reference in Part IV of the Member's Schedule;

(e) "export subsidies" refers to subsidies contingent upon export performance, including the export subsidies listed in Article 9 of this Agreement;

(f) "implementation period" means the six-year period commencing in the year 1995, except that, for the purposes of Article 13, it means the nine-year period commencing in 1995;

(g) "market access concessions" includes all market access commitments undertaken pursuant to this Agreement;

(h) "Total Aggregate Measurement of Support" and "Total AMS" mean the sum of all domestic support provided in favour of agricultural producers, calculated as the sum of all aggregate measurements of support for basic agricultural products, all non-product-specific aggregate measurements of support and all equivalent measurements of support for agricultural products, and which is:

(i) with respect to support provided during the base period (i.e. the "Base Total AMS") and the maximum support permitted to be provided during any year of the implementation period or thereafter (i.e. the "Annual and Final Bound Commitment Levels"), as specified in Part IV of a Member's Schedule; and

(ii) with respect to the level of support actually provided during any year of the implementation period and thereafter (i.e. the "Current Total AMS"), calculated in accordance with the provisions of this Agreement, including Article 6, and with the constraint data and methodology used in the tables of supporting material incorporated by reference in Part IV of the Member's Schedule;

(j) "year" in paragraph (f) above and in relation to the specific commitments of a Member refers to the calendar, financial or marketing year specified in the Schedule relating to that Member.

Article 2

Product Coverage

This Agreement applies to the products listed in Annex 1 to this Agreement, hereinafter referred to as agricultural products.

Part II

Article 3

Incorporation of Concessions and Commitments

1. The domestic support and export subsidy commitments in Part IV of each Member's Schedule constitute commitments limiting subsidization and are hereby made an integral part of GATT 1994.

2. Subject to the provisions of Article 6, a Member shall not provide support in favour of domestic producers in excess of the commitment levels specified in Section I of Part IV of its Schedule.

3. Subject to the provisions of paragraphs 2(b) and 4 of Article 9, a Member shall not provide export subsidies listed in paragraph 1 of Article 9 in respect of the agricultural products or groups of products specified in Section II of Part IV of its Schedule in excess of the budgetary outlay and quantity commitment levels specified therein and shall not provide such subsidies in respect of any agricultural product not specified in that Section of its Schedule.

Part III

Article 4

Market Access

1. Market access concessions contained in Schedules relate to bindings and reductions of tariffs, and to other market access commitments as specified therein.

2. Members shall not maintain, resort to, or revert to any measures of the kind which have been required to be converted into ordinary customs duties[1], except as otherwise provided for in Article 5 and Annex 5.

Article 5

Special Safeguard Provisions

1. Notwithstanding the provisions of paragraph 1(b) of Article II of GATT 1994, any Member may take recourse to the provisions of paragraphs 4 and 5 below in connection with the importation of an agricultural product, in respect of which measures referred to in paragraph 2 of Article 4 of this Agreement have been converted into an ordinary customs duty and which is designated in its Schedule with the symbol "SSG" as being the subject of a concession in respect of which the provisions of this Article may be invoked, if:

(a) the volume of imports of that product entering the customs territory of the Member granting the concession during any year exceeds a trigger level which relates to the existing market access opportunity as set out in paragraph 4; or, but not concurrently;

(b) the price at which imports of that product may enter the customs territory of the Member granting the concession, as determined on the basis of the c.i.f. import price of the shipment concerned expressed in terms of its domestic currency, falls below a trigger price equal to the average 1986 to 1988 reference price[2] for the product concerned.

2. Imports under current and minimum access commitments established as part of a concession referred to in paragraph 1 above shall be counted for the purpose of determining the volume of imports required for invoking the provisions of subparagraph 1(a) and paragraph 4, but imports under such commitments shall not be affected by any additional duty imposed under either subparagraph 1(a) and paragraph 4 or subparagraph 1(b) and paragraph 5 below.

3. Any supplies of the product in question which were *en route* on the basis of a contract settled before the additional duty is imposed under subparagraph 1(a) and paragraph 4 shall be exempted from any such additional duty, provided that they may be counted in the volume of imports of the product in question during the following year for the purposes of triggering the provisions of subparagraph 1(a) in that year.

4. Any additional duty imposed under subparagraph 1(a) shall only be maintained until the end of the year in which it has been imposed, and may only be levied at a level which shall not exceed one third of the level of the ordinary customs duty in effect in the year in which the action is taken. The trigger level shall be set according to the following schedule based on market access opportunities

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[1]These measures include quantitative import restrictions, variable import levies, minimum import prices, discretionary import licensing, non-tariff measures maintained through state-trading enterprises, voluntary export restraints, and similar border measures other than ordinary customs duties, whether or not the measures are maintained under country-specific derogations from the provisions of GATT 1947, but not measures maintained under balance-of-payments provisions or under other general, non-agriculture-specific provisions of GATT 1994 or of the other Multilateral Trade Agreements in Annex 1A to the WTO Agreement.

[2]The reference price used to invoke the provisions of this subparagraph shall, in general, be the average c.i.f. unit value of the product concerned, or otherwise shall be an appropriate price in terms of the quality of the product and its stage of processing. It shall, following its initial use, be publicly specified and available to the extent necessary to allow other Members to assess the additional duty that may be levied.

defined as imports as a percentage of the corresponding domestic consumption[1] during the three preceding years for which data are available:

(a) where such market access opportunities for a product are less than or equal to 10 per cent, the base trigger level shall equal 125 per cent;

(b) where such market access opportunities for a product are greater than 10 per cent but less than or equal to 30 per cent, the base trigger level shall equal 110 per cent;

(c) where such market access opportunities for a product are greater than 30 per cent, the base trigger level shall equal 105 per cent.

In all cases the additional duty may be imposed in any year where the absolute volume of imports of the product concerned entering the customs territory of the Member granting the concession exceeds the sum of (x) the base trigger level set out above multiplied by the average quantity of imports during the three preceding years for which data are available and (y) the absolute volume change in domestic consumption of the product concerned in the most recent year for which data are available compared to the preceding year, provided that the trigger level shall not be less than 105 per cent of the average quantity of imports in (x) above.

5. The additional duty imposed under subparagraph 1(b) shall be set according to the following schedule:

(a) if the difference between the c.i.f. import price of the shipment expressed in terms of the domestic currency (hereinafter referred to as the "import price") and the trigger price as defined under that subparagraph is less than or equal to 10 per cent of the trigger price, no additional duty shall be imposed;

(b) if the difference between the import price and the trigger price (hereinafter referred to as the "difference") is greater than 10 per cent but less than or equal to 40 per cent of the trigger price, the additional duty shall equal 30 per cent of the amount by which the difference exceeds 10 per cent;

(c) if the difference is greater than 40 per cent but less than or equal to 60 per cent of the trigger price, the additional duty shall equal 50 per cent of the amount by which the difference exceeds 40 per cent, plus the additional duty allowed under (b);

(d) if the difference is greater than 60 per cent but less than or equal to 75 per cent, the additional duty shall equal 70 per cent of the amount by which the difference exceeds 60 per cent of the trigger price, plus the additional duties allowed under (b) and (c);

(e) if the difference is greater than 75 per cent of the trigger price, the additional duty shall equal 90 per cent of the amount by which the difference exceeds 75 per cent, plus the additional duties allowed under (b), (c) and (d).

6. For perishable and seasonal products, the conditions set out above shall be applied in such a manner as to take account of the specific characteristics of such products. In particular, shorter time periods under subparagraph 1(a) and paragraph 4 may be used in reference to the corresponding periods in the base period and different reference prices for different periods may be used under subparagraph 1(b).

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[1]Where domestic consumption is not taken into account, the base trigger level under subparagraph 4(a) shall apply.

7. The operation of the special safeguard shall be carried out in a transparent manner. Any Member taking action under subparagraph 1(a) above shall give notice in writing, including relevant data, to the Committee on Agriculture as far in advance as may be practicable and in any event within 10 days of the implementation of such action. In cases where changes in consumption volumes must be allocated to individual tariff lines subject to action under paragraph 4, relevant data shall include the information and methods used to allocate these changes. A Member taking action under paragraph 4 shall afford any interested Members the opportunity to consult with it in respect of the conditions of application of such action. Any Member taking action under subparagraph 1(b) above shall give notice in writing, including relevant data, to the Committee on Agriculture within 10 days of the implementation of the first such action or, for perishable and seasonal products, the first action in any period. Members undertake, as far as practicable, not to take recourse to the provisions of subparagraph 1(b) where the volume of imports of the products concerned are declining. In either case a Member taking such action shall afford any interested Members the opportunity to consult with it in respect of the conditions of application of such action.

8. Where measures are taken in conformity with paragraphs 1 through 7 above, Members undertake not to have recourse, in respect of such measures, to the provisions of paragraphs 1(a) and 3 of Article XIX of GATT 1994 or paragraph 2 of Article 8 of the Agreement on Safeguards.

9. The provisions of this Article shall remain in force for the duration of the reform process as determined under Article 20.

Part IV

Article 6

Domestic Support Commitments

1. The domestic support reduction commitments of each Member contained in Part IV of its Schedule shall apply to all of its domestic support measures in favour of agricultural producers with the exception of domestic measures which are not subject to reduction in terms of the criteria set out in this Article and in Annex 2 to this Agreement. The commitments are expressed in terms of Total Aggregate Measurement of Support and "Annual and Final Bound Commitment Levels".

2. In accordance with the Mid-Term Review Agreement that government measures of assistance, whether direct or indirect, to encourage agricultural and rural development are an integral part of the development programmes of developing countries, investment subsidies which are generally available to agriculture in developing country Members and agricultural input subsidies generally available to low income or resource-poor producers in developing country Members shall be exempt from domestic support reduction commitments that would otherwise be applicable to such measures, as shall domestic support to producers in developing country Members to encourage diversification from growing illicit narcotic crops. Domestic support meeting the criteria of this paragraph shall not be required to be included in a Member's calculation of its Current Total AMS.

3. A Member shall be considered to be in compliance with its domestic support reduction commitments in any year in which its domestic support in favour of agricultural producers expressed in terms of Current Total AMS does not exceed the corresponding annual or final bound commitment level specified in Part IV of the Member's Schedule.

4. (a) A Member shall not be required to include in the calculation of its Current Total AMS and shall not be required to reduce:

(i) product-specific domestic support which would otherwise be required to be included in a Member's calculation of its Current AMS where such support does not exceed 5 per cent of that Member's total value of production of a basic agricultural product during the relevant year; and

(ii) non-product-specific domestic support which would otherwise be required to be included in a Member's calculation of its Current AMS where such support does not exceed 5 per cent of the value of that Member's total agricultural production.

(b) For developing country Members, the *de minimis* percentage under this paragraph shall be 10 per cent.

5. (a) Direct payments under production-limiting programmes shall not be subject to the commitment to reduce domestic support if:

(i) such payments are based on fixed area and yields; or

(ii) such payments are made on 85 per cent or less of the base level of production; or

(iii) livestock payments are made on a fixed number of head.

(b) The exemption from the reduction commitment for direct payments meeting the above criteria shall be reflected by the exclusion of the value of those direct payments in a Member's calculation of its Current Total AMS.

Article 7

General Disciplines on Domestic Support

1. Each Member shall ensure that any domestic support measures in favour of agricultural producers which are not subject to reduction commitments because they qualify under the criteria set out in Annex 2 to this Agreement are maintained in conformity therewith.

2. (a) Any domestic support measure in favour of agricultural producers, including any modification to such measure, and any measure that is subsequently introduced that cannot be shown to satisfy the criteria in Annex 2 to this Agreement or to be exempt from reduction by reason of any other provision of this Agreement shall be included in the Member's calculation of its Current Total AMS.

(b) Where no Total AMS commitment exists in Part IV of a Member's Schedule, the Member shall not provide support to agricultural producers in excess of the relevant *de minimis* level set out in paragraph 4 of Article 6.

Part V

Article 8

Export Competition Commitments

Each Member undertakes not to provide export subsidies otherwise than in conformity with this Agreement and with the commitments as specified in that Member's Schedule.

Article 9

Export Subsidy Commitments

1. The following export subsidies are subject to reduction commitments under this Agreement:

(a) the provision by governments or their agencies of direct subsidies, including payments-in-kind, to a firm, to an industry, to producers of an agricultural product, to a cooperative or other association of such producers, or to a marketing board, contingent on export performance;

(b) the sale or disposal for export by governments or their agencies of non-commercial stocks of agricultural products at a price lower than the comparable price charged for the like product to buyers in the domestic market;

(c) payments on the export of an agricultural product that are financed by virtue of governmental action, whether or not a charge on the public account is involved, including payments that are financed from the proceeds of a levy imposed on the agricultural product concerned or on an agricultural product from which the exported product is derived;

(d) the provision of subsidies to reduce the costs of marketing exports of agricultural products (other than widely available export promotion and advisory services) including handling, upgrading and other processing costs, and the costs of international transport and freight;

(e) internal transport and freight charges on export shipments, provided or mandated by governments, on terms more favourable than for domestic shipments;

(f) subsidies on agricultural products contingent on their incorporation in exported products.

2. (a) Except as provided in subparagraph (b), the export subsidy commitment levels for each year of the implementation period, as specified in a Member's Schedule, represent with respect to the export subsidies listed in paragraph 1 of this Article:

(i) in the case of budgetary outlay reduction commitments, the maximum level of expenditure for such subsidies that may be allocated or incurred in that year in respect of the agricultural product, or group of products, concerned; and

(ii) in the case of export quantity reduction commitments, the maximum quantity of an agricultural product, or group of products, in respect of which such export subsidies may be granted in that year.

(b) In any of the second through fifth years of the implementation period, a Member may provide export subsidies listed in paragraph 1 above in a given year in excess of the corresponding annual commitment levels in respect of the products or groups of products specified in Part IV of the Member's Schedule, provided that:

(i) the cumulative amounts of budgetary outlays for such subsidies, from the beginning of the implementation period through the year in question, does not exceed the cumulative amounts that would have resulted from full compliance with the relevant annual outlay commitment levels specified in the Member's Schedule by more than 3 per cent of the base period level of such budgetary outlays;

(ii) the cumulative quantities exported with the benefit of such export subsidies, from the beginning of the implementation period through the year in question, does not exceed the cumulative quantities that would have resulted from full compliance with the relevant annual quantity commitment levels specified in the Member's Schedule by more than 1.75 per cent of the base period quantities;

(iii) the total cumulative amounts of budgetary outlays for such export subsidies and the quantities benefiting from such export subsidies over the entire implementation period are no greater than the totals that would have resulted from full compliance with the relevant annual commitment levels specified in the Member's Schedule; and

(iv) the Member's budgetary outlays for export subsidies and the quantities benefiting from such subsidies, at the conclusion of the implementation period, are no greater than 64 per cent and 79 per cent of the 1986-1990 base period levels, respectively. For developing country Members these percentages shall be 76 and 86 per cent, respectively.

3. Commitments relating to limitations on the extension of the scope of export subsidization are as specified in Schedules.

4. During the implementation period, developing country Members shall not be required to undertake commitments in respect of the export subsidies listed in subparagraphs (d) and (e) of paragraph 1 above, provided that these are not applied in a manner that would circumvent reduction commitments.

Article 10

Prevention of Circumvention of Export Subsidy Commitments

1. Export subsidies not listed in paragraph 1 of Article 9 shall not be applied in a manner which results in, or which threatens to lead to, circumvention of export subsidy commitments; nor shall non-commercial transactions be used to circumvent such commitments.

2. Members undertake to work toward the development of internationally agreed disciplines to govern the provision of export credits, export credit guarantees or insurance programmes and, after agreement on such disciplines, to provide export credits, export credit guarantees or insurance programmes only in conformity therewith.

3. Any Member which claims that any quantity exported in excess of a reduction commitment level is not subsidized must establish that no export subsidy, whether listed in Article 9 or not, has been granted in respect of the quantity of exports in question.

4. Members donors of international food aid shall ensure:

(a) that the provision of international food aid is not tied directly or indirectly to commercial exports of agricultural products to recipient countries;

(b) that international food aid transactions, including bilateral food aid which is monetized, shall be carried out in accordance with the FAO "Principles of Surplus Disposal and Consultative Obligations", including, where appropriate, the system of Usual Marketing Requirements (UMRs); and

(c) that such aid shall be provided to the extent possible in fully grant form or on terms no less concessional than those provided for in Article IV of the Food Aid Convention 1986.

Article 11

Incorporated Products

In no case may the per-unit subsidy paid on an incorporated agricultural primary product exceed the per-unit export subsidy that would be payable on exports of the primary product as such.

Part VI

Article 12

Disciplines on Export Prohibitions and Restrictions

1. Where any Member institutes any new export prohibition or restriction on foodstuffs in accordance with paragraph 2(a) of Article XI of GATT 1994, the Member shall observe the following provisions:

(a) the Member instituting the export prohibition or restriction shall give due consideration to the effects of such prohibition or restriction on importing Members' food security;

(b) before any Member institutes an export prohibition or restriction, it shall give notice in writing, as far in advance as practicable, to the Committee on Agriculture comprising such information as the nature and the duration of such measure, and shall consult, upon request, with any other Member having a substantial interest as an importer with respect to any matter related to the measure in question. The Member instituting such export prohibition or restriction shall provide, upon request, such a Member with necessary information.

2. The provisions of this Article shall not apply to any developing country Member, unless the measure is taken by a developing country Member which is a net-food exporter of the specific foodstuff concerned.

Part VII

Article 13

Due Restraint

During the implementation period, notwithstanding the provisions of GATT 1994 and the Agreement on Subsidies and Countervailing Measures (referred to in this Article as the "Subsidies Agreement"):

(a) domestic support measures that conform fully to the provisions of Annex 2 to this Agreement shall be:

(i) non-actionable subsidies for purposes of countervailing duties*;

(ii) exempt from actions based on Article XVI of GATT 1994 and Part III of the Subsidies Agreement; and

(iii) exempt from actions based on non-violation nullification or impairment of the benefits of tariff concessions accruing to another Member under Article II of GATT 1994, in the sense of paragraph 1(b) of Article XXIII of GATT 1994;

(b) domestic support measures that conform fully to the provisions of Article 6 of this Agreement including direct payments that conform to the requirements of paragraph 5 thereof, as reflected in each Member's Schedule, as well as domestic support within *de minimis* levels and in conformity with paragraph 2 of Article 6, shall be:

(i) exempt from the imposition of countervailing duties unless a determination of injury or threat thereof is made in accordance with Article VI of GATT 1994 and Part V of the Subsidies Agreement, and due restraint shall be shown in initiating any countervailing duty investigations;

(ii) exempt from actions based on paragraph 1 of Article XVI of GATT 1994 or Articles 5 and 6 of the Subsidies Agreement, provided that such measures do not grant support to a specific commodity in excess of that decided during the 1992 marketing year; and

(iii) exempt from actions based on non-violation nullification or impairment of the benefits of tariff concessions accruing to another Member under Article II of GATT 1994, in the sense of paragraph 1(b) of Article XXIII of GATT 1994, provided that such measures do not grant support to a specific commodity in excess of that decided during the 1992 marketing year;

(c) export subsidies that conform fully to the provisions of Part V of this Agreement, as reflected in each Member's Schedule, shall be:

(i) subject to countervailing duties only upon a determination of injury or threat thereof based on volume, effect on prices, or consequent impact in accordance with Article VI of GATT 1994 and Part V of the Subsidies Agreement, and

* "Countervailing duties" where referred to in this Article are those covered by Article VI of GATT 1994 and Part V of the Agreement on Subsidies and Countervailing Measures.

due restraint shall be shown in initiating any countervailing duty investigations; and

(ii) exempt from actions based on Article XVI of GATT 1994 or Articles 3, 5 and 6 of the Subsidies Agreement.

Part VIII

Article 14

Sanitary and Phytosanitary Measures

Members agree to give effect to the Agreement on the Application of Sanitary and Phytosanitary Measures.

Part IX

Article 15

Special and Differential Treatment

1. In keeping with the recognition that differential and more favourable treatment for developing country Members is an integral part of the negotiation, special and differential treatment in respect of commitments shall be provided as set out in the relevant provisions of this Agreement and embodied in the Schedules of concessions and commitments.

2. Developing country Members shall have the flexibility to implement reduction commitments over a period of up to 10 years. Least-developed country Members shall not be required to undertake reduction commitments.

Part X

Article 16

Least-Developed and Net Food-Importing Developing Countries

1. Developed country Members shall take such action as is provided for within the framework of the Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries.

2. The Committee on Agriculture shall monitor, as appropriate, the follow-up to this Decision.

Part XI

Article 17

Committee on Agriculture

A Committee on Agriculture is hereby established.

Article 18

Review of the Implementation of Commitments

1. Progress in the implementation of commitments negotiated under the Uruguay Round reform programme shall be reviewed by the Committee on Agriculture.

2. The review process shall be undertaken on the basis of notifications submitted by Members in relation to such matters and at such intervals as shall be determined, as well as on the basis of such documentation as the Secretariat may be requested to prepare in order to facilitate the review process.

3. In addition to the notifications to be submitted under paragraph 2, any new domestic support measure, or modification of an existing measure, for which exemption from reduction is claimed shall be notified promptly. This notification shall contain details of the new or modified measure and its conformity with the agreed criteria as set out either in Article 6 or in Annex 2.

4. In the review process Members shall give due consideration to the influence of excessive rates of inflation on the ability of any Member to abide by its domestic support commitments.

5. Members agree to consult annually in the Committee on Agriculture with respect to their participation in the normal growth of world trade in agricultural products within the framework of the commitments on export subsidies under this Agreement.

6. The review process shall provide an opportunity for Members to raise any matter relevant to the implementation of commitments under the reform programme as set out in this Agreement.

7. Any Member may bring to the attention of the Committee on Agriculture any measure which it considers ought to have been notified by another Member.

Article 19

Consultation and Dispute Settlement

The provisions of Articles XXII and XXIII of GATT 1994, as elaborated and applied by the Dispute Settlement Understanding, shall apply to consultations and the settlement of disputes under this Agreement.

Part XII

Article 20

Continuation of the Reform Process

Recognizing that the long-term objective of substantial progressive reductions in support and protection resulting in fundamental reform is an ongoing process, Members agree that negotiations for continuing the process will be initiated one year before the end of the implementation period, taking into account:

(a) the experience to that date from implementing the reduction commitments;

(b) the effects of the reduction commitments on world trade in agriculture,

(c) non-trade concerns, special and differential treatment to developing country Members, and the objective to establish a fair and market-oriented agricultural trading system, and the other objectives and concerns mentioned in the preamble to this Agreement; and

(d) what further commitments are necessary to achieve the above mentioned long-term objectives.

Part XIII

Article 21

Final Provisions

1. The provisions of GATT 1994 and of other Multilateral Trade Agreements in Annex 1A to the WTO Agreement shall apply subject to the provisions of this Agreement.

2. The Annexes to this Agreement are hereby made an integral part of this Agreement.

ANNEX 1

PRODUCT COVERAGE

1. This Agreement shall cover the following products:

(i)	HS Chapters 1 to 24 less fish and fish products, plus*		
(ii)	HS Code	2905.43	(mannitol)
	HS Code	2905.44	(sorbitol)
	HS Heading	33.01	(essential oils)
	HS Headings	35.01 to 35.05	(albuminoidal substances, modified starches, glues)
	HS Code	3809.10	(finishing agents)
	HS Code	3823.60	(sorbitol n.e.p.)
	HS Headings	41.01 to 41.03	(hides and skins)
	HS Heading	43.01	(raw furskins)
	HS Headings	50.01 to 50.03	(raw silk and silk waste)
	HS Headings	51.01 to 51.03	(wool and animal hair)
	HS Headings	52.01 to 52.03	(raw cotton, waste and cotton carded or combed)
	HS Heading	53.01	(raw flax)
	HS Heading	53.02	(raw hemp)

2. The foregoing shall not limit the product coverage of the Agreement on the Application of Sanitary and Phytosanitary Measures.

*The product descriptions in round brackets are not necessarily exhaustive.

ANNEX 2

DOMESTIC SUPPORT: THE BASIS FOR EXEMPTION FROM THE REDUCTION COMMITMENTS

1. Domestic support measures for which exemption from the reduction commitments is claimed shall meet the fundamental requirement that they have no, or at most minimal, trade-distorting effects or effects on production. Accordingly, all measures for which exemption is claimed shall conform to the following basic criteria:

(a) the support in question shall be provided through a publicly-funded government programme (including government revenue foregone) not involving transfers from consumers; and,

(b) the support in question shall not have the effect of providing price support to producers;

plus policy-specific criteria and conditions as set out below.

Government Service Programmes

2. General services

Policies in this category involve expenditures (or revenue foregone) in relation to programmes which provide services or benefits to agriculture or the rural community. They shall not involve direct payments to producers or processors. Such programmes, which include but are not restricted to the following list, shall meet the general criteria in paragraph 1 above and policy-specific conditions where set out below:

(a) research, including general research, research in connection with environmental programmes, and research programmes relating to particular products;

(b) pest and disease control, including general and product-specific pest and disease control measures, such as early-warning systems, quarantine and eradication;

(c) training services, including both general and specialist training facilities;

(d) extension and advisory services, including the provision of means to facilitate the transfer of information and the results of research to producers and consumers;

(e) inspection services, including general inspection services and the inspection of particular products for health, safety, grading or standardization purposes;

(f) marketing and promotion services, including market information, advice and promotion relating to particular products but excluding expenditure for unspecified purposes that could be used by sellers to reduce their selling price or confer a direct economic benefit to purchasers; and

(g) infrastructural services, including: electricity reticulation, roads and other means of transport, market and port facilities, water supply facilities, dams and drainage schemes, and infrastructural works associated with environmental programmes. In all cases the expenditure shall be directed to the provision or construction of capital works only, and shall exclude the subsidized provision of on-farm facilities other than for the

reticulation of generally available public utilities. It shall not include subsidies to inputs or operating costs, or preferential user charges.

3. Public stockholding for food security purposes[5]

Expenditures (or revenue foregone) in relation to the accumulation and holding of stocks of products which form an integral part of a food security programme identified in national legislation. This may include government aid to private storage of products as part of such a programme.

The volume and accumulation of such stocks shall correspond to predetermined targets related solely to food security. The process of stock accumulation and disposal shall be financially transparent. Food purchases by the government shall be made at current market prices and sales from food security stocks shall be made at no less than the current domestic market price for the product and quality in question.

4. Domestic food aid[5]

Expenditures (or revenue foregone) in relation to the provision of domestic food aid to sections of the population in need.

Eligibility to receive the food aid shall be subject to clearly-defined criteria related to nutritional objectives. Such aid shall be in the form of direct provision of food to those concerned or the provision of means to allow eligible recipients to buy food either at market or at subsidized prices. Food purchases by the government shall be made at current market prices and the financing and administration of the aid shall be transparent.

5. Direct payments to producers

Support provided through direct payments (or revenue foregone, including payments in kind) to producers for which exemption from reduction commitments is claimed shall meet the basic criteria set out in paragraph 1 above, plus specific criteria applying to individual types of direct payment as set out in paragraphs 6 through 13 below. Where exemption from reduction is claimed for any existing or new type of direct payment other than those specified in paragraphs 6 through 13, it shall conform to criteria (b) through (e) in paragraph 6, in addition to the general criteria set out in paragraph 1.

6. Decoupled income support

(a) Eligibility for such payments shall be determined by clearly-defined criteria such as income, status as a producer or landowner, factor use or production level in a defined and fixed base period.

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[5] For the purposes of paragraph 3 of this Annex, governmental stockholding programmes for food security purposes in developing countries whose operation is transparent and conducted in accordance with officially published objective criteria or guidelines shall be considered to be in conformity with the provisions of this paragraph, including programmes under which stocks of foodstuffs for food security purposes are acquired and released at administered prices, provided that the difference between the acquisition price and the external reference price is accounted for in the AMS.

[5a] For the purposes of paragraphs 3 and 4 of this Annex, the provision of foodstuffs at subsidized prices with the objective of meeting food requirements of urban and rural poor in developing countries on a regular basis at reasonable prices shall be considered to be in conformity with the provisions of this paragraph.

(b) The amount of such payments in any given year shall not be related to, or based on, the type or volume of production (including livestock units) undertaken by the producer in any year after the base period.

(c) The amount of such payments in any given year shall not be related to, or based on, the prices, domestic or international, applying to any production undertaken in any year after the base period.

(d) The amount of such payments in any given year shall not be related to, or based on, the factors of production employed in any year after the base period.

(e) No production shall be required in order to receive such payments.

7. Government financial participation in income insurance and income safety-net programmes

(a) Eligibility for such payments shall be determined by an income loss, taking into account only income derived from agriculture, which exceeds 30 per cent of average gross income or the equivalent in net income terms (excluding any payments from the same or similar schemes) in the preceding three-year period or a three-year average based on the preceding five-year period, excluding the highest and the lowest entry. Any producer meeting this condition shall be eligible to receive the payments.

(b) The amount of such payments shall compensate for less than 70 per cent of the producer's income loss in the year the producer becomes eligible to receive this assistance.

(c) The amount of any such payments shall relate solely to income; it shall not relate to the type or volume of production (including livestock units) undertaken by the producer; or to the prices, domestic or international, applying to such production; or to the factors of production employed.

(d) Where a producer receives in the same year payments under this paragraph and under paragraph 8 (relief from natural disasters), the total of such payments shall be less than 100 per cent of the producer's total loss.

8. Payments (made either directly or by way of government financial participation in crop insurance schemes) for relief from natural disasters

(a) Eligibility for such payments shall arise only following a formal recognition by government authorities that a natural or like disaster (including disease outbreaks, pest infestations, nuclear accidents, and war on the territory of the Member concerned) has occurred or is occurring; and shall be determined by a production loss which exceeds 30 per cent of the average of production in the preceding three-year period or a three-year average based on the preceding five-year period, excluding the highest and the lowest entry.

(b) Payments made following a disaster shall be applied only in respect of losses of income, livestock (including payments in connection with the veterinary treatment of animals), land or other production factors due to the natural disaster in question.

(c) Payments shall compensate for not more than the total cost of replacing such losses and shall not require or specify the type or quantity of future production.

(d) Payments made during a disaster shall not exceed the level required to prevent or alleviate further loss as defined in criterion (b) above.

(e) Where a producer receives in the same year payments under this paragraph and under paragraph 7 (income insurance and income safety-net programmes), the total of such payments shall be less than 100 per cent of the producer's total loss.

9. Structural adjustment assistance provided through producer retirement programmes

(a) Eligibility for such payments shall be determined by reference to clearly defined criteria in programmes designed to facilitate the retirement of persons engaged in marketable agricultural production, or their movement to non-agricultural activities.

(b) Payments shall be conditional upon the total and permanent retirement of the recipients from marketable agricultural production.

10. Structural adjustment assistance provided through resource retirement programmes

(a) Eligibility for such payments shall be determined by reference to clearly defined criteria in programmes designed to remove land or other resources, including livestock, from marketable agricultural production.

(b) Payments shall be conditional upon the retirement of land from marketable agricultural production for a minimum of three years, and in the case of livestock on its slaughter or definitive permanent disposal.

(c) Payments shall not require or specify any alternative use for such land or other resources which involves the production of marketable agricultural products.

(d) Payments shall not be related to either the type or quantity of production or to the prices, domestic or international, applying to production undertaken using the land or other resources remaining in production.

11. Structural adjustment assistance provided through investment aids

(a) Eligibility for such payments shall be determined by reference to clearly-defined criteria in government programmes designed to assist the financial or physical restructuring of a producer's operations in response to objectively demonstrated structural disadvantages. Eligibility for such programmes may also be based on a clearly-defined government programme for the reprivatization of agricultural land.

(b) The amount of such payments in any given year shall not be related to, or based on, the type or volume of production (including livestock units) undertaken by the producer in any year after the base period other than as provided for under criterion (e) below.

(c) The amount of such payments in any given year shall not be related to, or based on, the prices, domestic or international, applying to any production undertaken in any year after the base period.

(d) The payments shall be given only for the period of time necessary for the realization of the investment in respect of which they are provided.

(e) The payments shall not mandate or in any way designate the agricultural products to be produced by the recipients except to require them not to produce a particular product.

(f) The payments shall be limited to the amount required to compensate for the structural disadvantage.

12. Payments under environmental programmes

(a) Eligibility for such payments shall be determined as part of a clearly-defined government environmental or conservation programme and be dependent on the fulfilment of specific conditions under the government programme, including conditions related to production methods or inputs.

(b) The amount of payment shall be limited to the extra costs or loss of income involved in complying with the government programme.

13. Payments under regional assistance programmes

(a) Eligibility for such payments shall be limited to producers in disadvantaged regions. Each such region must be a clearly designated contiguous geographical area with a definable economic and administrative identity, considered as disadvantaged on the basis of neutral and objective criteria clearly spelt out in law or regulation and indicating that the region's difficulties arise out of more than temporary circumstances.

(b) The amount of such payments in any given year shall not be related to, or based on, the type or volume of production (including livestock units) undertaken by the producer in any year after the base period other than to reduce that production.

(c) The amount of such payments in any given year shall not be related to, or based on, the prices, domestic or international, applying to any production undertaken in any year after the base period.

(d) Payments shall be available only to producers in eligible regions, but generally available to all producers within such regions.

(e) Where related to production factors, payments shall be made at a degressive rate above a threshold level of the factor concerned.

(f) The payments shall be limited to the extra costs or loss of income involved in undertaking agricultural production in the prescribed area.

ANNEX 3

DOMESTIC SUPPORT: CALCULATION OF AGGREGATE MEASUREMENT OF SUPPORT

1. Subject to the provisions of Article 6, an Aggregate Measurement of Support (AMS) shall be calculated on a product-specific basis for each basic agricultural product receiving market price support, non-exempt direct payments, or any other subsidy not exempted from the reduction commitment ("other non-exempt policies"). Support which is non-product specific shall be totalled into one non-product-specific AMS in total monetary terms.

2. Subsidies under paragraph 1 shall include both budgetary outlays and revenue foregone by governments or their agents.

3. Support at both the national and sub-national level shall be included.

4. Specific agricultural levies or fees paid by producers shall be deducted from the AMS.

5. The AMS calculated as outlined below for the base period shall constitute the base level for the implementation of the reduction commitment on domestic support.

6. For each basic agricultural product, a specific AMS shall be established, expressed in total monetary value terms.

7. The AMS shall be calculated as close as practicable to the point of first sale of the basic agricultural product concerned. Measures directed at agricultural processors shall be included to the extent that such measures benefit the producers of the basic agricultural products.

8. Market price support: market price support shall be calculated using the gap between a fixed external reference price and the applied administered price multiplied by the quantity of production eligible to receive the applied administered price. Budgetary payments made to maintain this gap, such as buying-in or storage costs, shall not be included in the AMS.

9. The fixed external reference price shall be based on the years 1986 to 1988 and shall generally be the average f.o.b. unit value for the basic agricultural product concerned in a net exporting country and the average c.i.f. unit value for the basic agricultural product concerned in a net importing country in the base period. The fixed reference price may be adjusted for quality differences as necessary.

10. Non-exempt direct payments: non-exempt direct payments which are dependent on a price gap shall be calculated either using the gap between the fixed reference price and the applied administered price multiplied by the quantity of production eligible to receive the administered price, or using budgetary outlays.

11. The fixed reference price shall be based on the years 1986 to 1988 and shall generally be the actual price used for determining payment rates.

12. Non-exempt direct payments which are based on factors other than price shall be measured using budgetary outlays.

13. Other non-exempt measures, including input subsidies and other measures such as marketing-cost reduction measures: the value of such measures shall be measured using government budgetary outlays or, where the use of budgetary outlays does not reflect the full extent of the subsidy concerned, the basis for calculating the subsidy shall be the gap between the price of the subsidized good or service and a representative market price for a similar good or service multiplied by the quantity of the good or service.

ANNEX 4

DOMESTIC SUPPORT: CALCULATION OF EQUIVALENT MEASUREMENT OF SUPPORT

1. Subject to the provisions of Article 6, equivalent measurements of support shall be calculated in respect of all basic agricultural products where market price support as defined in Annex 3 exists but for which calculation of this component of the AMS is not practicable. For such products the base level for implementation of the domestic support reduction commitments shall consist of a market price support component expressed in terms of equivalent measurements of support under paragraph 2 below, as well as any non-exempt direct payments and other non-exempt support, which shall be evaluated as provided for under paragraph 3 below. Support at both national and sub-national level shall be included.

2. The equivalent measurements of support provided for in paragraph 1 shall be calculated on a product-specific basis for all basic agricultural products as close as practicable to the point of first sale receiving market price support and for which the calculation of the market price support component of the AMS is not practicable. For those basic agricultural products, equivalent measurements of market price support shall be made using the applied administered price and the quantity of production eligible to receive that price or, where this is not practicable, on budgetary outlays used to maintain the producer price.

3. Where basic agricultural products falling under paragraph 1 are the subject of non-exempt direct payments or any other product-specific subsidy not exempted from the reduction commitment, the basis for equivalent measurements of support concerning these measures shall be calculations as for the corresponding AMS components (specified in paragraphs 10 through 13 of Annex 3).

4. Equivalent measurements of support shall be calculated on the amount of subsidy as close as practicable to the point of first sale of the basic agricultural product concerned. Measures directed at agricultural processors shall be included to the extent that such measures benefit the producers of the basic agricultural products. Specific agricultural levies or fees paid by producers shall reduce the equivalent measurements of support by a corresponding amount.

ANNEX 5

SPECIAL TREATMENT WITH RESPECT TO PARAGRAPH 2 OF ARTICLE 4

Section A

1. The provisions of paragraph 2 of Article 4 shall not apply with effect from the entry into force of the WTO Agreement to any primary agricultural product and its worked and/or prepared products ("designated products") in respect of which the following conditions are complied with (hereinafter referred to as "special treatment"):

(a) imports of the designated products comprised less than 3 per cent of corresponding domestic consumption in the base period 1986-1988 ("the base period");

(b) no export subsidies have been provided since the beginning of the base period for the designated products;

(c) effective production-restricting measures are applied to the primary agricultural product;

(d) such products are designated with the symbol "ST-Annex 5" in Section I-B of Part I of a Member's Schedule annexed to the Marrakesh Protocol, as being subject to special treatment reflecting factors of non-trade concerns, such as food security and environmental protection; and

(e) minimum access opportunities in respect of the designated products correspond, as specified in Section I-B of Part I of the Schedule of the Member concerned, to 4 per cent of base period domestic consumption of the designated products from the beginning of the first year of the implementation period and, thereafter, are increased by 0.8 per cent of corresponding domestic consumption in the base period per year for the remainder of the implementation period.

2. At the beginning of any year of the implementation period a Member may cease to apply special treatment in respect of the designated products by complying with the provisions of paragraph 6. In such a case, the Member concerned shall maintain the minimum access opportunities already in effect at such time and increase the minimum access opportunities by 0.4 per cent of corresponding domestic consumption in the base period per year for the remainder of the implementation period. Thereafter, the level of minimum access opportunities resulting from this formula in the final year of the implementation period shall be maintained in the Schedule of the Member concerned.

3. Any negotiation on the question of whether there can be a continuation of the special treatment as set out in paragraph 1 after the end of the implementation period shall be completed within the time-frame of the implementation period itself as a part of the negotiations set out in Article 20 of this Agreement, taking into account the factors of non-trade concerns.

4. If it is agreed as a result of the negotiation referred to in paragraph 3 that a Member may continue to apply the special treatment, such Member shall confer additional and acceptable concessions as determined in that negotiation.

5. Where the special treatment is not to be continued at the end of the implementation period, the Member concerned shall implement the provisions of paragraph 6. In such a case, after the end of the implementation period the minimum access opportunities for the designated products shall be maintained at the level of 8 per cent of corresponding domestic consumption in the base period in the Schedule of the Member concerned.

6. Border measures other than ordinary customs duties maintained in respect of the designated products shall become subject to the provisions of paragraph 2 of Article 4 with effect from the beginning of the year in which the special treatment ceases to apply. Such products shall be subject to ordinary customs duties, which shall be bound in the Schedule of the Member concerned and applied, from the beginning of the year in which special treatment ceases and thereafter, at such rates as would have been applicable had a reduction of at least 15 per cent been implemented over the implementation period in equal annual instalments. These duties shall be established on the basis of tariff equivalents to be calculated in accordance with the guidelines prescribed in the attachment hereto.

Section B

7. The provisions of paragraph 2 of Article 4 shall also not apply with effect from the entry into force of the WTO Agreement to a primary agricultural product that is the predominant staple in the traditional diet of a developing country Member and in respect of which the following conditions, in addition to those specified in paragraph 1(a) through 1(d), as they apply to the products concerned, are complied with:

(a) minimum access opportunities in respect of the products concerned, as specified in Section I-B of Part I of the Schedule of the developing country Member concerned, correspond to 1 per cent of base period domestic consumption of the products concerned from the beginning of the first year of the implementation period and are increased in equal annual instalments to 2 per cent of corresponding domestic consumption in the base period at the beginning of the fifth year of the implementation period. From the beginning of the sixth year of the implementation period, minimum access opportunities in respect of the products concerned correspond to 2 per cent of corresponding domestic consumption in the base period and are increased in equal annual instalments to 4 per cent of corresponding domestic consumption in the base period until the beginning of the 10th year. Thereafter, the level of minimum access opportunities resulting from this formula in the 10th year shall be maintained in the Schedule of the developing country Member concerned;

(b) appropriate market access opportunities have been provided for in other products under this Agreement.

8. Any negotiation on the question of whether there can be a continuation of the special treatment as set out in paragraph 7 after the end of the 10th year following the beginning of the implementation period shall be initiated and completed within the time-frame of the 10th year itself following the beginning of the implementation period.

9. If it is agreed as a result of the negotiation referred to in paragraph 8 that a Member may continue to apply the special treatment, such Member shall confer additional and acceptable concessions as determined in that negotiation.

10. In the event that special treatment under paragraph 7 is not to be continued beyond the 10th year following the beginning of the implementation period, the products concerned shall be subject to ordinary customs duties, established on the basis of a tariff equivalent to be calculated in accordance with the guidelines prescribed in the attachment hereto, which shall be bound in the Schedule of the Member concerned. In other respects, the provisions of paragraph 6 shall apply as modified by the relevant special and differential treatment accorded to developing country Members under this Agreement.

Attachment to Annex 5

Guidelines for the Calculation of Tariff Equivalents for the Specific Purpose Specified in Paragraphs 6 and 10 of this Annex

1. The calculation of the tariff equivalents, whether expressed as *ad valorem* or specific rates, shall be made using the actual difference between internal and external prices in a transparent manner. Data used shall be for the years 1986 to 1988. Tariff equivalents:

(a) shall primarily be established at the four-digit level of the HS;

(b) shall be established at the six-digit or a more detailed level of the HS wherever appropriate;

(c) shall generally be established for worked and/or prepared products by multiplying the specific tariff equivalent(s) for the primary agricultural product(s) by the proportion(s) in value terms or in physical terms as appropriate of the primary agricultural product(s) in the worked and/or prepared products, and take account, where necessary, of any additional elements currently providing protection to industry.

2. External prices shall be, in general, actual average c.i.f. unit values for the importing country. Where average c.i.f. unit values are not available or appropriate, external prices shall be either:

(a) appropriate average c.i.f. unit values of a near country; or

(b) estimated from average f.o.b. unit values of (an) appropriate major exporter(s) adjusted by adding an estimate of insurance, freight and other relevant costs to the importing country.

3. The external prices shall generally be converted to domestic currencies using the annual average market exchange rate for the same period as the price data.

4. The internal price shall generally be a representative wholesale price ruling in the domestic market or an estimate of that price where adequate data is not available.

5. The initial tariff equivalents may be adjusted, where necessary, to take account of differences in quality or variety using an appropriate coefficient.

6. Where a tariff equivalent resulting from these guidelines is negative or lower than the current bound rate, the initial tariff equivalent may be established at the current bound rate or on the basis of national offers for that product.

7. Where an adjustment is made to the level of a tariff equivalent which would have resulted from the above guidelines, the Member concerned shall afford, on request, full opportunities for consultation with a view to negotiating appropriate solutions.

AGREEMENT ON THE APPLICATION OF SANITARY AND PHYTOSANITARY MEASURES

Members,

Reaffirming that no Member should be prevented from adopting or enforcing measures necessary to protect human, animal or plant life or health, subject to the requirement that these measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between Members where the same conditions prevail or a disguised restriction on international trade,

Desiring to improve the human health, animal health and phytosanitary situation in all Members,

Noting that sanitary and phytosanitary measures are often applied on the basis of bilateral agreements or protocols;

Desiring the establishment of a multilateral framework of rules and disciplines to guide the development, adoption and enforcement of sanitary and phytosanitary measures in order to minimize their negative effects on trade;

Recognizing the important contribution that international standards, guidelines and recommendations can make in this regard;

Desiring to further the use of harmonized sanitary and phytosanitary measures between Members, on the basis of international standards, guidelines and recommendations developed by the relevant international organizations, including the Codex Alimentarius Commission, the International Office of Epizootics, and the relevant international and regional organizations operating within the framework of the International Plant Protection Convention, without requiring Members to change their appropriate level of protection of human, animal or plant life or health;

Recognizing that developing country Members may encounter special difficulties in complying with the sanitary or phytosanitary measures of importing Members, and as a consequence in access to markets, and also in the formulation and application of sanitary or phytosanitary measures in their own territories, and desiring to assist them in their endeavours in this regard;

Desiring therefore to elaborate rules for the application of the provisions of GATT 1994 which relate to the use of sanitary or phytosanitary measures, in particular the provisions of Article XX(b)[1];

Hereby agree as follows:

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[1] In this Agreement, reference to Article XX(b) includes also the chapeau of that Article.

Article 1

General Provisions

1. This Agreement applies to all sanitary and phytosanitary measures which may, directly or indirectly, affect international trade. Such measures shall be developed and applied in accordance with the provisions of this Agreement.

2. For the purposes of this Agreement, the definitions provided in Annex A shall apply.

3. The annexes are an integral part of this Agreement.

4. Nothing in this Agreement shall affect the rights of Members under the Agreement on Technical Barriers to Trade with respect to measures not within the scope of this Agreement.

Article 2

Basic Rights and Obligations

1. Members have the right to take sanitary and phytosanitary measures necessary for the protection of human, animal or plant life or health, provided that such measures are not inconsistent with the provisions of this Agreement.

2. Members shall ensure that any sanitary or phytosanitary measure is applied only to the extent necessary to protect human, animal or plant life or health, is based on scientific principles and is not maintained without sufficient scientific evidence, except as provided for in paragraph 7 of Article 5.

3. Members shall ensure that their sanitary and phytosanitary measures do not arbitrarily or unjustifiably discriminate between Members where identical or similar conditions prevail, including between their own territory and that of other Members. Sanitary and phytosanitary measures shall not be applied in a manner which would constitute a disguised restriction on international trade.

4. Sanitary or phytosanitary measures which conform to the relevant provisions of this Agreement shall be presumed to be in accordance with the obligations of the Members under the provisions of GATT 1994 which relate to the use of sanitary or phytosanitary measures, in particular the provisions of Article XX(b).

Article 3

Harmonization

1. To harmonize sanitary and phytosanitary measures on as wide a basis as possible, Members shall base their sanitary or phytosanitary measures on international standards, guidelines or recommendations, where they exist, except as otherwise provided for in this Agreement, and in particular in paragraph 3.

2. Sanitary or phytosanitary measures which conform to international standards, guidelines or recommendations shall be deemed to be necessary to protect human, animal or plant life or health, and presumed to be consistent with the relevant provisions of this Agreement and of GATT 1994.

3. Members may introduce or maintain sanitary or phytosanitary measures which result in a higher level of sanitary or phytosanitary protection than would be achieved by measures based on the relevant international standards, guidelines or recommendations, if there is a scientific justification, or as a consequence of the level of sanitary or phytosanitary protection a Member determines to be appropriate in accordance with the relevant provisions of paragraphs 1 through 8 of Article 5.[3] Notwithstanding the above, all measures which result in a level of sanitary or phytosanitary protection different from that which would be achieved by measures based on international standards, guidelines or recommendations shall not be inconsistent with any other provision of this Agreement.

4. Members shall play a full part, within the limits of their resources, in the relevant international organizations and their subsidiary bodies, in particular the Codex Alimentarius Commission, the International Office of Epizootics, and the international and regional organizations operating within the framework of the International Plant Protection Convention, to promote within these organizations the development and periodic review of standards, guidelines and recommendations with respect to all aspects of sanitary and phytosanitary measures.

5. The Committee on Sanitary and Phytosanitary Measures provided for in paragraphs 1 and 4 of Article 12 (referred to in this Agreement as the "Committee") shall develop a procedure to monitor the process of international harmonization and coordinate efforts in this regard with the relevant international organizations.

Article 4

Equivalence

1. Members shall accept the sanitary or phytosanitary measures of other Members as equivalent, even if these measures differ from their own or from those used by other Members trading in the same product, if the exporting Member objectively demonstrates to the importing Member that its measures achieve the importing Member's appropriate level of sanitary or phytosanitary protection. For this purpose, reasonable access shall be given, upon request, to the importing Member for inspection, testing and other relevant procedures.

2. Members shall, upon request, enter into consultations with the aim of achieving bilateral and multilateral agreements on recognition of the equivalence of specified sanitary or phytosanitary measures.

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[3]For the purposes of paragraph 3 of Article 3, there is a scientific justification if, on the basis of an examination and evaluation of available scientific information in conformity with the relevant provisions of this Agreement, a Member determines that the relevant international standards, guidelines or recommendations are not sufficient to achieve its appropriate level of sanitary or phytosanitary protection.

Article 5

Assessment of Risk and Determination of the Appropriate Level of Sanitary or Phytosanitary Protection

1. Members shall ensure that their sanitary or phytosanitary measures are based on an assessment, as appropriate to the circumstances, of the risks to human, animal or plant life or health, taking into account risk assessment techniques developed by the relevant international organizations.

2. In the assessment of risks, Members shall take into account available scientific evidence; relevant processes and production methods; relevant inspection, sampling and testing methods; prevalence of specific diseases or pests; existence of pest- or disease-free areas; relevant ecological and environmental conditions; and quarantine or other treatment.

3. In assessing the risk to animal or plant life or health and determining the measure to be applied for achieving the appropriate level of sanitary or phytosanitary protection from such risk, Members shall take into account as relevant economic factors: the potential damage in terms of loss of production or sales in the event of the entry, establishment or spread of a pest or disease; the costs of control or eradication in the territory of the importing Member; and the relative cost-effectiveness of alternative approaches to limiting risks.

4. Members should, when determining the appropriate level of sanitary or phytosanitary protection, take into account the objective of minimizing negative trade effects.

5. With the objective of achieving consistency in the application of the concept of appropriate level of sanitary or phytosanitary protection against risks to human life or health, or to animal and plant life or health, each Member shall avoid arbitrary or unjustifiable distinctions in the levels it considers to be appropriate in different situations, if such distinctions result in discrimination or a disguised restriction on international trade. Members shall cooperate in the Committee, in accordance with paragraphs 1, 2 and 3 of Article 12, to develop guidelines to further the practical implementation of this provision. In developing the guidelines, the Committee shall take into account all relevant factors, including the exceptional character of human health risks to which people voluntarily expose themselves.

6. Without prejudice to paragraph 2 of Article 3, when establishing or maintaining sanitary or phytosanitary measures to achieve the appropriate level of sanitary or phytosanitary protection, Members shall ensure that such measures are not more trade-restrictive than required to achieve their appropriate level of sanitary or phytosanitary protection, taking into account technical and economic feasibility.[3]

7. In cases where relevant scientific evidence is insufficient, a Member may provisionally adopt sanitary or phytosanitary measures on the basis of available pertinent information, including that from the relevant international organizations as well as from sanitary or phytosanitary measures applied by other Members. In such circumstances, Members shall seek to obtain the additional information necessary for a more objective assessment of risk and review the sanitary or phytosanitary measure accordingly within a reasonable period of time.

8. When a Member has reason to believe that a specific sanitary or phytosanitary measure introduced or maintained by another Member is constraining, or has the potential to constrain, its exports and

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[3]For purposes of paragraph 6 of Article 5, a measure is not more trade-restrictive than required unless there is another measure, reasonably available taking into account technical and economic feasibility, that achieves the appropriate level of sanitary or phytosanitary protection and is significantly less restrictive to trade.

the measure is not based on the relevant international standards, guidelines or recommendations, or such standards, guidelines or recommendations do not exist, an explanation of the reasons for such sanitary or phytosanitary measure may be requested and shall be provided by the Member maintaining the measure.

Article 6

Adaptation to Regional Conditions, Including Pest- or Disease-Free Areas and Areas of Low Pest or Disease Prevalence

1. Members shall ensure that their sanitary or phytosanitary measures are adapted to the sanitary or phytosanitary characteristics of the area - whether all of a country, part of a country, or all or parts of several countries - from which the product originated and to which the product is destined. In assessing the sanitary or phytosanitary characteristics of a region, Members shall take into account, *inter alia*, the level of prevalence of specific diseases or pests, the existence of eradication or control programmes, and appropriate criteria or guidelines which may be developed by the relevant international organizations.

2. Members shall, in particular, recognize the concepts of pest- or disease-free areas and areas of low pest or disease prevalence. Determination of such areas shall be based on factors such as geography, ecosystems, epidemiological surveillance, and the effectiveness of sanitary or phytosanitary controls.

3. Exporting Members claiming that areas within their territories are pest- or disease-free areas or areas of low pest or disease prevalence shall provide the necessary evidence thereof in order to objectively demonstrate to the importing Member that such areas are, and are likely to remain, pest- or disease-free areas or areas of low pest or disease prevalence, respectively. For this purpose, reasonable access shall be given, upon request, to the importing Member for inspection, testing and other relevant procedures.

Article 7

Transparency

Members shall notify changes in their sanitary or phytosanitary measures and shall provide information on their sanitary or phytosanitary measures in accordance with the provisions of Annex B.

Article 8

Control, Inspection and Approval Procedures

Members shall observe the provisions of Annex C in the operation of control, inspection and approval procedures, including national systems for approving the use of additives or for establishing tolerances for contaminants in foods, beverages or feedstuffs, and otherwise ensure that their procedures are not inconsistent with the provisions of this Agreement.

Article 9

Technical Assistance

1. Members agree to facilitate the provision of technical assistance to other Members, especially developing country Members, either bilaterally or through the appropriate international organizations. Such assistance may be, *inter alia*, in the areas of processing technologies, research and infrastructure, including in the establishment of national regulatory bodies, and may take the form of advice, credits, donations and grants, including for the purpose of seeking technical expertise, training and equipment to allow such countries to adjust to, and comply with, sanitary or phytosanitary measures necessary to achieve the appropriate level of sanitary or phytosanitary protection in their export markets.

2. Where substantial investments are required in order for an exporting developing country Member to fulfil the sanitary or phytosanitary requirements of an importing Member, the latter shall consider providing such technical assistance as will permit the developing country Member to maintain and expand its market access opportunities for the product involved.

Article 10

Special and Differential Treatment

1. In the preparation and application of sanitary or phytosanitary measures, Members shall take account of the special needs of developing country Members, and in particular of the least-developed country Members.

2. Where the appropriate level of sanitary or phytosanitary protection allows scope for the phased introduction of new sanitary or phytosanitary measures, longer time-frames for compliance should be accorded on products of interest to developing country Members so as to maintain opportunities for their exports.

3. With a view to ensuring that developing country Members are able to comply with the provisions of this Agreement, the Committee is enabled to grant to such countries, upon request, specified, time-limited exceptions in whole or in part from obligations under this Agreement, taking into account their financial, trade and development needs.

4. Members should encourage and facilitate the active participation of developing country Members in the relevant international organizations.

Article 11

Consultations and Dispute Settlement

1. The provisions of Articles XXII and XXIII of GATT 1994 as elaborated and applied by the Dispute Settlement Understanding shall apply to consultations and the settlement of disputes under this Agreement, except as otherwise specifically provided herein.

2. In a dispute under this Agreement involving scientific or technical issues, a panel should seek advice from experts chosen by the panel in consultation with the parties to the dispute. To this end, the panel may, when it deems it appropriate, establish an advisory technical experts group, or consult

the relevant international organizations, at the request of either party to the dispute or on its own initiative.

3. Nothing in this Agreement shall impair the rights of Members under other international agreements, including the right to resort to the good offices or dispute settlement mechanisms of other international organizations or established under any international agreement.

Article 12

Administration

1. A Committee on Sanitary and Phytosanitary Measures is hereby established to provide a regular forum for consultations. It shall carry out the functions necessary to implement the provisions of this Agreement and the furtherance of its objectives, in particular with respect to harmonization. The Committee shall reach its decisions by consensus.

2. The Committee shall encourage and facilitate ad hoc consultations or negotiations among Members on specific sanitary or phytosanitary issues. The Committee shall encourage the use of international standards, guidelines or recommendations by all Members and, in this regard, shall sponsor technical consultation and study with the objective of increasing coordination and integration between international and national systems and approaches for approving the use of food additives or for establishing tolerances for contaminants in foods, beverages or feedstuffs.

3. The Committee shall maintain close contact with the relevant international organizations in the field of sanitary and phytosanitary protection, especially with the Codex Alimentarius Commission, the International Office of Epizootics, and the Secretariat of the International Plant Protection Convention, with the objective of securing the best available scientific and technical advice for the administration of this Agreement and in order to ensure that unnecessary duplication of effort is avoided.

4. The Committee shall develop a procedure to monitor the process of international harmonization and the use of international standards, guidelines or recommendations. For this purpose, the Committee should, in conjunction with the relevant international organizations, establish a list of international standards, guidelines or recommendations relating to sanitary or phytosanitary measures which the Committee determines to have a major trade impact. The list should include an indication by Members of those international standards, guidelines or recommendations which they apply as conditions for import or on the basis of which imported products conforming to these standards can enjoy access to their markets. For those cases in which a Member does not apply an international standard, guideline or recommendation as a condition for import, the Member should provide an indication of the reason therefor, and, in particular, whether it considers that the standard is not stringent enough to provide the appropriate level of sanitary or phytosanitary protection. If a Member revises its position, following its indication of the use of a standard, guideline or recommendation as a condition for import, it should provide an explanation for its change and so inform the Secretariat as well as the relevant international organizations, unless such notification and explanation is given according to the procedures of Annex B.

5. In order to avoid unnecessary duplication, the Committee may decide, as appropriate, to use the information generated by the procedures, particularly for notification, which are in operation in the relevant international organizations.

6. The Committee may, on the basis of an initiative from one of the Members, through appropriate channels invite the relevant international organizations or their subsidiary bodies to examine specific

matters with respect to a particular standard, guideline or recommendation, including the basis of explanations for non-use given according to paragraph 4.

7. The Committee shall review the operation and implementation of this Agreement three years after the date of entry into force of the WTO Agreement, and thereafter as the need arises. Where appropriate, the Committee may submit to the Council for Trade in Goods proposals to amend the text of this Agreement having regard, *inter alia*, to the experience gained in its implementation.

Article 13

Implementation

Members are fully responsible under this Agreement for the observance of all obligations set forth herein. Members shall formulate and implement positive measures and mechanisms in support of the observance of the provisions of this Agreement by other than central government bodies. Members shall take such reasonable measures as may be available to them to ensure that non-governmental entities within their territories, as well as regional bodies in which relevant entities within their territories are members, comply with the relevant provisions of this Agreement. In addition, Members shall not take measures which have the effect of, directly or indirectly, requiring or encouraging such regional or non-governmental entities, or local governmental bodies, to act in a manner inconsistent with the provisions of this Agreement. Members shall ensure that they rely on the services of non-governmental entities for implementing sanitary or phytosanitary measures only if these entities comply with the provisions of this Agreement.

Article 14

Final Provisions

The least-developed country Members may delay application of the provisions of this Agreement for a period of five years following the date of entry into force of the WTO Agreement with respect to their sanitary or phytosanitary measures affecting importation or imported products. Other developing country Members may delay application of the provisions of this Agreement, other than paragraph 8 of Article 5 and Article 7, for two years following the date of entry into force of the WTO Agreement with respect to their existing sanitary or phytosanitary measures affecting importation or imported products, where such application is prevented by a lack of technical expertise, technical infrastructure or resources.

ANNEX A

DEFINITIONS*

1. *Sanitary or phytosanitary measure* - Any measure applied:

(a) to protect animal or plant life or health within the territory of the Member from risks arising from the entry, establishment or spread of pests, diseases, disease-carrying organisms or disease-causing organisms;

(b) to protect human or animal life or health within the territory of the Member from risks arising from additives, contaminants, toxins or disease-causing organisms in foods, beverages or feedstuffs;

(c) to protect human life or health within the territory of the Member from risks arising from diseases carried by animals, plants or products thereof, or from the entry, establishment or spread of pests; or

(d) to prevent or limit other damage within the territory of the Member from the entry, establishment or spread of pests.

Sanitary or phytosanitary measures include all relevant laws, decrees, regulations, requirements and procedures including, *inter alia*, end product criteria; processes and production methods; testing, inspection, certification and approval procedures; quarantine treatments including relevant requirements associated with the transport of animals or plants, or with the materials necessary for their survival during transport; provisions on relevant statistical methods, sampling procedures and methods of risk assessment; and packaging and labelling requirements directly related to food safety.

2. *Harmonization* – The establishment, recognition and application of common sanitary and phytosanitary measures by different Members.

3. *International standards, guidelines and recommendations*

(a) for food safety, the standards, guidelines and recommendations established by the Codex Alimentarius Commission relating to food additives, veterinary drug and pesticide residues, contaminants, methods of analysis and sampling, and codes and guidelines of hygienic practice;

(b) for animal health and zoonoses, the standards, guidelines and recommendations developed under the auspices of the International Office of Epizootics;

(c) for plant health, the international standards, guidelines and recommendations developed under the auspices of the Secretariat of the International Plant Protection Convention in cooperation with regional organizations operating within the framework of the International Plant Protection Convention; and

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*For the purpose of these definitions, "animal" includes fish and wild fauna; "plant" includes forests and wild flora; "pests" include weeds; and "contaminants" include pesticide and veterinary drug residues and extraneous matter.

(d) for matters not covered by the above organizations, appropriate standards, guidelines and recommendations promulgated by other relevant international organizations open for membership to all Members, as identified by the Committee.

4. *Risk assessment* - The evaluation of the likelihood of entry, establishment or spread of a pest or disease within the territory of an importing Member according to the sanitary or phytosanitary measures which might be applied, and of the associated potential biological and economic consequences; or the evaluation of the potential for adverse effects on human or animal health arising from the presence of additives, contaminants, toxins or disease-causing organisms in food, beverages or feedstuffs.

5. *Appropriate level of sanitary or phytosanitary protection* - The level of protection deemed appropriate by the Member establishing a sanitary or phytosanitary measure to protect human, animal or plant life or health within its territory.

NOTE: Many Members otherwise refer to this concept as the "acceptable level of risk".

6. *Pest- or disease-free area* - An area, whether all of a country, part of a country, or all or parts of several countries, as identified by the competent authorities, in which a specific pest or disease does not occur.

NOTE: A pest- or disease-free area may surround, be surrounded by, or be adjacent to an area - whether within part of a country or in a geographic region which includes parts of or all of several countries - in which a specific pest or disease is known to occur but is subject to regional control measures such as the establishment of protection, surveillance and buffer zones which will confine or eradicate the pest or disease in question.

7. *Area of low pest or disease prevalence* - An area, whether all of a country, part of a country, or all or parts of several countries, as identified by the competent authorities, in which a specific pest or disease occurs at low levels and which is subject to effective surveillance, control or eradication measures.

ANNEX B

TRANSPARENCY OF SANITARY AND PHYTOSANITARY REGULATIONS

Publication of regulations

1. Members shall ensure that all sanitary and phytosanitary regulations[5] which have been adopted are published promptly in such a manner as to enable interested Members to become acquainted with them.

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

Enquiry points

3. Each Member shall ensure that one enquiry point exists which is responsible for the provision of answers to all reasonable questions from interested Members as well as for the provision of relevant documents regarding:

(a) any sanitary or phytosanitary regulations adopted or proposed within its territory;

(b) any control and inspection procedures, production and quarantine treatment, pesticide tolerance and food additive approval procedures, which are operated within its territory;

(c) risk assessment procedures, factors taken into consideration, as well as the determination of the appropriate level of sanitary or phytosanitary protection;

(d) the membership and participation of the Member, or of relevant bodies within its territory, in international and regional sanitary and phytosanitary organizations and systems, as well as in bilateral and multilateral agreements and arrangements within the scope of this Agreement, and the texts of such agreements and arrangements.

4. Members shall ensure that where copies of documents are requested by interested Members, they are supplied at the same price (if any), apart from the cost of delivery, as to the nationals[6] of the Member concerned.

Notification procedures

5. Whenever an international standard, guideline or recommendation does not exist or the content of a proposed sanitary or phytosanitary regulation is not substantially the same as the content of an international standard, guideline or recommendation, and if the regulation may have a significant effect on trade of other Members, Members shall:

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[5] Sanitary and phytosanitary measures such as laws, decrees or ordinances which are applicable generally.

[6] When "nationals" are referred to in this Agreement, the term shall be deemed, in the case of a separate customs territory Member of the WTO, to mean persons, natural or legal, who are domiciled or who have a real and effective industrial or commercial establishment in that customs territory.

(a) publish a notice at an early stage in such a manner as to enable interested Members to become acquainted with the proposal to introduce a particular regulation;

(b) notify other Members, through the Secretariat, of the products to be covered by the regulation together with a brief indication of the objective and rationale of the proposed regulation. Such notifications shall take place at an early stage, when amendments can still be introduced and comments taken into account;

(c) provide upon request to other Members copies of the proposed regulation and, whenever possible, identify the parts which in substance deviate from international standards, guidelines or recommendations;

(d) without discrimination, allow reasonable time for other Members to make comments in writing, discuss these comments upon request, and take the comments and the results of the discussions into account.

6. However, where urgent problems of health protection arise or threaten to arise for a Member, that Member may omit such of the steps enumerated in paragraph 5 of this Annex as it finds necessary, provided that the Member:

(a) immediately notifies other Members, through the Secretariat, of the particular regulation and the products covered, with a brief indication of the objective and the rationale of the regulation, including the nature of the urgent problem(s);

(b) provides, upon request, copies of the regulation to other Members;

(c) allows other Members to make comments in writing, discusses these comments upon request, and takes the comments and the results of the discussions into account.

7. Notifications to the Secretariat shall be in English, French or Spanish.

8. Developed country Members shall, if requested by other Members, provide copies of the documents or, in case of voluminous documents, summaries of the documents covered by a specific notification in English, French or Spanish.

9. The Secretariat shall promptly circulate copies of the notification to all Members and interested international organizations and draw the attention of developing country Members to any notifications relating to products of particular interest to them.

10. Members shall designate a single central government authority as responsible for the implementation, on the national level, of the provisions concerning notification procedures according to paragraphs 5, 6, 7 and 8 of this Annex.

General reservations

11. Nothing in this Agreement shall be construed as requiring:

(a) the provision of particulars or copies of drafts or the publication of texts other than in the language of the Member except as stated in paragraph 8 of this Annex; or

(b) Members to disclose confidential information which would impede enforcement of sanitary or phytosanitary legislation or which would prejudice the legitimate commercial interests of particular enterprises.

ANNEX C

CONTROL, INSPECTION AND APPROVAL PROCEDURES[7]

1. Members shall ensure, with respect to any procedure to check and ensure the fulfilment of sanitary or phytosanitary measures, that:

(a) such procedures are undertaken and completed without undue delay and in no less favourable manner for imported products than for like domestic products;

(b) the standard processing period of each procedure is published or that the anticipated processing period is communicated to the applicant upon request; when receiving an application, the competent body promptly examines the completeness of the documentation and informs the applicant in a precise and complete manner of all deficiencies; the competent body transmits as soon as possible the results of the procedure in a precise and complete manner to the applicant so that corrective action may be taken if necessary; even when the application has deficiencies, the competent body proceeds as far as practicable with the procedure if the applicant so requests; and that upon request, the applicant is informed of the stage of the procedure, with any delay being explained;

(c) information requirements are limited to what is necessary for appropriate control, inspection and approval procedures, including for approval of the use of additives or for the establishment of tolerances for contaminants in food, beverages or feedstuffs;

(d) the confidentiality of information about imported products arising from or supplied in connection with control, inspection and approval is respected in a way no less favourable than for domestic products and in such a manner that legitimate commercial interests are protected;

(e) any requirements for control, inspection and approval of individual specimens of a product are limited to what is reasonable and necessary;

(f) any fees imposed for the procedures on imported products are equitable in relation to any fees charged on like domestic products or products originating in any other Member and should be no higher than the actual cost of the service;

(g) the same criteria should be used in the siting of facilities used in the procedures and the selection of samples of imported products as for domestic products so as to minimize the inconvenience to applicants, importers, exporters or their agents;

(h) whenever specifications of a product are changed subsequent to its control and inspection in light of the applicable regulations, the procedure for the modified product is limited to what is necessary to determine whether adequate confidence exists that the product still meets the regulations concerned; and

[7]Control, inspection and approval procedures include, *inter alia*, procedures for sampling, testing and certification.

(i) a procedure exists to review complaints concerning the operation of such procedures and to take corrective action when a complaint is justified.

Where an importing Member operates a system for the approval of the use of food additives or for the establishment of tolerances for contaminants in food, beverages or feedstuffs which prohibits or restricts access to its domestic markets for products based on the absence of an approval, the importing Member shall consider the use of a relevant international standard as the basis for access until a final determination is made.

2. Where a sanitary or phytosanitary measure specifies control at the level of production, the Member in whose territory the production takes place shall provide the necessary assistance to facilitate such control and the work of the controlling authorities.

3. Nothing in this Agreement shall prevent Members from carrying out reasonable inspection within their own territories.

AGREEMENT ON TEXTILES AND CLOTHING

Members,

Recalling that Ministers agreed at Punta del Este that "negotiations in the area of textiles and clothing shall aim to formulate modalities that would permit the eventual integration of this sector into GATT on the basis of strengthened GATT rules and disciplines, thereby also contributing to the objective of further liberalization of trade";

Recalling also that in the April 1989 Decision of the Trade Negotiations Committee it was agreed that the process of integration should commence following the conclusion of the Uruguay Round of Multilateral Trade Negotiations and should be progressive in character;

Recalling further that it was agreed that special treatment should be accorded to the least-developed country Members;

Hereby *agree* as follows:

Article 1

1. This Agreement sets out provisions to be applied by Members during a transition period for the integration of the textiles and clothing sector into GATT 1994.

2. Members agree to use the provisions of paragraph 18 of Article 2 and paragraph 6(b) of Article 6 in such a way as to permit meaningful increases in access possibilities for small suppliers and the development of commercially significant trading opportunities for new entrants in the field of textiles and clothing trade.[1]

3. Members shall have due regard to the situation of those Members which have not accepted the Protocols extending the Arrangement Regarding International Trade in Textiles (referred to in this Agreement as the "MFA") since 1986 and, to the extent possible, shall afford them special treatment in applying the provisions of this Agreement.

4. Members agree that the particular interests of the cotton-producing exporting Members should, in consultation with them, be reflected in the implementation of the provisions of this Agreement.

5. In order to facilitate the integration of the textiles and clothing sector into GATT 1994, Members should allow for continuous autonomous industrial adjustment and increased competition in their markets.

6. Unless otherwise provided in this Agreement, its provisions shall not affect the rights and obligations of Members under the provisions of the WTO Agreement and the Multilateral Trade Agreements.

7. The textile and clothing products to which this Agreement applies are set out in the Annex.

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[1] To the extent possible, exports from a least-developed country Member may also benefit from this provision.

Article 2

1 All quantitative restrictions within bilateral agreements maintained under Article 4 or notified under Article 7 or 8 of the MFA in force on the day before the entry into force of the WTO Agreement shall, within 60 days following such entry into force, be notified in detail, including the restraint levels, growth rates and flexibility provisions, by the Members maintaining such restrictions to the Textiles Monitoring Body provided for in Article 8 (referred to in this Agreement as the "TMB"). Members agree that as of the date of entry into force of the WTO Agreement, all such restrictions maintained between GATT 1947 contracting parties, and in place on the day before such entry into force, shall be governed by the provisions of this Agreement.

2. The TMB shall circulate these notifications to all Members for their information. It is open to any Member to bring to the attention of the TMB, within 60 days of the circulation of the notifications, any observations it deems appropriate with regard to such notifications. Such observations shall be circulated to the other Members for their information. The TMB may make recommendations, as appropriate, to the Members concerned.

3. When the 12-month period of restrictions to be notified under paragraph 1 does not coincide with the 12-month period immediately preceding the date of entry into force of the WTO Agreement, the Members concerned should mutually agree on arrangements to bring the period of restrictions into line with the agreement year[2], and to establish notional base levels of such restrictions in order to implement the provisions of this Article. Concerned Members agree to enter into consultations promptly upon request with a view to reaching such mutual agreement. Any such arrangements shall take into account, *inter alia*, seasonal patterns of shipments in recent years. The results of these consultations shall be notified to the TMB, which shall make such recommendations as it deems appropriate to the Members concerned.

4. The restrictions notified under paragraph 1 shall be deemed to constitute the totality of such restrictions applied by the respective Members on the day before the entry into force of the WTO Agreement. No new restrictions in terms of products or Members shall be introduced except under the provisions of this Agreement or relevant GATT 1994 provisions.[3] Restrictions not notified within 60 days of the date of entry into force of the WTO Agreement shall be terminated forthwith.

5. Any unilateral measure taken under Article 3 of the MFA prior to the date of entry into force of the WTO Agreement may remain in effect for the duration specified therein, but not exceeding 12 months, if it has been reviewed by the Textiles Surveillance Body (referred to in this Agreement as the "TSB") established under the MFA. Should the TSB not have had the opportunity to review any such unilateral measure, it shall be reviewed by the TMB in accordance with the rules and procedures governing Article 3 measures under the MFA. Any measure applied under an MFA Article 4 agreement prior to the date of entry into force of the WTO Agreement that is the subject of a dispute which the TSB has not had the opportunity to review shall also be reviewed by the TMB in accordance with the MFA rules and procedures applicable for such a review.

6. On the date of entry into force of the WTO Agreement, each Member shall integrate into GATT 1994 products which accounted for not less than 16 per cent of the total volume of the Member's 1990 imports of the products in the Annex, in terms of HS lines or categories. The products to be integrated shall encompass products from each of the following four groups: tops and yarns, fabrics, made-up textile products, and clothing.

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[2]The "agreement year" is defined to mean a 12-month period beginning from the date of entry into force of the WTO Agreement and at the subsequent 12-month intervals

[3]The relevant GATT 1994 provisions shall not include Article XIX in respect of products not yet integrated into GATT 1994, except as specifically provided in paragraph 3 of the Annex.

7. Full details of the actions to be taken pursuant to paragraph 6 shall be notified by the Members concerned according to the following:

(a) Members maintaining restrictions falling under paragraph 1 undertake, notwithstanding the date of entry into force of the WTO Agreement, to notify such details to the GATT Secretariat not later than the date determined by the Ministerial Decision of 15 April 1994. The GATT Secretariat shall promptly circulate these notifications to the other participants for information. These notifications will be made available to the TMB, when established, for the purposes of paragraph 21;

(b) Members which have, pursuant to paragraph 1 of Article 6, retained the right to use the provisions of Article 6, shall notify such details to the TMB not later than 60 days following the date of entry into force of the WTO Agreement, or, in the case of those Members covered by paragraph 3 of Article 1, not later than at the end of the 12th month that the WTO Agreement is in effect. The TMB shall circulate these notifications to the other Members for information and review them as provided in paragraph 21.

8. The remaining products, i.e. the products not integrated into GATT 1994 under paragraph 6, shall be integrated, in terms of HS lines or categories, in three stages, as follows:

(a) on the first day of the 37th month that the WTO Agreement is in effect, products which accounted for not less than 17 per cent of the total volume of the Member's 1990 imports of the products in the Annex. The products to be integrated by the Members shall encompass products from each of the following four groups: tops and yarns, fabrics, made-up textile products, and clothing;

(b) on the first day of the 85th month that the WTO Agreement is in effect, products which accounted for not less than 18 per cent of the total volume of the Member's 1990 imports of the products in the Annex. The products to be integrated by the Members shall encompass products from each of the following four groups: tops and yarns, fabrics, made-up textile products, and clothing;

(c) on the first day of the 121st month that the WTO Agreement is in effect, the textiles and clothing sector shall stand integrated into GATT 1994, all restrictions under this Agreement having been eliminated.

9. Members which have notified, pursuant to paragraph 1 of Article 6, their intention not to retain the right to use the provisions of Article 6 shall, for the purposes of this Agreement, be deemed to have integrated their textiles and clothing products into GATT 1994. Such Members shall, therefore, be exempted from complying with the provisions of paragraphs 6 to 8 and 11.

10. Nothing in this Agreement shall prevent a Member which has submitted an integration programme pursuant to paragraph 6 or 8 from integrating products into GATT 1994 earlier than provided for in such a programme. However, any such integration of products shall take effect at the beginning of an agreement year, and details shall be notified to the TMB at least three months prior thereto for circulation to all Members.

11. The respective programmes of integration, in pursuance of paragraph 8, shall be notified in detail to the TMB at least 12 months before their coming into effect, and circulated by the TMB to all Members.

12. The base levels of the restrictions on the remaining products, mentioned in paragraph 8, shall be the restraint levels referred to in paragraph 1.

13. During Stage 1 of this Agreement (from the date of entry into force of the WTO Agreement to the 36th month that it is in effect, inclusive) the level of each restriction under MFA bilateral agreements in force for the 12-month period prior to the date of entry into force of the WTO Agreement shall be increased annually by not less than the growth rate established for the respective restrictions, increased by 16 per cent.

14. Except where the Council for Trade in Goods or the Dispute Settlement Body decides otherwise under paragraph 12 of Article 8, the level of each remaining restriction shall be increased annually during subsequent stages of this Agreement by not less than the following:

(a) for Stage 2 (from the 37th to the 84th month that the WTO Agreement is in effect, inclusive), the growth rate for the respective restrictions during Stage 1, increased by 25 per cent,

(b) for Stage 3 (from the 85th to the 120th month that the WTO Agreement is in effect, inclusive), the growth rate for the respective restrictions during Stage 2, increased by 27 per cent.

15. Nothing in this Agreement shall prevent a Member from eliminating any restriction maintained pursuant to this Article, effective at the beginning of any agreement year during the transition period, provided the exporting Member concerned and the TMB are notified at least three months prior to the elimination coming into effect. The period for prior notification may be shortened to 30 days with the agreement of the restrained Member. The TMB shall circulate such notifications to all Members. In considering the elimination of restrictions as envisaged in this paragraph, the Members concerned shall take into account the treatment of similar exports from other Members.

16 Flexibility provisions, i.e. swing, carryover and carry forward, applicable to all restrictions maintained pursuant to this Article, shall be the same as those provided for in MFA bilateral agreements for the 12-month period prior to the entry into force of the WTO Agreement. No quantitative limits shall be placed or maintained on the combined use of swing, carryover and carry forward.

17. Administrative arrangements, as deemed necessary in relation to the implementation of any provision of this Article, shall be a matter for agreement between the Members concerned. Any such arrangements shall be notified to the TMB.

18. As regards those Members whose exports are subject to restrictions on the day before the entry into force of the WTO Agreement and whose restrictions represent 1.2 per cent or less of the total volume of the restrictions applied by an importing Member as of 31 December 1991 and notified under this Article, meaningful improvement in access for their exports shall be provided, at the entry into force of the WTO Agreement and for the duration of this Agreement, through advancement by one stage of the growth rates set out in paragraphs 13 and 14, or through at least equivalent changes as may be mutually agreed with respect to a different mix of base levels, growth and flexibility provisions. Such improvements shall be notified to the TMB.

19. In any case, during the duration of this Agreement, in which a safeguard measure is initiated by a Member under Article XIX of GATT 1994 in respect of a particular product during a period of one year immediately following the integration of that product into GATT 1994 in accordance with the provisions of this Article, the provisions of Article XIX, as interpreted by the Agreement on Safeguards, will apply, save as set out in paragraph 20.

20. Where such a measure is applied using non-tariff means, the importing Member concerned shall apply the measure in a manner as set forth in paragraph 2(d) of Article XIII of GATT 1994 at the request of any exporting Member whose exports of such products were subject to restrictions under this Agreement at any time in the one-year period immediately prior to the initiation of the safeguard

measure. The exporting Member concerned shall administer such a measure. The applicable level shall not reduce the relevant exports below the level of a recent representative period, which shall normally be the average of exports from the Member concerned in the last three representative years for which statistics are available. Furthermore, when the safeguard measure is applied for more than one year, the applicable level shall be progressively liberalized at regular intervals during the period of application. In such cases the exporting Member concerned shall not exercise the right of suspending substantially equivalent concessions or other obligations under paragraph 3(a) of Article XIX of GATT 1994.

21. The TMB shall keep under review the implementation of this Article. It shall, at the request of any Member, review any particular matter with reference to the implementation of the provisions of this Article. It shall make appropriate recommendations or findings within 30 days to the Member or Members concerned, after inviting the participation of such Members.

Article 3

1. Within 60 days following the date of entry into force of the WTO Agreement, Members maintaining restrictions[4] on textile and clothing products (other than restrictions maintained under the MFA and covered by the provisions of Article 2), whether consistent with GATT 1994 or not, shall (*a*) notify them in detail to the TMB, or (*b*) provide to the TMB notifications with respect to them which have been submitted to any other WTO body. The notifications should, wherever applicable, provide information with respect to any GATT 1994 justification for the restrictions, including GATT 1994 provisions on which they are based.

2. Members maintaining restrictions falling under paragraph 1, except those justified under a GATT 1994 provision, shall either:

(a) bring them into conformity with GATT 1994 within one year following the entry into force of the WTO Agreement, and notify this action to the TMB for its information; or

(b) phase them out progressively according to a programme to be presented to the TMB by the Member maintaining the restrictions not later than six months after the date of entry into force of the WTO Agreement. This programme shall provide for all restrictions to be phased out within a period not exceeding the duration of this Agreement. The TMB may make recommendations to the Member concerned with respect to such a programme.

3. During the duration of this Agreement, Members shall provide to the TMB, for its information, notifications submitted to any other WTO bodies with respect to any new restrictions or changes in existing restrictions on textile and clothing products, taken under any GATT 1994 provision, within 60 days of their coming into effect.

4. It shall be open to any Member to make reverse notifications to the TMB, for its information, in regard to the GATT 1994 justification, or in regard to any restrictions that may not have been notified under the provisions of this Article. Actions with respect to such notifications may be pursued by any Member under relevant GATT 1994 provisions or procedures in the appropriate WTO body.

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[4]Restrictions denote all unilateral quantitative restrictions, bilateral arrangements and other measures having a similar effect.

5. The TMB shall circulate the notifications made pursuant to this Article to all Members for their information.

Article 4

1. Restrictions referred to in Article 2, and those applied under Article 6, shall be administered by the exporting Members. Importing Members shall not be obliged to accept shipments in excess of the restrictions notified under Article 2, or of restrictions applied pursuant to Article 6.

2. Members agree that the introduction of changes, such as changes in practices, rules, procedures and categorization of textile and clothing products, including those changes relating to the Harmonized System, in the implementation or administration of those restrictions notified or applied under this Agreement should not: upset the balance of rights and obligations between the Members concerned under this Agreement; adversely affect the access available to a Member; impede the full utilization of such access; or disrupt trade under this Agreement.

3. If a product which constitutes only part of a restriction is notified for integration pursuant to the provisions of Article 2, Members agree that any change in the level of that restriction shall not upset the balance of rights and obligations between the Members concerned under this Agreement.

4. When changes mentioned in paragraphs 2 and 3 are necessary, however, Members agree that the Member initiating such changes shall inform and, wherever possible, initiate consultations with the affected Member or Members prior to the implementation of such changes, with a view to reaching a mutually acceptable solution regarding appropriate and equitable adjustment. Members further agree that where consultation prior to implementation is not feasible, the Member initiating such changes will, at the request of the affected Member, consult, within 60 days if possible, with the Members concerned with a view to reaching a mutually satisfactory solution regarding appropriate and equitable adjustments. If a mutually satisfactory solution is not reached, any Member involved may refer the matter to the TMB for recommendations as provided in Article 8. Should the TSB not have had the opportunity to review a dispute concerning such changes introduced prior to the entry into force of the WTO Agreement, it shall be reviewed by the TMB in accordance with the rules and procedures of the MFA applicable for such a review.

Article 5

1. Members agree that circumvention by transshipment, re-routing, false declaration concerning country or place of origin, and falsification of official documents, frustrates the implementation of this Agreement to integrate the textiles and clothing sector into GATT 1994. Accordingly, Members should establish the necessary legal provisions and/or administrative procedures to address and take action against such circumvention. Members further agree that, consistent with their domestic laws and procedures, they will cooperate fully to address problems arising from circumvention.

2. Should any Member believe that this Agreement is being circumvented by transshipment, re-routing, false declaration concerning country or place of origin, or falsification of official documents, and that no, or inadequate, measures are being applied to address and/or to take action against such circumvention, that Member should consult with the Member or Members concerned with a view to seeking a mutually satisfactory solution. Such consultations should be held promptly, and within 30 days when possible. If a mutually satisfactory solution is not reached, the matter may be referred by any Member involved to the TMB for recommendations.

3. Members agree to take necessary action, consistent with their domestic laws and procedures, to prevent, to investigate and, where appropriate, to take legal and/or administrative action against

circumvention practices within their territory. Members agree to cooperate fully, consistent with their domestic laws and procedures, in instances of circumvention or alleged circumvention of this Agreement, to establish the relevant facts in the places of import, export and, where applicable, transshipment. It is agreed that such cooperation, consistent with domestic laws and procedures, will include: investigation of circumvention practices which increase restrained exports to the Member maintaining such restraints; exchange of documents, correspondence, reports and other relevant information to the extent available; and facilitation of plant visits and contacts, upon request and on a case-by-case basis. Members should endeavour to clarify the circumstances of any such instances of circumvention or alleged circumvention, including the respective roles of the exporters or importers involved.

4. Where, as a result of investigation, there is sufficient evidence that circumvention has occurred (e.g. where evidence is available concerning the country or place of true origin, and the circumstances of such circumvention), Members agree that appropriate action, to the extent necessary to address the problem, should be taken. Such action may include the denial of entry of goods or, where goods have entered, having due regard to the actual circumstances and the involvement of the country or place of true origin, the adjustment of charges to restraint levels to reflect the true country or place of origin. Also, where there is evidence of the involvement of the territories of the Members through which the goods have been transshipped, such action may include the introduction of restraints with respect to such Members. Any such actions, together with their timing and scope, may be taken after consultations held with a view to arriving at a mutually satisfactory solution between the concerned Members and shall be notified to the TMB with full justification. The Members concerned may agree on other remedies in consultation. Any such agreement shall also be notified to the TMB, and the TMB may make such recommendations to the Members concerned as it deems appropriate. If a mutually satisfactory solution is not reached, any Member concerned may refer the matter to the TMB for prompt review and recommendations.

5. Members note that some cases of circumvention may involve shipments transiting through countries or places with no changes or alterations made to the goods contained in such shipments in the places of transit. They note that it may not be generally practicable for such places of transit to exercise control over such shipments.

6. Members agree that false declaration concerning fibre content, quantities, description or classification of merchandise also frustrates the objective of this Agreement. Where there is evidence that any such false declaration has been made for purposes of circumvention, Members agree that appropriate measures, consistent with domestic laws and procedures, should be taken against the exporters or importers involved. Should any Member believe that this Agreement is being circumvented by such false declaration and that no, or inadequate, administrative measures are being applied to address and/or to take action against such circumvention, that Member should consult promptly with the Member involved with a view to seeking a mutually satisfactory solution. If such a solution is not reached, the matter may be referred by any Member involved to the TMB for recommendations. This provision is not intended to prevent Members from making technical adjustments when inadvertent errors in declarations have been made.

Article 6

1. Members recognize that during the transition period it may be necessary to apply a specific transitional safeguard mechanism (referred to in this Agreement as "transitional safeguard"). The transitional safeguard may be applied by any Member to products covered by the Annex, except those integrated into GATT 1994 under the provisions of Article 2. Members not maintaining restrictions falling under Article 2 shall notify the TMB within 60 days following the date of entry into force of the WTO Agreement, as to whether or not they wish to retain the right to use the provisions of this Article. Members which have not accepted the Protocols extending the MFA since 1986 shall make such notification within 6 months following the entry into force of the WTO Agreement. The transitional

safeguard should be applied as sparingly as possible, consistently with the provisions of this Article and the effective implementation of the integration process under this Agreement.

2. Safeguard action may be taken under this Article when, on the basis of a determination by a Member[5], it is demonstrated that a particular product is being imported into its territory in such increased quantities as to cause serious damage, or actual threat thereof, to the domestic industry producing like and/or directly competitive products. Serious damage or actual threat thereof must demonstrably be caused by such increased quantities in total imports of that product and not by such other factors as technological changes or changes in consumer preference.

3. In making a determination of serious damage, or actual threat thereof, as referred to in paragraph 2, the Member shall examine the effect of those imports on the state of the particular industry, as reflected in changes in such relevant economic variables as output, productivity, utilization of capacity, inventories, market share, exports, wages, employment, domestic prices, profits and investment; none of which, either alone or combined with other factors, can necessarily give decisive guidance.

4. Any measure invoked pursuant to the provisions of this Article shall be applied on a Member-by-Member basis. The Member or Members to whom serious damage, or actual threat thereof, referred to in paragraphs 2 and 3, is attributed, shall be determined on the basis of a sharp and substantial increase in imports, actual or imminent[6], from such a Member or Members individually, and on the basis of the level of imports as compared with imports from other sources, market share, and import and domestic prices at a comparable stage of commercial transaction; none of these factors, either alone or combined with other factors, can necessarily give decisive guidance. Such safeguard measure shall not be applied to the exports of any Member whose exports of the particular product are already under restraint under this Agreement.

5. The period of validity of a determination of serious damage or actual threat thereof for the purpose of invoking safeguard action shall not exceed 90 days from the date of initial notification as set forth in paragraph 7.

6. In the application of the transitional safeguard, particular account shall be taken of the interests of exporting Members as set out below:

(a) least-developed country Members shall be accorded treatment significantly more favourable than that provided to the other groups of Members referred to in this paragraph, preferably in all its elements but, at least, on overall terms;

(b) Members whose total volume of textile and clothing exports is small in comparison with the total volume of exports of other Members and who account for only a small percentage of total imports of that product into the importing Member shall be accorded differential and more favourable treatment in the fixing of the economic terms provided in paragraphs 8, 13 and 14. For those suppliers, due account will be taken, pursuant to paragraphs 2 and 3 of Article 1, of the future possibilities for the development of their trade and the need to allow commercial quantities of imports from them,

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[5] A customs union may apply a safeguard measure as a single unit or on behalf of a member State. When a customs union applies a safeguard measure as a single unit, all the requirements for the determination of serious damage or actual threat thereof under this Agreement shall be based on the conditions existing in the customs union as a whole. When a safeguard measure is applied on behalf of a member State, all the requirements for the determination of serious damage, or actual threat thereof, shall be based on the conditions existing in that member State and the measure shall be limited to that member State.

[6] Such an imminent increase shall be a measurable one and shall not be determined to exist on the basis of allegation, conjecture or mere possibility arising, for example, from the existence of production capacity in the exporting Members.

(c) with respect to wool products from wool-producing developing country Members whose economy and textiles and clothing trade are dependent on the wool sector, whose total textile and clothing exports consist almost exclusively of wool products, and whose volume of textiles and clothing trade is comparatively small in the markets of the importing Members, special consideration shall be given to the export needs of such Members when considering quota levels, growth rates and flexibility;

(d) more favourable treatment shall be accorded to re-imports by a Member of textile and clothing products which that Member has exported to another Member for processing and subsequent reimportation, as defined by the laws and practices of the importing Member, and subject to satisfactory control and certification procedures, when these products are imported from a Member for which this type of trade represents a significant proportion of its total exports of textiles and clothing.

7. The Member proposing to take safeguard action shall seek consultations with the Member or Members which would be affected by such action. The request for consultations shall be accompanied by specific and relevant factual information, as up-to-date as possible, particularly in regard to: (*a*) the factors, referred to in paragraph 3, on which the Member invoking the action has based its determination of the existence of serious damage or actual threat thereof; and (*b*) the factors, referred to in paragraph 4, on the basis of which it proposes to invoke the safeguard action with respect to the Member or Members concerned. In respect of requests made under this paragraph, the information shall be related, as closely as possible, to identifiable segments of production and to the reference period set out in paragraph 8. The Member invoking the action shall also indicate the specific level at which imports of the product in question from the Member or Members concerned are proposed to be restrained; such level shall not be lower than the level referred to in paragraph 8. The Member seeking consultations shall, at the same time, communicate to the Chairman of the TMB the request for consultations, including all the relevant factual data outlined in paragraphs 3 and 4, together with the proposed restraint level. The Chairman shall inform the members of the TMB of the request for consultations, indicating the requesting Member, the product in question and the Member having received the request. The Member or Members concerned shall respond to this request promptly and the consultations shall be held without delay and normally be completed within 60 days of the date on which the request was received.

8. If, in the consultations, there is mutual understanding that the situation calls for restraint on the exports of the particular product from the Member or Members concerned, the level of such restraint shall be fixed at a level not lower than the actual level of exports or imports from the Member concerned during the 12-month period terminating two months preceding the month in which the request for consultation was made.

9. Details of the agreed restraint measure shall be communicated to the TMB within 60 days from the date of conclusion of the agreement. The TMB shall determine whether the agreement is justified in accordance with the provisions of this Article. In order to make its determination, the TMB shall have available to it the factual data provided to the Chairman of the TMB, referred to in paragraph 7, as well as any other relevant information provided by the Members concerned. The TMB may make such recommendations as it deems appropriate to the Members concerned.

10. If, however, after the expiry of the period of 60 days from the date on which the request for consultations was received, there has been no agreement between the Members, the Member which proposed to take safeguard action may apply the restraint by date of import or date of export, in accordance with the provisions of this Article, within 30 days following the 60-day period for consultations, and at the same time refer the matter to the TMB. It shall be open to either Member to refer the matter to the TMB before the expiry of the period of 60 days. In either case, the TMB shall promptly conduct an examination of the matter, including the determination of serious damage, or actual threat thereof, and its causes, and make appropriate recommendations to the Members concerned within 30 days. In order to conduct such examination, the TMB shall have available to it the factual

data provided to the Chairman of the TMB, referred to in paragraph 7, as well as any other relevant information provided by the Members concerned.

11. In highly unusual and critical circumstances, where delay would cause damage which would be difficult to repair, action under paragraph 10 may be taken provisionally on the condition that the request for consultations and notification to the TMB shall be effected within no more than five working days after taking the action. In the case that consultations do not produce agreement, the TMB shall be notified at the conclusion of consultations, but in any case no later than 60 days from the date of the implementation of the action. The TMB shall promptly conduct an examination of the matter, and make appropriate recommendations to the Members concerned within 30 days. In the case that consultations do produce agreement, Members shall notify the TMB upon conclusion but, in any case, no later than 90 days from the date of the implementation of the action. The TMB may make such recommendations as it deems appropriate to the Members concerned.

12. A Member may maintain measures invoked pursuant to the provisions of this Article: (*a*) for up to three years without extension, or (*b*) until the product is integrated into GATT 1994, whichever comes first.

13. Should the restraint measure remain in force for a period exceeding one year, the level for subsequent years shall be the level specified for the first year increased by a growth rate of not less than 6 per cent per annum, unless otherwise justified to the TMB. The restraint level for the product concerned may be exceeded in either year of any two subsequent years by carry forward and/or carryover of 10 per cent of which carry forward shall not represent more than 5 per cent. No quantitative limits shall be placed on the combined use of carryover, carry forward and the provision of paragraph 14.

14. When more than one product from another Member is placed under restraint under this Article by a Member, the level of restraint agreed, pursuant to the provisions of this Article, for each of these products may be exceeded by 7 per cent, provided that the total exports subject to restraint do not exceed the total of the levels for all products so restrained under this Article, on the basis of agreed common units. Where the periods of application of restraints of these products do not coincide with each other, this provision shall be applied to any overlapping period on a *pro rata* basis.

15. If a safeguard action is applied under this Article to a product for which a restraint was previously in place under the MFA during the 12-month period prior to the entry into force of the WTO Agreement, or pursuant to the provisions of Article 2 or 6, the level of the new restraint shall be the level provided for in paragraph 8 unless the new restraint comes into force within one year of:

(a) the date of notification referred to in paragraph 13 of Article 2 for the elimination of the previous restraint; or

(b) the date of removal of the previous restraint put in place pursuant to the provisions of this Article or of the MFA

in which case the level shall not be less than the higher of (*i*) the level of restraint for the last 12-month period during which the product was under restraint, or (*ii*) the level of restraint provided for in paragraph 8.

16. When a Member which is not maintaining a restraint under Article 2 decides to apply a restraint pursuant to the provisions of this Article, it shall establish appropriate arrangements which: (*a*) take full account of such factors as established tariff classification and quantitative units based on normal commercial practices in export and import transactions, both as regards fibre composition and in terms of competing for the same segment of its domestic market, and (*b*) avoid over-categorization. The request for consultations referred to in paragraphs 7 or 11 shall include full information on such arrangements.

Article 7

1. As part of the integration process and with reference to the specific commitments undertaken by the Members as a result of the Uruguay Round, all Members shall take such actions as may be necessary to abide by GATT 1994 rules and disciplines so as to:

(a) achieve improved access to markets for textile and clothing products through such measures as tariff reductions and bindings, reduction or elimination of non-tariff barriers, and facilitation of customs, administrative and licensing formalities;

(b) ensure the application of policies relating to fair and equitable trading conditions as regards textiles and clothing in such areas as dumping and anti-dumping rules and procedures, subsidies and countervailing measures, and protection of intellectual property rights; and

(c) avoid discrimination against imports in the textiles and clothing sector when taking measures for general trade policy reasons.

Such actions shall be without prejudice to the rights and obligations of Members under GATT 1994.

2. Members shall notify to the TMB the actions referred to in paragraph 1 which have a bearing on the implementation of this Agreement. To the extent that these have been notified to other WTO bodies, a summary, with reference to the original notification, shall be sufficient to fulfil the requirements under this paragraph. It shall be open to any Member to make reverse notifications to the TMB.

3. Where any Member considers that another Member has not taken the actions referred to in paragraph 1, and that the balance of rights and obligations under this Agreement has been upset, that Member may bring the matter before the relevant WTO bodies and inform the TMB. Any subsequent findings or conclusions by the WTO bodies concerned shall form a part of the TMB's comprehensive report.

Article 8

1. In order to supervise the implementation of this Agreement, to examine all measures taken under this Agreement and their conformity therewith, and to take the actions specifically required of it by this Agreement, the Textiles Monitoring Body ("TMB") is hereby established. The TMB shall consist of a Chairman and 10 members. Its membership shall be balanced and broadly representative of the Members and shall provide for rotation of its members at appropriate intervals. The members shall be appointed by Members designated by the Council for Trade in Goods to serve on the TMB, discharging their function on an *ad personam* basis.

2. The TMB shall develop its own working procedures. It is understood, however, that consensus within the TMB does not require the assent or concurrence of members appointed by Members involved in an unresolved issue under review by the TMB.

3. The TMB shall be considered as a standing body and shall meet as necessary to carry out the functions required of it under this Agreement. It shall rely on notifications and information supplied by the Members under the relevant Articles of this Agreement, supplemented by any additional information or necessary details they may submit or it may decide to seek from them. It may also rely on notifications to and reports from other WTO bodies and from such other sources as it may deem appropriate.

4. Members shall afford to each other adequate opportunity for consultations with respect to any matters affecting the operation of this Agreement.

5. In the absence of any mutually agreed solution in the bilateral consultations provided for in this Agreement, the TMB shall, at the request of either Member, and following a thorough and prompt consideration of the matter, make recommendations to the Members concerned.

6. At the request of any Member, the TMB shall review promptly any particular matter which that Member considers to be detrimental to its interests under this Agreement and where consultations between it and the Member or Members concerned have failed to produce a mutually satisfactory solution. On such matters, the TMB may make such observations as it deems appropriate to the Members concerned and for the purposes of the review provided for in paragraph 11.

7. Before formulating its recommendations or observations, the TMB shall invite participation of such Members as may be directly affected by the matter in question.

8. Whenever the TMB is called upon to make recommendations or findings, it shall do so, preferably within a period of 30 days, unless a different time period is specified in this Agreement. All such recommendations or findings shall be communicated to the Members directly concerned. All such recommendations or findings shall also be communicated to the Council for Trade in Goods for its information.

9. The Members shall endeavour to accept in full the recommendations of the TMB, which shall exercise proper surveillance of the implementation of such recommendations.

10. If a Member considers itself unable to conform with the recommendations of the TMB, it shall provide the TMB with the reasons therefor not later than one month after receipt of such recommendations. Following thorough consideration of the reasons given, the TMB shall issue any further recommendations it considers appropriate forthwith. If, after such further recommendations, the matter remains unresolved, either Member may bring the matter before the Dispute Settlement Body and invoke paragraph 2 of Article XXIII of GATT 1994 and the relevant provisions of the Dispute Settlement Understanding.

11. In order to oversee the implementation of this Agreement, the Council for Trade in Goods shall conduct a major review before the end of each stage of the integration process. To assist in this review, the TMB shall, at least five months before the end of each stage, transmit to the Council for Trade in Goods a comprehensive report on the implementation of this Agreement during the stage under review, in particular in matters with regard to the integration process, the application of the transitional safeguard mechanism, and relating to the application of GATT 1994 rules and disciplines as defined in Articles 2, 3, 6 and 7 respectively. The TMB's comprehensive report may include any recommendation as deemed appropriate by the TMB to the Council for Trade in Goods.

12. In the light of its review the Council for Trade in Goods shall by consensus take such decisions as it deems appropriate to ensure that the balance of rights and obligations embodied in this Agreement is not being impaired. For the resolution of any disputes that may arise with respect to matters referred to in Article 7, the Dispute Settlement Body may authorize, without prejudice to the final date set out under Article 9, an adjustment to paragraph 14 of Article 2, for the stage subsequent to the review, with respect to any Member found not to be complying with its obligations under this Agreement.

Article 9

This Agreement and all restrictions thereunder shall stand terminated on the first day of the 121st month that the WTO Agreement is in effect, on which date the textiles and clothing sector shall be fully integrated into GATT 1994. There shall be no extension of this Agreement.

ANNEX

LIST OF PRODUCTS COVERED BY THIS AGREEMENT

1. This Annex lists textile and clothing products defined by Harmonized Commodity Description and Coding System (HS) codes at the six-digit level.

2. Actions under the safeguard provisions in Article 6 will be taken with respect to particular textile and clothing products and not on the basis of the HS lines *per se*.

3. Actions under the safeguard provisions in Article 6 of this Agreement shall not apply to:

(a) developing country Members' exports of handloom fabrics of the cottage industry, or hand-made cottage industry products made of such handloom fabrics, or traditional folklore handicraft textile and clothing products, provided that such products are properly certified under arrangements established between the Members concerned;

(b) historically traded textile products which were internationally traded in commercially significant quantities prior to 1982, such as bags, sacks, carpetbacking, cordage, luggage, mats, mattings and carpets typically made from fibres such as jute, coir, sisal, abaca, maguey and henequen;

(c) products made of pure silk.

For such products, the provisions of Article XIX of GATT 1994, as interpreted by the Agreement on Safeguards, shall be applicable.

Products within Section XI (Textiles and Textile Articles) of the Harmonized Commodity Description and Coding System (HS) Nomenclature

HS No.	Product Description
Ch. 50	Silk
5004.00	Silk yarn (nther than yarn spun from silk waste) not put up for retail sale
5005.00	Yarn spun from silk waste, not put up for retail sale
5006.00	Silk yarn&yarn spun from silk waste, put up f retail sale; silk-worm gut
5007.10	Woven fabrics of noil silk
5007.20	Woven fabrics of silk/silk waste, other than noil silk, 85%/more of such fibres
5007.90	Woven fabrics of silk, nes
Ch. 51	Wool, fine/coarse animal hair, horsehair yarn & fabric
5105.10	Carded wool
5105.21	Combed wool in fragments
5105.29	Wool tops and other combed wool, other than combed wool in fragments
5105.30	Fine animal hair, carded or combed
5106.10	Yarn of carded wool, > /= 85% by weight of wool, nt put up for retail sale
5106.20	Yarn of carded, wool, < 85% by weight of wool, not put up for retail sale
5107.10	Yarn of combed wool, > /= 85% by weight of wool, not put up for retail sale
5107.20	Yarn of combed wool, < 85% by weight of wool, not put up for retail sale
5108.10	Yarn of carded fine animal hair, not put up for retail sale
5108.20	Yarn of combed fine animal hair, not put up for retail sale
5109.10	Yarn of wool/of fine animal hair, > /= 85% by weight of such fibres, put up
5109.90	Yarn of wool/of fine animal hair, < 85% by weight of such fibres, put up
5110.00	Yarn of coarse animal hair or of horsehair
5111.11	Woven fabrics of carded wool/fine animal hair, > /= 85% by weight, < /= 300 g/m2
5111.19	Woven fabrics of carded wool/fine animal hair, > /= 85% by weight, > 300 g/m2
5111.20	Woven fabric of carded wool/fine animal hair, < 85% by wt, mixd w m-m fi
5111.30	Woven fabric of carded wool/fine animal hair, < 85% by wt, mixd w m-m fib
5111.90	Woven fabrics of carded wool/fine animal hair, < 85% by weight, nes
5112.11	Woven fabric of combed wool/fine animal hair, > /= 85% by weight, < /= 200 g/m2
5112.19	Woven fabrics of combed wool/fine animal hair, > /= 85% by weight, > 200 g/m2
5112.20	Woven fabrics of combed wool/fine animal hair, < 85% by wt, mixd w m-m fil
5112.30	Woven fabrics of combed wool/fine animal hair, < 85% by wt, mixd w m-m fib
5112.90	Woven fabrics of combed wool/fine animal hair, < 85% by weight, nes
5113.00	Woven fabrics of coarse animal hair or of horsehair
Ch. 52	Cotton
5204.11	Cotton sewing thread > /= 85% by weight of cotton, not put up for retail sale
5204.19	Cotton sewing thread, < 85% by weight of cotton, not put up for retail sale
5204.20	Cotton sewing thread, put up for retail sale
5205.11	Cotton yarn, > /= 85%, single, uncombed, > /= 714.29 dtex, nt put up
5205.12	Cotton yarn, > /= 85%, single, uncombed, 714.29 > dtex > /= 232.56, not put up
5205.13	Cotton yarn, > /= 85%, single, uncombed, 232.56 > dtex > /= 192.31, not put up
5205.14	Cotton yarn, > /= 85%, single, uncombed, 192.31 > dtex > /= 125, not put up
5205.15	Cotton yarn, > /= 85%, single, uncombed, < 125 dtex, nt put up f retail sale
5205.21	Cotton yarn, > /= 85%, single, combed, > /= 714.29, not put up
5205.22	Cotton yarn, > /= 85%, single, combed, 714.29 > dtex > /= 232.56, not put up
5205.23	Cotton yarn, > /= 85%, single, combed, 232.56 > dtex > /= 192.31, not put up
5205.24	Cotton yarn, > /= 85%, single, combed, 192.31 > dtex > /= 125, not put up
5205.25	Cotton yarn, > /= 85%, single, combed, < 125 dtex, not put up for retail sale

HS No.	Product Description
5205.31	Cotton yarn, >/=85%, multi, uncombed, >/=714.29 dtex, not put up, nes
5205.32	Cotton yarn, >/=85%,multi, uncombed, 714.29 >dtex>/=232.56, not put up, nes
5205.33	Cotton yarn, >/=85%,multi, uncombed, 232.56 >dtex>/=192.31, not put up, nes
5205.34	Cotton yarn, >/=85%,multi, uncombed, 192.31 >dtex>/=125, nt put up, nes
5205.35	Cotton yarn, >/=85%,multi, uncombed, <125 dtex, not put up, nes
5205.41	Cotton yarn, >/=85%, multiple, combed, >/=714.29 dtex, nut put up, nes
5205.42	Cotton yarn, >/=85%,multi, combed, 714.29 >dtex>/=232.56, nt put up, nes
5205.43	Cotton yarn, >/=85%,multi, combed, 232.56 >dtex>/=192.31, nt put up, nes
5205.44	Cotton yarn, >/=85%,multiple, combed, 192.31 >dtex>/=125, not put up, nes
5205.45	Cotton yarn, >/=85%, multiple, combed, <125 dtex, not put up, nes
5206.11	Cotton yarn, <85%, single, uncombed, >/=714.29, not put up
5206.12	Cotton yarn, <85%, single, uncombed, 714.29 >dtex>/=232.56, nt put up
5206.13	Cotton yarn, <85%, single, uncombed, 232.56 >dtex>/=192.31, not put up
5206.14	Cotton yarn, <85%, single, uncombed, 192.31 >dtex>/=125, nt put up
5206.15	Cotton yarn, <85%,single, uncombed,<125 dtex, not put up for retail sale
5206.21	Cotton yarn, <85%, single, combed, >/=714.29 dtex, nt put up
5206.22	Cotton yarn, <85%, single, combed, 714.29 >dtex>/=232.56, not put up
5206.23	Cotton yarn, <85%, single, combed, 232.56 >dtex>/=192.31, not put up
5206.24	Cotton yarn, <85%, single, combed, 192.31 >dtex>/=125, not put up
5206.25	Cotton yarn, <85%,single, combed, <125 dtex, not put up for retail sale
5206.31	Cotton yarn, <85%, multiple, uncombed, >/=714.29, not put up, nes
5206.32	Cotton yarn, <85%,multiple, uncombed, 714.29 >dtex>/=232.56, nt put up, nes
5206.33	Cotton yarn, <85%,multiple, uncombed, 232.56 >dex>/=192.31, nt put up, nes
5206.34	Cotton yarn, <85%,multiple, uncombed, 192.31 >dtex>/=125, nt put up, nes
5206.35	Cotton yarn, <85%, multiple, uncombed, <125 dtex, not put up, nes
5206.41	Cotton yarn, <85%, multiple, combed, >/=714.29, nt put up, nes
5206.42	Cotton yarn, <85%,multiple, combed, 714.29 >dtex>/=232.56, nt put up, nes
5206.43	Cotton yarn, <85%,multiple, combed, 232.56 >dtex>/=192.31, nt put up, nes
5206.44	Cotton yarn, <85%,multiple, combed, 192.31 >dtex>/=125, nt put up, nes
5206.45	Cotton yarn, <85%, multiple, combed, <125 dtex, not put up, nes
5207.10	Cotton yarn (other than sewing thread)>/=85% by weight of cotton, put up
5207.90	Cotton yarn (other than sewg thread) <85% by wt of cotton, put up f retl sale
5208.11	Plain weave cotton fabric, >/=85%, not more than 100 g/m2, unbleached
5208.12	Plain weave cotton fabric, >/=85%, >100 g/m2 to 200 g/m2, unbleached
5208.13	Twill weave cotton fabric, >/=85%, not more than 200 g/m2, unbleached
5208.19	Woven fabrics of cotton, >/=85%, not more than 200 g/m2, unbleached, nes
5208.21	Plain weave cotton fabrics, >/=85%, not more than 100 g/m2, bleached
5208.22	Plain weave cotton fabric, >/=85%, >100 g/m2 to 200 g/m2, bleached
5208.23	Twill weave cotton fabric, >/=85%, not more than 200 g/m2, bleached
5208.29	Woven fabrics of cotton, >/=85%, nt more than 200 g/m2, bleached, nes
5208.31	Plain weave cotton fabric, >/=85%, not more than 100 g/m2, dyed
5208.32	Plain weave cotton fabric, >/=85%, >100g/m 2 to 200g/m 2, dyed
5208.33	Twill weave cotton fabrics, >/=85%, not more than 200 g/m2, dyed
5208.39	Woven fabrics of cotton, >/=85%, not more than 200 g/m2, dyed, nes
5208.41	Plain weave cotton fabric, >/=85%, not more than 100 g/m2, yarn dyed
5208.42	Plain weave cotton fabrics, >/=85%, >100 g/m2 to 200 g/m2, yarn dyed
5208.43	Twill weave cotton fabric, >/=85%, not more than 200 g/m2, yarn dyed
5208.49	Woven fabrics of cotton, >/=85%,nt more than 200 g/m2, yarn dyed, nes
5208.51	Plain weave cotton fabrics, >/=85%, not more than 100 g/m2, printed
5208.52	Plain weave cotton fabric, >/=85%, >100 g/m2 to 200 g/m2, printed
5208.53	Twill weave cotton fabric, >/=85%, not more than 200 g/m2, printed
5208.59	Woven fabrics of cotton, >/=85%, not more than 200 g/m2, printed, nes

HS No.	Product Description
5209.11	Plain weave cotton fabric, > /= 85%, more than 200 g/m2, unbleached
5209.12	Twill weave cotton fabric, > /= 85%, more than 200 g/m2, unbleached
5209.19	Woven fabrics of cotton, > /= 85%, more than 200 g/m2, unbleached, nes
5209.21	Plain weave cotton fabric, > /= 85%, more than 200 g/m2, bleached
5209.22	Twill weave cotton fabrics, > /= 85%, more than 200 g/m2, bleached
5209.29	Woven fabrics of cotton, > /= 85%, more than 200 g/m2, bleached, nes
5209.31	Plain weave cotton fabrics, > /= 85%, more than 200 g/m2, dyed
5209.32	Twill weave cotton fabrics, > /= 85%, more than 200 g/m2, dyed
5209.39	Woven fabrics of cotton, > /= 85%, more than 200 g/m2, dyed, nes
5209.41	Plain weave cotton fabrics, > /= 85%, more than 200 g/m2, yarn dyed
5209.42	Denim fabrics of cotton, > /= 85%, more than 200 g/m2
5209.43	Twill weave cotton fab, other than denim, > /= 85%, more than 200 g/m2, yarn dyed
5209.49	Woven fabrics of cotton, > /= 85%, more than 200 g/m2, yarn dyed, nes
5209.51	Plain weave cotton fabrics, > /= 85%, more than 200 g/m2, printed
5209.52	Twill weave cotton fabrics, > /= 85%, more than 200 g/m2, printed
5209.59	Woven fabrics of cotton, > /= 85%, more than 200 g/m2, printed, nes
5210.11	Plain weave cotton fab, < 85% mixd w m-m fib, not more than 200 g/m2, unbl
5210.12	Twill weave cotton fab, < 85% mixd w m-m fib, not more than 200 g/m2, unbl
5210.19	Woven fab of cotton, < 85% mixd with m-m fib, < /= 200 g/m2, unbl, nes
5210.21	Plain weave cotton fab, < 85% mixd w m-m fib, not more than 200 g/m2, bl
5210.22	Twill weave cotton fab, < 85% mixd w m-m fib, not more than 200 g/m2, bl
5210.29	Woven fabrics of cotton, < 85% mixd with m-m fib, < /= 200 g/m2, bl, nes
5210.31	Plain weave cotton fab, < 85% mixd w m-m fib, not more than 200 g/m2, dyd
5210.32	Twill weave cotton fab, < 85% mixd w m-m fib, not more than 200 g/m2, dyd
5210.39	Woven fabrics of cotton, < 85% mixd with m-m fib, < /= 200 g/m2, dyed, nes
5210.41	Plain weave cotton fab, < 85% mixd w m-m fib, nt mor thn 200g/m2, yarn dyd
5210.42	Twill weave cotton fab, < 85% mixd w m-m fib, nt mor thn 200g/m2, yarn dyd
5210.49	Woven fabrics of cotton, < 85% mixed w m-m fib, < /= 200g/m2, yarn dyed, nes
5210.51	Plain weave cotton fab, < 85% mixd w m-m fib, nt more thn 200 g/m2, printd
5210.52	Twill weave cotton fab, < 85% mixd w m-m fib, nt more thn 200g/m2, printd
5210.59	Woven fabrics of cotton, < 85% mixed with m-m fib, < /= 200g/m2, printed, nes
5211.11	Plain weave cotton fab, < 85% mixd w m-m fib, more thn 200 g/m2, unbleachd
5211.12	Twill weave cotton fab, < 85% mixed with m-m fib, more than 200 g/m2, unbl
5211.19	Woven fabrics of cotton, < 85% mixd w m-m fib, more thn 200g/m2, unbl, nes
5211.21	Plain weave cotton fab, < 85% mixd w m-m fib, more than 200 g/m2, bleachd
5211.22	Twill weave cotton fab, < 85% mixd w m-m fib, more than 200 g/m2, bleachd
5211.29	Woven fabrics of cotton, < 85% mixd w m-m fib, more than 200 g/m2, bl, nes
5211.31	Plain weave cotton fab, < 85% mixed with m-m fib, more than 200 g/m2, dyed
5211.32	Twill weave cotton fab, < 85% mixed with m-m fib, more than 200 g/m2, dyed
5211.39	Woven fabrics of cotton, < 85% mixd w m-m fib, more than 200 g/m2, dyd, nes
5211.41	Plain weave cotton fab, < 85% mixd w m-m fib, more than 200 g/m2, yarn dyd
5211.42	Denim fabrics of cotton, < 85% mixed with m-m fib, more than 200 g/m2
5211.43	Twill weave cotton fab, other than denim, < 85% mixd w m-m fib, > 200g/m2, yarn dyd
5211.49	Woven fabrics of cotton, < 85% mixd with m-m fib, > 200 g/m2, yarn dyed, nes
5211.51	Plain weave cotton fab, < 85% mixd w m-m fib, more than 200 g/m2, printd
5211.52	Twill weave cotton fab, < 85% mixd w m-m fib, more than 200 g/m2, printd
5211.59	Woven fabrics of cotton, < 85% mixd w m-m fib, mor thn 200g/m2, printd, nes
5212.11	Woven fabrics of cotton, weighing not more than 200 g/m2, unbleached, nes
5212.12	Woven fabrics of cotton, weighing not more than 200 g/m2, bleached, nes
5212.13	Woven fabrics of cotton, weighing not more than 200 g/m2, dyed, nes
5212.14	Woven fabrics of cotton, < /= 200g/m2, of yarns of different colours, nes
5212.15	Woven fabrics of cotton, weighing not more than 200 g/m2, printed, nes

HS No.	Product Description
5212.21	Woven fabrics of cotton, weighing more than 200 g/m2, unbleached, nes
5212.22	Woven fabrics of cotton, weighing more than 200 g/m2, bleached, nes
5212.23	Woven fabrics of cotton, weighing more than 200 g/m2, dyed, nes
5212.24	Woven fabrics of cotton, > 200 g/m2, of yarns of different colours, nes
5212.25	Woven fabrics of cotton, weighing more than 200 g/m2, printed, nes
Ch. 53	Other vegetable textile fibres; paper yarn & woven fab
5306.10	Flax yarn, single
5306.20	Flax yarn, multile (folded) or cabled
5307.10	Yarn of jute or of other textile bast fibres, single
5307.20	Yarn of jute or of oth textile bast fibres, multiple (folded) or cabled
5308.20	True hemp yarn
5308.90	Yarn of other vegetable textile fibres
5309.11	Woven fabrics, containg 85% or more by weight of flax, unbleached or bl
5309.19	Woven fabrics, containing 85% or more by weight of flax, other than unbl or bl
5309.21	Woven fabrics of flax, containg < 85% by weight of flax, unbleached or bl
5309.29	Woven fabrics of flax, containing < 85% by weight of flax, other than unbl or bl
5310.10	Woven fabrics of jute or of other textile bast fibres, unbleached
5310.90	Woven fabrics of jute or of other textile bast fibres, other than unbleached
5311.00	Woven fabrics of oth vegetable textile fibres; woven fab of paper yarn
Ch. 54	Man-made filaments
5401.10	Sewing thread of synthetic filaments
5401.20	Sewing thread of artificial filaments
5402.10	High tenacity yarn (other than sewg thread),nylon/oth polyamides fi, nt put up
5402.20	High tenacity yarn (other than sewg thread),of polyester filaments, not put up
5402.31	Textured yarn nes, of nylon/oth polyamides fi, < /=50tex/s.y.,not put up
5402.32	Textured yarn nes, of nylon/oth polyamides fi, > 50 tex/s.y.,not put up
5402.33	Textured yarn nes, of polyester filaments, not put up for retail sale
5402.39	Textured yarn of synthetic filaments, nes, not put up
5402.41	Yarn of nylon or other polyamides fi, single, untwisted, nes, not put up
5402.42	Yarn of polyester filaments, partially oriented, single, nes, not put up
5402.43	Yarn of polyester filaments, single, untwisted, nes, not put up
5402.49	Yarn of synthetic filaments, single, untwisted, nes, not put up
5402.51	Yarn of nylon or other polyamides fi, single, > 50 turns/m, not put up
5402.52	Yarn of polyester filaments, single, > 50 turns per metre, not put up
5402.59	Yarn of synthetic filaments, single, > 50 turns per metre, nes, not put up
5402.61	Yarn of nylon or other polyamides fi, multiple, nes, not put up
5402.62	Yarn of polyester filaments, multiple, nes, not put up
5402.69	Yarn of synthetic filaments, multiple, nes, not put up
5403.10	High tenacity yarn (other than sewg thread),of viscose rayon filamt, nt put up
5403.20	Textured yarn nes, of artificial filaments, not put up for retail sale
5403.31	Yarn of viscose rayon filaments, single, untwisted, nes, not put up
5403.32	Yarn of viscose rayon filaments, single, > 120 turns per m, nes, nt put up
5403.33	Yarn of cellulose acetate filaments, single, nes, not put up
5403.39	Yarn of artificial filaments, single, nes, not put up
5403.41	Yarn of viscose rayon filaments, multiple, nes, not put up
5403.42	Yarn of cellulose acetate filaments, multiple, nes, not put up
5403.49	Yarn of artificial filaments, multiple, nes, not put up
5404.10	Synthetic mono, > /=67dtex, no cross sectional dimension exceeds 1 mm
5404.90	Strip&the like of syn tex material of an apparent width nt exceedg 5mm
5405.00	Artificial mono, 67 dtex, cross-sect > 1mm; strip of arti tex mat w < /=5mm

HS No.	Product Description
5406.10	Yarn of synthetic filament (other than sewing thread), put up for retail sale
5406.20	Yarn of artificial filament (other than sewing thread),put up for retail sale
5407.10	Woven fab of high tenacity fi yarns of nylon oth polyamides/polyesters
5407.20	Woven fab obtaind from strip/the like of synthetic textile materials
5407.30	Fabrics specif in Note 9 Section XI (layers of parallel syn tex yarn)
5407.41	Woven fab, > /=85% of nylon/other polyamides filaments, unbl or bl, nes
5407.42	Woven fabrics, > /=85% of nylon/other polyamides filaments, dyed, nes
5407.43	Woven fab, > /=85% of nylon/other polyamides filaments, yarn dyed, nes
5407.44	Woven fabrics, > /=85% of nylon/other polyamides filaments, printed, nes
5407.51	Woven fabrics, > /=85% of textured polyester filaments, unbl or bl, nes
5407.52	Woven fabrics, > /=85% of textured polyester filaments, dyed, nes
5407.53	Woven fabrics, > /=85% of textured polyester filaments, yarn dyed, nes
5407.54	Woven fabrics, > /=85% of textured polyester filaments, printed, nes
5407.60	Woven fabrics, > /=85% of non-textured polyester filaments, nes
5407.71	Woven fab, > /=85% of synthetic filaments, unbleached or bleached, nes
5407.72	Woven fabrics, > /=85% of synthetic filaments, dyed, nes
5407.73	Woven fabrics, > /=85% of synthetic filaments, yarn dyed, nes
5407.74	Woven fabrics, > /=85% of synthetic filaments, printed, nes
5407.81	Woven fabrics of synthetic filaments, < 85% mixd w cotton, unbl o bl, nes
5407.82	Woven fabrics of synthetic filaments, < 85% mixed with cotton, dyed, nes
5407.83	Woven fabrics of synthetic filaments, < 85% mixd w cotton, yarn dyd, nes
5407.84	Woven fabrics of synthetic filaments, < 85% mixd with cotton, printed, nes
5407.91	Woven fabrics of synthetic filaments, unbleached or bleached, nes
5407.92	Woven fabrics of synthetic filaments, dyed, nes
5407.93	Woven fabrics of synthetic filaments, yarn dyed, nes
5407.94	Woven fabrics of synthetic filaments, printed, nes
5408.10	Woven fabrics of high tenacity filament yarns of viscose rayon
5408.21	Woven fab, > /=85% of artificial fi o strip of art tex mat, unbl/bl, nes
5408.22	Woven fab, > /=85% of artificial fi or strip of art tex mat, dyed, nes
5408.23	Woven fab, > /=85% of artificial fi or strip of art tex mat, y dyed, nes
5408.24	Woven fab, > /=85% of artificial fi or strip of art tex mat, printd, nes
5408.31	Woven fabrics of artificial filaments, unbleached or bleached, nes
5408.32	Woven fabrics of artificial filaments, dyed, nes
5408.33	Woven fabrics of artificial filaments, yarn dyed, nes
5408.34	Woven fabrics of artificial filaments, printed, nes
Ch. 55	Man-made staple fibres
5501.10	Filament tow of nylon or other polyamides
5501.20	Filament tow of polyesters
5501.30	Filament tow of acrylic or modacrylic
5501.90	Synthetic filament tow, nes
5502.00	Artificial filament tow
5503.10	Staple fibres of nylon or other polyamides, not carded or combed
5503.20	Staple fibres of polyesters, not carded or combed
5503.30	Staple fibres of acrylic or modacrylic, not carded or combed
5503.40	Staple fibres of polypropylene, not carded or combed
5503.90	Synthetic staple fibres, not carded or combed, nes
5504.10	Staple fibres of viscose, not carded or combed
5504.90	Artificial staple fibres, other than viscose, not carded or combed
5505.10	Waste of synthetic fibres
5505.20	Waste of artificial fibres
5506.10	Staple fibres of nylon or other polyamides, carded or combed

HS No.	Product Description
5506.20	Staple fibres of polyesters, carded or combed
5506.30	Staple fibres of acrylic or modacrylic, carded or combed
5506.90	Synthetic staple fibres, carded or combed, nes
5507.00	Artificial staple fibres, carded or combed
5508.10	Sewing thread of synthetic staple fibres
5508.20	Sewing thread of artificial staple fibres
5509.11	Yarn, >/=85% nylon or other polyamides staple fibres, single, not put up
5509.12	Yarn, >/=85% nylon o oth polyamides staple fibres, multi, not put up, nes
5509.21	Yarn, >/=85% of polyester staple fibres, single, not put up
5509.22	Yarn, >/=85% of polyester staple fibres, multiple, not put up, nes
5509.31	Yarn, >/=85% of acrylic or modacrylic staple fibres, single, not put up
5509.32	Yarn, >/=85% acrylic/modacrylic staple fibres, multiple, not put up, nes
5509.41	Yarn, >/=85% of other synthetic staple fibres, single, not put up
5509.42	Yarn, >/=85% of other synthetic staple fibres, multiple, not put up, nes
5509.51	Yarn of polyester staple fibres mixd w/ arti staple fib, not put up, nes
5509.52	Yarn of polyester staple fib mixd w wool/fine animal hair, nt put up, nes
5509.53	Yarn of polyester staple fibres mixed with cotton, not put up, nes
5509.59	Yarn of polyester staple fibres, not put up, nes
5509.61	Yarn of acrylic staple fib mixd w wool/fine animal hair, not put up, nes
5509.62	Yarn of acrylic staple fibres mixed with cotton, not put up, nes
5509.69	Yarn of acrylic staple fibres, not put up, nes
5509.91	Yarn of oth synthetic staple fibres mixed w/wool/fine animal hair, nes
5509.92	Yarn of other synthetic staple fibres mixed with cotton, not put up, nes
5509.99	Yarn of other synthetic staple fibres, not put up, nes
5510.11	Yarn, >/=85% of artificial staple fibres, single, not put up
5510.12	Yarn, >/=85% of artificial staple fibres, multiple, not put up, nes
5510.20	Yarn of artifict staple fib mixd w wool/fine animal hair, not put up, nes
5510.30	Yarn of artificial staple fibres mixed with cotton, not put up, nes
5510.90	Yarn of artificial staple fibres, not put up, nes
5511.10	Yarn, >/=85% of synthetic staple fibres, other than sewing thread, put up
5511.20	Yarn, <85% of synthetic staple fibres, put up for retail sale, nes
5511.30	Yarn of artificial fibres (other than sewing thread), put up for retail sale
5512.11	Woven fabrics, containing >/=85% of polyester staple fibres, unbl or bl
5512.19	Woven fabrics, containg >/=85% of polyester staple fibres, other than unbl or bl
5512.21	Woven fabrics, containg >/=85% of acrylic staple fibres, unbleached or bl
5512.29	Woven fabrics, containing >/=85% of acrylic staple fibres, other than unbl or bl
5512.91	Woven fabrics, containing >/=85% of oth synthetic staple fibres, unbl/bl
5512.99	Woven fabrics, containg >/=85% of other synthetic staple fib, other than unbl/bl
5513.11	Plain weave polyest stapl fib fab, <85%,mixd w/cottn, </=170g/m2, unbl/bl
5513.12	Twill weave polyest stapl fib fab, <85%,mixd w/cottn, </=170g/m2, unbl/bl
5513.13	Woven fab of polyest staple fib, <85% mixd w/cot, </=170g/m2, unbl/bl, nes
5513.19	Woven fabrics of oth syn staple fib, <85% mixd w/cot, </=170g/m2, unbl/bl
5513.21	Plain weave polyester staple fib fab, <85%,mixd w/cotton, </=170g/m2, dyd
5513.22	Twill weave polyest staple fib fab, <85%,mixd w/cotton, </=170g/m2, dyd
5513.23	Woven fab of polyester staple fib, <85%,mixd w/cot, </=170 g/m2, dyd, nes
5513.29	Woven fabrics of oth syn staple fib, <85% mixd w/cotton, </=170g/m2, dyed
5513.31	Plain weave polyest stapl fib fab, <85% mixd w/cot, </=170g/m2, yarn dyd
5513.32	Twill weave polyest stapl fib fab, <85% mixd w/cot, </=170g/m2, yarn dyd
5513.33	Woven fab of polyest staple fib, <85% mixd w/cot, </=170 g/m2, dyd nes
5513.39	Woven fab of oth syn staple fib, <85% mixd w/cot, </=170g/m2, yarn dyd
5513.41	Plain weave polyester stapl fib fab, <85%,mixd w/cot, </=170g/m2, printd
5513.42	Twill weave polyest staple fib fab, <85%,mixd w/cot, <=/170g/m2, printd

HS No.	Product Description
5513.43	Woven fab of polyester staple fib, < 85%, mixd w/cot, < /= 170g/m2, ptd, nes
5513.49	Woven fab of oth syn staple fib, < 85%, mixed w/cot, < /= 170g/m2, printed
5514.11	Plain weave polyest staple fib fab, < 85%, mixd w/cotton, > 170g/m2, unbl/bl
5514.12	Twill weave polyest stapl fib fab, < 85%, mixd w/cotton, > 170g/m2, unbl/bl
5514.13	Woven fab of polyester staple fib, < 85% mixd w/cot, > 170g/m2, unbl/bl, nes
5514.19	Woven fabrics of oth syn staple fib, < 85%, mixed w/cot, > 170 g/m2, unbl/bl
5514.21	Plain weave polyester staple fibre fab, < 85%, mixd w/cotton, > 170g/m2, dyd
5514.22	Twill weave polyester staple fibre fab, < 85%, mixd w/cotton, > 170g/m2, dyd
5514.23	Woven fabrics of polyester staple fib, < 85%, mixed w/cot, > 170 g/m2, dyed
5514.29	Woven fabrics of oth synthetic staple fib, < 85%, mixd w/cot, > 170g/m2, dyd
5514.31	Plain weave polyester staple fib fab, < 85% mixd w/cot, > 170g/m2, yarn dyd
5514.32	Twill weave polyester staple fib fab, < 85% mixd w/cot, > 170g/m2, yarn dyd
5514.33	Woven fab of polyester stapl fib, < 85% mixd w/cot, > 170g/m2, yarn dyd nes
5514.39	Woven fabrics of oth syn staple fib, < 85% mixd w/cot, > 170 g/m2, yarn dyd
5514.41	Plain weave polyester staple fibre fab, < 85%, mixd w/cot, > 170g/m2, printd
5514.42	Twill weave polyester staple fibre fab, < 85%, mixd w/cot, > 170g/m2, printd
5514.43	Woven fab of polyester staple fibres < 85%, mixd w/cot, > 170g/m2, ptd, nes
5514.49	Woven fabrics of oth syn staple fib, < 85%, mixed w/cot, > 170 g/m2, printed
5515.11	Woven fab of polyester staple fib mixd w viscose rayon staple fib, nes
5515.12	Woven fabrics of polyester staple fibres mixd w man-made filaments, nes
5515.13	Woven fab of polyester staple fibres mixd w/wool/fine animal hair, nes
5515.19	Woven fabrics of polyester staple fibres, nes
5515.21	Woven fabrics of acrylic staple fibres, mixd w man-made filaments, nes
5515.22	Woven fab of acrylic staple fibres, mixd w/wool/fine animal hair, nes
5515.29	Woven fabrics of acrylic or modacrylic staple fibres, nes
5515.91	Woven fabrics of oth syn staple fib, mixed with man-made filaments, nes
5515.92	Woven fabrics of oth syn staple fib, mixd w/wool o fine animal hair, nes
5515.99	Woven fabrics of synthetic staple fibres, nes
5516.11	Woven fabrics, containg > /= 85% of artificial staple fibres, unbleached/bl
5516.12	Woven fabrics, containing > /= 85% of artificial staple fibres, dyed
5516.13	Woven fabrics, containing > /= 85% of artificial staple fib, yarn dyed
5516.14	Woven fabrics, containing > /= 85% of artificial staple fibres, printed
5516.21	Woven fabrics of artificial staple fib, < 85%, mixd w man-made fi, unbl/bl
5516.22	Woven fabrics of artificial staple fib, < 85%, mixd with man-made fi, dyd
5516.23	Woven fabrics of artificial staple fib, < 85%, mixd with m-m fi, yarn dyd
5516.24	Woven fabrics of artificial staple fib, < 85%, mixd w man-made fi, printd
5516.31	Woven fab of arti staple fib, < 85% mixd w/wool/fine animal hair, unbl/bl
5516.32	Woven fabrics of arti staple fib, < 85% mixd w/wool/fine animal hair, dyd
5516.33	Woven fab of arti staple fib, < 85% mixd w/wool/fine animal hair, yarn dyd
5516.34	Woven fab of arti staple fib, < 85% mixd w/wool/fine animal hair, printd
5516.41	Woven fabrics of artificial staple fib, < 85% mixd with cotton, unbl o bl
5516.42	Woven fabrics of artificial staple fib, < 85% mixed with cotton, dyed
5516.43	Woven fabrics of artificial staple fib, < 85% mixd with cotton, yarn dyd
5516.44	Woven fabrics of artificial staple fib, < 85% mixed with cotton, printed
5516.91	Woven fabrics of artificial staple fibres, unbleached or bleached, nes
5516.92	Woven fabrics of artificial staple fibres, dyed, nes
5516.93	Woven fabrics of artificial staple fibres, yarn dyed, nes
5516.94	Woven fabrics of artificial staple fibres, printed, nes
Ch. 56	Wadding, felt & nonwoven; yarns; twine, cordage, etc.
5601.10	Sanitary articles of waddg of textile mat; i.e. sanitary towels, tampons
5601.21	Wadding of cotton and articles thereof, other than sanitary articles

HS No.	Product Description
5601.22	Wadding of man-made fibres and articles thereof, other than sanitary articles
5601.29	Waddg of oth textile materials&articles thereof, other than sanitary articles
5601.30	Textile flock and dust and mill neps
5602.10	Needleloom felt and stitch-bonded fibre fabrics
5602.21	Felt other than needleloom, of wool or fine animal hair, not impreg, ctd, cov etc
5602.29	Felt other than needleloom, of other textile materials, not impreg, ctd, cov etc
5602.90	Felt of textile materials, nes
5603.00	Nonwovens, whether or not impregnated, coated, covered or laminated
5604.10	Rubber thread and cord, textile covered
5604.20	High tenacity yarn of polyest, nylon oth polyamid, viscose rayon, ctd etc
5604.90	Textile yarn, strips&the like, impreg ctd/cov with rubber o plastics, nes
5605.00	Metallisd yarn, beg textile yarn combind w metal thread, strip/powder
5606.00	Gimped yarn nes; chenille yarn; loop wale-yarn
5607.10	Twine, cordage, ropes and cables, of jute or other textile bast fibres
5607.21	Binder o baler twine, of sisal o oth textile fibres of the genus Agave
5607.29	Twine nes, cordage, ropes and cables, of sisal textile fibres
5607.30	Twine, cordage, ropes and cables, of abaca or other hard (leaf) fibres
5607.41	Binder or baler twine, of polyethylene or polypropylene
5607.49	Twine nes, cordage, ropes and cables, of polyethylene or polypropylene
5607.50	Twine, cordage, ropes and cables, of other synthetic fibres
5607.90	Twine, cordage, ropes and cables, of other materials
5608.11	Made up fishing nets, of man-made textile materials
5608.19	Knottd netg of twine/cordage/rope, and oth made up nets of m-m tex mat
5608.90	Knottd netg of twine/cordage/rope, nes, and made up nets of oth tex mat
5609.00	Articles of yarn, strip, twine, cordage, rope and cables, nes
Ch. 57	Carpets and other textile floor coverings
5701.10	Carpets of wool or fine animal hair, knotted
5701.90	Carpets of other textile materials, knotted
5702.10	Kelem, Schumacks, Karamanie and similar textile hand-woven rugs
5702.20	Floor coverings of coconut fibres (coir)
5702.31	Carpets of wool/fine animl hair, of wovn pile constructn, nt made up nes
5702.32	Carpets of man-made textile mat, of wovn pile construct, nt made up, nes
5702.39	Carpets of oth textile mat, of woven pile constructn, nt made up, nes
5702.41	Carpets of wool/fine animal hair, of wovn pile construction, made up, nes
5702.42	Carpets of man-made textile mat, of woven pile construction, made up, nes
5702.49	Carpets of oth textile materials, of wovn pile construction, made up, nes
5702.51	Carpets of wool or fine animal hair, woven, not made up, nes
5702.52	Carpets of man-made textile materials, woven, not made up, nes
5702.59	Carpets of other textile materials, woven, not made up, nes
5702.91	Carpets of wool or fine animal hair, woven, made up, nes
5702.92	Carpets of man-made textile materials, woven, made up, nes
5702.99	Carpets of other textile materials, woven, made up, nes
5703.10	Carpets of wool or fine animal hair, tufted
5703.20	Carpets of nylon or other polyamides, tufted
5703.30	Carpets of other man-made textile materials, tufted
5703.90	Carpets of other textile materials, tufted
5704.10	Tiles of felt of textile materials, havg a max surface area of 0.3 m2
5704.90	Carpets of felt of textile materials, nes
5705.00	Carpets and other textile floor coverings, nes
Ch. 58	Special woven fab; tufted tex fab; lace; tapestries etc.

HS No.	Product Description
5801.10	Woven pile fabrics of wool/fine animal hair, other than terry&narrow fabrics
5801.21	Woven uncut weft pile fabrics of cotton, other than terry and narrow fabrics
5801.22	Cut corduroy fabrics of cotton, other than narrow fabrics
5801.23	Woven weft pile fabrics of cotton, nes
5801.24	Woven warp pile fab of cotton, pingl (uncut),other than terry&narrow fab
5801.25	Woven warp pile fabrics of cotton, cut, other than terry and narrow fabrics
5801.26	Chenille fabrics of cotton, other than narrow fabrics
5801.31	Woven uncut weft pile fabrics of manmade fibres, other than terry&narrow fab.
5801.32	Cut corduroy fabrics of man-made fibres, other than narrow fabrics
5801.33	Woven weft pile fabrics of man-made fibres, nes
5801.34	Woven warp pile fab of man-made fib, pingl (uncut),other than terry&nar fab
5801.35	Woven warp pile fabrics of man-made fib, cut, other than terry & narrow fabrics
5801.36	Chenille fabrics of man-made fibres, other than narrow fabrics
5801.90	Woven pile fab&chenille fab of other tex mat, other than terry&narrow fabrics
5802.11	Terry towellg & similar woven terry fab of cotton, other than narrow fab, unbl
5802.19	Terry towellg&similar woven terry fab of cotton, other than unbl&other than nar fab
5802.20	Terry towellg&sim woven terry fab of oth tex mat, other than narrow fabrics
5802.30	Tufted textile fabrics, other than products of heading No 57.03
5803.10	Gauze of cotton, other than narrow fabrics
5803.90	Gauze of other textile material, other than narrow fabrics
5804.10	Tulles & other net fabrics, not incl woven, knitted or crocheted fabrics
5804.21	Mechanically made lace of man-made fib, in the piece, in strips/motifs
5804.29	Mechanically made lace of oth tex mat, in the piece, in strips/in motifs
5804.30	Hand-made lace, in the piece, in strips or in motifs
5805.00	Hand-woven tapestries&needle-worked tapestries, whether or not made up
5806.10	Narrow woven pile fabrics and narrow chenille fabrics
5806.20	Narrow woven fab, cntg by wt>/=5% elastomeric yarn/rubber thread nes
5806.31	Narrow woven fabrics of cotton, nes
5806.32	Narrow woven fabrics of man-made fibres, nes
5806.39	Narrow woven fabrics of other textile materials, nes
5806.40	Fabrics consisting of warp w/o weft assembled by means of an adhesive
5807.10	Labels, badges and similar woven articles of textile materials
5807.90	Labels, badges and similar articles, not woven, of textile materials, nes
5808.10	Braids in the piece
5808.90	Ornamental trimmings in the piece, other than knit; tassels, pompons&similar art
5809.00	Woven fabrics of metal thread/of metallised yarn, for apparel, etc, nes
5810.10	Embroidery without visible ground, in the piece, in strips or in motifs
5810.91	Embroidery of cotton, in the piece, in strips or in motifs, nes
5810.92	Embroidery of man-made fibres, in the piece, in strips or in motifs, nes
5810.99	Embroidery of oth textile materials, in the piece, in strips/motifs, nes
5811.00	Quilted textile products in the piece
Ch. 59	**Impregnated, coated, cover/laminated textile fabric etc.**
5901.10	Textile fabrics coatd with gum, of a kind usd for outer covers of books
5901.90	Tracg cloth; prepared paintg canvas; stiffened textile fab; for hats etc
5902.10	Tire cord fabric made of nylon or other polyamides high tenacity yarns
5902.20	Tire cord fabric made of polyester high tenacity yarns
5902.90	Tire cord fabric made of viscose rayon high tenacity yarns
5903.10	Textile fab impregnatd, ctd, cov, or laminatd w polyvinyl chloride, nes
5903.20	Textile fabrics impregnated, ctd, cov, or laminated with polyurethane, nes
5903.90	Textile fabrics impregnated, ctd, cov, or laminated with plastics, nes
5904.10	Linoleum, whether or not cut to shape

HS No.	Product Description
5904.91	Floor coverings, other that linoleum, with a base of needleloom felt/nonwovens
5904.92	Floor coverings, other than linoleum, with other textile base
5905.00	Textile wall coverings
5906.10	Rubberised textile adhesive tape of a width not exceeding 20 cm
5906.91	Rubberised textile knitted or crocheted fabrics, nes
5906.99	Rubberised textile fabrics, nes
5907.00	Textile fab impreg, coti, cov nes; painted canvas (e.g.threatrical scenery)
5908.00	Textile wicks f lamps, stoves, etc; gas mantles&knittd gas mantle fabric
5909.00	Textile hosepiping and similar textile tubing
5910.00	Transmission or conveyor belts or belting of textile material
5911.10	Textile fabrics usd f card clothing, and sim fabric f technical uses
5911.20	Textile bolting cloth, whether or not made up
5911.31	Textile fabrics used in paper-making or similar machines, <650 g/m2
5911.32	Textile fabrics usd in paper-makg or similar mach, weighg >/=650 g/m2
5911.40	Textile straing cloth usd in oil presses o the like, incl of human hair
5911.90	Textile products and articles for technical uses, nes
Ch. 60	Knitted or crocheted fabrics
6001.10	Long pile knitted or crocheted textile fabrics
6001.21	Looped pile knitted or crocheted fabrics, of cotton
6001.22	Looped pile knitted or crocheted fabrics, of man-made fibres
6001.29	Looped pile knitted or crocheted fabrics, of other textile materials
6001.91	Pile knitted or crocheted fabrics, of cotton, nes
6001.92	Pile knitted or crocheted fabrics, of man-made fibres, nes
6001.99	Pile knitted or crocheted fabrics, of other textile materials, nes
6002.10	Knittd or crocheted tex fab, w<=30 cm, >/=5% of elastomeric/rubber, nes
6002.20	Knitted or crocheted textile fabrics, of a width not exceedg 30 cm, nes
6002.30	Knittd/crocheted tex fab, width > 30 cm, >/=5% of elastomeric/rubber, nes
6002.41	Warp knitted fabrics, of wool or fine animal hair, nes
6002.42	Warp knitted fabrics, of cotton, nes
6002.43	Warp knitted fabrics, of man-made fibres, nes
6002.49	Warp knitted fabrics, of other materials, nes
6002.91	Knitted or crocheted fabrics, of wool or of fine animal hair, nes
6002.92	Knitted or crocheted fabrics, of cotton, nes
6002.93	Knitted or crocheted fabrics, of manmade fibres, nes
6002.99	Knitted or crocheted fabrics, of other materials, nes
Ch. 61	Art of apparel & clothing access, knitted or crocheted
6101.10	Mens/boys overcoats, anoraks etc, of wool or fine animal hair, knitted
6101.20	Mens/boys overcoats, anoraks etc, of cotton, knitted
6101.30	Mens/boys overcoats, anoraks etc, of man-made fibres, knitted
6101.90	Mens/boys overcoats, anoraks etc, of other textile materials, knitted
6102.10	Womens/girls overcoats, anoraks etc, of wool or fine animal hair, knitted
6102.20	Womens/girls overcoats, anoraks etc, of cotton, knitted
6102.30	Womens/girls overcoats, anoraks etc, of man-made fibres, knitted
6102.90	Womens/girls overcoats, anoraks etc, of other textile materials, knitted
6103.11	Mens/boys suits, of wool or fine animal hair, knitted
6103.12	Mens/boys suits, of synthetic fibres, knitted
6103.19	Mens/boys suits, of other textile materials, knitted
6103.21	Mens/boys ensembles, of wool or fine animal hair, knitted
6103.22	Mens/boys ensembles, of cotton, knitted
6103.23	Mens/boys ensembles, of synthetic fibres, knitted

HS No.	Product Description
6103.29	Mens/boys ensembles, of other textile materials, knitted
6103.31	Mens/boys jackets and blazers, of wool or fine animal hair, knitted
6103.32	Mens/boys jackets and blazers, of cotton, knitted
6103.33	Mens/boys jackets and blazers, of synthetic fibres, knitted
6103.39	Mens/boys jackets and blazers, of other textile materials, knitted
6103.41	Mens/boys trousers and shorts, of wool or fine animal hair, knitted
6103.42	Mens/boys trousers and shorts, of cotton, knitted
6103.43	Mens/boys trousers and shorts, of synthetic fibres, knitted
6103.49	Mens/boys trousers and shorts, of other textile materials, knitted
6104.11	Womens/girls suits, of wool or fine animal hair, knitted
6104.12	Womens/girls suits, of cotton, knitted
6104.13	Womens/girls suits, of synthetic fibres, knitted
6104.19	Womens/girls suits, of other textile materials, knitted
6104.21	Womens/girls ensembles, of wool or fine animal hair, knitted
6104.22	Womens/girls ensembles, of cotton, knitted
6104.23	Womens/girls ensembles, of synthetic fibres, knitted
6104.29	Womens/girls ensembles, of other textile materials, knitted
6104.31	Womens/girls jackets, of wool or fine animal hair, knitted
6104.32	Womens/girls jackets, of cotton, knitted
6104.33	Womens/girls jackets, of synthetic fibres, knitted
6104.39	Womens/girls jackets, of other textile materials, knitted
6104.41	Womens/girls dresses, of wool or fine animal hair, knitted
6104.42	Womens/girls dresses, of cotton, knitted
6104.43	Womens/girls dresses, of synthetic fibres, knitted
6104.44	Womens/girls dresses, of artificial fibres, knitted
6104.49	Womens/girls dresses, of other textile materials, knitted
6104.51	Womens/girls skirts, of wool or fine animal hair, knitted
6104.52	Womens/girls skirts, of cotton, knitted
6104.53	Womens/girls skirts, of synthetic fibres, knitted
6104.59	Womens/girls skirts, of other textile materials, knitted
6104.61	Womens/girls trousers and shorts, of wool or fine animal hair, knitted
6104.62	Womens/girls trousers and shorts, of cotton, knitted
6104.63	Womens/girls trousers and shorts, of synthetic fibres, knitted
6104.69	Womens/girls trousers and shorts, of other textile materials, knitted
6105.10	Mens/boys shirts, of cotton, knitted
6105.20	Mens/boys shirts, of man-made fibres, knitted
6105.90	Mens/boys shirts, of other textile materials, knitted
6106.10	Womens/girls blouses and shirts, of cotton, knitted
6106.20	Womens/girls blouses and shirts, of man-made fibres, knitted
6106.90	Womens/girls blouses and shirts, of other materials, knitted
6107.11	Mens/boys underpants and briefs, of cotton, knitted
6107.12	Mens/boys underpants and briefs, of man-made fibres, knitted
6107.19	Mens/boys underpants and briefs, of other textile materials, knitted
6107.21	Mens/boys nightshirts and pyjamas, of cotton, knitted
6107.22	Mens/boys nightshirts and pyjamas, of man-made fibres, knitted
6107.29	Mens/boys nightshirts and pyjamas, of other textile materials, knitted
6107.91	Mens/boys bathrobes, dressing gowns etc of cotton, knitted
6107.92	Mens/boys bathrobes, dressing gowns, etc of man-made fibres, knitted
6107.99	Mens/boys bathrobes, dressg gowns, etc of oth textile materials, knitted
6108.11	Womens/girls slips and petticoats, of man-made fibres, knitted
6108.19	Womens/girls slips and petticoats, of other textile materials, knitted
6108.21	Womens/girls briefs and panties, of cotton, knitted

HS No.	Product Description
6108.22	Womens/girls briefs and panties, of man-made fibres, knitted
6108.29	Womens/girls briefs and panties, of other textile materials, knitted
6108.31	Womens/girls nightdresses and pyjamas, of cotton, knitted
6108.32	Womens/girls nightdresses and pyjamas, of man-made fibres, knitted
6108.39	Womens/girls nightdresses & pyjamas, of other textile materials, knitted
6108.91	Womens/girls bathrobes, dressing gowns, etc, of cotton, knitted
6108.92	Womens/girls bathrobes, dressing gowns, etc, of man-made fibres, knitted
6108.99	Women/girls bathrobes, dressg gowns, etc, of oth textile materials, knitte
6109.10	T-shirts, singlets and other vests, of cotton, knitted
6109.90	T-shirts, singlets and other vests, of other textile materials, knitted
6110.10	Pullovers, cardigans&similar article of wool or fine animal hair, knitte
6110.20	Pullovers, cardigans and similar articles of cotton, knitted
6110.30	Pullovers, cardigans and similar articles of man-made fibres, knitted
6110.90	Pullovers, cardigans&similar articles of oth textile materials, knitte
6111.10	Babies garments&clothg accessories of wool or fine animal hair, knitted
6111.20	Babies garments and clothing accessories of cotton, knitted
6111.30	Babies garments and clothing accessories of synthetic fibres, knitted
6111.90	Babies garments&clothg accessories of other textile materials, knitted
6112.11	Track suits, of cotton, knitted
6112.12	Track suits, of synthetic fibres, knitted
6112.19	Track suits, of other textile materials, knitted
6112.20	Ski suits, of textile materials, knitted
6112.31	Mens/boys swimwear, of synthetic fibres, knitted
6112.39	Mens/boys swimwear, of other textile materials, knitted
6112.41	Womens/girls swimwear, of synthetic fibres, knitted
6112.49	Womens/girls swimwear, of other textile materials, knitted
6113.00	Garments made up of impreg, coatd, coverd or laminatd textile knitd fab
6114.10	Garments nes, of wool or fine animal hair, knitted
6114.20	Garments nes, of cotton, knitted
6114.30	Garments nes, of man-made fibres, knitted
6114.90	Garments nes, of other textile materials, knitted
6115.11	Panty hose&tights, of synthetic fibre yarns <67 dtex/single yarn knitd
6115.12	Panty hose&tights, of synthetic fib yarns >/=67 dtex/single yarn knitd
6115.19	Panty hose and tights, of other textile materials, knitted
6115.20	Women full-l/knee-l hosiery, of textile yarn<67 dtex/single yarn knitd
6115.91	Hosiery nes, of wool or fine animal hair, knitted
6115.92	Hosiery nes, of cotton, knitted
6115.93	Hosiery nes, of synthetic fibres, knitted
6115.99	Hosiery nes, of other textile materials, knitted
6116.10	Gloves impregnated, coated or covered with plastics or rubber, knitted
6116.91	Gloves, mittens and mitts, nes, of wool or fine animal hair, knitted
6116.92	Gloves, mittens and mitts, nes, of cotton, knitted
6116.93	Gloves, mittens and mitts, nes, of synthetic fibres, knitted
6116.99	Gloves, mittens and mitts, nes, of other textile materials, knitted
6117.10	Shawls, scarves, veils and the like, of textile materials, knitted
6117.20	Ties, bow ties and cravats, of textile materials, knitted
6117.80	Clothing accessories nes, of textile materials, knitted
6117.90	Parts of garments/of clothg accessories, of textile materials, knitd
Ch. 62	Art of apparel & clothing access, not knitted/crocheted
6201.11	Mens/boys overcoats&similar articles of wool/fine animal hair, not knit
6201.12	Mens/boys overcoats and similar articles of cotton, not knitted

HS No.	Product Description
6201.13	Mens/boys overcoats & similar articles of man-made fibres, not knitted
6201.19	Mens/boys overcoats&sim articles of oth textile materials, not knittd
6201.91	Mens/boys anoraks&similar articles, of wool/fine animal hair, not knittd
6201.92	Mens/boys anoraks and similar articles, of cotton, not knitted
6201.93	Mens/boys anoraks and similar articles, of man-made fibres, not knitted
6201.99	Mens/boys anoraks&similar articles, of oth textile materials, not knittd
6202.11	Womens/girls overcoats&sim articles of wool/fine animal hair nt knit
6202.12	Womens/girls overcoats and similar articles of cotton, not knitted
6202.13	Womens/girls overcoats&sim articles of man-made fibres, not knittd
6202.19	Womens/girls overcoats&similar articles of other textile mat, not knit
6202.91	Womens/girls anoraks&similau article of wool/fine animal hair, not knit
6202.92	Womens/girls anoraks and similar article of cotton, not knitted
6202.93	Womens/girls anoraks & similar article of man-made fibres, not knitted
6202.99	Womens/girls anoraks&similar article of oth textile materials, not knit
6203.11	Mens/boys suits, of wool or fine animal hair, not knitted
6203.12	Mens/boys suits, of synthetic fibres, not knitted
6203.19	Mens/boys suits, of other textile materials, not knitted
6203.21	Mens/boys ensembles, of wool or fine animal hair, not knitted
6203.22	Mens/boys ensembles, of cotton, not knitted
6203.23	Mens/boys ensembles, of synthetic fibres, not knitted
6203.29	Mens/boys ensembles, of other textile materials, not knitted
6203.31	Mens/boys jackets and blazers, of wool or fine animal hair, not knitted
6203.32	Mens/boys jackets and blazers, of cotton, not knitted
6203.33	Mens/boys jackets and blazers, of synthetic fibres, not knitted
6203.39	Mens/boys jackets and blazers, of other textile materials, not knitted
6203.41	Mens/boys trousers and shorts, of wool or fine animal hair, not knitted
6203.42	Mens/boys trousers and shorts, of cotton, not knitted
6203.43	Mens/boys trousers and shorts, of synthetic fibres, not knitted
6203.49	Mens/boys trousers and shorts, of other textile materials, not knitted
6204.11	Womens/girls suits, of wool or fine animal hair, not knitted
6204.12	Womens/girls suits, of cotton, not knitted
6204.13	Womens/girls suits, of synthetic fibres, not knitted
6204.19	Womens/girls suits, of other textile materials, not knitted
6204.21	Womens/girls ensembles, of wool or fine animal hair, not knitted
6204.22	Womens/girls ensembles, of cotton, not knitted
6204.23	Womens/girls ensembles, of synthetic fibres, not knitted
6204.29	Womens/girls ensembles, of other textile materials, not knitted
6204.31	Womens/girls jackets, of wool or fine animal hair, not knitted
6204.32	Womens/girls jackets, of cotton, not knitted
6204.33	Womens/girls jackets, of synthetic fibres, not knitted
6204.39	Womens/girls jackets, of other textile materials, not knitted
6204.41	Womens/girls dresses, of wool or fine animal hair, not knitted
6204.42	Womens/girls dresses, of cotton, not knitted
6204.43	Womens/girls dresses, of synthetic fibres, not knitted
6204.44	Womens/girls dresses, of artificial fibres, not knitted
6204.49	Womens/girls dresses, of other textile materials, not knitted
6204.51	Womens/girls skirts, of wool or fine animal hair, not knitted
6204.52	Womens/girls skirts, of cotton, not knitted
6204.53	Womens/girls skirts, of synthetic fibres, not knitted
6204.59	Womens/girls skirts, of other textile materials, not knitted
6204.61	Womens/girls trousers & shorts, of wool or fine animal hair, not knitted
6204.62	Womens/girls trousers and shorts, of cotton, not knitted

HS No.	Product Description
6204.63	Womens/girls trousers and shorts, of synthetic fibres, not knitted
6204.69	Womens/girls trousers & shorts, of other textile materials, not knitted
6205.10	Mens/boys shirts, of wool or fine animal hair, not knitted
6205.20	Mens/boys shirts, of cotton, not knitted
6205.30	Mens/boys shirts, of man-made fibres, not knitted
6205.90	Mens/boys shirts, of other textile materials, not knitted
6206.10	Womens/girls blouses and shirts, of silk or silk waste, not knitted
6206.20	Womens/girls blouses & shirts, of wool or fine animal hair, not knitted
6206.30	Womens/girls blouses and shirts, of cotton, not knitted
6206.40	Womens/girls blouses and shirts, of man-made fibres, not knitted
6206.90	Womens/girls blouses and shirts, of other textile materials, not knitted
6207.11	Mens/boys underpants and briefs, of cotton, not knitted
6207.19	Mens/boys underpants and briefs, of other textile materials, not knitted
6207.21	Mens/boys nightshirts and pyjamas, of cotton, not knitted
6207.22	Mens/boys nightshirts and pyjamas, of man-made fibres, not knitted
6207.29	Mens/boys nightshirts & pyjamas, of other textile materials, not knitted
6207.91	Mens/boys bathrobes, dressing gowns, etc of cotton, not knitted
6207.92	Mens/boys bathrobes, dressing gowns, etc of man-made fibres, not knitted
6207.99	Mens/boys bathrobes, dressg gowns, etc of oth textile materials, not knit
6208.11	Womens/girls slips and petticoats, of man-made fibres, not knitted
6208.19	Womens/girls slips & petticoats, of other textile materials, not knitted
6208.21	Womens/girls nightdresses and pyjamas, of cotton, not knitted
6208.22	Womens/girls nightdresses and pyjamas, of man-made fibres, not knitted
6208.29	Womens/girls nightdresses&pyjamas, of oth textile materials, not knitted
6208.91	Womens/girls panties, bathrobes, etc, of cotton, not knitted
6208.92	Womens/girls panties, bathrobes, etc, of man-made fibres, not knitted
6208.99	Womens/girls panties, bathrobes, etc, of oth textile materials, not knittd
6209.10	Babies garments&clothg accessories of wool o fine animal hair, not knit
6209.20	Babies garments and clothing accessories of cotton, not knitted
6209.30	Babies garments & clothing accessories of synthetic fibres, not knitted
6209.90	Babies garments&clothg accessories of oth textile materials, not knittd
6210.10	Garments made up of textile felts and of nonwoven textile fabrics
6210.20	Mens/boys overcoats&similar articles of impreg, ctd, cov etc, tex wov fab
6210.30	Womens/girls overcoats&sim articles, of impreg, ctd, etc, tex wov fab
6210.40	Mens/boys garments nes, made up of impreg, ctd, cov, etc, textile woven fab
6210.50	Womens/girls garments nes, of impregnatd, ctd, cov, etc, textile woven fab
6211.11	Mens/boys swimwear, of textile materials not knitted
6211.12	Womens/girls swimwear, of textile materials, not knitted
6211.20	Ski suits, of textile materials, not knitted
6211.31	Mens/boys garments nes, of wool or fine animal hair, not knitted
6211.32	Mens/boys garments nes, of cotton, not knitted
6211.33	Mens/boys garments nes, of man-made fibres, not knitted
6211.39	Mens/boys garments nes, of other textile materials, not knitted
6211.41	Womens/girls garments nes, of wool or fine animal hair, not knitted
6211.42	Womens/girls garments nes, of cotton, not knitted
6211.43	Womens/girls garments nes, of man-made fibres, not knitted
6211.49	Womens/girls garments nes, of other textile materials, not knitted
6212.10	Brassieres and parts thereof, of textile materials
6212.20	Girdles, panty girdles and parts thereof, of textile materials
6212.30	Corselettes and parts thereof, of textile materials
6212.90	Corsets, braces & similar articles & parts thereof, of textile materials
6213.10	Handkerchiefs, of silk or silk waste, not knitted

HS No.	Product Description
6213.20	Handkerchiefs, of cotton, not knitted
6213.90	Handkerchiefs, of other textile materials, not knitted
6214.10	Shawls, scarves, veils and the like, of silk or silk waste, not knitted
6214.20	Shawls, scarves, veils&the like, of wool or fine animal hair, not knitted
6214.30	Shawls, scarves, veils and the like, of synthetic fibres, not knitted
6214.40	Shawls, scarves, veils and the like, of artificial fibres, not knitted
6214.90	Shawls, scarves, veils & the like, of other textile materials, not knitted
6215.10	Ties, bow ties and cravats, of silk or silk waste, not knitted
6215.20	Ties, bow ties and cravats, of man-made fibres, not knitted
6215.90	Ties, bow ties and cravats, of other textile materials, not knitted
6216.00	Gloves, mittens and mitts, of textile materials, not knitted
6217.10	Clothing accessories nes, of textile materials, not knitted
6217.90	Parts of garments or of clothg accessories nes, of tex mat, not knittd.
Ch. 63	**Other made up textile articles; sets; worn clothing etc.**
6301.10	Electric blankets, of textile materials
6301.20	Blankets (other than electric) & travelling rugs, of wool or fine animal hair
6301.30	Blankets (other than electric) and travelling rugs, of cotton
6301.40	Blankets (other than electric) and travelling rugs, of synthetic fibres
6301.90	Blankets (other than electric) and travelling rugs, of other textile materials
6302.10	Bed linen, of textile knitted or crocheted materials
6302.21	Bed linen, of cotton, printed, not knitted
6302.22	Bed linen, of man-made fibres, printed, not knitted
6302.29	Bed linen, of other textile materials, printed, not knitted
6302.31	Bed linen, of cotton, nes
6302.32	Bed linen, of man-made fibres, nes
6302.39	Bed linen, of other textile materials, nes
6302.40	Table linen, of textile knitted or crocheted materials
6302.51	Table linen, of cotton, not knitted
6302.52	Table linen, of flax, not knitted
6302.53	Table linen, of man-made fibres, not knitted
6302.59	Table linen, of other textile materials, not knitted
6302.60	Toilet&kitchen linen, of terry towellg or similar terry fab, of cotton
6302.91	Toilet and kitchen linen, of cotton, nes
6302.92	Toilet and kitchen linen, of flax
6302.93	Toilet and kitchen linen, of man-made fibres
6302.99	Toilet and kitchen linen, of other textile materials
6303.11	Curtains, drapes, interior blinds&curtain or bed valances, of cotton, knit
6303.12	Curtains, drapes, interior blinds&curtain/bd valances, of syn fib, knittd
6303.19	Curtains, drapes, interior blinds&curtain/bd valances, oth tex mat, knit
6303.91	Curtains/drapes/interior blinds&curtain/bd valances, of cotton, not knit
6303.92	Curtains/drapes/interior blinds curtain/od valances, of syn fib, nt knit
6303.99	Curtain/drape/interior blind curtain/bd valance, of oth tex mat, nt knit
6304.11	Bedspreads of textile materials, nes, knitted or crocheted
6304.19	Bedspreads of textile materials, nes, not knitted or crocheted
6304.91	Furnishing articles nes, of textile materials, knitted or crocheted
6304.92	Furnishing articles nes, of cotton, not knitted or crocheted
6304.93	Furnishing articles nes, of synthetic fibres, not knitted or crocheted
6304.99	Furnishg articles nes, of oth textile materials, not knittd o crocheted
6305.10	Sacks&bags, for packg of goods, of jute or of other textile bast fibres
6305.20	Sacks and bags, for packing of goods, of cotton
6305.31	Sacks&bags, for packg of goods, of polyethylene or polypropylene strips

HS No.	Product Description
6305.39	Sacks & bags, for packing of goods, of other man-made textile materials
6305.90	Sacks and bags, for packing of goods, of other textile materials
6306.11	Tarpaulins, awnings and sunblinds, of cotton
6306.12	Tarpaulins, awnings and sunblinds, of synthetic fibres
6306.19	Tarpaulins, awnings and sunblinds, of other textile materials
6306.21	Tents, of cotton
6306.22	Tents, of synthetic fibres
6306.29	Tents, of other textile materials
6306.31	Sails, of synthetic fibres
6306.39	Sails, of other textile materials
6306.41	Pneumatic matresses, of cotton
6306.49	Pneumatic matresses, of other textile materials
6306.91	Camping goods nes, of cotton
6306.99	Camping goods nes, of other textile materials
6307.10	Floor-cloths, dish-cloths, dusters & similar cleaning cloths, of tex mat
6307.20	Life jackets and life belts, of textile materials
6307.90	Made up articles, of textile materials, nes, including dress patterns
6308.00	Sets consistg of woven fab & yarn, for makg up into rugs, tapestries etc
6309.00	Worn clothing and other worn articles

Textile and clothing products in Chapters 30-49, 64-96

HS No.	Product Description
3005.90	Wadding, gauze, bandages and the like
ex 3921.12}	{
ex 3921.13}	{ Woven, knitted or non-woven fabrics coated, covered or laminated with plastics
ex 3921.90}	{
ex 4202.12}	{
ex 4202.22}	{Luggage, handbags and flatgoods with an outer surface predominantly of textile
ex 4202.32}	{materials
ex 4202.92}	{
ex 6405.20	Footwear with soles and uppers of wool felt
ex 6406.10	Footwear uppers of which 50% or more of the external surface area is textile material
ex 6406.99	Leg warmers and gaiters of textile material
6501.00	Hat-forms, hat bodies and hoods of felt; plateaux and manchons of felt
6502.00	Hat-shapes, plaited or made by assembling strips of any material
6503.00	Felt hats and other felt headgear
6504.00	Hats & other headgear, plaited or made by assembling strips of any material
6505.90	Hats & other headgear, knitted or made up from lace, or other textile material
6601.10	Umbrellas and sun umbrellas, garden type
6601.91	Other umbrella types, telescopic shaft
6601.99	Other umbrellas
ex 7019.10	Yarns of fibre glass

HS No.	Product Description
ex 7019.20	Woven fabrics of fibre glass
8708.21	Safety seat belts for motor vehicles
8804.00	Parachutes; their parts and accessories
9113.90	Watch straps, bands and bracelets of textile materials
ex 9404.90	Pillow and cushions of cotton; quilts; eiderdowns; comforters and similar articles of textile materials
9502.91	Garments for dolls
ex 9612.10	Woven ribbons, of man-made fibres, other than those measuring less than 30 mm in width and permanently put up in cartridges

AGREEMENT ON TECHNICAL BARRIERS TO TRADE

Members,

Having regard to the Uruguay Round of Multilateral Trade Negotiations;

Desiring to further the objectives of GATT 1994;

Recognizing the important contribution that international standards and conformity assessment systems can make in this regard by improving efficiency of production and facilitating the conduct of international trade;

Desiring therefore to encourage the development of such international standards and conformity assessment systems;

Desiring however to ensure that technical regulations and standards, including packaging, marking and labelling requirements, and procedures for assessment of conformity with technical regulations and standards do not create unnecessary obstacles to international trade;

Recognizing that no country should be prevented from taking measures necessary to ensure the quality of its exports, or for the protection of human, animal or plant life or health, of the environment, or for the prevention of deceptive practices, at the levels it considers appropriate, subject to the requirement that they are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail or a disguised restriction on international trade, and are otherwise in accordance with the provisions of this Agreement;

Recognizing that no country should be prevented from taking measures necessary for the protection of its essential security interest;

Recognizing the contribution which international standardization can make to the transfer of technology from developed to developing countries;

Recognizing that developing countries may encounter special difficulties in the formulation and application of technical regulations and standards and procedures for assessment of conformity with technical regulations and standards, and desiring to assist them in their endeavours in this regard;

Hereby *agree* as follows:

Article 1

General Provisions

1.1 General terms for standardization and procedures for assessment of conformity shall normally have the meaning given to them by definitions adopted within the United Nations system and by international standardizing bodies taking into account their context and in the light of the object and purpose of this Agreement.

1.2 However, for the purposes of this Agreement the meaning of the terms given in Annex 1 applies.

1.3 All products, including industrial and agricultural products, shall be subject to the provisions of this Agreement.

1.4 Purchasing specifications prepared by governmental bodies for production or consumption requirements of governmental bodies are not subject to the provisions of this Agreement but are addressed in the Agreement on Government Procurement, according to its coverage.

1.5 The provisions of this Agreement do not apply to sanitary and phytosanitary measures as defined in Annex A of the Agreement on the Application of Sanitary and Phytosanitary Measures.

1.6 All references in this Agreement to technical regulations, standards and conformity assessment procedures shall be construed to include any amendments thereto and any additions to the rules or the product coverage thereof, except amendments and additions of an insignificant nature.

TECHNICAL REGULATIONS AND STANDARDS

Article 2

Preparation, Adoption and Application of Technical Regulations by Central Government Bodies

With respect to their central government bodies:

2.1 Members shall ensure that in respect of technical regulations, products imported from the territory of any Member shall be accorded treatment no less favourable than that accorded to like products of national origin and to like products originating in any other country.

2.2 Members shall ensure that technical regulations are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade. For this purpose, technical regulations shall not be more trade-restrictive than necessary to fulfil a legitimate objective, taking account of the risks non-fulfilment would create. Such legitimate objectives are, *inter alia:* national security requirements; the prevention of deceptive practices; protection of human health or safety, animal or plant life or health, or the environment. In assessing such risks, relevant elements of consideration are, *inter alia:* available scientific and technical information, related processing technology or intended end-uses of products.

2.3 Technical regulations shall not be maintained if the circumstances or objectives giving rise to their adoption no longer exist or if the changed circumstances or objectives can be addressed in a less trade-restrictive manner.

2.4 Where technical regulations are required and relevant international standards exist or their completion is imminent, Members shall use them, or the relevant parts of them, as a basis for their technical regulations except when such international standards or relevant parts would be an ineffective or inappropriate means for the fulfilment of the legitimate objectives pursued, for instance because of fundamental climatic or geographical factors or fundamental technological problems.

2.5 A Member preparing, adopting or applying a technical regulation which may have a significant effect on trade of other Members shall, upon the request of another Member, explain the justification for that technical regulation in terms of the provisions of paragraphs 2 to 4. Whenever a technical regulation is prepared, adopted or applied for one of the legitimate objectives explicitly mentioned in paragraph 2, and is in accordance with relevant international standards, it shall be rebuttably presumed not to create an unnecessary obstacle to international trade.

2.6 With a view to harmonizing technical regulations on as wide a basis as possible, Members shall play a full part, within the limits of their resources, in the preparation by appropriate international

standardizing bodies of international standards for products for which they either have adopted, or expect to adopt, technical regulations.

2.7 Members shall give positive consideration to accepting as equivalent technical regulations of other Members, even if these regulations differ from their own, provided they are satisfied that these regulations adequately fulfil the objectives of their own regulations.

2.8 Wherever appropriate, Members shall specify technical regulations based on product requirements in terms of performance rather than design or descriptive characteristics.

2.9 Whenever a relevant international standard does not exist or the technical content of a proposed technical regulation is not in accordance with the technical content of relevant international standards, and if the technical regulation may have a significant effect on trade of other Members, Members shall:

2.9.1 publish a notice in a publication at an early appropriate stage, in such a manner as to enable interested parties in other Members to become acquainted with it, that they propose to introduce a particular technical regulation;

2.9.2 notify other Members through the Secretariat of the products to be covered by the proposed technical regulation, together with a brief indication of its objective and rationale. Such notifications shall take place at an early appropriate stage, when amendments can still be introduced and comments taken into account;

2.9.3 upon request, provide to other Members particulars or copies of the proposed technical regulation and, whenever possible, identify the parts which in substance deviate from relevant international standards;

2.9.4 without discrimination, allow reasonable time for other Members to make comments in writing, discuss these comments upon request, and take these written comments and the results of these discussions into account.

2.10 Subject to the provisions in the lead-in to paragraph 9, where urgent problems of safety, health, environmental protection or national security arise or threaten to arise for a Member, that Member may omit such of the steps enumerated in paragraph 9 as it finds necessary, provided that the Member, upon adoption of a technical regulation, shall:

2.10.1 notify immediately other Members through the Secretariat of the particular technical regulation and the products covered, with a brief indication of the objective and the rationale of the technical regulation, including the nature of the urgent problems;

2.10.2 upon request, provide other Members with copies of the technical regulation;

2.10.3 without discrimination, allow other Members to present their comments in writing, discuss these comments upon request, and take these written comments and the results of these discussions into account.

2.11 Members shall ensure that all technical regulations which have been adopted are published promptly or otherwise made available in such a manner as to enable interested parties in other Members to become acquainted with them.

2.12 Except in those urgent circumstances referred to in paragraph 10, Members shall allow a reasonable interval between the publication of technical regulations and their entry into force in order to allow time for producers in exporting Members, and particularly in developing country Members, to adapt their products or methods of production to the requirements of the importing Member.

Article 3

Preparation, Adoption and Application of Technical Regulations by Local Government Bodies and Non-Governmental Bodies

With respect to their local government and non-governmental bodies within their territories:

3.1 Members shall take such reasonable measures as may be available to them to ensure compliance by such bodies with the provisions of Article 2, with the exception of the obligation to notify as referred to in paragraphs 9.2 and 10.1 of Article 2.

3.2 Members shall ensure that the technical regulations of local governments on the level directly below that of the central government in Members are notified in accordance with the provisions of paragraphs 9.2 and 10.1 of Article 2, noting that notification shall not be required for technical regulations the technical content of which is substantially the same as that of previously notified technical regulations of central government bodies of the Member concerned.

3.3 Members may require contact with other Members, including the notifications, provision of information, comments and discussions referred to in paragraphs 9 and 10 of Article 2, to take place through the central government.

3.4 Members shall not take measures which require or encourage local government bodies or non-governmental bodies within their territories to act in a manner inconsistent with the provisions of Article 2.

3.5 Members are fully responsible under this Agreement for the observance of all provisions of Article 2. Members shall formulate and implement positive measures and mechanisms in support of the observance of the provisions of Article 2 by other than central government bodies.

Article 4

Preparation, Adoption and Application of Standards

4.1 Members shall ensure that their central government standardizing bodies accept and comply with the Code of Good Practice for the Preparation, Adoption and Application of Standards in Annex 3 to this Agreement (referred to in this Agreement as the "Code of Good Practice"). They shall take such reasonable measures as may be available to them to ensure that local government and non-governmental standardizing bodies within their territories, as well as regional standardizing bodies of which they or one or more bodies within their territories are members, accept and comply with this Code of Good Practice. In addition, Members shall not take measures which have the effect of, directly or indirectly, requiring or encouraging such standardizing bodies to act in a manner inconsistent with the Code of Good Practice. The obligations of Members with respect to compliance of standardizing bodies with the provisions of the Code of Good Practice shall apply irrespective of whether or not a standardizing body has accepted the Code of Good Practice.

4.2 Standardizing bodies that have accepted and are complying with the Code of Good Practice shall be acknowledged by the Members as complying with the principles of this Agreement.

CONFORMITY WITH TECHNICAL REGULATIONS AND STANDARDS

Article 5

Procedures for Assessment of Conformity by Central Government Bodies

5.1 Members shall ensure that, in cases where a positive assurance of conformity with technical regulations or standards is required, their central government bodies apply the following provisions to products originating in the territories of other Members:

5.1.1 conformity assessment procedures are prepared, adopted and applied so as to grant access for suppliers of like products originating in the territories of other Members under conditions no less favourable than those accorded to suppliers of like products of national origin or originating in any other country, in a comparable situation; access entails suppliers' right to an assessment of conformity under the rules of the procedure, including, when foreseen by this procedure, the possibility to have conformity assessment activities undertaken at the site of facilities and to receive the mark of the system;

5.1.2 conformity assessment procedures are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade. This means, *inter alia*, that conformity assessment procedures shall not be more strict or be applied more strictly than is necessary to give the importing Member adequate confidence that products conform with the applicable technical regulations or standards, taking account of the risks non-conformity would create.

5.2 When implementing the provisions of paragraph 1, Members shall ensure that:

5.2.1 conformity assessment procedures are undertaken and completed as expeditiously as possible and in a no less favourable order for products originating in the territories of other Members than for like domestic products;

5.2.2 the standard processing period of each conformity assessment procedure is published or that the anticipated processing period is communicated to the applicant upon request; when receiving an application, the competent body promptly examines the completeness of the documentation and informs the applicant in a precise and complete manner of all deficiencies; the competent body transmits as soon as possible the results of the assessment in a precise and complete manner to the applicant so that corrective action may be taken if necessary; even when the application has deficiencies, the competent body proceeds as far as practicable with the conformity assessment if the applicant so requests; and that, upon request, the applicant is informed of the stage of the procedure, with any delay being explained;

5.2.3 information requirements are limited to what is necessary to assess conformity and determine fees;

5.2.4 the confidentiality of information about products originating in the territories of other Members arising from or supplied in connection with such conformity assessment procedures is respected in the same way as for domestic products and in such a manner that legitimate commercial interests are protected;

5.2.5 any fees imposed for assessing the conformity of products originating in the territories of other Members are equitable in relation to any fees chargeable for assessing the

conformity of like products of national origin or originating in any other country, taking into account communication, transportation and other costs arising from differences between location of facilities of the applicant and the conformity assessment body;

5.2.6 the siting of facilities used in conformity assessment procedures and the selection of samples are not such as to cause unnecessary inconvenience to applicants or their agents;

5.2.7 whenever specifications of a product are changed subsequent to the determination of its conformity to the applicable technical regulations or standards, the conformity assessment procedure for the modified product is limited to what is necessary to determine whether adequate confidence exists that the product still meets the technical regulations or standards concerned;

5.2.8 a procedure exists to review complaints concerning the operation of a conformity assessment procedure and to take corrective action when a complaint is justified.

5.3 Nothing in paragraphs 1 and 2 shall prevent Members from carrying out reasonable spot checks within their territories.

5.4 In cases where a positive assurance is required that products conform with technical regulations or standards, and relevant guides or recommendations issued by international standardizing bodies exist or their completion is imminent, Members shall ensure that central government bodies use them, or the relevant parts of them, as a basis for their conformity assessment procedures, except where, as duly explained upon request, such guides or recommendations or relevant parts are inappropriate for the Members concerned, for, *inter alia*, such reasons as: national security requirements; the prevention of deceptive practices; protection of human health or safety, animal or plant life or health, or the environment; fundamental climatic or other geographical factors; fundamental technological or infrastructural problems.

5.5 With a view to harmonizing conformity assessment procedures on as wide a basis as possible, Members shall play a full part, within the limits of their resources, in the preparation by appropriate international standardizing bodies of guides and recommendations for conformity assessment procedures.

5.6 Whenever a relevant guide or recommendation issued by an international standardizing body does not exist or the technical content of a proposed conformity assessment procedure is not in accordance with relevant guides and recommendations issued by international standardizing bodies, and if the conformity assessment procedure may have a significant effect on trade of other Members, Members shall:

5.6.1 publish a notice in a publication at an early appropriate stage, in such a manner as to enable interested parties in other Members to become acquainted with it, that they propose to introduce a particular conformity assessment procedure;

5.6.2 notify other Members through the Secretariat of the products to be covered by the proposed conformity assessment procedure, together with a brief indication of its objective and rationale. Such notifications shall take place at an early appropriate stage, when amendments can still be introduced and comments taken into account;

5.6.3 upon request, provide to other Members particulars or copies of the proposed procedure and, whenever possible, identify the parts which in substance deviate from relevant guides or recommendations issued by international standardizing bodies;

5.6.4 without discrimination, allow reasonable time for other Members to make comments in writing, discuss these comments upon request, and take these written comments and the results of these discussions into account.

5.7 Subject to the provisions in the lead-in to paragraph 6, where urgent problems of safety, health, environmental protection or national security arise or threaten to arise for a Member, that Member may omit such of the steps enumerated in paragraph 6 as it finds necessary, provided that the Member, upon adoption of the procedure, shall:

5.7.1 notify immediately other Members through the Secretariat of the particular procedure and the products covered, with a brief indication of the objective and the rationale of the procedure, including the nature of the urgent problems;

5.7.2 upon request, provide other Members with copies of the rules of the procedure;

5.7.3 without discrimination, allow other Members to present their comments in writing, discuss these comments upon request, and take these written comments and the results of these discussions into account.

5.8 Members shall ensure that all conformity assessment procedures which have been adopted are published promptly or otherwise made available in such a manner as to enable interested parties in other Members to become acquainted with them.

5.9 Except in those urgent circumstances referred to in paragraph 7, Members shall allow a reasonable interval between the publication of requirements concerning conformity assessment procedures and their entry into force in order to allow time for producers in exporting Members, and particularly in developing country Members, to adapt their products or methods of production to the requirements of the importing Member.

Article 6

Recognition of Conformity Assessment by Central Government Bodies

With respect to their central government bodies:

6.1 Without prejudice to the provisions of paragraphs 3 and 4, Members shall ensure, whenever possible, that results of conformity assessment procedures in other Members are accepted, even when those procedures differ from their own, provided they are satisfied that those procedures offer an assurance of conformity with applicable technical regulations or standards equivalent to their own procedures. It is recognized that prior consultations may be necessary in order to arrive at a mutually satisfactory understanding regarding, in particular:

6.1.1 adequate and enduring technical competence of the relevant conformity assessment bodies in the exporting Member, so that confidence in the continued reliability of their conformity assessment results can exist; in this regard, verified compliance, for instance through accreditation, with relevant guides or recommendations issued by international standardizing bodies shall be taken into account as an indication of adequate technical competence;

6.1.2 limitation of the acceptance of conformity assessment results to those produced by designated bodies in the exporting Member.

6.2 Members shall ensure that their conformity assessment procedures permit, as far as practicable, the implementation of the provisions in paragraph 1.

6.3 Members are encouraged, at the request of other Members, to be willing to enter into negotiations for the conclusion of agreements for the mutual recognition of results of each other's conformity assessment procedures. Members may require that such agreements fulfil the criteria of paragraph 1 and give mutual satisfaction regarding their potential for facilitating trade in the products concerned.

6.4 Members are encouraged to permit participation of conformity assessment bodies located in the territories of other Members in their conformity assessment procedures under conditions no less favourable than those accorded to bodies located within their territory or the territory of any other country.

Article 7

Procedures for Assessment of Conformity by Local Government Bodies

With respect to their local government bodies within their territories:

7.1 Members shall take such reasonable measures as may be available to them to ensure compliance by such bodies with the provisions of Articles 5 and 6, with the exception of the obligation to notify as referred to in paragraphs 6.2 and 7.1 of Article 5.

7.2 Members shall ensure that the conformity assessment procedures of local governments on the level directly below that of the central government in Members are notified in accordance with the provisions of paragraphs 6.2 and 7.1 of Article 5, noting that notifications shall not be required for conformity assessment procedures the technical content of which is substantially the same as that of previously notified conformity assessment procedures of central government bodies of the Members concerned.

7.3 Members may require contact with other Members, including the notifications, provision of information, comments and discussions referred to in paragraphs 6 and 7 of Article 5, to take place through the central government.

7.4 Members shall not take measures which require or encourage local government bodies within their territories to act in a manner inconsistent with the provisions of Articles 5 and 6.

7.5 Members are fully responsible under this Agreement for the observance of all provisions of Articles 5 and 6. Members shall formulate and implement positive measures and mechanisms in support of the observance of the provisions of Articles 5 and 6 by other than central government bodies.

Article 8

Procedures for Assessment of Conformity by Non-Governmental Bodies

8.1 Members shall take such reasonable measures as may be available to them to ensure that non-governmental bodies within their territories which operate conformity assessment procedures comply with the provisions of Articles 5 and 6, with the exception of the obligation to notify proposed conformity assessment procedures. In addition, Members shall not take measures which have the effect of, directly or indirectly, requiring or encouraging such bodies to act in a manner inconsistent with the provisions of Articles 5 and 6.

8.2 Members shall ensure that their central government bodies rely on conformity assessment procedures operated by non-governmental bodies only if these latter bodies comply with the provisions of Articles 5 and 6, with the exception of the obligation to notify proposed conformity assessment procedures.

Article 9

International and Regional Systems

9.1 Where a positive assurance of conformity with a technical regulation or standard is required, Members shall, wherever practicable, formulate and adopt international systems for conformity assessment and become members thereof or participate therein.

9.2 Members shall take such reasonable measures as may be available to them to ensure that international and regional systems for conformity assessment in which relevant bodies within their territories are members or participants comply with the provisions of Articles 5 and 6. In addition, Members shall not take any measures which have the effect of, directly or indirectly, requiring or encouraging such systems to act in a manner inconsistent with any of the provisions of Articles 5 and 6.

9.3 Members shall ensure that their central government bodies rely on international or regional conformity assessment systems only to the extent that these systems comply with the provisions of Articles 5 and 6, as applicable.

INFORMATION AND ASSISTANCE

Article 10

Information About Technical Regulations, Standards and Conformity Assessment Procedures

10.1 Each Member shall ensure that an enquiry point exists which is able to answer all reasonable enquiries from other Members and interested parties in other Members as well as to provide the relevant documents regarding:

10.1.1 any technical regulations adopted or proposed within its territory by central or local government bodies, by non-governmental bodies which have legal power to enforce a technical regulation, or by regional standardizing bodies of which such bodies are members or participants;

10.1.2 any standards adopted or proposed within its territory by central or local government bodies, or by regional standardizing bodies of which such bodies are members or participants;

10.1.3 any conformity assessment procedures, or proposed conformity assessment procedures, which are operated within its territory by central or local government bodies, or by non-governmental bodies which have legal power to enforce a technical regulation, or by regional bodies of which such bodies are members or participants;

10.1.4 the membership and participation of the Member, or of relevant central or local government bodies within its territory, in international and regional standardizing bodies and conformity assessment systems, as well as in bilateral and multilateral arrangements

within the scope of this Agreement; it shall also be able to provide reasonable information on the provisions of such systems and arrangements;

10.1.5 the location of notices published pursuant to this Agreement, or the provision of information as to where such information can be obtained; and

10.1.6 the location of the enquiry points mentioned in paragraph 3.

10.2 If, however, for legal or administrative reasons more than one enquiry point is established by a Member, that Member shall provide to the other Members complete and unambiguous information on the scope of responsibility of each of these enquiry points. In addition, that Member shall ensure that any enquiries addressed to an incorrect enquiry point shall promptly be conveyed to the correct enquiry point.

10.3 Each Member shall take such reasonable measures as may be available to it to ensure that one or more enquiry points exist which are able to answer all reasonable enquiries from other Members and interested parties in other Members as well as to provide the relevant documents or information as to where they can be obtained regarding:

10.3.1 any standards adopted or proposed within its territory by non-governmental standardizing bodies, or by regional standardizing bodies of which such bodies are members or participants; and

10.3.2 any conformity assessment procedures, or proposed conformity assessment procedures, which are operated within its territory by non-governmental bodies, or by regional bodies of which such bodies are members or participants;

10.3.3 the membership and participation of relevant non-governmental bodies within its territory in international and regional standardizing bodies and conformity assessment systems, as well as in bilateral and multilateral arrangements within the scope of this Agreement; they shall also be able to provide reasonable information on the provisions of such systems and arrangements.

10.4 Members shall take such reasonable measures as may be available to them to ensure that where copies of documents are requested by other Members or by interested parties in other Members, in accordance with the provisions of this Agreement, they are supplied at an equitable price (if any) which shall, apart from the real cost of delivery, be the same for the nationals[2] of the Member concerned or of any other Member.

10.5 Developed country Members shall, if requested by other Members, provide, in English, French or Spanish, translations of the documents covered by a specific notification or, in case of voluminous documents, of summaries of such documents.

10.6 The Secretariat shall, when it receives notifications in accordance with the provisions of this Agreement, circulate copies of the notifications to all Members and interested international standardizing and conformity assessment bodies, and draw the attention of developing country Members to any notifications relating to products of particular interest to them.

10.7 Whenever a Member has reached an agreement with any other country or countries on issues related to technical regulations, standards or conformity assessment procedures which may have a

[2] "Nationals" here shall be deemed, in the case of a separate customs territory Member of the WTO, to mean persons, natural or legal, who are domiciled or who have a real and effective industrial or commercial establishment in that customs territory.

significant effect on trade, at least one Member party to the agreement shall notify other Members through the Secretariat of the products to be covered by the agreement and include a brief description of the agreement. Members concerned are encouraged to enter, upon request, into consultations with other Members for the purposes of concluding similar agreements or of arranging for their participation in such agreements.

10.8 Nothing in this Agreement shall be construed as requiring:

10.8.1 the publication of texts other than in the language of the Member;

10.8.2 the provision of particulars or copies of drafts other than in the language of the Member except as stated in paragraph 5; or

10.8.3 Members to furnish any information, the disclosure of which they consider contrary to their essential security interests.

10.9 Notifications to the Secretariat shall be in English, French or Spanish.

10.10 Members shall designate a single central government authority that is responsible for the implementation on the national level of the provisions concerning notification procedures under this Agreement except those included in Annex 3.

10.11 If, however, for legal or administrative reasons the responsibility for notification procedures is divided among two or more central government authorities, the Member concerned shall provide to the other Members complete and unambiguous information on the scope of responsibility of each of these authorities.

Article 11

Technical Assistance to Other Members

11.1 Members shall, if requested, advise other Members, especially the developing country Members, on the preparation of technical regulations.

11.2 Members shall, if requested, advise other Members, especially the developing country Members, and shall grant them technical assistance on mutually agreed terms and conditions regarding the establishment of national standardizing bodies, and participation in the international standardizing bodies, and shall encourage their national standardizing bodies to do likewise.

11.3 Members shall, if requested, take such reasonable measures as may be available to them to arrange for the regulatory bodies within their territories to advise other Members, especially the developing country Members, and shall grant them technical assistance on mutually agreed terms and conditions regarding:

11.3.1 the establishment of regulatory bodies, or bodies for the assessment of conformity with technical regulations; and

11.3.2 the methods by which their technical regulations can best be met.

11.4 Members shall, if requested, take such reasonable measures as may be available to them to arrange for advice to be given to other Members, especially the developing country Members, and shall grant them technical assistance on mutually agreed terms and conditions regarding the establishment

of bodies for the assessment of conformity with standards adopted within the territory of the requesting Member.

11.5 Members shall, if requested, advise other Members, especially the developing country Members, and shall grant them technical assistance on mutually agreed terms and conditions regarding the steps that should be taken by their producers if they wish to have access to systems for conformity assessment operated by governmental or non-governmental bodies within the territory of the Member receiving the request.

11.6 Members which are members or participants of international or regional systems for conformity assessment shall, if requested, advise other Members, especially the developing country Members, and shall grant them technical assistance on mutually agreed terms and conditions regarding the establishment of the institutions and legal framework which would enable them to fulfil the obligations of membership or participation in such systems.

11.7 Members shall, if so requested, encourage bodies within their territories which are members or participants of international or regional systems for conformity assessment to advise other Members, especially the developing country Members, and should consider requests for technical assistance from them regarding the establishment of the institutions which would enable the relevant bodies within their territories to fulfil the obligations of membership or participation.

11.8 In providing advice and technical assistance to other Members in terms of paragraphs 1 to 7, Members shall give priority to the needs of the least-developed country Members.

Article 12

Special and Differential Treatment of Developing Country Members

12.1 Members shall provide differential and more favourable treatment to developing country Members to this Agreement, through the following provisions as well as through the relevant provisions of other Articles of this Agreement.

12.2 Members shall give particular attention to the provisions of this Agreement concerning developing country Members' rights and obligations and shall take into account the special development, financial and trade needs of developing country Members in the implementation of this Agreement, both nationally and in the operation of this Agreement's institutional arrangements.

12.3 Members shall, in the preparation and application of technical regulations, standards and conformity assessment procedures, take account of the special development, financial and trade needs of developing country Members, with a view to ensuring that such technical regulations, standards and conformity assessment procedures do not create unnecessary obstacles to exports from developing country Members.

12.4 Members recognize that, although international standards, guides or recommendations may exist, in their particular technological and socio-economic conditions, developing country Members adopt certain technical regulations, standards or conformity assessment procedures aimed at preserving indigenous technology and production methods and processes compatible with their development needs. Members therefore recognize that developing country Members should not be expected to use international standards as a basis for their technical regulations or standards, including test methods, which are not appropriate to their development, financial and trade needs.

12.5 Members shall take such reasonable measures as may be available to them to ensure that international standardizing bodies and international systems for conformity assessment are organized

and operated in a way which facilitates active and representative participation of relevant bodies in all Members, taking into account the special problems of developing country Members.

12.6 Members shall take such reasonable measures as may be available to them to ensure that international standardizing bodies, upon request of developing country Members, examine the possibility of, and, if practicable, prepare international standards concerning products of special interest to developing country Members.

12.7 Members shall, in accordance with the provisions of Article 11, provide technical assistance to developing country Members to ensure that the preparation and application of technical regulations, standards and conformity assessment procedures do not create unnecessary obstacles to the expansion and diversification of exports from developing country Members. In determining the terms and conditions of the technical assistance, account shall be taken of the stage of development of the requesting Members and in particular of the least-developed country Members.

12.8 It is recognized that developing country Members may face special problems, including institutional and infrastructural problems, in the field of preparation and application of technical regulations, standards and conformity assessment procedures. It is further recognized that the special development and trade needs of developing country Members, as well as their stage of technological development, may hinder their ability to discharge fully their obligations under this Agreement. Members, therefore, shall take this fact fully into account. Accordingly, with a view to ensuring that developing country Members are able to comply with this Agreement, the Committee on Technical Barriers to Trade provided for in Article 13 (referred to in this Agreement as the "Committee") is enabled to grant, upon request, specified, time-limited exceptions in whole or in part from obligations under this Agreement. When considering such requests the Committee shall take into account the special problems, in the field of preparation and application of technical regulations, standards and conformity assessment procedures, and the special development and trade needs of the developing country Member, as well as its stage of technological development, which may hinder its ability to discharge fully its obligations under this Agreement. The Committee shall, in particular, take into account the special problems of the least-developed country Members.

12.9 During consultations, developed country Members shall bear in mind the special difficulties experienced by developing country Members in formulating and implementing standards and technical regulations and conformity assessment procedures, and in their desire to assist developing country Members with their efforts in this direction, developed country Members shall take account of the special needs of the former in regard to financing, trade and development.

12.10 The Committee shall examine periodically the special and differential treatment, as laid down in this Agreement, granted to developing country Members on national and international levels.

INSTITUTIONS, CONSULTATION AND DISPUTE SETTLEMENT

Article 13

The Committee on Technical Barriers to Trade

13.1 A Committee on Technical Barriers to Trade is hereby established, and shall be composed of representatives from each of the Members. The Committee shall elect its own Chairman and shall meet as necessary, but no less than once a year, for the purpose of affording Members the opportunity of consulting on any matters relating to the operation of this Agreement or the furtherance of its objectives, and shall carry out such responsibilities as assigned to it under this Agreement or by the Members.

13.2 The Committee shall establish working parties or other bodies as may be appropriate, which shall carry out such responsibilities as may be assigned to them by the Committee in accordance with the relevant provisions of this Agreement.

13.3 It is understood that unnecessary duplication should be avoided between the work under this Agreement and that of governments in other technical bodies. The Committee shall examine this problem with a view to minimizing such duplication.

Article 14

Consultation and Dispute Settlement

14.1 Consultations and the settlement of disputes with respect to any matter affecting the operation of this Agreement shall take place under the auspices of the Dispute Settlement Body and shall follow, *mutatis mutandis*, the provisions of Articles XXII and XXIII of GATT 1994, as elaborated and applied by the Dispute Settlement Understanding.

14.2 At the request of a party to a dispute, or at its own initiative, a panel may establish a technical expert group to assist in questions of a technical nature, requiring detailed consideration by experts.

14.3 Technical expert groups shall be governed by the procedures of Annex 2.

14.4 The dispute settlement provisions set out above can be invoked in cases where a Member considers that another Member has not achieved satisfactory results under Articles 3, 4, 7, 8 and 9 and its trade interests are significantly affected. In this respect, such results shall be equivalent to those as if the body in question were a Member.

FINAL PROVISIONS

Article 15

Final Provisions

Reservations

15.1 Reservations may not be entered in respect of any of the provisions of this Agreement without the consent of the other Members.

Review

15.2 Each Member shall, promptly after the date on which the WTO Agreement enters into force for it, inform the Committee of measures in existence or taken to ensure the implementation and administration of this Agreement. Any changes of such measures thereafter shall also be notified to the Committee.

15.3 The Committee shall review annually the implementation and operation of this Agreement taking into account the objectives thereof.

15.4 Not later than the end of the third year from the date of entry into force of the WTO Agreement and at the end of each three-year period thereafter, the Committee shall review the operation and implementation of this Agreement, including the provisions relating to transparency, with a view to

recommending an adjustment of the rights and obligations of this Agreement where necessary to ensure mutual economic advantage and balance of rights and obligations, without prejudice to the provisions of Article 12. Having regard, *inter alia,* to the experience gained in the implementation of the Agreement, the Committee shall, where appropriate, submit proposals for amendments to the text of this Agreement to the Council for Trade in Goods.

Annexes

15.5 The annexes to this Agreement constitute an integral part thereof.

ANNEX 1

TERMS AND THEIR DEFINITIONS FOR THE PURPOSE OF THIS AGREEMENT

The terms presented in the sixth edition of the ISO/IEC Guide 2: 1991, General Terms and Their Definitions Concerning Standardization and Related Activities, shall, when used in this Agreement, have the same meaning as given in the definitions in the said Guide taking into account that services are excluded from the coverage of this Agreement.

For the purpose of this Agreement, however, the following definitions shall apply:

1. *Technical regulation*

Document which lays down product characteristics or their related processes and production methods, including the applicable administrative provisions, with which compliance is mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a product, process or production method.

Explanatory note

The definition in ISO/IEC Guide 2 is not self-contained, but based on the so-called "building block" system.

2. *Standard*

Document approved by a recognized body, that provides, for common and repeated use, rules, guidelines or characteristics for products or related processes and production methods, with which compliance is not mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a product, process or production method.

Explanatory note

The terms as defined in ISO/IEC Guide 2 cover products, processes and services. This Agreement deals only with technical regulations, standards and conformity assessment procedures related to products or processes and production methods. Standards as defined by ISO/IEC Guide 2 may be mandatory or voluntary. For the purpose of this Agreement standards are defined as voluntary and technical regulations as mandatory documents. Standards prepared by the international standardization community are based on consensus. This Agreement covers also documents that are not based on consensus.

3. *Conformity assessment procedures*

Any procedure used, directly or indirectly, to determine that relevant requirements in technical regulations or standards are fulfilled.

Explanatory note

Conformity assessment procedures include, *inter alia*, procedures for sampling, testing and inspection; evaluation, verification and assurance of conformity; registration, accreditation and approval as well as their combinations.

4. *International body or system*

Body or system whose membership is open to the relevant bodies of at least all Members.

5. *Regional body or system*

Body or system whose membership is open to the relevant bodies of only some of the Members.

6. *Central government body*

Central government, its ministries and departments or any body subject to the control of the central government in respect of the activity in question.

Explanatory note:

In the case of the European Communities the provisions governing central government bodies apply. However, regional bodies or conformity assessment systems may be established within the European Communities, and in such cases would be subject to the provisions of this Agreement on regional bodies or conformity assessment systems.

7. *Local government body*

Government other than a central government (e.g. states, provinces, Länder, cantons, municipalities, etc.), its ministries or departments or any body subject to the control of such a government in respect of the activity in question.

8. *Non-governmental body*

Body other than a central government body or a local government body, including a non-governmental body which has legal power to enforce a technical regulation.

ANNEX 2

TECHNICAL EXPERT GROUPS

The following procedures shall apply to technical expert groups established in accordance with the provisions of Article 14.

1. Technical expert groups are under the panel's authority. Their terms of reference and detailed working procedures shall be decided by the panel, and they shall report to the panel.

2. Participation in technical expert groups shall be restricted to persons of professional standing and experience in the field in question.

3. Citizens of parties to the dispute shall not serve on a technical expert group without the joint agreement of the parties to the dispute, except in exceptional circumstances when the panel considers that the need for specialized scientific expertise cannot be fulfilled otherwise. Government officials of parties to the dispute shall not serve on a technical expert group. Members of technical expert groups shall serve in their individual capacities and not as government representatives, nor as representatives of any organization. Governments or organizations shall therefore not give them instructions with regard to matters before a technical expert group.

4. Technical expert groups may consult and seek information and technical advice from any source they deem appropriate. Before a technical expert group seeks such information or advice from a source within the jurisdiction of a Member, it shall inform the government of that Member. Any Member shall respond promptly and fully to any request by a technical expert group for such information as the technical expert group considers necessary and appropriate.

5. The parties to a dispute shall have access to all relevant information provided to a technical expert group, unless it is of a confidential nature. Confidential information provided to the technical expert group shall not be released without formal authorization from the government, organization or person providing the information. Where such information is requested from the technical expert group but release of such information by the technical expert group is not authorized, a non-confidential summary of the information will be provided by the government, organization or person supplying the information.

6. The technical expert group shall submit a draft report to the Members concerned with a view to obtaining their comments, and taking them into account, as appropriate, in the final report, which shall also be circulated to the Members concerned when it is submitted to the panel.

ANNEX 3

CODE OF GOOD PRACTICE FOR THE PREPARATION, ADOPTION AND APPLICATION OF STANDARDS

General Provisions

A. For the purposes of this Code the definitions in Annex 1 of this Agreement shall apply.

B. This Code is open to acceptance by any standardizing body within the territory of a Member of the WTO, whether a central government body, a local government body, or a non-governmental body; to any governmental regional standardizing body one or more members of which are Members of the WTO; and to any non-governmental regional standardizing body one or more members of which are situated within the territory of a Member of the WTO (referred to in this Code collectively as "standardizing bodies" and individually as "the standardizing body").

C. Standardizing bodies that have accepted or withdrawn from this Code shall notify this fact to the ISO/IEC Information Centre in Geneva. The notification shall include the name and address of the body concerned and the scope of its current and expected standardization activities. The notification may be sent either directly to the ISO/IEC Information Centre, or through the national member body of ISO/IEC or, preferably, through the relevant national member or international affiliate of ISONET, as appropriate.

SUBSTANTIVE PROVISIONS

D. In respect of standards, the standardizing body shall accord treatment to products originating in the territory of any other Member of the WTO no less favourable than that accorded to like products of national origin and to like products originating in any other country.

E. The standardizing body shall ensure that standards are not prepared, adopted or applied with a view to, or with the effect of, creating unnecessary obstacles to international trade.

F. Where international standards exist or their completion is imminent, the standardizing body shall use them, or the relevant parts of them, as a basis for the standards it develops, except where such international standards or relevant parts would be ineffective or inappropriate, for instance, because of an insufficient level of protection or fundamental climatic or geographical factors or fundamental technological problems.

G. With a view to harmonizing standards on as wide a basis as possible, the standardizing body shall, in an appropriate way, play a full part, within the limits of its resources, in the preparation by relevant international standardizing bodies of international standards regarding subject matter for which it either has adopted, or expects to adopt, standards. For standardizing bodies within the territory of a Member, participation in a particular international standardization activity shall, whenever possible, take place through one delegation representing all standardizing bodies in the territory that have adopted, or expect to adopt, standards for the subject matter to which the international standardization activity relates.

H. The standardizing body within the territory of a Member shall make every effort to avoid duplication of, or overlap with, the work of other standardizing bodies in the national territory or with the work of relevant international or regional standardizing bodies. They shall also make every effort to achieve a national consensus on the standards they develop. Likewise the regional standardizing body shall make every effort to avoid duplication of, or overlap with, the work of relevant international standardizing bodies.

I. Wherever appropriate, the standardizing body shall specify standards based on product requirements in terms of performance rather than design or descriptive characteristics.

J. At least once every six months, the standardizing body shall publish a work programme containing its name and address, the standards it is currently preparing and the standards which it has adopted in the preceding period. A standard is under preparation from the moment a decision has been taken to develop a standard until that standard has been adopted. The titles of specific draft standards shall, upon request, be provided in English, French or Spanish. A notice of the existence of the work programme shall be published in a national or, as the case may be, regional publication of standardization activities.

The work programme shall for each standard indicate, in accordance with any ISONET rules, the classification relevant to the subject matter, the stage attained in the standard's development, and the references of any international standards taken as a basis. No later than at the time of publication of its work programme, the standardizing body shall notify the existence thereof to the ISO/IEC Information Centre in Geneva.

The notification shall contain the name and address of the standardizing body, the name and issue of the publication in which the work programme is published, the period to which the work programme applies, its price (if any), and how and where it can be obtained. The notification may be sent directly to the ISO/IEC Information Centre, or, preferably, through the relevant national member or international affiliate of ISONET, as appropriate.

K. The national member of ISO/IEC shall make every effort to become a member of ISONET or to appoint another body to become a member as well as to acquire the most advanced membership type possible for the ISONET member. Other standardizing bodies shall make every effort to associate themselves with the ISONET member.

L. Before adopting a standard, the standardizing body shall allow a period of at least 60 days for the submission of comments on the draft standard by interested parties within the territory of a Member of the WTO. This period may, however, be shortened in cases where urgent problems of safety, health or environment arise or threaten to arise. No later than at the start of the comment period, the standardizing body shall publish a notice announcing the period for commenting in the publication referred to in paragraph J. Such notification shall include, as far as practicable, whether the draft standard deviates from relevant international standards.

M. On the request of any interested party within the territory of a Member of the WTO, the standardizing body shall promptly provide, or arrange to provide, a copy of a draft standard which it has submitted for comments. Any fees charged for this service shall, apart from the real cost of delivery, be the same for foreign and domestic parties.

N. The standardizing body shall take into account, in the further processing of the standard, the comments received during the period for commenting. Comments received through standardizing bodies that have accepted this Code of Good Practice shall, if so requested, be replied to as promptly as possible. The reply shall include an explanation why a deviation from relevant international standards is necessary.

O. Once the standard has been adopted, it shall be promptly published.

P. On the request of any interested party within the territory of a Member of the WTO, the standardizing body shall promptly provide, or arrange to provide, a copy of its most recent work programme or of a standard which it produced. Any fees charged for this service shall, apart from the real cost of delivery, be the same for foreign and domestic parties.

Q. The standardizing body shall afford sympathetic consideration to, and adequate opportunity for, consultation regarding representations with respect to the operation of this Code presented by standardizing bodies that have accepted this Code of Good Practice. It shall make an objective effort to solve any complaints.

AGREEMENT ON TRADE-RELATED INVESTMENT MEASURES

Members,

Considering that Ministers agreed in the Punta del Este Declaration that "Following an examination of the operation of GATT Articles related to the trade restrictive and distorting effects of investment measures, negotiations should elaborate, as appropriate, further provisions that may be necessary to avoid such adverse effects on trade";

Desiring to promote the expansion and progressive liberalisation of world trade and to facilitate investment across international frontiers so as to increase the economic growth of all trading partners, particularly developing country Members, while ensuring free competition;

Taking into account the particular trade, development and financial needs of developing country Members, particularly those of the least-developed country Members;

Recognizing that certain investment measures can cause trade-restrictive and distorting effects;

Hereby *agree* as follows:

Article 1

Coverage

This Agreement applies to investment measures related to trade in goods only (referred to in this Agreement as "TRIMs").

Article 2

National Treatment and Quantitative Restrictions

1. Without prejudice to other rights and obligations under GATT 1994, no Member shall apply any TRIM that is inconsistent with the provisions of Article III or Article XI of GATT 1994.

2. An illustrative list of TRIMs that are inconsistent with the obligation of national treatment provided for in paragraph 4 of Article III of GATT 1994 and the obligation of general elimination of quantitative restrictions provided for in paragraph 1 of Article XI of GATT 1994 is contained in the Annex to this Agreement.

Article 3

Exceptions

All exceptions under GATT 1994 shall apply, as appropriate, to the provisions of this Agreement.

Article 4

Developing Country Members

A developing country Member shall be free to deviate temporarily from the provisions of Article 2 to the extent and in such a manner as Article XVIII of GATT 1994, the Understanding on the Balance-of-Payments Provisions of GATT 1994, and the Declaration on Trade Measures Taken for Balance-of-Payments Purposes adopted on 28 November 1979 (BISD 26S/205-209) permit the Member to deviate from the provisions of Articles III and XI of GATT 1994.

Article 5

Notification and Transitional Arrangements

1. Members, within 90 days of the date of entry into force of the WTO Agreement, shall notify the Council for Trade in Goods of all TRIMs they are applying that are not in conformity with the provisions of this Agreement. Such TRIMs of general or specific application shall be notified, along with their principal features.[1]

2. Each Member shall eliminate all TRIMs which are notified under paragraph 1 within two years of the date of entry into force of the WTO Agreement in the case of a developed country Member, within five years in the case of a developing country Member, and within seven years in the case of a least-developed country Member.

3. On request, the Council for Trade in Goods may extend the transition period for the elimination of TRIMs notified under paragraph 1 for a developing country Member, including a least-developed country Member, which demonstrates particular difficulties in implementing the provisions of this Agreement. In considering such a request, the Council for Trade in Goods shall take into account the individual development, financial and trade needs of the Member in question.

4. During the transition period, a Member shall not modify the terms of any TRIM which it notifies under paragraph 1 from those prevailing at the date of entry into force of the WTO Agreement so as to increase the degree of inconsistency with the provisions of Article 2. TRIMs introduced less than 180 days before the date of entry into force of the WTO Agreement shall not benefit from the transitional arrangements provided in paragraph 2.

5. Notwithstanding the provisions of Article 2, a Member, in order not to disadvantage established enterprises which are subject to a TRIM notified under paragraph 1, may apply during the transition period the same TRIM to a new investment (*i*) where the products of such investment are like products to those of the established enterprises, and (*ii*) where necessary to avoid distorting the conditions of competition between the new investment and the established enterprises. Any TRIM so applied to a new investment shall be notified to the Council for Trade in Goods. The terms of such a TRIM shall be equivalent in their competitive effect to those applicable to the established enterprises, and it shall be terminated at the same time.

[1] In the case of TRIMs applied under discretionary authority, each specific application shall be notified. Information that would prejudice the legitimate commercial interests of particular enterprises need not be disclosed.

Article 6

Transparency

1. Members reaffirm, with respect to TRIMs, their commitment to obligations on transparency and notification in Article X of GATT 1994, in the undertaking on "Notification" contained in the Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance adopted on 28 November 1979 and in the Ministerial Decision on Notification Procedures adopted on 15 April 1994.

2. Each Member shall notify the Secretariat of the publications in which TRIMs may be found, including those applied by regional and local governments and authorities within their territories.

3. Each Member shall accord sympathetic consideration to requests for information, and afford adequate opportunity for consultation, on any matter arising from this Agreement raised by another Member. In conformity with Article X of GATT 1994 no Member is required to disclose information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private

Article 7

Committee on Trade-Related Investment Measures

1. A Committee on Trade-Related Investment Measures (referred to in this Agreement as the "Committee") is hereby established, and shall be open to all Members. The Committee shall elect its own Chairman and Vice-Chairman, and shall meet not less than once a year and otherwise at the request of any Member.

2. The Committee shall carry out responsibilities assigned to it by the Council for Trade in Goods and shall afford Members the opportunity to consult on any matters relating to the operation and implementation of this Agreement.

3. The Committee shall monitor the operation and implementation of this Agreement and shall report thereon annually to the Council for Trade in Goods.

Article 8

Consultation and Dispute Settlement

The provisions of Articles XXII and XXIII of GATT 1994, as elaborated and applied by the Dispute Settlement Understanding, shall apply to consultations and the settlement of disputes under this Agreement.

Article 9

Review by the Council for Trade in Goods

Not later than five years after the date of entry into force of the WTO Agreement, the Council for Trade in Goods shall review the operation of this Agreement and, as appropriate, propose to the Ministerial Conference amendments to its text. In the course of this review, the Council for Trade in Goods shall consider whether the Agreement should be complemented with provisions on investment policy and competition policy.

ANNEX

Illustrative List

1. TRIMs that are inconsistent with the obligation of national treatment provided for in paragraph 4 of Article III of GATT 1994 include those which are mandatory or enforceable under domestic law or under administrative rulings, or compliance with which is necessary to obtain an advantage, and which require:

(a) the purchase or use by an enterprise of products of domestic origin or from any domestic source, whether specified in terms of particular products, in terms of volume or value of products, or in terms of a proportion of volume or value of its local production; or

(b) that an enterprise's purchases or use of imported products be limited to an amount related to the volume or value of local products that it exports.

2. TRIMs that are inconsistent with the obligation of general elimination of quantitative restrictions provided for in paragraph 1 of Article XI of GATT 1994 include those which are mandatory or enforceable under domestic law or under administrative rulings, or compliance with which is necessary to obtain an advantage, and which restrict:

(a) the importation by an enterprise of products used in or related to its local production, generally or to an amount related to the volume or value of local production that it exports;

(b) the importation by an enterprise of products used in or related to its local production by restricting its access to foreign exchange to an amount related to the foreign exchange inflows attributable to the enterprise; or

(c) the exportation or sale for export by an enterprise of products, whether specified in terms of particular products, in terms of volume or value of products, or in terms of a proportion of volume or value of its local production.

AGREEMENT ON IMPLEMENTATION OF ARTICLE VI OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE 1994

Members hereby *agree* as follows:

PART I

Article 1

Principles

An anti-dumping measure shall be applied only under the circumstances provided for in Article VI of GATT 1994 and pursuant to investigations initiated[1] and conducted in accordance with the provisions of this Agreement. The following provisions govern the application of Article VI of GATT 1994 in so far as action is taken under anti-dumping legislation or regulations.

Article 2

Determination of Dumping

2.1 For the purpose of this Agreement, a product is to be considered as being dumped, i.e. introduced into the commerce of another country at less than its normal value, if the export price of the product exported from one country to another is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country.

2.2 When there are no sales of the like product in the ordinary course of trade in the domestic market of the exporting country or when, because of the particular market situation or the low volume of the sales in the domestic market of the exporting country[2], such sales do not permit a proper comparison, the margin of dumping shall be determined by comparison with a comparable price of the like product when exported to an appropriate third country, provided that this price is representative, or with the cost of production in the country of origin plus a reasonable amount for administrative, selling and general costs and for profits.

2.2.1 Sales of the like product in the domestic market of the exporting country or sales to a third country at prices below per unit (fixed and variable) costs of production plus administrative, selling and general costs may be treated as not being in the ordinary course of trade by reason of price and may be disregarded in determining normal value

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[1]The term "initiated" as used in this Agreement means the procedural action by which a Member formally commences an investigation as provided in Article 5.

[2]Sales of the like product destined for consumption in the domestic market of the exporting country shall normally be considered a sufficient quantity for the determination of the normal value if such sales constitute 5 per cent or more of the sales of the product under consideration to the importing Member, provided that a lower ratio should be acceptable where the evidence demonstrates that domestic sales at such lower ratio are nonetheless of sufficient magnitude to provide for a proper comparison

only if the authorities[3] determine that such sales are made within an extended period of time[4] in substantial quantities[5] and are at prices which do not provide for the recovery of all costs within a reasonable period of time. If prices which are below per unit costs at the time of sale are above weighted average per unit costs for the period of investigation, such prices shall be considered to provide for recovery of costs within a reasonable period of time.

2.2.1.1 For the purpose of paragraph 2, costs shall normally be calculated on the basis of records kept by the exporter or producer under investigation, provided that such records are in accordance with the generally accepted accounting principles of the exporting country and reasonably reflect the costs associated with the production and sale of the product under consideration. Authorities shall consider all available evidence on the proper allocation of costs, including that which is made available by the exporter or producer in the course of the investigation provided that such allocations have been historically utilized by the exporter or producer, in particular in relation to establishing appropriate amortization and depreciation periods and allowances for capital expenditures and other development costs. Unless already reflected in the cost allocations under this sub-paragraph, costs shall be adjusted appropriately for those non-recurring items of cost which benefit future and/or current production, or for circumstances in which costs during the period of investigation are affected by start-up operations.[6]

2.2.2 For the purpose of paragraph 2, the amounts for administrative, selling and general costs and for profits shall be based on actual data pertaining to production and sales in the ordinary course of trade of the like product by the exporter or producer under investigation. When such amounts cannot be determined on this basis, the amounts may be determined on the basis of:

(i) the actual amounts incurred and realized by the exporter or producer in question in respect of production and sales in the domestic market of the country of origin of the same general category of products;

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[3]When in this Agreement the term "authorities" is used, it shall be interpreted as meaning authorities at an appropriate senior level.

[4]The extended period of time should normally be one year but shall in no case be less than six months.

[5]Sales below per unit costs are made in substantial quantities when the authorities establish that the weighted average selling price of the transactions under consideration for the determination of the normal value is below the weighted average per unit costs, or that the volume of sales below per unit costs represents not less than 20 per cent of the volume sold in transactions under consideration for the determination of the normal value.

[6]The adjustment made for start-up operations shall reflect the costs at the end of the start-up period or, if that period extends beyond the period of investigation, the most recent costs which can reasonably be taken into account by the authorities during the investigation.

(ii) the weighted average of the actual amounts incurred and realized by other exporters or producers subject to investigation in respect of production and sales of the like product in the domestic market of the country of origin;

(iii) any other reasonable method, provided that the amount for profit so established shall not exceed the profit normally realized by other exporters or producers on sales of products of the same general category in the domestic market of the country of origin.

2.3 In cases where there is no export price or where it appears to the authorities concerned that the export price is unreliable because of association or a compensatory arrangement between the exporter and the importer or a third party, the export price may be constructed on the basis of the price at which the imported products are first resold to an independent buyer, or if the products are not resold to an independent buyer, or not resold in the condition as imported, on such reasonable basis as the authorities may determine.

2.4 A fair comparison shall be made between the export price and the normal value. This comparison shall be made at the same level of trade, normally at the ex-factory level, and in respect of sales made at as nearly as possible the same time. Due allowance shall be made in each case, on its merits, for differences which affect price comparability, including differences in conditions and terms of sale, taxation, levels of trade, quantities, physical characteristics, and any other differences which are also demonstrated to affect price comparability.[7] In the cases referred to in paragraph 3, allowances for costs, including duties and taxes, incurred between importation and resale, and for profits accruing, should also be made. If in these cases price comparability has been affected, the authorities shall establish the normal value at a level of trade equivalent to the level of trade of the constructed export price, or shall make due allowance as warranted under this paragraph. The authorities shall indicate to the parties in question what information is necessary to ensure a fair comparison and shall not impose an unreasonable burden of proof on those parties.

2.4.1 When the comparison under paragraph 4 requires a conversion of currencies, such conversion should be made using the rate of exchange on the date of sale[8], provided that when a sale of foreign currency on forward markets is directly linked to the export sale involved, the rate of exchange in the forward sale shall be used. Fluctuations in exchange rates shall be ignored and in an investigation the authorities shall allow exporters at least 60 days to have adjusted their export prices to reflect sustained movements in exchange rates during the period of investigation.

2.4.2 Subject to the provisions governing fair comparison in paragraph 4, the existence of margins of dumping during the investigation phase shall normally be established on the basis of a comparison of a weighted average normal value with a weighted average of prices of all comparable export transactions or by a comparison of normal value and export prices on a transaction-to-transaction basis. A normal value established on a weighted average basis may be compared to prices of individual export transactions if the authorities find a pattern of export prices which differ significantly among different

[7]It is understood that some of the above factors may overlap, and authorities shall ensure that they do not duplicate adjustments that have been already made under this provision.

[8]Normally, the date of sale would be the date of contract, purchase order, order confirmation, or invoice, whichever establishes the material terms of sale.

purchasers, regions or time periods, and if an explanation is provided as to why such differences cannot be taken into account appropriately by the use of a weighted average-to-weighted average or transaction-to-transaction comparison.

2.5 In the case where products are not imported directly from the country of origin but are exported to the importing Member from an intermediate country, the price at which the products are sold from the country of export to the importing Member shall normally be compared with the comparable price in the country of export. However, comparison may be made with the price in the country of origin, if, for example, the products are merely transshipped through the country of export, or such products are not produced in the country of export, or there is no comparable price for them in the country of export.

2.6 Throughout this Agreement the term "like product" ("produit similaire") shall be interpreted to mean a product which is identical, i.e. alike in all respects to the product under consideration, or in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration.

2.7 This Article is without prejudice to the second Supplementary Provision to paragraph 1 of Article VI in Annex I to GATT 1994.

Article 3

Determination of Injury[9]

3.1 A determination of injury for purposes of Article VI of GATT 1994 shall be based on positive evidence and involve an objective examination of both *(a)* the volume of the dumped imports and the effect of the dumped imports on prices in the domestic market for like products, and *(b)* the consequent impact of these imports on domestic producers of such products.

3.2 With regard to the volume of the dumped imports, the investigating authorities shall consider whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in the importing Member. With regard to the effect of the dumped imports on prices, the investigating authorities shall consider whether there has been a significant price undercutting by the dumped imports as compared with the price of a like product of the importing Member, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. No one or several of these factors can necessarily give decisive guidance.

3.3 Where imports of a product from more than one country are simultaneously subject to anti-dumping investigations, the investigating authorities may cumulatively assess the effects of such imports only if they determine that *(a)* the margin of dumping established in relation to the imports from each country is more than *de minimis* as defined in paragraph 8 of Article 5 and the volume of imports from each country is not negligible and *(b)* a cumulative assessment of the effects of the imports is appropriate in light of the conditions of competition between the imported products and the conditions of competition between the imported products and the like domestic product.

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[9] Under this Agreement the term "injury" shall, unless otherwise specified, be taken to mean material injury to a domestic industry, threat of material injury to a domestic industry or material retardation of the establishment of such an industry and shall be interpreted in accordance with the provisions of this Article.

3.4 The examination of the impact of the dumped imports on the domestic industry concerned shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including actual and potential decline in sales, profits, output, market share, productivity, return on investments, or utilization of capacity; factors affecting domestic prices; the magnitude of the margin of dumping; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments. This list is not exhaustive, nor can one or several of these factors necessarily give decisive guidance.

3.5 It must be demonstrated that the dumped imports are, through the effects of dumping, as set forth in paragraphs 2 and 4, causing injury within the meaning of this Agreement. The demonstration of a causal relationship between the dumped imports and the injury to the domestic industry shall be based on an examination of all relevant evidence before the authorities. The authorities shall also examine any known factors other than the dumped imports which at the same time are injuring the domestic industry, and the injuries caused by these other factors must not be attributed to the dumped imports. Factors which may be relevant in this respect include, *inter alia*, the volume and prices of imports not sold at dumping prices, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry.

3.6 The effect of the dumped imports shall be assessed in relation to the domestic production of the like product when available data permit the separate identification of that production on the basis of such criteria as the production process, producers' sales and profits. If such separate identification of that production is not possible, the effects of the dumped imports shall be assessed by the examination of the production of the narrowest group or range of products, which includes the like product, for which the necessary information can be provided.

3.7 A determination of a threat of material injury shall be based on facts and not merely on allegation, conjecture or remote possibility. The change in circumstances which would create a situation in which the dumping would cause injury must be clearly foreseen and imminent.[10] In making a determination regarding the existence of a threat of material injury, the authorities should consider, *inter alia*, such factors as:

(i) a significant rate of increase of dumped imports into the domestic market indicating the likelihood of substantially increased importation;

(ii) sufficient freely disposable, or an imminent, substantial increase in, capacity of the exporter indicating the likelihood of substantially increased dumped exports to the importing Member's market, taking into account the availability of other export markets to absorb any additional exports;

(iii) whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further imports; and

(iv) inventories of the product being investigated.

No one of these factors by itself can necessarily give decisive guidance but the totality of the factors

[10]One example, though not an exclusive one, is that there is convincing reason to believe that there will be, in the near future, substantially increased importation of the product at dumped prices.

considered must lead to the conclusion that further dumped exports are imminent and that, unless protective action is taken, material injury would occur.

3.8 With respect to cases where injury is threatened by dumped imports, the application of anti-dumping measures shall be considered and decided with special care.

Article 4

Definition of Domestic Industry

4.1 For the purposes of this Agreement, the term "domestic industry" shall be interpreted as referring to the domestic producers as a whole of the like products or to those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products, except that:

(i) when producers are related[11] to the exporters or importers or are themselves importers of the allegedly dumped product, the term "domestic industry" may be interpreted as referring to the rest of the producers;

(ii) in exceptional circumstances the territory of a Member may, for the production in question, be divided into two or more competitive markets and the producers within each market may be regarded as a separate industry if *(a)* the producers within such market sell all or almost all of their production of the product in question in that market, and *(b)* the demand in that market is not to any substantial degree supplied by producers of the product in question located elsewhere in the territory. In such circumstances, injury may be found to exist even where a major portion of the total domestic industry is not injured, provided there is a concentration of dumped imports into such an isolated market and provided further that the dumped imports are causing injury to the producers of all or almost all of the production within such market.

4.2 When the domestic industry has been interpreted as referring to the producers in a certain area, i.e. a market as defined in paragraph 1(ii), anti-dumping duties shall be levied[12] only on the products in question consigned for final consumption to that area. When the constitutional law of the importing Member does not permit the levying of anti-dumping duties on such a basis, the importing Member may levy the anti-dumping duties without limitation only if *(a)* the exporters shall have been given an opportunity to cease exporting at dumped prices to the area concerned or otherwise give assurances pursuant to Article 8 and adequate assurances in this regard have not been promptly given, and *(b)* such duties cannot be levied only on products of specific producers which supply the area in question.

4.3 Where two or more countries have reached under the provisions of paragraph 8(a) of Article XXIV of GATT 1994 such a level of integration that they have the characteristics of a single,

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[11]For the purpose of this paragraph, producers shall be deemed to be related to exporters or importers only if *(a)* one of them directly or indirectly controls the other, or *(b)* both of them are directly or indirectly controlled by a third person; or *(c)* together they directly or indirectly control a third person, provided that there are grounds for believing or suspecting that the effect of the relationship is such as to cause the producer concerned to behave differently from non-related producers. For the purpose of this paragraph, one shall be deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the latter.

[12]As used in this Agreement "levy" shall mean the definitive or final legal assessment or collection of a duty or tax.

unified market, the industry in the entire area of integration shall be taken to be the domestic industry referred to in paragraph 1.

4.4 The provisions of paragraph 6 of Article 3 shall be applicable to this Article.

Article 5

Initiation and Subsequent Investigation

5.1 Except as provided for in paragraph 6, an investigation to determine the existence, degree and effect of any alleged dumping shall be initiated upon a written application by or on behalf of the domestic industry.

5.2 An application under paragraph 1 shall include evidence of *(a)* dumping, *(b)* injury within the meaning of Article VI of GATT 1994 as interpreted by this Agreement and *(c)* a causal link between the dumped imports and the alleged injury. Simple assertion, unsubstantiated by relevant evidence, cannot be considered sufficient to meet the requirements of this paragraph. The application shall contain such information as is reasonably available to the applicant on the following:

(i) the identity of the applicant and a description of the volume and value of the domestic production of the like product by the applicant. Where a written application is made on behalf of the domestic industry, the application shall identify the industry on behalf of which the application is made by a list of all known domestic producers of the like product (or associations of domestic producers of the like product) and, to the extent possible, a description of the volume and value of domestic production of the like product accounted for by such producers;

(ii) a complete description of the allegedly dumped product, the names of the country or countries of origin or export in question, the identity of each known exporter or foreign producer and a list of known persons importing the product in question;

(iii) information on prices at which the product in question is sold when destined for consumption in the domestic markets of the country or countries of origin or export (or, where appropriate, information on the prices at which the product is sold from the country or countries of origin or export to a third country or countries, or on the constructed value of the product) and information on export prices or, where appropriate, on the prices at which the product is first resold to an independent buyer in the territory of the importing Member;

(iv) information on the evolution of the volume of the allegedly dumped imports, the effect of these imports on prices of the like product in the domestic market and the consequent impact of the imports on the domestic industry, as demonstrated by relevant factors and indices having a bearing on the state of the domestic industry, such as those listed in paragraphs 2 and 4 of Article 3.

5.3 The authorities shall examine the accuracy and adequacy of the evidence provided in the application to determine whether there is sufficient evidence to justify the initiation of an investigation.

5.4 An investigation shall not be initiated pursuant to paragraph 1 unless the authorities have determined, on the basis of an examination of the degree of support for, or opposition to, the application expressed[13] by domestic producers of the like product, that the application has been made by or on behalf of the domestic industry.[14] The application shall be considered to have been made "by or on behalf of the domestic industry" if it is supported by those domestic producers whose collective output constitutes more than 50 per cent of the total production of the like product produced by that portion of the domestic industry expressing either support for or opposition to the application. However, no investigation shall be initiated when domestic producers expressly supporting the application account for less than 25 per cent of total production of the like product produced by the domestic industry.

5.5 The authorities shall avoid, unless a decision has been made to initiate an investigation, any publicizing of the application for the initiation of an investigation. However, after receipt of a properly documented application and before proceeding to initiate an investigation, the authorities shall notify the government of the exporting Member concerned.

5.6 If, in special circumstances, the authorities concerned decide to initiate an investigation without having received a written application by or on behalf of a domestic industry for the initiation of such investigation, they shall proceed only if they have sufficient evidence of dumping, injury and a causal link, as described in paragraph 2, to justify the initiation of an investigation.

5.7 The evidence of both dumping and injury shall be considered simultaneously *(a)* in the decision whether or not to initiate an investigation, and *(b)* thereafter, during the course of the investigation, starting on a date not later than the earliest date on which in accordance with the provisions of this Agreement provisional measures may be applied.

5.8 An application under paragraph 1 shall be rejected and an investigation shall be terminated promptly as soon as the authorities concerned are satisfied that there is not sufficient evidence of either dumping or of injury to justify proceeding with the case. There shall be immediate termination in cases where the authorities determine that the margin of dumping is *de minimis*, or that the volume of dumped imports, actual or potential, or the injury, is negligible. The margin of dumping shall be considered to be *de minimis* if this margin is less than 2 per cent, expressed as a percentage of the export price. The volume of dumped imports shall normally be regarded as negligible if the volume of dumped imports from a particular country is found to account for less than 3 per cent of imports of the like product in the importing Member, unless countries which individually account for less than 3 per cent of the imports of the like product in the importing Member collectively account for more than 7 per cent of imports of the like product in the importing Member.

5.9 An anti-dumping proceeding shall not hinder the procedures of customs clearance.

5.10 Investigations shall, except in special circumstances, be concluded within one year, and in no case more than 18 months, after their initiation.

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[13] In the case of fragmented industries involving an exceptionally large number of producers, authorities may determine support and opposition by using statistically valid sampling techniques.

[14] Members are aware that in the territory of certain Members employees of domestic producers of the like product or representatives of those employees may make or support an application for an investigation under paragraph 1.

Article 6

Evidence

6.1 All interested parties in an anti-dumping investigation shall be given notice of the information which the authorities require and ample opportunity to present in writing all evidence which they consider relevant in respect of the investigation in question.

6.1.1 Exporters or foreign producers receiving questionnaires used in an anti-dumping investigation shall be given at least 30 days for reply.[15] Due consideration should be given to any request for an extension of the 30-day period and, upon cause shown, such an extension should be granted whenever practicable.

6.1.2 Subject to the requirement to protect confidential information, evidence presented in writing by one interested party shall be made available promptly to other interested parties participating in the investigation.

6.1.3 As soon as an investigation has been initiated, the authorities shall provide the full text of the written application received under paragraph 1 of Article 5 to the known exporters[16] and to the authorities of the exporting Member and shall make it available, upon request, to other interested parties involved. Due regard shall be paid to the requirement for the protection of confidential information, as provided for in paragraph 5.

6.2 Throughout the anti-dumping investigation all interested parties shall have a full opportunity for the defence of their interests. To this end, the authorities shall, on request, provide opportunities for all interested parties to meet those parties with adverse interests, so that opposing views may be presented and rebuttal arguments offered. Provision of such opportunities must take account of the need to preserve confidentiality and of the convenience to the parties. There shall be no obligation on any party to attend a meeting, and failure to do so shall not be prejudicial to that party's case. Interested parties shall also have the right, on justification, to present other information orally.

6.3 Oral information provided under paragraph 2 shall be taken into account by the authorities only in so far as it is subsequently reproduced in writing and made available to other interested parties, as provided for in subparagraph 1.2.

6.4 The authorities shall whenever practicable provide timely opportunities for all interested parties to see all information that is relevant to the presentation of their cases, that is not confidential as defined in paragraph 5, and that is used by the authorities in an anti-dumping investigation, and to prepare presentations on the basis of this information.

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[15] As a general rule, the time limit for exporters shall be counted from the date of receipt of the questionnaire, which for this purpose shall be deemed to have been received one week from the date on which it was sent to the respondent or transmitted to the appropriate diplomatic representative of the exporting Member or, in the case of a separate customs territory Member of the WTO, an official representative of the exporting territory.

[16] It being understood that, where the number of exporters involved is particularly high, the full text of the written application should instead be provided only to the authorities of the exporting Member or to the relevant trade association.

6.5 Any information which is by nature confidential (for example, because its disclosure would be of significant competitive advantage to a competitor or because its disclosure would have a significantly adverse effect upon a person supplying the information or upon a person from whom that person acquired the information), or which is provided on a confidential basis by parties to an investigation shall, upon good cause shown, be treated as such by the authorities. Such information shall not be disclosed without specific permission of the party submitting it.[17]

6.5.1 The authorities shall require interested parties providing confidential information to furnish non-confidential summaries thereof. These summaries shall be in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence. In exceptional circumstances, such parties may indicate that such information is not susceptible of summary. In such exceptional circumstances, a statement of the reasons why summarization is not possible must be provided.

6.5.2 If the authorities find that a request for confidentiality is not warranted and if the supplier of the information is either unwilling to make the information public or to authorize its disclosure in generalized or summary form, the authorities may disregard such information unless it can be demonstrated to their satisfaction from appropriate sources that the information is correct.[18]

6.6 Except in circumstances provided for in paragraph 8, the authorities shall during the course of an investigation satisfy themselves as to the accuracy of the information supplied by interested parties upon which their findings are based.

6.7 In order to verify information provided or to obtain further details, the authorities may carry out investigations in the territory of other Members as required, provided they obtain the agreement of the firms concerned and notify the representatives of the government of the Member in question, and unless that Member objects to the investigation. The procedures described in Annex I shall apply to investigations carried out in the territory of other Members. Subject to the requirement to protect confidential information, the authorities shall make the results of any such investigations available, or shall provide disclosure thereof pursuant to paragraph 9, to the firms to which they pertain and may make such results available to the applicants.

6.8 In cases in which any interested party refuses access to, or otherwise does not provide, necessary information within a reasonable period or significantly impedes the investigation, preliminary and final determinations, affirmative or negative, may be made on the basis of the facts available. The provisions of Annex II shall be observed in the application of this paragraph.

6.9 The authorities shall, before a final determination is made, inform all interested parties of the essential facts under consideration which form the basis for the decision whether to apply definitive measures. Such disclosure should take place in sufficient time for the parties to defend their interests.

6.10 The authorities shall, as a rule, determine an individual margin of dumping for each known exporter or producer concerned of the product under investigation. In cases where the number of exporters, producers, importers or types of products involved is so large as to make such a determination

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[17]Members are aware that in the territory of certain Members disclosure pursuant to a narrowly-drawn protective order may be required.

[18]Members agree that requests for confidentiality should not be arbitrarily rejected.

impracticable, the authorities may limit their examination either to a reasonable number of interested parties or products by using samples which are statistically valid on the basis of information available to the authorities at the time of the selection, or to the largest percentage of the volume of the exports from the country in question which can reasonably be investigated.

6.10.1 Any selection of exporters, producers, importers or types of products made under this paragraph shall preferably be chosen in consultation with and with the consent of the exporters, producers or importers concerned.

6.10.2 In cases where the authorities have limited their examination, as provided for in this paragraph, they shall nevertheless determine an individual margin of dumping for any exporter or producer not initially selected who submits the necessary information in time for that information to be considered during the course of the investigation, except where the number of exporters or producers is so large that individual examinations would be unduly burdensome to the authorities and prevent the timely completion of the investigation. Voluntary responses shall not be discouraged.

6.11 For the purposes of this Agreement, "interested parties" shall include:

(i) an exporter or foreign producer or the importer of a product subject to investigation, or a trade or business association a majority of the members of which are producers, exporters or importers of such product;

(ii) the government of the exporting Member; and

(iii) a producer of the like product in the importing Member or a trade and business association a majority of the members of which produce the like product in the territory of the importing Member.

This list shall not preclude Members from allowing domestic or foreign parties other than those mentioned above to be included as interested parties.

6.12 The authorities shall provide opportunities for industrial users of the product under investigation, and for representative consumer organizations in cases where the product is commonly sold at the retail level, to provide information which is relevant to the investigation regarding dumping, injury and causality.

6.13 The authorities shall take due account of any difficulties experienced by interested parties, in particular small companies, in supplying information requested, and shall provide any assistance practicable.

6.14 The procedures set out above are not intended to prevent the authorities of a Member from proceeding expeditiously with regard to initiating an investigation, reaching preliminary or final determinations, whether affirmative or negative, or from applying provisional or final measures, in accordance with relevant provisions of this Agreement.

Article 7

Provisional Measures

7.1 Provisional measures may be applied only if:

(i) an investigation has been initiated in accordance with the provisions of Article 5, a public notice has been given to that effect and interested parties have been given adequate opportunities to submit information and make comments;

(ii) a preliminary affirmative determination has been made of dumping and consequent injury to a domestic industry; and

(iii) the authorities concerned judge such measures necessary to prevent injury being caused during the investigation.

7.2 Provisional measures may take the form of a provisional duty or, preferably, a security - by cash deposit or bond - equal to the amount of the anti-dumping duty provisionally estimated, being not greater than the provisionally estimated margin of dumping. Withholding of appraisement is an appropriate provisional measure, provided that the normal duty and the estimated amount of the anti-dumping duty be indicated and as long as the withholding of appraisement is subject to the same conditions as other provisional measures.

7.3 Provisional measures shall not be applied sooner than 60 days from the date of initiation of the investigation.

7.4 The application of provisional measures shall be limited to as short a period as possible, not exceeding four months or, on decision of the authorities concerned, upon request by exporters representing a significant percentage of the trade involved, to a period not exceeding six months. When authorities, in the course of an investigation, examine whether a duty lower than the margin of dumping would be sufficient to remove injury, these periods may be six and nine months, respectively.

7.5 The relevant provisions of Article 9 shall be followed in the application of provisional measures.

Article 8

Price Undertakings

8.1 Proceedings may[9] be suspended or terminated without the imposition of provisional measures or anti-dumping duties upon receipt of satisfactory voluntary undertakings from any exporter to revise its prices or to cease exports to the area in question at dumped prices so that the authorities are satisfied that the injurious effect of the dumping is eliminated. Price increases under such undertakings shall not be higher than necessary to eliminate the margin of dumping. It is desirable that the price increases be less than the margin of dumping if such increases would be adequate to remove the injury to the domestic industry.

[9]The word "may" shall not be interpreted to allow the simultaneous continuation of proceedings with the implementation of price undertakings except as provided in paragraph 4.

8.2 Price undertakings shall not be sought or accepted from exporters unless the authorities of the importing Member have made a preliminary affirmative determination of dumping and injury caused by such dumping.

8.3 Undertakings offered need not be accepted if the authorities consider their acceptance impractical, for example, if the number of actual or potential exporters is too great, or for other reasons, including reasons of general policy. Should the case arise and where practicable, the authorities shall provide to the exporter the reasons which have led them to consider acceptance of an undertaking as inappropriate, and shall, to the extent possible, give the exporter an opportunity to make comments thereon.

8.4 If an undertaking is accepted, the investigation of dumping and injury shall nevertheless be completed if the exporter so desires or the authorities so decide. In such a case, if a negative determination of dumping or injury is made, the undertaking shall automatically lapse, except in cases where such a determination is due in large part to the existence of a price undertaking. In such cases, the authorities may require that an undertaking be maintained for a reasonable period consistent with the provisions of this Agreement. In the event that an affirmative determination of dumping and injury is made, the undertaking shall continue consistent with its terms and the provisions of this Agreement.

8.5 Price undertakings may be suggested by the authorities of the importing Member, but no exporter shall be forced to enter into such undertakings. The fact that exporters do not offer such undertakings, or do not accept an invitation to do so, shall in no way prejudice the consideration of the case. However, the authorities are free to determine that a threat of injury is more likely to be realized if the dumped imports continue.

8.6 Authorities of an importing Member may require any exporter from whom an undertaking has been accepted to provide periodically information relevant to the fulfilment of such an undertaking and to permit verification of pertinent data. In case of violation of an undertaking, the authorities of the importing Member may take, under this Agreement in conformity with its provisions, expeditious actions which may constitute immediate application of provisional measures using the best information available. In such cases, definitive duties may be levied in accordance with this Agreement on products entered for consumption not more than 90 days before the application of such provisional measures, except that any such retroactive assessment shall not apply to imports entered before the violation of the undertaking.

Article 9

Imposition and Collection of Anti-Dumping Duties

9.1 The decision whether or not to impose an anti-dumping duty in cases where all requirements for the imposition have been fulfilled, and the decision whether the amount of the anti-dumping duty to be imposed shall be the full margin of dumping or less, are decisions to be made by the authorities of the importing Member. It is desirable that the imposition be permissive in the territory of all Members, and that the duty be less than the margin if such lesser duty would be adequate to remove the injury to the domestic industry.

9.2 When an anti-dumping duty is imposed in respect of any product, such anti-dumping duty shall be collected in the appropriate amounts in each case, on a non-discriminatory basis on imports of such product from all sources found to be dumped and causing injury, except as to imports from those sources

from which price undertakings under the terms of this Agreement have been accepted. The authorities shall name the supplier or suppliers of the product concerned. If, however, several suppliers from the same country are involved, and it is impracticable to name all these suppliers, the authorities may name the supplying country concerned. If several suppliers from more than one country are involved, the authorities may name either all the suppliers involved, or, if this is impracticable, all the supplying countries involved.

9.3 The amount of the anti-dumping duty shall not exceed the margin of dumping as established under Article 2.

9.3.1 When the amount of the anti-dumping duty is assessed on a retrospective basis, the determination of the final liability for payment of anti-dumping duties shall take place as soon as possible, normally within 12 months, and in no case more than 18 months, after the date on which a request for a final assessment of the amount of the anti-dumping duty has been made.[21] Any refund shall be made promptly and normally in not more than 90 days following the determination of final liability made pursuant to this sub-paragraph. In any case, where a refund is not made within 90 days, the authorities shall provide an explanation if so requested.

9.3.2 When the amount of the anti-dumping duty is assessed on a prospective basis, provision shall be made for a prompt refund, upon request, of any duty paid in excess of the margin of dumping. A refund of any such duty paid in excess of the actual margin of dumping shall normally take place within 12 months, and in no case more than 18 months, after the date on which a request for a refund, duly supported by evidence, has been made by an importer of the product subject to the anti-dumping duty. The refund authorized should normally be made within 90 days of the above-noted decision.

9.3.3 In determining whether and to what extent a reimbursement should be made when the export price is constructed in accordance with paragraph 3 of Article 2, authorities should take account of any change in normal value, any change in costs incurred between importation and resale, and any movement in the resale price which is duly reflected in subsequent selling prices, and should calculate the export price with no deduction for the amount of anti-dumping duties paid when conclusive evidence of the above is provided.

9.4 When the authorities have limited their examination in accordance with the second sentence of paragraph 10 of Article 6, any anti-dumping duty applied to imports from exporters or producers not included in the examination shall not exceed:

(i) the weighted average margin of dumping established with respect to the selected exporters or producers or,

(ii) where the liability for payment of anti-dumping duties is calculated on the basis of a prospective normal value, the difference between the weighted average normal value of the selected exporters or producers and the export prices of exporters or producers not individually examined,

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[21] It is understood that the observance of the time-limits mentioned in this subparagraph and in subparagraph 3.2 may not be possible where the product in question is subject to judicial review proceedings.

provided that the authorities shall disregard for the purpose of this paragraph any zero and *de minimis* margins and margins established under the circumstances referred to in paragraph 8 of Article 6. The authorities shall apply individual duties or normal values to imports from any exporter or producer not included in the examination who has provided the necessary information during the course of the investigation, as provided for in subparagraph 10.2 of Article 6.

9.5 If a product is subject to anti-dumping duties in an importing Member, the authorities shall promptly carry out a review for the purpose of determining individual margins of dumping for any exporters or producers in the exporting country in question who have not exported the product to the importing Member during the period of investigation, provided that these exporters or producers can show that they are not related to any of the exporters or producers in the exporting country who are subject to the anti-dumping duties on the product. Such a review shall be initiated and carried out on an accelerated basis, compared to normal duty assessment and review proceedings in the importing Member. No anti-dumping duties shall be levied on imports from such exporters or producers while the review is being carried out. The authorities may, however, withhold appraisement and/or request guarantees to ensure that, should such a review result in a determination of dumping in respect of such producers or exporters, anti-dumping duties can be levied retroactively to the date of the initiation of the review.

Article 10

Retroactivity

10.1 Provisional measures and anti-dumping duties shall only be applied to products which enter for consumption after the time when the decision taken under paragraph 1 of Article 7 and paragraph 1 of Article 9, respectively, enters into force, subject to the exceptions set out in this Article.

10.2 Where a final determination of injury (but not of a threat thereof or of a material retardation of the establishment of an industry) is made or, in the case of a final determination of a threat of injury, where the effect of the dumped imports would, in the absence of the provisional measures, have led to a determination of injury, anti-dumping duties may be levied retroactively for the period for which provisional measures, if any, have been applied.

10.3 If the definitive anti-dumping duty is higher than the provisional duty paid or payable, or the amount estimated for the purpose of the security, the difference shall not be collected. If the definitive duty is lower than the provisional duty paid or payable, or the amount estimated for the purpose of the security, the difference shall be reimbursed or the duty recalculated, as the case may be.

10.4 Except as provided in paragraph 2, where a determination of threat of injury or material retardation is made (but no injury has yet occurred) a definitive anti-dumping duty may be imposed only from the date of the determination of threat of injury or material retardation, and any cash deposit made during the period of the application of provisional measures shall be refunded and any bonds released in an expeditious manner.

10.5 Where a final determination is negative, any cash deposit made during the period of the application of provisional measures shall be refunded and any bonds released in an expeditious manner.

10.6 A definitive anti-dumping duty may be levied on products which were entered for consumption not more than 90 days prior to the date of application of provisional measures, when the authorities determine for the dumped product in question that:

(i) there is a history of dumping which caused injury or that the importer was, or should have been, aware that the exporter practises dumping and that such dumping would cause injury, and

(ii) the injury is caused by massive dumped imports of a product in a relatively short time which in light of the timing and the volume of the dumped imports and other circumstances (such as a rapid build-up of inventories of the imported product) is likely to seriously undermine the remedial effect of the definitive anti-dumping duty to be applied, provided that the importers concerned have been given an opportunity to comment.

10.7 The authorities may, after initiating an investigation, take such measures as the withholding of appraisement or assessment as may be necessary to collect anti-dumping duties retroactively, as provided for in paragraph 6, once they have sufficient evidence that the conditions set forth in that paragraph are satisfied.

10.8 No duties shall be levied retroactively pursuant to paragraph 6 on products entered for consumption prior to the date of initiation of the investigation.

Article 11

Duration and Review of Anti-Dumping Duties and Price Undertakings

11.1 An anti-dumping duty shall remain in force only as long as and to the extent necessary to counteract dumping which is causing injury.

11.2 The authorities shall review the need for the continued imposition of the duty, where warranted, on their own initiative or, provided that a reasonable period of time has elapsed since the imposition of the definitive anti-dumping duty, upon request by any interested party which submits positive information substantiating the need for a review.[21] Interested parties shall have the right to request the authorities to examine whether the continued imposition of the duty is necessary to offset dumping, whether the injury would be likely to continue or recur if the duty were removed or varied, or both. If, as a result of the review under this paragraph, the authorities determine that the anti-dumping duty is no longer warranted, it shall be terminated immediately.

11.3 Notwithstanding the provisions of paragraphs 1 and 2, any definitive anti-dumping duty shall be terminated on a date not later than five years from its imposition (or from the date of the most recent review under paragraph 2 if that review has covered both dumping and injury, or under this paragraph), unless the authorities determine, in a review initiated before that date on their own initiative or upon a duly substantiated request made by or on behalf of the domestic industry within a reasonable period

[21] A determination of final liability for payment of anti-dumping duties, as provided for in paragraph 3 of Article 9, does not by itself constitute a review within the meaning of this Article.

of time prior to that date, that the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury.[22] The duty may remain in force pending the outcome of such a review.

11.4 The provisions of Article 6 regarding evidence and procedure shall apply to any review carried out under this Article. Any such review shall be carried out expeditiously and shall normally be concluded within 12 months of the date of initiation of the review.

11.5 The provisions of this Article shall apply *mutatis mutandis* to price undertakings accepted under Article 8.

Article 12

Public Notice and Explanation of Determinations

12.1 When the authorities are satisfied that there is sufficient evidence to justify the initiation of an anti-dumping investigation pursuant to Article 5, the Member or Members the products of which are subject to such investigation and other interested parties known to the investigating authorities to have an interest therein shall be notified and a public notice shall be given.

12.1.1 A public notice of the initiation of an investigation shall contain, or otherwise make available through a separate report[23], adequate information on the following:

(i) the name of the exporting country or countries and the product involved;

(ii) the date of initiation of the investigation;

(iii) the basis on which dumping is alleged in the application;

(iv) a summary of the factors on which the allegation of injury is based;

(v) the address to which representations by interested parties should be directed;

(vi) the time-limits allowed to interested parties for making their views known.

12.2 Public notice shall be given of any preliminary or final determination, whether affirmative or negative, of any decision to accept an undertaking pursuant to Article 8, of the termination of such an undertaking, and of the termination of a definitive anti-dumping duty. Each such notice shall set forth, or otherwise make available through a separate report, in sufficient detail the findings and conclusions reached on all issues of fact and law considered material by the investigating authorities. All such notices and reports shall be forwarded to the Member or Members the products of which are subject to such determination or undertaking and to other interested parties known to have an interest therein.

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[22]When the amount of the anti-dumping duty is assessed on a retrospective basis, a finding in the most recent assessment proceeding under subparagraph 3.1 of Article 9 that no duty is to be levied shall not by itself require the authorities to terminate the definitive duty.

[23]Where authorities provide information and explanations under the provisions of this Article in a separate report, they shall ensure that such report is readily available to the public.

12.2.1 A public notice of the imposition of provisional measures shall set forth, or otherwise make available through a separate report, sufficiently detailed explanations for the preliminary determinations on dumping and injury and shall refer to the matters of fact and law which have led to arguments being accepted or rejected. Such a notice or report shall, due regard being paid to the requirement for the protection of confidential information, contain in particular:

(i) the names of the suppliers, or when this is impracticable, the supplying countries involved;

(ii) a description of the product which is sufficient for customs purposes;

(iii) the margins of dumping established and a full explanation of the reasons for the methodology used in the establishment and comparison of the export price and the normal value under Article 2;

(iv) considerations relevant to the injury determination as set out in Article 3;

(v) the main reasons leading to the determination.

12.2.2 A public notice of conclusion or suspension of an investigation in the case of an affirmative determination providing for the imposition of a definitive duty or the acceptance of a price undertaking shall contain, or otherwise make available through a separate report, all relevant information on the matters of fact and law and reasons which have led to the imposition of final measures or the acceptance of a price undertaking, due regard being paid to the requirement for the protection of confidential information. In particular, the notice or report shall contain the information described in subparagraph 2.1, as well as the reasons for the acceptance or rejection of relevant arguments or claims made by the exporters and importers, and the basis for any decision made under subparagraph 10.2 of Article 6.

12.2.3 A public notice of the termination or suspension of an investigation following the acceptance of an undertaking pursuant to Article 8 shall include, or otherwise make available through a separate report, the non-confidential part of this undertaking.

12.3 The provisions of this Article shall apply *mutatis mutandis* to the initiation and completion of reviews pursuant to Article 11 and to decisions under Article 10 to apply duties retroactively.

Article 13

Judicial Review

Each Member whose national legislation contains provisions on anti-dumping measures shall maintain judicial, arbitral or administrative tribunals or procedures for the purpose, *inter alia*, of the prompt review of administrative actions relating to final determinations and reviews of determinations within the meaning of Article 11. Such tribunals or procedures shall be independent of the authorities responsible for the determination or review in question.

Article 14

Anti-Dumping Action on Behalf of a Third Country

14.1 An application for anti-dumping action on behalf of a third country shall be made by the authorities of the third country requesting action.

14.2 Such an application shall be supported by price information to show that the imports are being dumped and by detailed information to show that the alleged dumping is causing injury to the domestic industry concerned in the third country. The government of the third country shall afford all assistance to the authorities of the importing country to obtain any further information which the latter may require.

14.3 In considering such an application, the authorities of the importing country shall consider the effects of the alleged dumping on the industry concerned as a whole in the third country; that is to say, the injury shall not be assessed in relation only to the effect of the alleged dumping on the industry's exports to the importing country or even on the industry's total exports.

14.4 The decision whether or not to proceed with a case shall rest with the importing country. If the importing country decides that it is prepared to take action, the initiation of the approach to the Council for Trade in Goods seeking its approval for such action shall rest with the importing country.

Article 15

Developing Country Members

It is recognized that special regard must be given by developed country Members to the special situation of developing country Members when considering the application of anti-dumping measures under this Agreement. Possibilities of constructive remedies provided for by this Agreement shall be explored before applying anti-dumping duties where they would affect the essential interests of developing country Members.

PART II

Article 16

Committee on Anti-Dumping Practices

16.1 There is hereby established a Committee on Anti-Dumping Practices (referred to in this Agreement as the "Committee") composed of representatives from each of the Members. The Committee shall elect its own Chairman and shall meet not less than twice a year and otherwise as envisaged by relevant provisions of this Agreement at the request of any Member. The Committee shall carry out responsibilities as assigned to it under this Agreement or by the Members and it shall afford Members the opportunity of consulting on any matters relating to the operation of the Agreement or the furtherance of its objectives. The WTO Secretariat shall act as the secretariat to the Committee.

16.2 The Committee may set up subsidiary bodies as appropriate.

16.3 In carrying out their functions, the Committee and any subsidiary bodies may consult with and seek information from any source they deem appropriate. However, before the Committee or a subsidiary body seeks such information from a source within the jurisdiction of a Member, it shall inform the Member involved. It shall obtain the consent of the Member and any firm to be consulted.

16.4 Members shall report without delay to the Committee all preliminary or final anti-dumping actions taken. Such reports shall be available in the Secretariat for inspection by other Members. Members shall also submit, on a semi-annual basis, reports of any anti-dumping actions taken within the preceding six months. The semi-annual reports shall be submitted on an agreed standard form.

16.5 Each Member shall notify the Committee *(a)* which of its authorities are competent to initiate and conduct investigations referred to in Article 5 and *(b)* its domestic procedures governing the initiation and conduct of such investigations.

Article 17

Consultation and Dispute Settlement

17.1 Except as otherwise provided herein, the Dispute Settlement Understanding is applicable to consultations and the settlement of disputes under this Agreement.

17.2 Each Member shall afford sympathetic consideration to, and shall afford adequate opportunity for consultation regarding, representations made by another Member with respect to any matter affecting the operation of this Agreement.

17.3 If any Member considers that any benefit accruing to it, directly or indirectly, under this Agreement is being nullified or impaired, or that the achievement of any objective is being impeded, by another Member or Members, it may, with a view to reaching a mutually satisfactory resolution of the matter, request in writing consultations with the Member or Members in question. Each Member shall afford sympathetic consideration to any request from another Member for consultation.

17.4 If the Member that requested consultations considers that the consultations pursuant to paragraph 3 have failed to achieve a mutually agreed solution, and if final action has been taken by the administering authorities of the importing Member to levy definitive anti-dumping duties or to accept price undertakings, it may refer the matter to the Dispute Settlement Body ("DSB"). When a provisional measure has a significant impact and the Member that requested consultations considers that the measure was taken contrary to the provisions of paragraph 1 of Article 7, that Member may also refer such matter to the DSB.

17.5 The DSB shall, at the request of the complaining party, establish a panel to examine the matter based upon:

(i) a written statement of the Member making the request indicating how a benefit accruing to it, directly or indirectly, under this Agreement has been nullified or impaired, or that the achieving of the objectives of the Agreement is being impeded, and

(ii) the facts made available in conformity with appropriate domestic procedures to the authorities of the importing Member.

17.6 In examining the matter referred to in paragraph 5:

(i) in its assessment of the facts of the matter, the panel shall determine whether the authorities' establishment of the facts was proper and whether their evaluation of those facts was unbiased and objective. If the establishment of the facts was proper and the evaluation was unbiased and objective, even though the panel might have reached a different conclusion, the evaluation shall not be overturned;

(ii) the panel shall interpret the relevant provisions of the Agreement in accordance with customary rules of interpretation of public international law. Where the panel finds that a relevant provision of the Agreement admits of more than one permissible interpretation, the panel shall find the authorities' measure to be in conformity with the Agreement if it rests upon one of those permissible interpretations.

17.7 Confidential information provided to the panel shall not be disclosed without formal authorization from the person, body or authority providing such information. Where such information is requested from the panel but release of such information by the panel is not authorized, a non-confidential summary of the information, authorized by the person, body or authority providing the information, shall be provided.

PART III

Article 18

Final Provisions

18.1 No specific action against dumping of exports from another Member can be taken except in accordance with the provisions of GATT 1994, as interpreted by this Agreement.[26]

18.2 Reservations may not be entered in respect of any of the provisions of this Agreement without the consent of the other Members.

18.3 Subject to subparagraphs 3.1 and 3.2, the provisions of this Agreement shall apply to investigations, and reviews of existing measures, initiated pursuant to applications which have been made on or after the date of entry into force for a Member of the WTO Agreement.

18.3.1 With respect to the calculation of margins of dumping in refund procedures under paragraph 3 of Article 9, the rules used in the most recent determination or review of dumping shall apply.

18.3.2 For the purposes of paragraph 3 of Article 11, existing anti-dumping measures shall be deemed to be imposed on a date not later than the date of entry into force for a Member of the WTO Agreement, except in cases in which the domestic legislation of a Member in force on that date already included a clause of the type provided for in that paragraph.

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[26]This is not intended to preclude action under other relevant provisions of GATT 1994, as appropriate

18.4 Each Member shall take all necessary steps, of a general or particular character, to ensure, not later than the date of entry into force of the WTO Agreement for it, the conformity of its laws, regulations and administrative procedures with the provisions of this Agreement as they may apply for the Member in question.

18.5 Each Member shall inform the Committee of any changes in its laws and regulations relevant to this Agreement and in the administration of such laws and regulations.

18.6 The Committee shall review annually the implementation and operation of this Agreement taking into account the objectives thereof. The Committee shall inform annually the Council for Trade in Goods of developments during the period covered by such reviews.

18.7 The Annexes to this Agreement constitute an integral part thereof.

ANNEX I

PROCEDURES FOR ON-THE-SPOT INVESTIGATIONS PURSUANT TO PARAGRAPH 7 OF ARTICLE 6

1. Upon initiation of an investigation, the authorities of the exporting Member and the firms known to be concerned should be informed of the intention to carry out on-the-spot investigations.

2. If in exceptional circumstances it is intended to include non-governmental experts in the investigating team, the firms and the authorities of the exporting Member should be so informed. Such non-governmental experts should be subject to effective sanctions for breach of confidentiality requirements.

3. It should be standard practice to obtain explicit agreement of the firms concerned in the exporting Member before the visit is finally scheduled.

4. As soon as the agreement of the firms concerned has been obtained, the investigating authorities should notify the authorities of the exporting Member of the names and addresses of the firms to be visited and the dates agreed.

5. Sufficient advance notice should be given to the firms in question before the visit is made.

6. Visits to explain the questionnaire should only be made at the request of an exporting firm. Such a visit may only be made if *(a)* the authorities of the importing Member notify the representatives of the Member in question and *(b)* the latter do not object to the visit.

7. As the main purpose of the on-the-spot investigation is to verify information provided or to obtain further details, it should be carried out after the response to the questionnaire has been received unless the firm agrees to the contrary and the government of the exporting Member is informed by the investigating authorities of the anticipated visit and does not object to it; further, it should be standard practice prior to the visit to advise the firms concerned of the general nature of the information to be verified and of any further information which needs to be provided, though this should not preclude requests to be made on the spot for further details to be provided in the light of information obtained.

8. Enquiries or questions put by the authorities or firms of the exporting Members and essential to a successful on-the-spot investigation should, whenever possible, be answered before the visit is made.

ANNEX II

BEST INFORMATION AVAILABLE IN TERMS OF PARAGRAPH 8 OF ARTICLE 6

1. As soon as possible after the initiation of the investigation, the investigating authorities should specify in detail the information required from any interested party, and the manner in which that information should be structured by the interested party in its response. The authorities should also ensure that the party is aware that if information is not supplied within a reasonable time, the authorities will be free to make determinations on the basis of the facts available, including those contained in the application for the initiation of the investigation by the domestic industry.

2. The authorities may also request that an interested party provide its response in a particular medium (e.g. computer tape) or computer language. Where such a request is made, the authorities should consider the reasonable ability of the interested party to respond in the preferred medium or computer language, and should not request the party to use for its response a computer system other than that used by the party. The authority should not maintain a request for a computerized response if the interested party does not maintain computerized accounts and if presenting the response as requested would result in an unreasonable extra burden on the interested party, e.g. it would entail unreasonable additional cost and trouble. The authorities should not maintain a request for a response in a particular medium or computer language if the interested party does not maintain its computerized accounts in such medium or computer language and if presenting the response as requested would result in an unreasonable extra burden on the interested party, e.g. it would entail unreasonable additional cost and trouble.

3. All information which is verifiable, which is appropriately submitted so that it can be used in the investigation without undue difficulties, which is supplied in a timely fashion, and, where applicable, which is supplied in a medium or computer language requested by the authorities, should be taken into account when determinations are made. If a party does not respond in the preferred medium or computer language but the authorities find that the circumstances set out in paragraph 2 have been satisfied, the failure to respond in the preferred medium or computer language should not be considered to significantly impede the investigation.

4. Where the authorities do not have the ability to process information if provided in a particular medium (e.g. computer tape), the information should be supplied in the form of written material or any other form acceptable to the authorities.

5. Even though the information provided may not be ideal in all respects, this should not justify the authorities from disregarding it, provided the interested party has acted to the best of its ability.

6. If evidence or information is not accepted, the supplying party should be informed forthwith of the reasons therefor, and should have an opportunity to provide further explanations within a reasonable period, due account being taken of the time-limits of the investigation. If the explanations are considered by the authorities as not being satisfactory, the reasons for the rejection of such evidence or information should be given in any published determinations.

7. If the authorities have to base their findings, including those with respect to normal value, on information from a secondary source, including the information supplied in the application for the initiation of the investigation, they should do so with special circumspection. In such cases, the authorities should, where practicable, check the information from other independent sources at their

disposal, such as published price lists, official import statistics and customs returns, and from the information obtained from other interested parties during the investigation. It is clear, however, that if an interested party does not cooperate and thus relevant information is being withheld from the authorities, this situation could lead to a result which is less favourable to the party than if the party did cooperate.

AGREEMENT ON IMPLEMENTATION OF ARTICLE VII OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE 1994

GENERAL INTRODUCTORY COMMENTARY

1. The primary basis for customs value under this Agreement is "transaction value" as defined in Article 1. Article 1 is to be read together with Article 8 which provides, *inter alia*, for adjustments to the price actually paid or payable in cases where certain specific elements which are considered to form a part of the value for customs purposes are incurred by the buyer but are not included in the price actually paid or payable for the imported goods. Article 8 also provides for the inclusion in the transaction value of certain considerations which may pass from the buyer to the seller in the form of specified goods or services rather than in the form of money. Articles 2 through 7 provide methods of determining the customs value whenever it cannot be determined under the provisions of Article 1.

2. Where the customs value cannot be determined under the provisions of Article 1 there should normally be a process of consultation between the customs administration and importer with a view to arriving at a basis of value under the provisions of Article 2 or 3. It may occur, for example, that the importer has information about the customs value of identical or similar imported goods which is not immediately available to the customs administration in the port of importation. On the other hand, the customs administration may have information about the customs value of identical or similar imported goods which is not readily available to the importer. A process of consultation between the two parties will enable information to be exchanged, subject to the requirements of commercial confidentiality, with a view to determining a proper basis of value for customs purposes.

3. Articles 5 and 6 provide two bases for determining the customs value where it cannot be determined on the basis of the transaction value of the imported goods or of identical or similar imported goods. Under paragraph 1 of Article 5 the customs value is determined on the basis of the price at which the goods are sold in the condition as imported to an unrelated buyer in the country of importation. The importer also has the right to have goods which are further processed after importation valued under the provisions of Article 5 if the importer so requests. Under Article 6 the customs value is determined on the basis of the computed value. Both these methods present certain difficulties and because of this the importer is given the right, under the provisions of Article 4, to choose the order of application of the two methods.

4. Article 7 sets out how to determine the customs value in cases where it cannot be determined under the provisions of any of the preceding Articles.

Members,

Having regard to the Multilateral Trade Negotiations;

Desiring to further the objectives of GATT 1994 and to secure additional benefits for the international trade of developing countries;

Recognizing the importance of the provisions of Article VII of GATT 1994 and desiring to elaborate rules for their application in order to provide greater uniformity and certainty in their implementation;

Recognizing the need for a fair, uniform and neutral system for the valuation of goods for customs purposes that precludes the use of arbitrary or fictitious customs values;

Recognizing that the basis for valuation of goods for customs purposes should, to the greatest extent possible, be the transaction value of the goods being valued;

Recognizing that customs value should be based on simple and equitable criteria consistent with commercial practices and that valuation procedures should be of general application without distinction between sources of supply;

Recognizing that valuation procedures should not be used to combat dumping;

Hereby *agree* as follows:

PART I

RULES ON CUSTOMS VALUATION

Article 1

1. The customs value of imported goods shall be the transaction value, that is the price actually paid or payable for the goods when sold for export to the country of importation adjusted in accordance with the provisions of Article 8, provided:

(a) that there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which:

(i) are imposed or required by law or by the public authorities in the country of importation;

(ii) limit the geographical area in which the goods may be resold; or

(iii) do not substantially affect the value of the goods;

(b) that the sale or price is not subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued;

(c) that no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of Article 8; and

(d) that the buyer and seller are not related, or where the buyer and seller are related, that the transaction value is acceptable for customs purposes under the provisions of paragraph 2.

2. (a) In determining whether the transaction value is acceptable for the purposes of paragraph 1, the fact that the buyer and the seller are related within the meaning of Article 15 shall not in itself be grounds for regarding the transaction value as unacceptable. In such case the circumstances surrounding the sale shall be examined and the transaction value shall be accepted provided that the relationship did not influence the price. If, in the light of information provided by the importer or otherwise, the customs administration has grounds for considering that the relationship influenced the price, it shall communicate its grounds to the importer and the importer shall be given a reasonable opportunity to respond. If the importer so requests, the communication of the grounds shall be in writing.

(b) In a sale between related persons, the transaction value shall be accepted and the goods valued in accordance with the provisions of paragraph 1 whenever the importer demonstrates that such value closely approximates to one of the following occurring at or about the same time:

(i) the transaction value in sales to unrelated buyers of identical or similar goods for export to the same country of importation;

(ii) the customs value of identical or similar goods as determined under the provisions of Article 5;

(iii) the customs value of identical or similar goods as determined under the provisions of Article 6;

In applying the foregoing tests, due account shall be taken of demonstrated differences in commercial levels, quantity levels, the elements enumerated in Article 8 and costs incurred by the seller in sales in which the seller and the buyer are not related that are not incurred by the seller in sales in which the seller and the buyer are related.

(c) The tests set forth in paragraph 2(b) are to be used at the initiative of the importer and only for comparison purposes. Substitute values may not be established under the provisions of paragraph 2(b).

Article 2

1. (a) If the customs value of the imported goods cannot be determined under the provisions of Article 1, the customs value shall be the transaction value of identical goods sold for export to the same country of importation and exported at or about the same time as the goods being valued.

(b) In applying this Article, the transaction value of identical goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the customs value. Where no such sale is found, the transaction value of identical goods sold at a different commercial level and/or in different quantities, adjusted to take account of differences attributable to commercial level and/or to quantity, shall be used, provided that such adjustments can be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy

of the adjustment, whether the adjustment leads to an increase or a decrease in the value.

2. Where the costs and charges referred to in paragraph 2 of Article 8 are included in the transaction value, an adjustment shall be made to take account of significant differences in such costs and charges between the imported goods and the identical goods in question arising from differences in distances and modes of transport.

3. If, in applying this Article, more than one transaction value of identical goods is found, the lowest such value shall be used to determine the customs value of the imported goods.

Article 3

1. (a) If the customs value of the imported goods cannot be determined under the provisions of Articles 1 and 2, the customs value shall be the transaction value of similar goods sold for export to the same country of importation and exported at or about the same time as the goods being valued.

(b) In applying this Article, the transaction value of similar goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the customs value. Where no such sale is found, the transaction value of similar goods sold at a different commercial level and/or in different quantities, adjusted to take account of differences attributable to commercial level and/or to quantity, shall be used, provided that such adjustments can be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustment, whether the adjustment leads to an increase or a decrease in the value.

2. Where the costs and charges referred to in paragraph 2 of Article 8 are included in the transaction value, an adjustment shall be made to take account of significant differences in such costs and charges between the imported goods and the similar goods in question arising from differences in distances and modes of transport.

3. If, in applying this Article, more than one transaction value of similar goods is found, the lowest such value shall be used to determine the customs value of the imported goods.

Article 4

If the customs value of the imported goods cannot be determined under the provisions of Articles 1, 2 and 3, the customs value shall be determined under the provisions of Article 5 or, when the customs value cannot be determined under that Article, under the provisions of Article 6 except that, at the request of the importer, the order of application of Articles 5 and 6 shall be reversed.

Article 5

1. (a) If the imported goods or identical or similar imported goods are sold in the country of importation in the condition as imported, the customs value of the imported goods under the provisions of this Article shall be based on the unit price at which the imported goods or identical or similar imported goods are so sold in the greatest aggregate quantity, at or about the time of the importation of the goods being valued, to persons

who are not related to the persons from whom they buy such goods, subject to deductions for the following:

(i) either the commissions usually paid or agreed to be paid or the additions usually made for profit and general expenses in connection with sales in such country of imported goods of the same class or kind;

(ii) the usual costs of transport and insurance and associated costs incurred within the country of importation;

(iii) where appropriate, the costs and charges referred to in paragraph 2 of Article 8; and

(iv) the customs duties and other national taxes payable in the country of importation by reason of the importation or sale of the goods.

(b) If neither the imported goods nor identical nor similar imported goods are sold at or about the time of importation of the goods being valued, the customs value shall, subject otherwise to the provisions of paragraph 1(a), be based on the unit price at which the imported goods or identical or similar imported goods are sold in the country of importation in the condition as imported at the earliest date after the importation of the goods being valued but before the expiration of 90 days after such importation.

2. If neither the imported goods nor identical nor similar imported goods are sold in the country of importation in the condition as imported, then, if the importer so requests, the customs value shall be based on the unit price at which the imported goods, after further processing, are sold in the greatest aggregate quantity to persons in the country of importation who are not related to the persons from whom they buy such goods, due allowance being made for the value added by such processing and the deductions provided for in paragraph 1(a).

Article 6

1. The customs value of imported goods under the provisions of this Article shall be based on a computed value. Computed value shall consist of the sum of:

(a) the cost or value of materials and fabrication or other processing employed in producing the imported goods;

(b) an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to the country of importation;

(c) the cost or value of all other expenses necessary to reflect the valuation option chosen by the Member under paragraph 2 of Article 8.

2. No Member may require or compel any person not resident in its own territory to produce for examination, or to allow access to, any account or other record for the purposes of determining a computed value. However, information supplied by the producer of the goods for the purposes of determining the customs value under the provisions of this Article may be verified in another country by the authorities of the country of importation with the agreement of the producer and provided they give sufficient advance notice to the government of the country in question and the latter does not object to the investigation.

Article 7

1. If the customs value of the imported goods cannot be determined under the provisions of Articles 1 through 6, inclusive, the customs value shall be determined using reasonable means consistent with the principles and general provisions of this Agreement and of Article VII of GATT 1994 and on the basis of data available in the country of importation.

2. No customs value shall be determined under the provisions of this Article on the basis of:

(a) the selling price in the country of importation of goods produced in such country;

(b) a system which provides for the acceptance for customs purposes of the higher of two alternative values;

(c) the price of goods on the domestic market of the country of exportation;

(d) the cost of production other than computed values which have been determined for identical or similar goods in accordance with the provisions of Article 6;

(e) the price of the goods for export to a country other than the country of importation;

(f) minimum customs values; or

(g) arbitrary or fictitious values.

3. If the importer so requests, the importer shall be informed in writing of the customs value determined under the provisions of this Article and the method used to determine such value.

Article 8

1. In determining the customs value under the provisions of Article 1, there shall be added to the price actually paid or payable for the imported goods:

(a) the following, to the extent that they are incurred by the buyer but are not included in the price actually paid or payable for the goods:

(i) commissions and brokerage, except buying commissions;

(ii) the cost of containers which are treated as being one for customs purposes with the goods in question;

(iii) the cost of packing whether for labour or materials;

(b) the value, apportioned as appropriate, of the following goods and services where supplied directly or indirectly by the buyer free of charge or at reduced cost for use in connection with the production and sale for export of the imported goods, to the extent that such value has not been included in the price actually paid or payable:

(i) materials, components, parts and similar items incorporated in the imported goods;

(ii) tools, dies, moulds and similar items used in the production of the imported goods;

(iii) materials consumed in the production of the imported goods,

(iv) engineering, development, artwork, design work, and plans and sketches undertaken elsewhere than in the country of importation and necessary for the production of the imported goods;

(c) royalties and licence fees related to the goods being valued that the buyer must pay, either directly or indirectly, as a condition of sale of the goods being valued, to the extent that such royalties and fees are not included in the price actually paid or payable;

(d) the value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues directly or indirectly to the seller.

2. In framing its legislation, each Member shall provide for the inclusion in or the exclusion from the customs value, in whole or in part, of the following:

(a) the cost of transport of the imported goods to the port or place of importation;

(b) loading, unloading and handling charges associated with the transport of the imported goods to the port or place of importation; and

(c) the cost of insurance.

3. Additions to the price actually paid or payable shall be made under this Article only on the basis of objective and quantifiable data.

4. No additions shall be made to the price actually paid or payable in determining the customs value except as provided in this Article.

Article 9

1. Where the conversion of currency is necessary for the determination of the customs value, the rate of exchange to be used shall be that duly published by the competent authorities of the country of importation concerned and shall reflect as effectively as possible, in respect of the period covered by each such document of publication, the current value of such currency in commercial transactions in terms of the currency of the country of importation.

2. The conversion rate to be used shall be that in effect at the time of exportation or the time of importation, as provided by each Member.

Article 10

All information which is by nature confidential or which is provided on a confidential basis for the purposes of customs valuation shall be treated as strictly confidential by the authorities concerned who shall not disclose it without the specific permission of the person or government providing such information, except to the extent that it may be required to be disclosed in the context of judicial proceedings.

Article 11

1. The legislation of each Member shall provide in regard to a determination of customs value for the right of appeal, without penalty, by the importer or any other person liable for the payment of the duty.

2. An initial right of appeal without penalty may be to an authority within the customs administration or to an independent body, but the legislation of each Member shall provide for the right of appeal without penalty to a judicial authority.

3. Notice of the decision on appeal shall be given to the appellant and the reasons for such decision shall be provided in writing. The appellant shall also be informed of any rights of further appeal.

Article 12

Laws, regulations, judicial decisions and administrative rulings of general application giving effect to this Agreement shall be published in conformity with Article X of GATT 1994 by the country of importation concerned.

Article 13

If, in the course of determining the customs value of imported goods, it becomes necessary to delay the final determination of such customs value, the importer of the goods shall nevertheless be able to withdraw them from customs if, where so required, the importer provides sufficient guarantee in the form of a surety, a deposit or some other appropriate instrument, covering the ultimate payment of customs duties for which the goods may be liable. The legislation of each Member shall make provisions for such circumstances.

Article 14

The notes at Annex I to this Agreement form an integral part of this Agreement and the Articles of this Agreement are to be read and applied in conjunction with their respective notes. Annexes II and III also form an integral part of this Agreement.

Article 15

1. In this Agreement:

(a) "customs value of imported goods" means the value of goods for the purposes of levying ad valorem duties of customs on imported goods;

(b) "country of importation" means country or customs territory of importation; and

(c) "produced" includes grown, manufactured and mined.

2. In this Agreement:

(a) "identical goods" means goods which are the same in all respects, including physical characteristics, quality and reputation. Minor differences in appearance would not preclude goods otherwise conforming to the definition from being regarded as identical;

(b) "similar goods" means goods which, although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable. The quality of the goods, their reputation and the existence of a trademark are among the factors to be considered in determining whether goods are similar;

(c) the terms "identical goods" and "similar goods" do not include, as the case may be, goods which incorporate or reflect engineering, development, artwork, design work, and plans and sketches for which no adjustment has been made under paragraph 1(b)(iv) of Article 8 because such elements were undertaken in the country of importation;

(d) goods shall not be regarded as "identical goods" or "similar goods" unless they were produced in the same country as the goods being valued;

(e) goods produced by a different person shall be taken into account only when there are no identical goods or similar goods, as the case may be, produced by the same person as the goods being valued.

3. In this Agreement "goods of the same class or kind" means goods which fall within a group or range of goods produced by a particular industry or industry sector, and includes identical or similar goods.

4. For the purposes of this Agreement, persons shall be deemed to be related only if:

(a) they are officers or directors of one another's businesses;

(b) they are legally recognized partners in business;

(c) they are employer and employee;

(d) any person directly or indirectly owns, controls or holds 5 per cent or more of the outstanding voting stock or shares of both of them;

(e) one of them directly or indirectly controls the other;

(f) both of them are directly or indirectly controlled by a third person;

(g) together they directly or indirectly control a third person; or

(h) they are members of the same family.

5. Persons who are associated in business with one another in that one is the sole agent, sole distributor or sole concessionaire, however described, of the other shall be deemed to be related for the purposes of this Agreement if they fall within the criteria of paragraph 4.

Article 16

Upon written request, the importer shall have the right to an explanation in writing from the customs administration of the country of importation as to how the customs value of the importer's goods was determined.

Article 17

Nothing in this Agreement shall be construed as restricting or calling into question the rights of customs administrations to satisfy themselves as to the truth or accuracy of any statement, document or declaration presented for customs valuation purposes.

PART II

ADMINISTRATION, CONSULTATIONS AND DISPUTE SETTLEMENT

Article 18

Institutions

1. There is hereby established a Committee on Customs Valuation (referred to in this Agreement as "the Committee") composed of representatives from each of the Members. The Committee shall elect its own Chairman and shall normally meet once a year, or as is otherwise envisaged by the relevant provisions of this Agreement, for the purpose of affording Members the opportunity to consult on matters relating to the administration of the customs valuation system by any Member as it might affect the operation of this Agreement or the furtherance of its objectives and carrying out such other responsibilities as may be assigned to it by the Members. The WTO Secretariat shall act as the secretariat to the Committee.

2. There shall be established a Technical Committee on Customs Valuation (referred to in this Agreement as "the Technical Committee") under the auspices of the Customs Co-operation Council (referred to in this Agreement as "the CCC"), which shall carry out the responsibilities described in Annex II to this Agreement and shall operate in accordance with the rules of procedure contained therein.

Article 19

Consultations and Dispute Settlement

1. Except as otherwise provided herein, the Dispute Settlement Understanding is applicable to consultations and the settlement of disputes under this Agreement.

2. If any Member considers that any benefit accruing to it, directly or indirectly, under this Agreement is being nullified or impaired, or that the achievement of any objective of this Agreement is being impeded, as a result of the actions of another Member or of other Members, it may, with a view to reaching a mutually satisfactory solution of this matter, request consultations with the Member or Members in question. Each Member shall afford sympathetic consideration to any request from another Member for consultations.

3. The Technical Committee shall provide, upon request, advice and assistance to Members engaged in consultations.

4. At the request of a party to the dispute, or on its own initiative, a panel established to examine a dispute relating to the provisions of this Agreement may request the Technical Committee to carry out an examination of any questions requiring technical consideration. The panel shall determine the terms of reference of the Technical Committee for the particular dispute and set a time period for receipt of the report of the Technical Committee. The panel shall take into consideration the report of the Technical Committee. In the event that the Technical Committee is unable to reach consensus on a matter referred to it pursuant to this paragraph, the panel should afford the parties to the dispute an opportunity to present their views on the matter to the panel.

5. Confidential information provided to the panel shall not be disclosed without formal authorization from the person, body or authority providing such information. Where such information is requested from the panel but release of such information by the panel is not authorized, a non-confidential summary of this information, authorized by the person, body or authority providing the information, shall be provided.

PART III

SPECIAL AND DIFFERENTIAL TREATMENT

Article 20

1. Developing country Members not party to the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade done on 12 April 1979 may delay application of the provisions of this Agreement for a period not exceeding five years from the date of entry into force of the WTO Agreement for such Members. Developing country Members who choose to delay application of this Agreement shall notify the Director-General of the WTO accordingly.

2. In addition to paragraph 1, developing country Members not party to the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade done on 12 April 1979 may delay application of paragraph 2(b)(iii) of Article 1 and Article 6 for a period not exceeding three years following their application of all other provisions of this Agreement. Developing country Members that choose to delay application of the provisions specified in this paragraph shall notify the Director-General of the WTO accordingly.

3. Developed country Members shall furnish, on mutually agreed terms, technical assistance to developing country Members that so request. On this basis developed country Members shall draw up programmes of technical assistance which may include, *inter alia*, training of personnel, assistance in preparing implementation measures, access to sources of information regarding customs valuation methodology, and advice on the application of the provisions of this Agreement.

PART IV

FINAL PROVISIONS

Article 21

Reservations

Reservations may not be entered in respect of any of the provisions of this Agreement without the consent of the other Members.

Article 22

National Legislation

1. Each Member shall ensure, not later than the date of application of the provisions of this Agreement for it, the conformity of its laws, regulations and administrative procedures with the provisions of this Agreement.

2. Each Member shall inform the Committee of any changes in its laws and regulations relevant to this Agreement and in the administration of such laws and regulations.

Article 23

Review

The Committee shall review annually the implementation and operation of this Agreement taking into account the objectives thereof. The Committee shall annually inform the Council for Trade in Goods of developments during the period covered by such reviews.

Article 24

Secretariat

This Agreement shall be serviced by the WTO Secretariat except in regard to those responsibilities specifically assigned to the Technical Committee, which will be serviced by the CCC Secretariat.

ANNEX I

INTERPRETATIVE NOTES

General Note

Sequential Application of Valuation Methods

1. Articles 1 through 7 define how the customs value of imported goods is to be determined under the provisions of this Agreement. The methods of valuation are set out in a sequential order of application. The primary method for customs valuation is defined in Article 1 and imported goods are to be valued in accordance with the provisions of this Article whenever the conditions prescribed therein are fulfilled.

2. Where the customs value cannot be determined under the provisions of Article 1, it is to be determined by proceeding sequentially through the succeeding Articles to the first such Article under which the customs value can be determined. Except as provided in Article 4, it is only when the customs value cannot be determined under the provisions of a particular Article that the provisions of the next Article in the sequence can be used.

3. If the importer does not request that the order of Articles 5 and 6 be reversed, the normal order of the sequence is to be followed. If the importer does so request but it then proves impossible to determine the customs value under the provisions of Article 6, the customs value is to be determined under the provisions of Article 5, if it can be so determined.

4. Where the customs value cannot be determined under the provisions of Articles 1 through 6 it is to be determined under the provisions of Article 7.

Use of Generally Accepted Accounting Principles

1. "Generally accepted accounting principles" refers to the recognized consensus or substantial authoritative support within a country at a particular time as to which economic resources and obligations should be recorded as assets and liabilities, which changes in assets and liabilities should be recorded, how the assets and liabilities and changes in them should be measured, what information should be disclosed and how it should be disclosed, and which financial statements should be prepared. These standards may be broad guidelines of general application as well as detailed practices and procedures.

2. For the purposes of this Agreement, the customs administration of each Member shall utilize information prepared in a manner consistent with generally accepted accounting principles in the country which is appropriate for the Article in question. For example, the determination of usual profit and general expenses under the provisions of Article 5 would be carried out utilizing information prepared in a manner consistent with generally accepted accounting principles of the country of importation. On the other hand, the determination of usual profit and general expenses under the provisions of Article 6 would be carried out utilizing information prepared in a manner consistent with generally accepted accounting principles of the country of production. As a further example, the determination of an element provided for in paragraph 1(b)(ii) of Article 8 undertaken in the country of importation would be carried out utilizing information in a manner consistent with the generally accepted accounting principles of that country.

Note to Article 1

Price Actually Paid or Payable

1. The price actually paid or payable is the total payment made or to be made by the buyer to or for the benefit of the seller for the imported goods. The payment need not necessarily take the form of a transfer of money. Payment may be made by way of letters of credit or negotiable instruments. Payment may be made directly or indirectly. An example of an indirect payment would be the settlement by the buyer, whether in whole or in part, of a debt owed by the seller.

2. Activities undertaken by the buyer on the buyer's own account, other than those for which an adjustment is provided in Article 8, are not considered to be an indirect payment to the seller, even though they might be regarded as of benefit to the seller. The costs of such activities shall not, therefore, be added to the price actually paid or payable in determining the customs value.

3. The customs value shall not include the following charges or costs, provided that they are distinguished from the price actually paid or payable for the imported goods:

(a) charges for construction, erection, assembly, maintenance or technical assistance, undertaken after importation on imported goods such as industrial plant, machinery or equipment;

(b) the cost of transport after importation;

(c) duties and taxes of the country of importation.

4. The price actually paid or payable refers to the price for the imported goods. Thus the flow of dividends or other payments from the buyer to the seller that do not relate to the imported goods are not part of the customs value.

Paragraph 1(a)(iii)

Among restrictions which would not render a price actually paid or payable unacceptable are restrictions which do not substantially affect the value of the goods. An example of such restrictions would be the case where a seller requires a buyer of automobiles not to sell or exhibit them prior to a fixed date which represents the beginning of a model year.

Paragraph 1(b)

1. If the sale or price is subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued, the transaction value shall not be acceptable for customs purposes. Some examples of this include:

(a) the seller establishes the price of the imported goods on condition that the buyer will also buy other goods in specified quantities;

(b) the price of the imported goods is dependent upon the price or prices at which the buyer of the imported goods sells other goods to the seller of the imported goods;

(c) the price is established on the basis of a form of payment extraneous to the imported goods, such as where the imported goods are semi-finished goods which have been provided by the seller on condition that the seller will receive a specified quantity of the finished goods.

2. However, conditions or considerations relating to the production or marketing of the imported goods shall not result in rejection of the transaction value. For example, the fact that the buyer furnishes the seller with engineering and plans undertaken in the country of importation shall not result in rejection of the transaction value for the purposes of Article 1. Likewise, if the buyer undertakes on the buyer's own account, even though by agreement with the seller, activities relating to the marketing of the imported goods, the value of these activities is not part of the customs value nor shall such activities result in rejection of the transaction value.

Paragraph 2

1. Paragraphs 2(a) and 2(b) provide different means of establishing the acceptability of a transaction value.

2. Paragraph 2(a) provides that where the buyer and the seller are related, the circumstances surrounding the sale shall be examined and the transaction value shall be accepted as the customs value provided that the relationship did not influence the price. It is not intended that there should be an examination of the circumstances in all cases where the buyer and the seller are related. Such examination will only be required where there are doubts about the acceptability of the price. Where the customs administration have no doubts about the acceptability of the price, it should be accepted without requesting further information from the importer. For example, the customs administration may have previously examined the relationship, or it may already have detailed information concerning the buyer and the seller, and may already be satisfied from such examination or information that the relationship did not influence the price.

3. Where the customs administration is unable to accept the transaction value without further inquiry, it should give the importer an opportunity to supply such further detailed information as may be necessary to enable it to examine the circumstances surrounding the sale. In this context, the customs administration should be prepared to examine relevant aspects of the transaction, including the way in which the buyer and seller organize their commercial relations and the way in which the price in question was arrived at, in order to determine whether the relationship influenced the price. Where it can be shown that the buyer and seller, although related under the provisions of Article 15, buy from and sell to each other as if they were not related, this would demonstrate that the price had not been influenced by the relationship. As an example of this, if the price had been settled in a manner consistent with the normal pricing practices of the industry in question or with the way the seller settles prices for sales to buyers who are not related to the seller, this would demonstrate that the price had not been influenced by the relationship. As a further example, where it is shown that the price is adequate to ensure recovery of all costs plus a profit which is representative of the firm's overall profit realized over a representative period of time (e.g. on an annual basis) in sales of goods of the same class or kind, this would demonstrate that the price had not been influenced.

4. Paragraph 2(b) provides an opportunity for the importer to demonstrate that the transaction value closely approximates to a "test" value previously accepted by the customs administration and is therefore acceptable under the provisions of Article 1. Where a test under paragraph 2(b) is met, it is not necessary to examine the question of influence under paragraph 2(a). If the customs administration has already sufficient information to be satisfied, without further detailed inquiries, that one of the tests provided in paragraph 2(b) has been met, there is no reason for it to require the importer to demonstrate that the test can be met. In paragraph 2(b) the term "unrelated buyers" means buyers who are not related to the seller in any particular case.

Paragraph 2(b)

A number of factors must be taken into consideration in determining whether one value "closely approximates" to another value. These factors include the nature of the imported goods, the nature

of the industry itself, the season in which the goods are imported, and, whether the difference in values is commercially significant. Since these factors may vary from case to case, it would be impossible to apply a uniform standard such as a fixed percentage, in each case. For example, a small difference in value in a case involving one type of goods could be unacceptable while a large difference in a case involving another type of goods might be acceptable in determining whether the transaction value closely approximates to the "test" values set forth in paragraph 2(b) of Article 1.

Note to Article 2

1. In applying Article 2, the customs administration shall, wherever possible, use a sale of identical goods at the same commercial level and in substantially the same quantities as the goods being valued. Where no such sale is found, a sale of identical goods that takes place under any one of the following three conditions may be used:

(a) a sale at the same commercial level but in different quantities;

(b) a sale at a different commercial level but in substantially the same quantities; or

(c) a sale at a different commercial level and in different quantities.

2. Having found a sale under any one of these three conditions adjustments will then be made, as the case may be, for:

(a) quantity factors only;

(b) commercial level factors only; or

(c) both commercial level and quantity factors.

3. The expression "and/or" allows the flexibility to use the sales and make the necessary adjustments in any one of the three conditions described above.

4. For the purposes of Article 2, the transaction value of identical imported goods means a customs value, adjusted as provided for in paragraphs 1(b) and 2, which has already been accepted under Article 1.

5. A condition for adjustment because of different commercial levels or different quantities is that such adjustment, whether it leads to an increase or a decrease in the value, be made only on the basis of demonstrated evidence that clearly establishes the reasonableness and accuracy of the adjustments, e.g. valid price lists containing prices referring to different levels or different quantities. As an example of this, if the imported goods being valued consist of a shipment of 10 units and the only identical imported goods for which a transaction value exists involved a sale of 500 units, and it is recognized that the seller grants quantity discounts, the required adjustment may be accomplished by resorting to the seller's price list and using that price applicable to a sale of 10 units. This does not require that a sale had to have been made in quantities of 10 as long as the price list has been established as being bona fide through sales at other quantities. In the absence of such an objective measure, however, the determination of a customs value under the provisions of Article 2 is not appropriate.

Note to Article 3

1. In applying Article 3, the customs administration shall, wherever possible, use a sale of similar goods at the same commercial level and in substantially the same quantities as the goods being valued. Where no such sale is found, a sale of similar goods that takes place under any one of the following three conditions may be used:

(a) a sale at the same commercial level but in different quantities;

(b) a sale at a different commercial level but in substantially the same quantities; or

(c) a sale at a different commercial level and in different quantities.

2. Having found a sale under any one of these three conditions adjustments will then be made, as the case may be, for:

(a) quantity factors only;

(b) commercial level factors only; or

(c) both commercial level and quantity factors.

3. The expression "and/or" allows the flexibility to use the sales and make the necessary adjustments in any one of the three conditions described above.

4. For the purpose of Article 3, the transaction value of similar imported goods means a customs value, adjusted as provided for in paragraphs 1(b) and 2, which has already been accepted under Article 1.

5. A condition for adjustment because of different commercial levels or different quantities is that such adjustment, whether it leads to an increase or a decrease in the value, be made only on the basis of demonstrated evidence that clearly establishes the reasonableness and accuracy of the adjustment, e.g. valid price lists containing prices referring to different levels or different quantities. As an example of this, if the imported goods being valued consist of a shipment of 10 units and the only similar imported goods for which a transaction value exists involved a sale of 500 units, and it is recognized that the seller grants quantity discounts, the required adjustment may be accomplished by resorting to the seller's price list and using that price applicable to a sale of 10 units. This does not require that a sale had to have been made in quantities of 10 as long as the price list has been established as being bona fide through sales at other quantities. In the absence of such an objective measure, however, the determination of a customs value under the provisions of Article 3 is not appropriate.

Note to Article 5

1. The term "unit price at which ... goods are sold in the greatest aggregate quantity" means the price at which the greatest number of units is sold in sales to persons who are not related to the persons from whom they buy such goods at the first commercial level after importation at which such sales take place.

2. As an example of this, goods are sold from a price list which grants favourable unit prices for purchases made in larger quantities.

Sale quantity	*Unit price*	*Number of sales*	*Total quantity sold at each price*
1-10 units	100	10 sales of 5 units 5 sales of 3 units	65
11-25 units	95	5 sales of 11 units	55
over 25 units	90	1 sale of 30 units 1 sale of 50 units	80

The greatest number of units sold at a price is 80; therefore, the unit price in the greatest aggregate quantity is 90.

3. As another example of this, two sales occur. In the first sale 500 units are sold at a price of 95 currency units each. In the second sale 400 units are sold at a price of 90 currency units each. In this example, the greatest number of units sold at a particular price is 500; therefore, the unit price in the greatest aggregate quantity is 95.

4. A third example would be the following situation where various quantities are sold at various prices.

(a) Sales

Sale quantity	*Unit price*
40 units	100
30 units	90
15 units	100
50 units	95
25 units	105
35 units	90
5 units	100

(b) Totals

Total quantity sold	*Unit price*
65	90
50	95
60	100
25	105

In this example, the greatest number of units sold at a particular price is 65; therefore, the unit price in the greatest aggregate quantity is 90.

5. Any sale in the importing country, as described in paragraph 1 above, to a person who supplies directly or indirectly free of charge or at reduced cost for use in connection with the production and sale for export of the imported goods any of the elements specified in paragraph 1(b) of Article 8, should not be taken into account in establishing the unit price for the purposes of Article 5.

6. It should be noted that "profit and general expenses" referred to in paragraph 1 of Article 5 should be taken as a whole. The figure for the purposes of this deduction should be determined on the basis of information supplied by or on behalf of the importer unless the importer's figures are inconsistent with those obtained in sales in the country of importation of imported goods of the same class or kind. Where the importer's figures are inconsistent with such figures, the amount for profit and general expenses may be based upon relevant information other than that supplied by or on behalf of the importer.

7. The "general expenses" include the direct and indirect costs of marketing the goods in question.

8. Local taxes payable by reason of the sale of the goods for which a deduction is not made under the provisions of paragraph 1(a)(iv) of Article 5 shall be deducted under the provisions of paragraph 1(a)(i) of Article 5.

9. In determining either the commissions or the usual profits and general expenses under the provisions of paragraph 1 of Article 5, the question whether certain goods are "of the same class or kind" as other goods must be determined on a case-by-case basis by reference to the circumstances involved. Sales in the country of importation of the narrowest group or range of imported goods of the same class or kind, which includes the goods being valued, for which the necessary information can be provided, should be examined. For the purposes of Article 5, "goods of the same class or kind" includes goods imported from the same country as the goods being valued as well as goods imported from other countries.

10. For the purposes of paragraph 1(b) of Article 5, the "earliest date" shall be the date by which sales of the imported goods or of identical or similar imported goods are made in sufficient quantity to establish the unit price.

11. Where the method in paragraph 2 of Article 5 is used, deductions made for the value added by further processing shall be based on objective and quantifiable data relating to the cost of such work. Accepted industry formulas, recipes, methods of construction, and other industry practices would form the basis of the calculations.

12. It is recognized that the method of valuation provided for in paragraph 2 of Article 5 would normally not be applicable when, as a result of the further processing, the imported goods lose their identity. However, there can be instances where, although the identity of the imported goods is lost, the value added by the processing can be determined accurately without unreasonable difficulty. On the other hand, there can also be instances where the imported goods maintain their identity but form such a minor element in the goods sold in the country of importation that the use of this valuation method would be unjustified. In view of the above, each situation of this type must be considered on a case-by-case basis.

Note to Article 6

1. As a general rule, customs value is determined under this Agreement on the basis of information readily available in the country of importation. In order to determine a computed value, however, it may be necessary to examine the costs of producing the goods being valued and other information which has to be obtained from outside the country of importation. Furthermore, in most cases the

producer of the goods will be outside the jurisdiction of the authorities of the country of importation. The use of the computed value method will generally be limited to those cases where the buyer and seller are related, and the producer is prepared to supply to the authorities of the country of importation the necessary costings and to provide facilities for any subsequent verification which may be necessary.

2. The "cost or value" referred to in paragraph 1(a) of Article 6 is to be determined on the basis of information relating to the production of the goods being valued supplied by or on behalf of the producer. It is to be based upon the commercial accounts of the producer, provided that such accounts are consistent with the generally accepted accounting principles applied in the country where the goods are produced.

3. The "cost or value" shall include the cost of elements specified in paragraphs 1(a)(ii) and (iii) of Article 8. It shall also include the value, apportioned as appropriate under the provisions of the relevant note to Article 8, of any element specified in paragraph 1(b) of Article 8 which has been supplied directly or indirectly by the buyer for use in connection with the production of the imported goods. The value of the elements specified in paragraph 1(b)(iv) of Article 8 which are undertaken in the country of importation shall be included only to the extent that such elements are charged to the producer. It is to be understood that no cost or value of the elements referred to in this paragraph shall be counted twice in determining the computed value.

4. The "amount for profit and general expenses" referred to in paragraph 1(b) of Article 6 is to be determined on the basis of information supplied by or on behalf of the producer unless the producer's figures are inconsistent with those usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to the country of importation.

5. It should be noted in this context that the "amount for profit and general expenses" has to be taken as a whole. It follows that if, in any particular case, the producer's profit figure is low and the producer's general expenses are high, the producer's profit and general expenses taken together may nevertheless be consistent with that usually reflected in sales of goods of the same class or kind. Such a situation might occur, for example, if a product were being launched in the country of importation and the producer accepted a nil or low profit to offset high general expenses associated with the launch. Where the producer can demonstrate a low profit on sales of the imported goods because of particular commercial circumstances, the producer's actual profit figures should be taken into account provided that the producer has valid commercial reasons to justify them and the producer's pricing policy reflects usual pricing policies in the branch of industry concerned. Such a situation might occur, for example, where producers have been forced to lower prices temporarily because of an unforeseeable drop in demand, or where they sell goods to complement a range of goods being produced in the country of importation and accept a low profit to maintain competitivity. Where the producer's own figures for profit and general expenses are not consistent with those usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to the country of importation, the amount for profit and general expenses may be based upon relevant information other than that supplied by or on behalf of the producer of the goods.

6. Where information other than that supplied by or on behalf of the producer is used for the purposes of determining a computed value, the authorities of the importing country shall inform the importer, if the latter so requests, of the source of such information, the data used and the calculations based upon such data, subject to the provisions of Article 10.

7. The "general expenses" referred to in paragraph 1(b) of Article 6 covers the direct and indirect costs of producing and selling the goods for export which are not included under paragraph 1(a) of Article 6.

8. Whether certain goods are "of the same class or kind" as other goods must be determined on a case-by-case basis with reference to the circumstances involved. In determining the usual profits and general expenses under the provisions of Article 6, sales for export to the country of importation of the narrowest group or range of goods, which includes the goods being valued, for which the necessary information can be provided, should be examined. For the purposes of Article 6, "goods of the same class or kind" must be from the same country as the goods being valued.

Note to Article 7

1. Customs values determined under the provisions of Article 7 should, to the greatest extent possible, be based on previously determined customs values.

2. The methods of valuation to be employed under Article 7 should be those laid down in Articles 1 through 6 but a reasonable flexibility in the application of such methods would be in conformity with the aims and provisions of Article 7.

3. Some examples of reasonable flexibility are as follows:

(a) *Identical goods* - the requirement that the identical goods should be exported at or about the same time as the goods being valued could be flexibly interpreted; identical imported goods produced in a country other than the country of exportation of the goods being valued could be the basis for customs valuation; customs values of identical imported goods already determined under the provisions of Articles 5 and 6 could be used.

(b) *Similar goods* - the requirement that the similar goods should be exported at or about the same time as the goods being valued could be flexibly interpreted; similar imported goods produced in a country other than the country of exportation of the goods being valued could be the basis for customs valuation; customs values of similar imported goods already determined under the provisions of Articles 5 and 6 could be used.

(c) *Deductive method* – the requirement that the goods shall have been sold in the "condition as imported" in paragraph 1(a) of Article 5 could be flexibly interpreted; the "90 days" requirement could be administered flexibly.

Note to Article 8

Paragraph 1(a)(i)

The term "buying commissions" means fees paid by an importer to the importer's agent for the service of representing the importer abroad in the purchase of the goods being valued.

Paragraph 1(b)(ii)

1. There are two factors involved in the apportionment of the elements specified in paragraph 1(b)(ii) of Article 8 to the imported goods - the value of the element itself and the way in which that value is to be apportioned to the imported goods. The apportionment of these elements should be made in a reasonable manner appropriate to the circumstances and in accordance with generally accepted accounting principles.

2. Concerning the value of the element, if the importer acquires the element from a seller not related to the importer at a given cost, the value of the element is that cost. If the element was produced

by the importer or by a person related to the importer, its value would be the cost of producing it. If the element had been previously used by the importer, regardless of whether it had been acquired or produced by such importer, the original cost of acquisition or production would have to be adjusted downward to reflect its use in order to arrive at the value of the element.

3. Once a value has been determined for the element, it is necessary to apportion that value to the imported goods. Various possibilities exist. For example, the value might be apportioned to the first shipment if the importer wishes to pay duty on the entire value at one time. As another example, the importer may request that the value be apportioned over the number of units produced up to the time of the first shipment. As a further example, the importer may request that the value be apportioned over the entire anticipated production where contracts or firm commitments exist for that production. The method of apportionment used will depend upon the documentation provided by the importer.

4. As an illustration of the above, an importer provides the producer with a mould to be used in the production of the imported goods and contracts with the producer to buy 10,000 units. By the time of arrival of the first shipment of 1,000 units, the producer has already produced 4,000 units. The importer may request the customs administration to apportion the value of the mould over 1,000 units, 4,000 units or 10,000 units.

Paragraph 1(b)(iv)

1. Additions for the elements specified in paragraph 1(b)(iv) of Article 8 should be based on objective and quantifiable data. In order to minimize the burden for both the importer and customs administration in determining the values to be added, data readily available in the buyer's commercial record system should be used in so far as possible.

2. For those elements supplied by the buyer which were purchased or leased by the buyer, the addition would be the cost of the purchase or the lease. No addition shall be made for those elements available in the public domain, other than the cost of obtaining copies of them.

3. The ease with which it may be possible to calculate the values to be added will depend on a particular firm's structure and management practice, as well as its accounting methods.

4 For example, it is possible that a firm which imports a variety of products from several countries maintains the records of its design centre outside the country of importation in such a way as to show accurately the costs attributable to a given product. In such cases, a direct adjustment may appropriately be made under the provisions of Article 8.

5. In another case, a firm may carry the cost of the design centre outside the country of importation as a general overhead expense without allocation to specific products. In this instance, an appropriate adjustment could be made under the provisions of Article 8 with respect to the imported goods by apportioning total design centre costs over total production benefiting from the design centre and adding such apportioned cost on a unit basis to imports.

6. Variations in the above circumstances will, of course, require different factors to be considered in determining the proper method of allocation.

7. In cases where the production of the element in question involves a number of countries and over a period of time, the adjustment should be limited to the value actually added to that element outside the country of importation

Paragraph 1(c)

1. The royalties and licence fees referred to in paragraph 1(c) of Article 8 may include, among other things, payments in respect to patents, trade marks and copyrights. However, the charges for the right to reproduce the imported goods in the country of importation shall not be added to the price actually paid or payable for the imported goods in determining the customs value.

2. Payments made by the buyer for the right to distribute or resell the imported goods shall not be added to the price actually paid or payable for the imported goods if such payments are not a condition of the sale for export to the country of importation of the imported goods.

Paragraph 3

Where objective and quantifiable data do not exist with regard to the additions required to be made under the provisions of Article 8, the transaction value cannot be determined under the provisions of Article 1. As an illustration of this, a royalty is paid on the basis of the price in a sale in the importing country of a litre of a particular product that was imported by the kilogram and made up into a solution after importation. If the royalty is based partially on the imported goods and partially on other factors which have nothing to do with the imported goods (such as when the imported goods are mixed with domestic ingredients and are no longer separately identifiable, or when the royalty cannot be distinguished from special financial arrangements between the buyer and the seller), it would be inappropriate to attempt to make an addition for the royalty. However, if the amount of this royalty is based only on the imported goods and can be readily quantified, an addition to the price actually paid or payable can be made.

Note to Article 9

For the purposes of Article 9, "time of importation" may include the time of entry for customs purposes.

Note to Article 11

1. Article 11 provides the importer with the right to appeal against a valuation determination made by the customs administration for the goods being valued. Appeal may first be to a higher level in the customs administration, but the importer shall have the right in the final instance to appeal to the judiciary.

2. "Without penalty" means that the importer shall not be subject to a fine or threat of fine merely because the importer chose to exercise the right of appeal. Payment of normal court costs and lawyers' fees shall not be considered to be a fine.

3 However, nothing in Article 11 shall prevent a Member from requiring full payment of assessed customs duties prior to an appeal.

Note to Article 15

Paragraph 4

For the purposes of Article 15, the term "persons" includes a legal person, where appropriate

Paragraph 4(e)

For the purposes of this Agreement, one person shall be deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the latter.

ANNEX II

TECHNICAL COMMITTEE ON CUSTOMS VALUATION

1. In accordance with Article 18 of this Agreement, the Technical Committee shall be established under the auspices of the CCC with a view to ensuring, at the technical level, uniformity in interpretation and application of this Agreement.

2. The responsibilities of the Technical Committee shall include the following:

(a) to examine specific technical problems arising in the day-to-day administration of the customs valuation system of Members and to give advisory opinions on appropriate solutions based upon the facts presented;

(b) to study, as requested, valuation laws, procedures and practices as they relate to this Agreement and to prepare reports on the results of such studies;

(c) to prepare and circulate annual reports on the technical aspects of the operation and status of this Agreement;

(d) to furnish such information and advice on any matters concerning the valuation of imported goods for customs purposes as may be requested by any Member or the Committee. Such information and advice may take the form of advisory opinions, commentaries or explanatory notes;

(e) to facilitate, as requested, technical assistance to Members with a view to furthering the international acceptance of this Agreement;

(f) to carry out an examination of a matter referred to it by a panel under Article 19 of this Agreement; and

(g) to exercise such other responsibilities as the Committee may assign to it.

General

3. The Technical Committee shall attempt to conclude its work on specific matters, especially those referred to it by Members, the Committee or a panel, in a reasonably short period of time. As provided in paragraph 4 of Article 19, a panel shall set a specific time period for receipt of a report of the Technical Committee and the Technical Committee shall provide its report within that period.

4. The Technical Committee shall be assisted as appropriate in its activities by the CCC Secretariat.

Representation

5. Each Member shall have the right to be represented on the Technical Committee. Each Member may nominate one delegate and one or more alternates to be its representatives on the Technical Committee. Such a Member so represented on the Technical Committee is referred to in this Annex as a "member of the Technical Committee". Representatives of members of the Technical Committee may be assisted by advisers. The WTO Secretariat may also attend such meetings with observer status.

6. Members of the CCC which are not Members of the WTO may be represented at meetings of the Technical Committee by one delegate and one or more alternates. Such representatives shall attend meetings of the Technical Committee as observers.

7. Subject to the approval of the Chairman of the Technical Committee, the Secretary-General of the CCC (referred to in this Annex as "the Secretary-General") may invite representatives of governments which are neither Members of the WTO nor members of the CCC and representatives of international governmental and trade organizations to attend meetings of the Technical Committee as observers.

8. Nominations of delegates, alternates and advisers to meetings of the Technical Committee shall be made to the Secretary-General.

Technical Committee Meetings

9. The Technical Committee shall meet as necessary but at least two times a year. The date of each meeting shall be fixed by the Technical Committee at its preceding session. The date of the meeting may be varied either at the request of any member of the Technical Committee concurred in by a simple majority of the members of the Technical Committee or, in cases requiring urgent attention, at the request of the Chairman. Notwithstanding the provisions in sentence 1 of this paragraph, the Technical Committee shall meet as necessary to consider matters referred to it by a panel under the provisions of Article 19 of this Agreement.

10. The meetings of the Technical Committee shall be held at the headquarters of the CCC unless otherwise decided.

11. The Secretary-General shall inform all members of the Technical Committee and those included under paragraphs 6 and 7 at least 30 days in advance, except in urgent cases, of the opening date of each session of the Technical Committee.

Agenda

12. A provisional agenda for each session shall be drawn up by the Secretary-General and circulated to the members of the Technical Committee and to those included under paragraphs 6 and 7 at least 30 days in advance of the session, except in urgent cases. This agenda shall comprise all items whose inclusion has been approved by the Technical Committee during its preceding session, all items included by the Chairman on the Chairman's own initiative, and all items whose inclusion has been requested by the Secretary-General, by the Committee or by any member of the Technical Committee.

13. The Technical Committee shall determine its agenda at the opening of each session. During the session the agenda may be altered at any time by the Technical Committee.

Officers and Conduct of Business

14. The Technical Committee shall elect from among the delegates of its members a Chairman and one or more Vice-Chairmen. The Chairman and Vice-Chairmen shall each hold office for a period of one year. The retiring Chairman and Vice-Chairmen are eligible for re-election. The mandate of a Chairman or Vice-Chairman who no longer represents a member of the Technical Committee shall terminate automatically.

15. If the Chairman is absent from any meeting or part thereof, a Vice-Chairman shall preside. In that event, the latter shall have the same powers and duties as the Chairman.

16. The Chairman of the meeting shall participate in the proceedings of the Technical Committee as such and not as the representative of a member of the Technical Committee.

17. In addition to exercising the other powers conferred upon the Chairman by these rules, the Chairman shall declare the opening and closing of each meeting, direct the discussion, accord the right to speak, and, pursuant to these rules, have control of the proceedings. The Chairman may also call a speaker to order if the speaker's remarks are not relevant.

18. During discussion of any matter a delegation may raise a point of order. In this event, the Chairman shall immediately state a ruling. If this ruling is challenged, the Chairman shall submit it to the meeting for decision and it shall stand unless overruled.

19. The Secretary-General, or officers of the CCC Secretariat designated by the Secretary-General, shall perform the secretarial work of meetings of the Technical Committee.

Quorum and Voting

20. Representatives of a simple majority of the members of the Technical Committee shall constitute a quorum.

21. Each member of the Technical Committee shall have one vote. A decision of the Technical Committee shall be taken by a majority comprising at least two thirds of the members present. Regardless of the outcome of the vote on a particular matter, the Technical Committee shall be free to make a full report to the Committee and to the CCC on that matter indicating the different views expressed in the relevant discussions. Notwithstanding the above provisions of this paragraph, on matters referred to it by a panel, the Technical Committee shall take decisions by consensus. Where no agreement is reached in the Technical Committee on the question referred to it by a panel, the Technical Committee shall provide a report detailing the facts of the matter and indicating the views of the members.

Languages and Records

22. The official languages of the Technical Committee shall be English, French and Spanish. Speeches or statements made in any of these three languages shall be immediately translated into the other official languages unless all delegations agree to dispense with translation. Speeches or statements made in any other language shall be translated into English, French and Spanish, subject to the same conditions, but in that event the delegation concerned shall provide the translation into English, French or Spanish. Only English, French and Spanish shall be used for the official documents of the Technical Committee. Memoranda and correspondence for the consideration of the Technical Committee must be presented in one of the official languages.

23. The Technical Committee shall draw up a report of all its sessions and, if the Chairman considers it necessary, minutes or summary records of its meetings. The Chairman or a designee of the Chairman shall report on the work of the Technical Committee at each meeting of the Committee and at each meeting of the CCC.

ANNEX III

1. The five-year delay in the application of the provisions of the Agreement by developing country Members provided for in paragraph 1 of Article 20 may, in practice, be insufficient for certain developing country Members. In such cases a developing country Member may request before the end of the period referred to in paragraph 1 of Article 20 an extension of such period, it being understood that the Members will give sympathetic consideration to such a request in cases where the developing country Member in question can show good cause.

2. Developing countries which currently value goods on the basis of officially established minimum values may wish to make a reservation to enable them to retain such values on a limited and transitional basis under such terms and conditions as may be agreed to by the Members.

3. Developing countries which consider that the reversal of the sequential order at the request of the importer provided for in Article 4 of the Agreement may give rise to real difficulties for them may wish to make a reservation to Article 4 in the following terms:

> "The Government of ..... reserves the right to provide that the relevant provision of Article 4 of the Agreement shall apply only when the customs authorities agree to the request to reverse the order of Articles 5 and 6."

If developing countries make such a reservation, the Members shall consent to it under Article 21 of the Agreement.

4. Developing countries may wish to make a reservation with respect to paragraph 2 of Article 5 of the Agreement in the following terms:

> "The Government of ..... reserves the right to provide that paragraph 2 of Article 5 of the Agreement shall be applied in accordance with the provisions of the relevant note thereto whether or not the importer so requests."

If developing countries make such a reservation, the Members shall consent to it under Article 21 of the Agreement.

5. Certain developing countries may have problems in the implementation of Article 1 of the Agreement insofar as it relates to importations into their countries by sole agents, sole distributors and sole concessionaires. If such problems arise in practice in developing country Members applying the Agreement, a study of this question shall be made, at the request of such Members, with a view to finding appropriate solutions.

6. Article 17 recognizes that in applying the Agreement, customs administrations may need to make enquiries concerning the truth or accuracy of any statement, document or declaration presented to them for customs valuation purposes. The Article thus acknowledges that enquiries may be made which are, for example, aimed at verifying that the elements of value declared or presented to customs in connection with a determination of customs value are complete and correct. Members, subject to their national laws and procedures, have the right to expect the full cooperation of importers in these enquiries.

7. The price actually paid or payable includes all payments actually made or to be made as a condition of sale of the imported goods, by the buyer to the seller, or by the buyer to a third party to satisfy an obligation of the seller.

AGREEMENT ON PRESHIPMENT INSPECTION

Members,

Noting that Ministers on 20 September 1986 agreed that the Uruguay Round of Multilateral Trade Negotiations shall aim to "bring about further liberalization and expansion of world trade", "strengthen the role of GATT" and "increase the responsiveness of the GATT system to the evolving international economic environment";

Noting that a number of developing country Members have recourse to preshipment inspection;

Recognizing the need of developing countries to do so for as long and in so far as it is necessary to verify the quality, quantity or price of imported goods;

Mindful that such programmes must be carried out without giving rise to unnecessary delays or unequal treatment;

Noting that this inspection is by definition carried out on the territory of exporter Members;

Recognizing the need to establish an agreed international framework of rights and obligations of both user Members and exporter Members;

Recognizing that the principles and obligations of GATT 1994 apply to those activities of preshipment inspection entities that are mandated by governments that are Members of the WTO;

Recognizing that it is desirable to provide transparency of the operation of preshipment inspection entities and of laws and regulations relating to preshipment inspection;

Desiring to provide for the speedy, effective and equitable resolution of disputes between exporters and preshipment inspection entities arising under this Agreement:

Hereby *agree* as follows:

Article 1

Coverage - Definitions

1. This Agreement shall apply to all preshipment inspection activities carried out on the territory of Members, whether such activities are contracted or mandated by the government, or any government body, of a Member.

2. The term "user Member" means a Member of which the government or any government body contracts for or mandates the use of preshipment inspection activities.

3. Preshipment inspection activities are all activities relating to the verification of the quality, the quantity, the price, including currency exchange rate and financial terms, and/or the customs classification of goods to be exported to the territory of the user Member.

4. The term "preshipment inspection entity" is any entity contracted or mandated by a Member to carry out preshipment inspection activities.[1]

Article 2

Obligations of User Members

Non-discrimination

1. User Members shall ensure that preshipment inspection activities are carried out in a non-discriminatory manner, and that the procedures and criteria employed in the conduct of these activities are objective and are applied on an equal basis to all exporters affected by such activities. They shall ensure uniform performance of inspection by all the inspectors of the preshipment inspection entities contracted or mandated by them.

Governmental Requirements

2. User Members shall ensure that in the course of preshipment inspection activities relating to their laws, regulations and requirements, the provisions of paragraph 4 of Article III of GATT 1994 are respected to the extent that these are relevant.

Site of Inspection

3. User Members shall ensure that all preshipment inspection activities, including the issuance of a Clean Report of Findings or a note of non-issuance, are performed in the customs territory from which the goods are exported or, if the inspection cannot be carried out in that customs territory given the complex nature of the products involved, or if both parties agree, in the customs territory in which the goods are manufactured.

Standards

4. User Members shall ensure that quantity and quality inspections are performed in accordance with the standards defined by the seller and the buyer in the purchase agreement and that, in the absence of such standards, relevant international standards[2] apply.

Transparency

5. User Members shall ensure that preshipment inspection activities are conducted in a transparent manner.

6. User Members shall ensure that, when initially contacted by exporters, preshipment inspection entities provide to the exporters a list of all the information which is necessary for the exporters to comply with inspection requirements. The preshipment inspection entities shall provide the actual information when so requested by exporters. This information shall include a reference to the laws and regulations of user Members relating to preshipment inspection activities, and shall also include the procedures and criteria used for inspection and for price and currency exchange-rate verification

[1] It is understood that this provision does not obligate Members to allow government entities of other Members to conduct preshipment inspection activities on their territory.

[2] An international standard is a standard adopted by a governmental or non-governmental body whose membership is open to all Members, one of whose recognized activities is in the field of standardization.

purposes, the exporters' rights vis-à-vis the inspection entities, and the appeals procedures set up under paragraph 21. Additional procedural requirements or changes in existing procedures shall not be applied to a shipment unless the exporter concerned is informed of these changes at the time the inspection date is arranged. However, in emergency situations of the types addressed by Articles XX and XXI of GATT 1994, such additional requirements or changes may be applied to a shipment before the exporter has been informed. This assistance shall not, however, relieve exporters from their obligations in respect of compliance with the import regulations of the user Members.

7. User Members shall ensure that the information referred to in paragraph 6 is made available to exporters in a convenient manner, and that the preshipment inspection offices maintained by preshipment inspection entities serve as information points where this information is available.

8. User Members shall publish promptly all applicable laws and regulations relating to preshipment inspection activities in such a manner as to enable other governments and traders to become acquainted with them.

Protection of Confidential Business Information

9. User Members shall ensure that preshipment inspection entities treat all information received in the course of the preshipment inspection as business confidential to the extent that such information is not already published, generally available to third parties, or otherwise in the public domain. User Members shall ensure that preshipment inspection entities maintain procedures to this end.

10. User Members shall provide information to Members on request on the measures they are taking to give effect to paragraph 9. The provisions of this paragraph shall not require any Member to disclose confidential information the disclosure of which would jeopardize the effectiveness of the preshipment inspection programmes or would prejudice the legitimate commercial interest of particular enterprises, public or private.

11. User Members shall ensure that preshipment inspection entities do not divulge confidential business information to any third party, except that preshipment inspection entities may share this information with the government entities that have contracted or mandated them. User Members shall ensure that confidential business information which they receive from preshipment inspection entities contracted or mandated by them is adequately safeguarded. Preshipment inspection entities shall share confidential business information with the governments contracting or mandating them only to the extent that such information is customarily required for letters of credit or other forms of payment or for customs, import licensing or exchange control purposes.

12. User Members shall ensure that preshipment inspection entities do not request exporters to provide information regarding:

(a) manufacturing data related to patented, licensed or undisclosed processes, or to processes for which a patent is pending;

(b) unpublished technical data other than data necessary to demonstrate compliance with technical regulations or standards;

(c) internal pricing, including manufacturing costs;

(d) profit levels;

(e) the terms of contracts between exporters and their suppliers unless it is not otherwise possible for the entity to conduct the inspection in question. In such cases, the entity shall only request the information necessary for this purpose.

13. The information referred to in paragraph 12, which preshipment inspection entities shall not otherwise request, may be released voluntarily by the exporter to illustrate a specific case.

Conflicts of Interest

14. User Members shall ensure that preshipment inspection entities, bearing in mind also the provisions on protection of confidential business information in paragraphs 9 through 13, maintain procedures to avoid conflicts of interest:

(a) between preshipment inspection entities and any related entities of the preshipment inspection entities in question, including any entities in which the latter have a financial or commercial interest or any entities which have a financial interest in the preshipment inspection entities in question, and whose shipments the preshipment inspection entities are to inspect;

(b) between preshipment inspection entities and any other entities, including other entities subject to preshipment inspection, with the exception of the government entities contracting or mandating the inspections;

(c) with divisions of preshipment inspection entities engaged in activities other than those required to carry out the inspection process.

Delays

15. User Members shall ensure that preshipment inspection entities avoid unreasonable delays in inspection of shipments. User Members shall ensure that, once a preshipment inspection entity and an exporter agree on an inspection date, the preshipment inspection entity conducts the inspection on that date unless it is rescheduled on a mutually agreed basis between the exporter and the preshipment inspection entity, or the preshipment inspection entity is prevented from doing so by the exporter or by *force majeure*.[3]

16. User Members shall ensure that, following receipt of the final documents and completion of the inspection, preshipment inspection entities, within five working days, either issue a Clean Report of Findings or provide a detailed written explanation specifying the reasons for non-issuance. User Members shall ensure that, in the latter case, preshipment inspection entities give exporters the opportunity to present their views in writing and, if exporters so request, arrange for re-inspection at the earliest mutually convenient date.

17. User Members shall ensure that, whenever so requested by the exporters, preshipment inspection entities undertake, prior to the date of physical inspection, a preliminary verification of price and, where applicable, of currency exchange rate, on the basis of the contract between exporter and importer, the *pro forma* invoice and, where applicable, the application for import authorization. User Members shall ensure that a price or currency exchange rate that has been accepted by a preshipment inspection entity on the basis of such preliminary verification is not withdrawn, providing the goods conform to the import documentation and/or import licence. They shall ensure that, after a preliminary

[3] It is understood that, for the purposes of this Agreement, "*force majeure*" shall mean "irresistible compulsion or coercion, unforeseeable course of events excusing from fulfilment of contract".

verification has taken place, preshipment inspection entities immediately inform exporters in writing either of their acceptance or of their detailed reasons for non-acceptance of the price and/or currency exchange rate.

18. User Members shall ensure that, in order to avoid delays in payment, preshipment inspection entities send to exporters or to designated representatives of the exporters a Clean Report of Findings as expeditiously as possible.

19. User Members shall ensure that, in the event of a clerical error in the Clean Report of Findings, preshipment inspection entities correct the error and forward the corrected information to the appropriate parties as expeditiously as possible.

Price Verification

20. User Members shall ensure that, in order to prevent over- and under-invoicing and fraud, preshipment inspection entities conduct price verification[4] according to the following guidelines:

(a) preshipment inspection entities shall only reject a contract price agreed between an exporter and an importer if they can demonstrate that their findings of an unsatisfactory price are based on a verification process which is in conformity with the criteria set out in subparagraphs (b) through (e);

(b) the preshipment inspection entity shall base its price comparison for the verification of the export price on the price(s) of identical or similar goods offered for export from the same country of exportation at or about the same time, under competitive and comparable conditions of sale, in conformity with customary commercial practices and net of any applicable standard discounts. Such comparison shall be based on the following:

(i) only prices providing a valid basis of comparison shall be used, taking into account the relevant economic factors pertaining to the country of importation and a country or countries used for price comparison;

(ii) the preshipment inspection entity shall not rely upon the price of goods offered for export to different countries of importation to arbitrarily impose the lowest price upon the shipment;

(iii) the preshipment inspection entity shall take into account the specific elements listed in subparagraph (c);

(iv) at any stage in the process described above, the preshipment inspection entity shall provide the exporter with an opportunity to explain the price;

(c) when conducting price verification, preshipment inspection entities shall make appropriate allowances for the terms of the sales contract and generally applicable adjusting factors pertaining to the transaction; these factors shall include but not be limited to the commercial level and quantity of the sale, delivery periods and conditions, price escalation clauses, quality specifications, special design features, special shipping or packing specifications, order size, spot sales, seasonal influences, licence or other

[4]The obligations of user Members with respect to the services of preshipment inspection entities in connection with customs valuation shall be the obligations which they have accepted in GATT 1994 and the other Multilateral Trade Agreements included in Annex 1A of the WTO Agreement.

intellectual property fees, and services rendered as part of the contract if these are not customarily invoiced separately; they shall also include certain elements relating to the exporter's price, such as the contractual relationship between the exporter and importer;

(d) the verification of transportation charges shall relate only to the agreed price of the mode of transport in the country of exportation as indicated in the sales contract;

(e) the following shall not be used for price verification purposes:

(i) the selling price in the country of importation of goods produced in such country;

(ii) the price of goods for export from a country other than the country of exportation;

(iii) the cost of production;

(iv) arbitrary or fictitious prices or values.

Appeals Procedures

21. User Members shall ensure that preshipment inspection entities establish procedures to receive, consider and render decisions concerning grievances raised by exporters, and that information concerning such procedures is made available to exporters in accordance with the provisions of paragraphs 6 and 7. User Members shall ensure that the procedures are developed and maintained in accordance with the following guidelines:

(a) preshipment inspection entities shall designate one or more officials who shall be available during normal business hours in each city or port in which they maintain a preshipment inspection administrative office to receive, consider and render decisions on exporters' appeals or grievances;

(b) exporters shall provide in writing to the designated official(s) the facts concerning the specific transaction in question, the nature of the grievance and a suggested solution;

(c) the designated official(s) shall afford sympathetic consideration to exporters' grievances and shall render a decision as soon as possible after receipt of the documentation referred to in subparagraph (b).

Derogation

22. By derogation to the provisions of Article 2, user Members shall provide that, with the exception of part shipments, shipments whose value is less than a minimum value applicable to such shipments as defined by the user Member shall not be inspected, except in exceptional circumstances. This minimum value shall form part of the information furnished to exporters under the provisions of paragraph 6.

Article 3

Obligations of Exporter Members

Non-discrimination

1. Exporter Members shall ensure that their laws and regulations relating to preshipment inspection activities are applied in a non-discriminatory manner.

Transparency

2. Exporter Members shall publish promptly all applicable laws and regulations relating to preshipment inspection activities in such a manner as to enable other governments and traders to become acquainted with them.

Technical Assistance

3. Exporter Members shall offer to provide to user Members, if requested, technical assistance directed towards the achievement of the objectives of this Agreement on mutually agreed terms.[5]

Article 4

Independent Review Procedures

Members shall encourage preshipment inspection entities and exporters mutually to resolve their disputes. However, two working days after submission of the grievance in accordance with the provisions of paragraph 21 of Article 2, either party may refer the dispute to independent review. Members shall take such reasonable measures as may be available to them to ensure that the following procedures are established and maintained to this end:

(a) these procedures shall be administered by an independent entity constituted jointly by an organization representing preshipment inspection entities and an organization representing exporters for the purposes of this Agreement;

(b) the independent entity referred to in subparagraph (a) shall establish a list of experts as follows:

(i) a section of members nominated by an organization representing preshipment inspection entities;

(ii) a section of members nominated by an organization representing exporters;

(iii) a section of independent trade experts, nominated by the independent entity referred to in subparagraph (a).

The geographical distribution of the experts on this list shall be such as to enable any disputes raised under these procedures to be dealt with expeditiously. This list shall be drawn up within two months of the entry into force of the WTO Agreement and

[5] It is understood that such technical assistance may be given on a bilateral, plurilateral or multilateral basis.

shall be updated annually. The list shall be publicly available. It shall be notified to the Secretariat and circulated to all Members;

(c) an exporter or preshipment inspection entity wishing to raise a dispute shall contact the independent entity referred to in subparagraph (a) and request the formation of a panel. The independent entity shall be responsible for establishing a panel. This panel shall consist of three members. The members of the panel shall be chosen so as to avoid unnecessary costs and delays. The first member shall be chosen from section (i) of the above list by the preshipment inspection entity concerned, provided that this member is not affiliated to that entity. The second member shall be chosen from section (ii) of the above list by the exporter concerned, provided that this member is not affiliated to that exporter. The third member shall be chosen from section (iii) of the above list by the independent entity referred to in subparagraph (a). No objections shall be made to any independent trade expert drawn from section (iii) of the above list;

(d) the independent trade expert drawn from section (iii) of the above list shall serve as the chairman of the panel. The independent trade expert shall take the necessary decisions to ensure an expeditious settlement of the dispute by the panel, for instance, whether the facts of the case require the panelists to meet and, if so, where such a meeting shall take place, taking into account the site of the inspection in question;

(e) if the parties to the dispute so agree, one independent trade expert could be selected from section (iii) of the above list by the independent entity referred to in subparagraph (a) to review the dispute in question. This expert shall take the necessary decisions to ensure an expeditious settlement of the dispute, for instance taking into account the site of the inspection in question;

(f) the object of the review shall be to establish whether, in the course of the inspection in dispute, the parties to the dispute have complied with the provisions of this Agreement. The procedures shall be expeditious and provide the opportunity for both parties to present their views in person or in writing;

(g) decisions by a three-member panel shall be taken by majority vote. The decision on the dispute shall be rendered within eight working days of the request for independent review and be communicated to the parties to the dispute. This time-limit could be extended upon agreement by the parties to the dispute. The panel or independent trade expert shall apportion the costs, based on the merits of the case;

(h) the decision of the panel shall be binding upon the preshipment inspection entity and the exporter which are parties to the dispute.

Article 5

Notification

Members shall submit to the Secretariat copies of the laws and regulations by which they put this Agreement into force, as well as copies of any other laws and regulations relating to preshipment inspection, when the WTO Agreement enters into force with respect to the Member concerned. No changes in the laws and regulations relating to preshipment inspection shall be enforced before such changes have been officially published. They shall be notified to the Secretariat immediately after their publication. The Secretariat shall inform the Members of the availability of this information.

Article 6

Review

At the end of the second year from the date of entry into force of the WTO Agreement and every three years thereafter, the Ministerial Conference shall review the provisions, implementation and operation of this Agreement, taking into account the objectives thereof and experience gained in its operation. As a result of such review, the Ministerial Conference may amend the provisions of the Agreement.

Article 7

Consultation

Members shall consult with other Members upon request with respect to any matter affecting the operation of this Agreement. In such cases, the provisions of Article XXII of GATT 1994, as elaborated and applied by the Dispute Settlement Understanding, are applicable to this Agreement.

Article 8

Dispute Settlement

Any disputes among Members regarding the operation of this Agreement shall be subject to the provisions of Article XXIII of GATT 1994, as elaborated and applied by the Dispute Settlement Understanding.

Article 9

Final Provisions

1. Members shall take the necessary measures for the implementation of the present Agreement.

2. Members shall ensure that their laws and regulations shall not be contrary to the provisions of this Agreement.

AGREEMENT ON RULES OF ORIGIN

Members,

Noting that Ministers on 20 September 1986 agreed that the Uruguay Round of Multilateral Trade Negotiations shall aim to "bring about further liberalization and expansion of world trade", "strengthen the role of GATT" and "increase the responsiveness of the GATT system to the evolving international economic environment";

Desiring to further the objectives of GATT 1994;

Recognizing that clear and predictable rules of origin and their application facilitate the flow of international trade;

Desiring to ensure that rules of origin themselves do not create unnecessary obstacles to trade;

Desiring to ensure that rules of origin do not nullify or impair the rights of Members under GATT 1994;

Recognizing that it is desirable to provide transparency of laws, regulations, and practices regarding rules of origin;

Desiring to ensure that rules of origin are prepared and applied in an impartial, transparent, predictable, consistent and neutral manner;

Recognizing the availability of a consultation mechanism and procedures for the speedy, effective and equitable resolution of disputes arising under this Agreement;

Desiring to harmonize and clarify rules of origin;

Hereby *agree* as follows:

PART I

DEFINITIONS AND COVERAGE

Article 1

Rules of Origin

1. For the purposes of Parts I to IV of this Agreement, rules of origin shall be defined as those laws, regulations and administrative determinations of general application applied by any Member to determine the country of origin of goods provided such rules of origin are not related to contractual or autonomous trade regimes leading to the granting of tariff preferences going beyond the application of paragraph 1 of Article I of GATT 1994.

2. Rules of origin referred to in paragraph 1 shall include all rules of origin used in non-preferential commercial policy instruments, such as in the application of: most-favoured-nation treatment under Articles I, II, III, XI and XIII of GATT 1994; anti-dumping and countervailing duties under Article VI of GATT 1994; safeguard measures under Article XIX of GATT 1994; origin marking requirements

under Article IX of GATT 1994; and any discriminatory quantitative restrictions or tariff quotas. They shall also include rules of origin used for government procurement and trade statistics.[1]

PART II

DISCIPLINES TO GOVERN THE APPLICATION OF RULES OF ORIGIN

Article 2

Disciplines During the Transition Period

Until the work programme for the harmonization of rules of origin set out in Part IV is completed, Members shall ensure that:

(a) when they issue administrative determinations of general application, the requirements to be fulfilled are clearly defined. In particular:

(i) in cases where the criterion of change of tariff classification is applied, such a rule of origin, and any exceptions to the rule, must clearly specify the subheadings or headings within the tariff nomenclature that are addressed by the rule;

(ii) in cases where the ad valorem percentage criterion is applied, the method for calculating this percentage shall also be indicated in the rules of origin;

(iii) in cases where the criterion of manufacturing or processing operation is prescribed, the operation that confers origin on the good concerned shall be precisely specified;

(b) notwithstanding the measure or instrument of commercial policy to which they are linked, their rules of origin are not used as instruments to pursue trade objectives directly or indirectly;

(c) rules of origin shall not themselves create restrictive, distorting, or disruptive effects on international trade. They shall not pose unduly strict requirements or require the fulfilment of a certain condition not related to manufacturing or processing, as a prerequisite for the determination of the country of origin. However, costs not directly related to manufacturing or processing may be included for the purposes of the application of an ad valorem percentage criterion consistent with subparagraph (a);

(d) the rules of origin that they apply to imports and exports are not more stringent than the rules of origin they apply to determine whether or not a good is domestic and shall not discriminate between other Members, irrespective of the affiliation of the manufacturers of the good concerned[2];

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[1] It is understood that this provision is without prejudice to those determinations made for purposes of defining "domestic industry" or "like products of domestic industry" or similar terms wherever they apply.

[2] With respect to rules of origin applied for the purposes of government procurement, this provision shall not create obligations additional to those already assumed by Members under GATT 1994.

(e) their rules of origin are administered in a consistent, uniform, impartial and reasonable manner;

(f) their rules of origin are based on a positive standard. Rules of origin that state what does not confer origin (negative standard) are permissible as part of a clarification of a positive standard or in individual cases where a positive determination of origin is not necessary;

(g) their laws, regulations, judicial decisions and administrative rulings of general application relating to rules of origin are published as if they were subject to, and in accordance with, the provisions of paragraph 1 of Article X of GATT 1994;

(h) upon the request of an exporter, importer or any person with a justifiable cause, assessments of the origin they would accord to a good are issued as soon as possible but no later than 150 days[1] after a request for such an assessment provided that all necessary elements have been submitted. Requests for such assessments shall be accepted before trade in the good concerned begins and may be accepted at any later point in time. Such assessments shall remain valid for three years provided that the facts and conditions, including the rules of origin, under which they have been made remain comparable. Provided that the parties concerned are informed in advance, such assessments will no longer be valid when a decision contrary to the assessment is made in a review as referred to in subparagraph (j). Such assessments shall be made publicly available subject to the provisions of subparagraph (k);

(i) when introducing changes to their rules of origin or new rules of origin, they shall not apply such changes retroactively as defined in, and without prejudice to, their laws or regulations;

(j) any administrative action which they take in relation to the determination of origin is reviewable promptly by judicial, arbitral or administrative tribunals or procedures, independent of the authority issuing the determination, which can effect the modification or reversal of the determination;

(k) all information that is by nature confidential or that is provided on a confidential basis for the purpose of the application of rules of origin is treated as strictly confidential by the authorities concerned, which shall not disclose it without the specific permission of the person or government providing such information, except to the extent that it may be required to be disclosed in the context of judicial proceedings

Article 3

Disciplines after the Transition Period

Taking into account the aim of all Members to achieve, as a result of the harmonization work programme set out in Part IV, the establishment of harmonized rules of origin, Members shall ensure, upon the implementation of the results of the harmonization work programme, that:

(a) they apply rules of origin equally for all purposes as set out in Article 1;

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[1] In respect of requests made during the first year from the date of entry into force of the WTO Agreement, Members shall only be required to issue these assessments as soon as possible

(b) under their rules of origin, the country to be determined as the origin of a particular good is either the country where the good has been wholly obtained or, when more than one country is concerned in the production of the good, the country where the last substantial transformation has been carried out;

(c) the rules of origin that they apply to imports and exports are not more stringent than the rules of origin they apply to determine whether or not a good is domestic and shall not discriminate between other Members, irrespective of the affiliation of the manufacturers of the good concerned;

(d) the rules of origin are administered in a consistent, uniform, impartial and reasonable manner;

(e) their laws, regulations, judicial decisions and administrative rulings of general application relating to rules of origin are published as if they were subject to, and in accordance with, the provisions of paragraph 1 of Article X of GATT 1994;

(f) upon the request of an exporter, importer or any person with a justifiable cause, assessments of the origin they would accord to a good are issued as soon as possible but no later than 150 days after a request for such an assessment provided that all necessary elements have been submitted. Requests for such assessments shall be accepted before trade in the good concerned begins and may be accepted at any later point in time. Such assessments shall remain valid for three years provided that the facts and conditions, including the rules of origin, under which they have been made remain comparable. Provided that the parties concerned are informed in advance, such assessments will no longer be valid when a decision contrary to the assessment is made in a review as referred to in subparagraph (h). Such assessments shall be made publicly available subject to the provisions of subparagraph (i);

(g) when introducing changes to their rules of origin or new rules of origin, they shall not apply such changes retroactively as defined in, and without prejudice to, their laws or regulations;

(h) any administrative action which they take in relation to the determination of origin is reviewable promptly by judicial, arbitral or administrative tribunals or procedures, independent of the authority issuing the determination, which can effect the modification or reversal of the determination;

(i) all information which is by nature confidential or which is provided on a confidential basis for the purpose of the application of rules of origin is treated as strictly confidential by the authorities concerned, which shall not disclose it without the specific permission of the person or government providing such information, except to the extent that it may be required to be disclosed in the context of judicial proceedings.

PART III

PROCEDURAL ARRANGEMENTS ON NOTIFICATION, REVIEW, CONSULTATION AND DISPUTE SETTLEMENT

Article 4

Institutions

1. There is hereby established a Committee on Rules of Origin (referred to in this Agreement as "the Committee") composed of the representatives from each of the Members. The Committee shall elect its own Chairman and shall meet as necessary, but not less than once a year, for the purpose of affording Members the opportunity to consult on matters relating to the operation of Parts I, II, III and IV or the furtherance of the objectives set out in these Parts and to carry out such other responsibilities assigned to it under this Agreement or by the Council for Trade in Goods. Where appropriate, the Committee shall request information and advice from the Technical Committee referred to in paragraph 2 on matters related to this Agreement. The Committee may also request such other work from the Technical Committee as it considers appropriate for the furtherance of the above-mentioned objectives of this Agreement. The WTO Secretariat shall act as the secretariat to the Committee.

2. There shall be established a Technical Committee on Rules of Origin (referred to in this Agreement as "the Technical Committee") under the auspices of the Customs Co-operation Council (CCC) as set out in Annex I. The Technical Committee shall carry out the technical work called for in Part IV and prescribed in Annex I. Where appropriate, the Technical Committee shall request information and advice from the Committee on matters related to this Agreement. The Technical Committee may also request such other work from the Committee as it considers appropriate for the furtherance of the above-mentioned objectives of the Agreement. The CCC Secretariat shall act as the secretariat to the Technical Committee.

Article 5

Information and Procedures for Modification and Introduction of New Rules of Origin

1. Each Member shall provide to the Secretariat, within 90 days after the date of entry into force of the WTO Agreement for it, its rules of origin, judicial decisions, and administrative rulings of general application relating to rules of origin in effect on that date. If by inadvertence a rule of origin has not been provided, the Member concerned shall provide it immediately after this fact becomes known. Lists of information received and available with the Secretariat shall be circulated to the Members by the Secretariat.

2. During the period referred to in Article 2, Members introducing modifications, other than *de minimis* modifications, to their rules of origin or introducing new rules of origin, which, for the purpose of this Article, shall include any rule of origin referred to in paragraph 1 and not provided to the Secretariat, shall publish a notice to that effect at least 60 days before the entry into force of the modified or new rule in such a manner as to enable interested parties to become acquainted with the intention to modify a rule of origin or to introduce a new rule of origin, unless exceptional circumstances arise or threaten to arise for a Member. In these exceptional cases, the Member shall publish the modified or new rule as soon as possible.

Article 6

Review

1. The Committee shall review annually the implementation and operation of Parts II and III of this Agreement having regard to its objectives. The Committee shall annually inform the Council for Trade in Goods of developments during the period covered by such reviews.

2. The Committee shall review the provisions of Parts I, II and III and propose amendments as necessary to reflect the results of the harmonization work programme.

3. The Committee, in cooperation with the Technical Committee, shall set up a mechanism to consider and propose amendments to the results of the harmonization work programme, taking into account the objectives and principles set out in Article 9. This may include instances where the rules need to be made more operational or need to be updated to take into account new production processes as affected by any technological change.

Article 7

Consultation

The provisions of Article XXII of GATT 1994, as elaborated and applied by the Dispute Settlement Understanding, are applicable to this Agreement.

Article 8

Dispute Settlement

The provisions of Article XXII of GATT 1994, as elaborated and applied by the Dispute Settlement Understanding, are applicable to this Agreement.

PART IV

HARMONIZATION OF RULES OF ORIGIN

Article 9

Objectives and Principles

1. With the objectives of harmonizing rules of origin and, *inter alia*, providing more certainty in the conduct of world trade, the Ministerial Conference shall undertake the work programme set out below in conjunction with the CCC, on the basis of the following principles:

(a) rules of origin should be applied equally for all purposes as set out in Article 1;

(b) rules of origin should provide for the country to be determined as the origin of a particular good to be either the country where the good has been wholly obtained or, when more than one country is concerned in the production of the good, the country where the last substantial transformation has been carried out;

(c) rules of origin should be objective, understandable and predictable;

(d) notwithstanding the measure or instrument to which they may be linked, rules of origin should not be used as instruments to pursue trade objectives directly or indirectly. They should not themselves create restrictive, distorting or disruptive effects on international trade. They should not pose unduly strict requirements or require the fulfilment of a certain condition not relating to manufacturing or processing as a prerequisite for the determination of the country of origin. However, costs not directly related to manufacturing or processing may be included for purposes of the application of an ad valorem percentage criterion;

(e) rules of origin should be administrable in a consistent, uniform, impartial and reasonable manner;

(f) rules of origin should be coherent;

(g) rules of origin should be based on a positive standard. Negative standards may be used to clarify a positive standard.

Work Programme

2. (a) The work programme shall be initiated as soon after the entry into force of the WTO Agreement as possible and will be completed within three years of initiation.

(b) The Committee and the Technical Committee provided for in Article 4 shall be the appropriate bodies to conduct this work.

(c) To provide for detailed input by the CCC, the Committee shall request the Technical Committee to provide its interpretations and opinions resulting from the work described below on the basis of the principles listed in paragraph 1. To ensure timely completion of the work programme for harmonization, such work shall be conducted on a product sector basis, as represented by various chapters or sections of the Harmonized System (HS) nomenclature.

(i) *Wholly Obtained and Minimal Operations or Processes*

The Technical Committee shall develop harmonized definitions of:

- the goods that are to be considered as being wholly obtained in one country. This work shall be as detailed as possible;

- minimal operations or processes that do not by themselves confer origin to a good.

The results of this work shall be submitted to the Committee within three months of receipt of the request from the Committee.

(ii) *Substantial Transformation - Change in Tariff Classification*

- The Technical Committee shall consider and elaborate upon, on the basis of the criterion of substantial transformation, the use of change in tariff subheading or heading when developing rules of origin for particular products or a product

sector and, if appropriate, the minimum change within the nomenclature that meets this criterion.

- The Technical Committee shall divide the above work on a product basis taking into account the chapters or sections of the HS nomenclature, so as to submit results of its work to the Committee at least on a quarterly basis. The Technical Committee shall complete the above work within one year and three months from receipt of the request of the Committee.

(iii) *Substantial Transformation - Supplementary Criteria*

Upon completion of the work under subparagraph (ii) for each product sector or individual product category where the exclusive use of the HS nomenclature does not allow for the expression of substantial transformation, the Technical Committee:

- shall consider and elaborate upon, on the basis of the criterion of substantial transformation, the use, in a supplementary or exclusive manner, of other requirements, including ad valorem percentages[4] and/or manufacturing or processing operations[5], when developing rules of origin for particular products or a product sector;

- may provide explanations for its proposals;

- shall divide the above work on a product basis taking into account the chapters or sections of the HS nomenclature, so as to submit results of its work to the Committee at least on a quarterly basis. The Technical Committee shall complete the above work within two years and three months of receipt of the request from the Committee.

Role of the Committee

3. On the basis of the principles listed in paragraph 1:

(a) the Committee shall consider the interpretations and opinions of the Technical Committee periodically in accordance with the time-frames provided in subparagraphs (i), (ii) and (iii) of paragraph 2(c) with a view to endorsing such interpretations and opinions. The Committee may request the Technical Committee to refine or elaborate its work and/or to develop new approaches. To assist the Technical Committee, the Committee should provide its reasons for requests for additional work and, as appropriate, suggest alternative approaches;

(b) upon completion of all the work identified in subparagraphs (i), (ii) and (iii) of paragraph 2(c), the Committee shall consider the results in terms of their overall coherence.

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[4] If the ad valorem criterion is prescribed, the method for calculating this percentage shall also be indicated in the rules of origin.

[5] If the criterion of manufacturing or processing operation is prescribed, the operation that confers origin on the product concerned shall be precisely specified.

Results of the Harmonization Work Programme and Subsequent Work

4. The Ministerial Conference shall establish the results of the harmonization work programme in an annex as an integral part of this Agreement.[6] The Ministerial Conference shall establish a time-frame for the entry into force of this annex.

[6] At the same time, consideration shall be given to arrangements concerning the settlement of disputes relating to customs classification

ANNEX I

TECHNICAL COMMITTEE ON RULES OF ORIGIN

Responsibilities

1. The ongoing responsibilities of the Technical Committee shall include the following:

(a) at the request of any member of the Technical Committee, to examine specific technical problems arising in the day-to-day administration of the rules of origin of Members and to give advisory opinions on appropriate solutions based upon the facts presented;

(b) to furnish information and advice on any matters concerning the origin determination of goods as may be requested by any Member or the Committee;

(c) to prepare and circulate periodic reports on the technical aspects of the operation and status of this Agreement; and

(d) to review annually the technical aspects of the implementation and operation of Parts II and III.

2. The Technical Committee shall exercise such other responsibilities as the Committee may request of it.

3. The Technical Committee shall attempt to conclude its work on specific matters, especially those referred to it by Members or the Committee, in a reasonably short period of time.

Representation

4. Each Member shall have the right to be represented on the Technical Committee. Each Member may nominate one delegate and one or more alternates to be its representatives on the Technical Committee. Such a Member so represented on the Technical Committee is hereinafter referred to as a "member" of the Technical Committee. Representatives of members of the Technical Committee may be assisted by advisers at meetings of the Technical Committee. The WTO Secretariat may also attend such meetings with observer status.

5. Members of the CCC which are not Members of the WTO may be represented at meetings of the Technical Committee by one delegate and one or more alternates. Such representatives shall attend meetings of the Technical Committee as observers.

6. Subject to the approval of the Chairman of the Technical Committee, the Secretary-General of the CCC (referred to in this Annex as "the Secretary-General") may invite representatives of governments which are neither Members of the WTO nor members of the CCC and representatives of international governmental and trade organizations to attend meetings of the Technical Committee as observers.

7. Nominations of delegates, alternates and advisers to meetings of the Technical Committee shall be made to the Secretary-General.

Meetings

8. The Technical Committee shall meet as necessary, but not less than once a year.

Procedures

9. The Technical Committee shall elect its own Chairman and shall establish its own procedures.

ANNEX II

COMMON DECLARATION WITH REGARD TO PREFERENTIAL RULES OF ORIGIN

1. Recognizing that some Members apply preferential rules of origin, distinct from non-preferential rules of origin, the Members hereby *agree* as follows.

2. For the purposes of this Common Declaration, preferential rules of origin shall be defined as those laws, regulations and administrative determinations of general application applied by any Member to determine whether goods qualify for preferential treatment under contractual or autonomous trade regimes leading to the granting of tariff preferences going beyond the application of paragraph 1 of Article I of GATT 1994.

3. The Members *agree* to ensure that:

(a) when they issue administrative determinations of general application, the requirements to be fulfilled are clearly defined. In particular:

(i) in cases where the criterion of change of tariff classification is applied, such a preferential rule of origin, and any exceptions to the rule, must clearly specify the subheadings or headings within the tariff nomenclature that are addressed by the rule;

(ii) in cases where the ad valorem percentage criterion is applied, the method for calculating this percentage shall also be indicated in the preferential rules of origin;

(iii) in cases where the criterion of manufacturing or processing operation is prescribed, the operation that confers preferential origin shall be precisely specified;

(b) their preferential rules of origin are based on a positive standard. Preferential rules of origin that state what does not confer preferential origin (negative standard) are permissible as part of a clarification of a positive standard or in individual cases where a positive determination of preferential origin is not necessary;

(c) their laws, regulations, judicial decisions and administrative rulings of general application relating to preferential rules of origin are published as if they were subject to, and in accordance with, the provisions of paragraph 1 of Article X of GATT 1994;

(d) upon request of an exporter, importer or any person with a justifiable cause, assessments of the preferential origin they would accord to a good are issued as soon as possible but no later than 150 days[1] after a request for such an assessment provided that all necessary elements have been submitted. Requests for such assessments shall be accepted before trade in the good concerned begins and may be accepted at any later point in time. Such assessments shall remain valid for three years provided that the facts and conditions, including the preferential rules of origin, under which they have been made remain comparable. Provided that the parties concerned are informed in

[1] In respect of requests made during the first year from entry into force of the WTO Agreement, Members shall only be required to issue these assessments as soon as possible.

advance, such assessments will no longer be valid when a decision contrary to the assessment is made in a review as referred to in subparagraph (f). Such assessments shall be made publicly available subject to the provisions of subparagraph (g);

(e) when introducing changes to their preferential rules of origin or new preferential rules of origin, they shall not apply such changes retroactively as defined in, and without prejudice to, their laws or regulations;

(f) any administrative action which they take in relation to the determination of preferential origin is reviewable promptly by judicial, arbitral or administrative tribunals or procedures, independent of the authority issuing the determination, which can effect the modification or reversal of the determination;

(g) all information that is by nature confidential or that is provided on a confidential basis for the purpose of the application of preferential rules of origin is treated as strictly confidential by the authorities concerned, which shall not disclose it without the specific permission of the person or government providing such information, except to the extent that it may be required to be disclosed in the context of judicial proceedings.

4. Members *agree* to provide to the Secretariat promptly their preferential rules of origin, including a listing of the preferential arrangements to which they apply, judicial decisions, and administrative rulings of general application relating to their preferential rules of origin in effect on the date of entry into force of the WTO Agreement for the Member concerned. Furthermore, Members agree to provide any modifications to their preferential rules of origin or new preferential rules of origin as soon as possible to the Secretariat. Lists of information received and available with the Secretariat shall be circulated to the Members by the Secretariat.

AGREEMENT ON IMPORT LICENSING PROCEDURES

Members,

Having regard to the Multilateral Trade Negotiations;

Desiring to further the objectives of GATT 1994;

Taking into account the particular trade, development and financial needs of developing country Members;

Recognizing the usefulness of automatic import licensing for certain purposes and that such licensing should not be used to restrict trade;

Recognizing that import licensing may be employed to administer measures such as those adopted pursuant to the relevant provisions of GATT 1994;

Recognizing the provisions of GATT 1994 as they apply to import licensing procedures;

Desiring to ensure that import licensing procedures are not utilized in a manner contrary to the principles and obligations of GATT 1994;

Recognizing that the flow of international trade could be impeded by the inappropriate use of import licensing procedures;

Convinced that import licensing, particularly non-automatic import licensing, should be implemented in a transparent and predictable manner;

Recognizing that non-automatic licensing procedures should be no more administratively burdensome than absolutely necessary to administer the relevant measure;

Desiring to simplify, and bring transparency to, the administrative procedures and practices used in international trade, and to ensure the fair and equitable application and administration of such procedures and practices;

Desiring to provide for a consultative mechanism and the speedy, effective and equitable resolution of disputes arising under this Agreement;

Hereby *agree* as follows:

Article 1

General Provisions

1. For the purpose of this Agreement, import licensing is defined as administrative procedures[1] used for the operation of import licensing regimes requiring the submission of an application or other documentation (other than that required for customs purposes) to the relevant administrative body as a prior condition for importation into the customs territory of the importing Member.

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[1] Those procedures referred to as "licensing" as well as other similar administrative procedures.

2. Members shall ensure that the administrative procedures used to implement import licensing regimes are in conformity with the relevant provisions of GATT 1994 including its annexes and protocols, as interpreted by this Agreement, with a view to preventing trade distortions that may arise from an inappropriate operation of those procedures, taking into account the economic development purposes and financial and trade needs of developing country Members.[2]

3. The rules for import licensing procedures shall be neutral in application and administered in a fair and equitable manner.

4. (a) The rules and all information concerning procedures for the submission of applications, including the eligibility of persons, firms and institutions to make such applications, the administrative body(ies) to be approached, and the lists of products subject to the licensing requirement shall be published, in the sources notified to the Committee on Import Licensing provided for in Article 4 (referred to in this Agreement as "the Committee"), in such a manner as to enable governments[3] and traders to become acquainted with them. Such publication shall take place, whenever practicable, 21 days prior to the effective date of the requirement but in all events not later than such effective date. Any exception, derogations or changes in or from the rules concerning licensing procedures or the list of products subject to import licensing shall also be published in the same manner and within the same time periods as specified above. Copies of these publications shall also be made available to the Secretariat.

(b) Members which wish to make comments in writing shall be provided the opportunity to discuss these comments upon request. The concerned Member shall give due consideration to these comments and results of discussion.

5. Application forms and, where applicable, renewal forms shall be as simple as possible. Such documents and information as are considered strictly necessary for the proper functioning of the licensing regime may be required on application.

6. Application procedures and, where applicable, renewal procedures shall be as simple as possible. Applicants shall be allowed a reasonable period for the submission of licence applications. Where there is a closing date, this period should be at least 21 days with provision for extension in circumstances where insufficient applications have been received within this period. Applicants shall have to approach only one administrative body in connection with an application. Where it is strictly indispensable to approach more than one administrative body, applicants shall not need to approach more than three administrative bodies.

7. No application shall be refused for minor documentation errors which do not alter basic data contained therein. No penalty greater than necessary to serve merely as a warning shall be imposed in respect of any omission or mistake in documentation or procedures which is obviously made without fraudulent intent or gross negligence.

8. Licensed imports shall not be refused for minor variations in value, quantity or weight from the amount designated on the licence due to differences occurring during shipment, differences incidental to bulk loading and other minor differences consistent with normal commercial practice.

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[2] Nothing in this Agreement shall be taken as implying that the basis, scope or duration of a measure being implemented by a licensing procedure is subject to question under this Agreement.

[3] For the purpose of this Agreement, the term "governments" is deemed to include the competent authorities of the European Communities.

9. The foreign exchange necessary to pay for licensed imports shall be made available to licence holders on the same basis as to importers of goods not requiring import licences.

10. With regard to security exceptions, the provisions of Article XXI of GATT 1994 apply.

11. The provisions of this Agreement shall not require any Member to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.

Article 2

Automatic Import Licensing[4]

1. Automatic import licensing is defined as import licensing where approval of the application is granted in all cases, and which is in accordance with the requirements of paragraph 2(a).

2. The following provisions[5], in addition to those in paragraphs 1 through 11 of Article 1 and paragraph 1 of this Article, shall apply to automatic import licensing procedures:

(a) automatic licensing procedures shall not be administered in such a manner as to have restricting effects on imports subject to automatic licensing. Automatic licensing procedures shall be deemed to have trade-restricting effects unless, *inter alia*:

(i) any person, firm or institution which fulfils the legal requirements of the importing Member for engaging in import operations involving products subject to automatic licensing is equally eligible to apply for and to obtain import licences;

(ii) applications for licences may be submitted on any working day prior to the customs clearance of the goods;

(iii) applications for licences when submitted in appropriate and complete form are approved immediately on receipt, to the extent administratively feasible, but within a maximum of 10 working days;

(b) Members recognize that automatic import licensing may be necessary whenever other appropriate procedures are not available. Automatic import licensing may be maintained as long as the circumstances which gave rise to its introduction prevail and as long as its underlying administrative purposes cannot be achieved in a more appropriate way.

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[4]Those import licensing procedures requiring a security which have no restrictive effects on imports are to be considered as falling within the scope of paragraphs 1 and 2.

[5]A developing country Member, other than a developing country Member which was a Party to the Agreement on Import Licensing Procedures done on 12 April 1979, which has specific difficulties with the requirements of subparagraphs (a)(ii) and (a)(iii) may, upon notification to the Committee, delay the application of these subparagraphs by not more than two years from the date of entry into force of the WTO Agreement for such Member.

Article 3

Non Automatic Import Licensing

1. The following provisions, in addition to those in paragraphs 1 through 11 of Article 1, shall apply to non-automatic import licensing procedures. Non-automatic import licensing procedures are defined as import licensing not falling within the definition contained in paragraph 1 of Article 2.

2. Non-automatic licensing shall not have trade-restrictive or -distortive effects on imports additional to those caused by the imposition of the restriction. Non-automatic licensing procedures shall correspond in scope and duration to the measure they are used to implement, and shall be no more administratively burdensome than absolutely necessary to administer the measure.

3. In the case of licensing requirements for purposes other than the implementation of quantitative restrictions, Members shall publish sufficient information for other Members and traders to know the basis for granting and/or allocating licences.

4. Where a Member provides the possibility for persons, firms or institutions to request exceptions or derogations from a licensing requirement, it shall include this fact in the information published under paragraph 4 of Article 1 as well as information on how to make such a request and, to the extent possible, an indication of the circumstances under which requests would be considered.

5. (a) Members shall provide, upon the request of any Member having an interest in the trade in the product concerned, all relevant information concerning:

(i) the administration of the restrictions;

(ii) the import licences granted over a recent period;

(iii) the distribution of such licences among supplying countries;

(iv) where practicable, import statistics (i.e. value and/or volume) with respect to the products subject to import licensing. Developing country Members would not be expected to take additional administrative or financial burdens on this account;

(b) Members administering quotas by means of licensing shall publish the overall amount of quotas to be applied by quantity and/or value, the opening and closing dates of quotas, and any change thereof, within the time periods specified in paragraph 4 of Article 1 and in such a manner as to enable governments and traders to become acquainted with them;

(c) in the case of quotas allocated among supplying countries, the Member applying the restrictions shall promptly inform all other Members having an interest in supplying the product concerned of the shares in the quota currently allocated, by quantity or value, to the various supplying countries and shall publish this information within the time periods specified in paragraph 4 of Article 1 and in such a manner as to enable governments and traders to become acquainted with them;

(d) where situations arise which make it necessary to provide for an early opening date of quotas, the information referred to in paragraph 4 of Article 1 should be published

within the time-periods specified in paragraph 4 of Article 1 and in such a manner as to enable governments and traders to become acquainted with them;

(e) any person, firm or institution which fulfils the legal and administrative requirements of the importing Member shall be equally eligible to apply and to be considered for a licence. If the licence application is not approved, the applicant shall, on request, be given the reason therefor and shall have a right of appeal or review in accordance with the domestic legislation or procedures of the importing Member;

(f) the period for processing applications shall, except when not possible for reasons outside the control of the Member, not be longer than 30 days if applications are considered as and when received, i.e. on a first-come first-served basis, and no longer than 60 days if all applications are considered simultaneously. In the latter case, the period for processing applications shall be considered to begin on the day following the closing date of the announced application period;

(g) the period of licence validity shall be of reasonable duration and not be so short as to preclude imports. The period of licence validity shall not preclude imports from distant sources, except in special cases where imports are necessary to meet unforeseen short-term requirements;

(h) when administering quotas, Members shall not prevent importation from being effected in accordance with the issued licences, and shall not discourage the full utilization of quotas;

(i) when issuing licences, Members shall take into account the desirability of issuing licences for products in economic quantities;

(j) in allocating licences, the Member should consider the import performance of the applicant. In this regard, consideration should be given as to whether licences issued to applicants in the past have been fully utilized during a recent representative period. In cases where licences have not been fully utilized, the Member shall examine the reasons for this and take these reasons into consideration when allocating new licences. Consideration shall also be given to ensuring a reasonable distribution of licences to new importers, taking into account the desirability of issuing licences for products in economic quantities. In this regard, special consideration should be given to those importers importing products originating in developing country Members and, in particular, the least-developed country Members;

(k) in the case of quotas administered through licences which are not allocated among supplying countries, licence holders[6] shall be free to choose the sources of imports. In the case of quotas allocated among supplying countries, the licence shall clearly stipulate the country or countries;

(l) in applying paragraph 8 of Article 1, compensating adjustments may be made in future licence allocations where imports exceeded a previous licence level.

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[6]Sometimes referred to as "quota holders".

Article 4

Institutions

There is hereby established a Committee on Import Licensing composed of representatives from each of the Members. The Committee shall elect its own Chairman and Vice-Chairman and shall meet as necessary for the purpose of affording Members the opportunity of consulting on any matters relating to the operation of this Agreement or the furtherance of its objectives.

Article 5

Notification

1. Members which institute licensing procedures or changes in these procedures shall notify the Committee of such within 60 days of publication.

2. Notifications of the institution of import licensing procedures shall include the following information:

(a) list of products subject to licensing procedures;

(b) contact point for information on eligibility;

(c) administrative body(ies) for submission of applications;

(d) date and name of publication where licensing procedures are published;

(e) indication of whether the licensing procedure is automatic or non-automatic according to definitions contained in Articles 2 and 3;

(f) in the case of automatic import licensing procedures, their administrative purpose;

(g) in the case of non-automatic import licensing procedures, indication of the measure being implemented through the licensing procedure; and

(h) expected duration of the licensing procedure if this can be estimated with some probability, and if not, reason why this information cannot be provided.

3. Notifications of changes in import licensing procedures shall indicate the elements mentioned above, if changes in such occur.

4. Members shall notify the Committee of the publication(s) in which the information required in paragraph 4 of Article 1 will be published.

5. Any interested Member which considers that another Member has not notified the institution of a licensing procedure or changes therein in accordance with the provisions of paragraphs 1 through 3 may bring the matter to the attention of such other Member. If notification is not made promptly thereafter, such Member may itself notify the licensing procedure or changes therein, including all relevant and available information.

Article 6

Consultation and Dispute Settlement

Consultations and the settlement of disputes with respect to any matter affecting the operation of this Agreement shall be subject to the provisions of Articles XXII and XXIII of GATT 1994, as elaborated and applied by the Dispute Settlement Understanding.

Article 7

Review

1. The Committee shall review as necessary, but at least once every two years, the implementation and operation of this Agreement, taking into account the objectives thereof, and the rights and obligations contained therein.

2. As a basis for the Committee review, the Secretariat shall prepare a factual report based on information provided under Article 5, responses to the annual questionnaire on import licensing procedures[7] and other relevant reliable information which is available to it. This report shall provide a synopsis of the aforementioned information, in particular indicating any changes or developments during the period under review, and including any other information as agreed by the Committee.

3. Members undertake to complete the annual questionnaire on import licensing procedures promptly and in full.

4. The Committee shall inform the Council for Trade in Goods of developments during the period covered by such reviews.

Article 8

Final Provisions

Reservations

1. Reservations may not be entered in respect of any of the provisions of this Agreement without the consent of the other Members.

Domestic Legislation

2. (a) Each Member shall ensure, not later than the date of entry into force of the WTO Agreement for it, the conformity of its laws, regulations and administrative procedures with the provisions of this Agreement.

(b) Each Member shall inform the Committee of any changes in its laws and regulations relevant to this Agreement and in the administration of such laws and regulations.

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[7]Originally circulated as GATT 1947 document L/3515 of 21 March 1971.

AGREEMENT ON SUBSIDIES AND COUNTERVAILING MEASURES

Members hereby *agree* as follows:

PART I: GENERAL PROVISIONS

Article 1

Definition of a Subsidy

1.1 For the purpose of this Agreement, a subsidy shall be deemed to exist if:

(a)(1) there is a financial contribution by a government or any public body within the territory of a Member (referred to in this Agreement as "government"), i.e. where:

(i) a government practice involves a direct transfer of funds (e.g. grants, loans, and equity infusion), potential direct transfers of funds or liabilities (e.g. loan guarantees);

(ii) government revenue that is otherwise due is foregone or not collected (e.g. fiscal incentives such as tax credits)[1];

(iii) a government provides goods or services other than general infrastructure, or purchases goods;

(iv) a government makes payments to a funding mechanism, or entrusts or directs a private body to carry out one or more of the type of functions illustrated in (i) to (iii) above which would normally be vested in the government and the practice, in no real sense, differs from practices normally followed by governments;

or

(a)(2) there is any form of income or price support in the sense of Article XVI of GATT 1994;

and

(b) a benefit is thereby conferred.

1.2 A subsidy as defined in paragraph 1 shall be subject to the provisions of Part II or shall be subject to the provisions of Part III or V only if such a subsidy is specific in accordance with the provisions of Article 2.

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[1]In accordance with the provisions of Article XVI of GATT 1994 (Note to Article XVI) and the provisions of Annexes I through III of this Agreement, the exemption of an exported product from duties or taxes borne by the like product when destined for domestic consumption, or the remission of such duties or taxes in amounts not in excess of those which have accrued, shall not be deemed to be a subsidy.

Article 2

Specificity

2.1 In order to determine whether a subsidy, as defined in paragraph 1 of Article 1, is specific to an enterprise or industry or group of enterprises or industries (referred to in this Agreement as "certain enterprises") within the jurisdiction of the granting authority, the following principles shall apply:

(a) Where the granting authority, or the legislation pursuant to which the granting authority operates, explicitly limits access to a subsidy to certain enterprises, such subsidy shall be specific.

(b) Where the granting authority, or the legislation pursuant to which the granting authority operates, establishes objective criteria or conditions[2] governing the eligibility for, and the amount of, a subsidy, specificity shall not exist, provided that the eligibility is automatic and that such criteria and conditions are strictly adhered to. The criteria or conditions must be clearly spelled out in law, regulation, or other official document, so as to be capable of verification.

(c) If, notwithstanding any appearance of non-specificity resulting from the application of the principles laid down in subparagraphs (a) and (b), there are reasons to believe that the subsidy may in fact be specific, other factors may be considered. Such factors are: use of a subsidy programme by a limited number of certain enterprises, predominant use by certain enterprises, the granting of disproportionately large amounts of subsidy to certain enterprises, and the manner in which discretion has been exercised by the granting authority in the decision to grant a subsidy.[3] In applying this subparagraph, account shall be taken of the extent of diversification of economic activities within the jurisdiction of the granting authority, as well as of the length of time during which the subsidy programme has been in operation.

2.2 A subsidy which is limited to certain enterprises located within a designated geographical region within the jurisdiction of the granting authority shall be specific. It is understood that the setting or change of generally applicable tax rates by all levels of government entitled to do so shall not be deemed to be a specific subsidy for the purposes of this Agreement.

2.3 Any subsidy falling under the provisions of Article 3 shall be deemed to be specific.

2.4 Any determination of specificity under the provisions of this Article shall be clearly substantiated on the basis of positive evidence.

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[2]Objective criteria or conditions, as used herein, mean criteria or conditions which are neutral, which do not favour certain enterprises over others, and which are economic in nature and horizontal in application, such as number of employees or size of enterprise.

[3]In this regard, in particular, information on the frequency with which applications for a subsidy are refused or approved and the reasons for such decisions shall be considered.

PART II: PROHIBITED SUBSIDIES

Article 3

Prohibition

3.1 Except as provided in the Agreement on Agriculture, the following subsidies, within the meaning of Article 1, shall be prohibited:

(a) subsidies contingent, in law or in fact[4], whether solely or as one of several other conditions, upon export performance, including those illustrated in Annex I[5];

(b) subsidies contingent, whether solely or as one of several other conditions, upon the use of domestic over imported goods.

3.2 A Member shall neither grant nor maintain subsidies referred to in paragraph 1.

Article 4

Remedies

4.1 Whenever a Member has reason to believe that a prohibited subsidy is being granted or maintained by another Member, such Member may request consultations with such other Member.

4.2 A request for consultations under paragraph 1 shall include a statement of available evidence with regard to the existence and nature of the subsidy in question.

4.3 Upon request for consultations under paragraph 1, the Member believed to be granting or maintaining the subsidy in question shall enter into such consultations as quickly as possible. The purpose of the consultations shall be to clarify the facts of the situation and to arrive at a mutually agreed solution.

4.4 If no mutually agreed solution has been reached within 30 days[6] of the request for consultations, any Member party to such consultations may refer the matter to the Dispute Settlement Body ("DSB") for the immediate establishment of a panel, unless the DSB decides by consensus not to establish a panel.

4.5 Upon its establishment, the panel may request the assistance of the Permanent Group of Experts[7] (referred to in this Agreement as the "PGE") with regard to whether the measure in question is a prohibited subsidy. If so requested, the PGE shall immediately review the evidence with regard to

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[4]This standard is met when the facts demonstrate that the granting of a subsidy, without having been made legally contingent upon export performance, is in fact tied to actual or anticipated exportation or export earnings. The mere fact that a subsidy is granted to enterprises which export shall not for that reason alone be considered to be an export subsidy within the meaning of this provision.

[5]Measures referred to in Annex I as not constituting export subsidies shall not be prohibited under this or any other provision of this Agreement.

[6]Any time-periods mentioned in this Article may be extended by mutual agreement.

[7]As established in Article 24.

the existence and nature of the measure in question and shall provide an opportunity for the Member applying or maintaining the measure to demonstrate that the measure in question is not a prohibited subsidy. The PGE shall report its conclusions to the panel within a time-limit determined by the panel. The PGE's conclusions on the issue of whether or not the measure in question is a prohibited subsidy shall be accepted by the panel without modification.

4.6 The panel shall submit its final report to the parties to the dispute. The report shall be circulated to all Members within 90 days of the date of the composition and the establishment of the panel's terms of reference.

4.7 If the measure in question is found to be a prohibited subsidy, the panel shall recommend that the subsidizing Member withdraw the subsidy without delay. In this regard, the panel shall specify in its recommendation the time-period within which the measure must be withdrawn.

4.8 Within 30 days of the issuance of the panel's report to all Members, the report shall be adopted by the DSB unless one of the parties to the dispute formally notifies the DSB of its decision to appeal or the DSB decides by consensus not to adopt the report.

4.9 Where a panel report is appealed, the Appellate Body shall issue its decision within 30 days from the date when the party to the dispute formally notifies its intention to appeal. When the Appellate Body considers that it cannot provide its report within 30 days, it shall inform the DSB in writing of the reasons for the delay together with an estimate of the period within which it will submit its report. In no case shall the proceedings exceed 60 days. The appellate report shall be adopted by the DSB and unconditionally accepted by the parties to the dispute unless the DSB decides by consensus not to adopt the appellate report within 20 days following its issuance to the Members.[9]

4.10 In the event the recommendation of the DSB is not followed within the time-period specified by the panel, which shall commence from the date of adoption of the panel's report or the Appellate Body's report, the DSB shall grant authorization to the complaining Member to take appropriate[9] countermeasures, unless the DSB decides by consensus to reject the request.

4.11 In the event a party to the dispute requests arbitration under paragraph 6 of Article 22 of the Dispute Settlement Understanding ("DSU"), the arbitrator shall determine whether the countermeasures are appropriate.[10]

4.12 For purposes of disputes conducted pursuant to this Article, except for time-periods specifically prescribed in this Article, time-periods applicable under the DSU for the conduct of such disputes shall be half the time prescribed therein.

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[9] If a meeting of the DSB is not scheduled during this period, such a meeting shall be held for this purpose.

[9] This expression is not meant to allow countermeasures that are disproportionate in light of the fact that the subsidies dealt with under these provisions are prohibited.

[10] This expression is not meant to allow countermeasures that are disproportionate in light of the fact that the subsidies dealt with under these provisions are prohibited.

PART III: ACTIONABLE SUBSIDIES

Article 5

Adverse Effects

No Member should cause, through the use of any subsidy referred to in paragraphs 1 and 2 of Article 1, adverse effects to the interests of other Members, i.e.:

(a) injury to the domestic industry of another Member[11];

(b) nullification or impairment of benefits accruing directly or indirectly to other Members under GATT 1994 in particular the benefits of concessions bound under Article II of GATT 1994[12];

(c) serious prejudice to the interests of another Member.[13]

This Article does not apply to subsidies maintained on agricultural products as provided in Article 13 of the Agreement on Agriculture.

Article 6

Serious Prejudice

6.1 Serious prejudice in the sense of paragraph (c) of Article 5 shall be deemed to exist in the case of:

(a) the total ad valorem subsidization[14] of a product exceeding 5 per cent[15];

(b) subsidies to cover operating losses sustained by an industry;

(c) subsidies to cover operating losses sustained by an enterprise, other than one-time measures which are non-recurrent and cannot be repeated for that enterprise and which are given merely to provide time for the development of long-term solutions and to avoid acute social problems;

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[11]The term "injury to the domestic industry" is used here in the same sense as it is used in Part V.

[12]The term "nullification or impairment" is used in this Agreement in the same sense as it is used in the relevant provisions of GATT 1994, and the existence of such nullification or impairment shall be established in accordance with the practice of application of these provisions.

[13]The term "serious prejudice to the interests of another Member" is used in this Agreement in the same sense as it is used in paragraph 1 of Article XVI of GATT 1994, and includes threat of serious prejudice.

[14]The total ad valorem subsidization shall be calculated in accordance with the provisions of Annex IV.

[15]Since it is anticipated that civil aircraft will be subject to specific multilateral rules, the threshold in this subparagraph does not apply to civil aircraft.

(d) direct forgiveness of debt, i.e. forgiveness of government-held debt, and grants to cover debt repayment.[16]

6.2 Notwithstanding the provisions of paragraph 1, serious prejudice shall not be found if the subsidizing Member demonstrates that the subsidy in question has not resulted in any of the effects enumerated in paragraph 3.

6.3 Serious prejudice in the sense of paragraph (c) of Article 5 may arise in any case where one or several of the following apply:

(a) the effect of the subsidy is to displace or impede the imports of a like product of another Member into the market of the subsidizing Member;

(b) the effect of the subsidy is to displace or impede the exports of a like product of another Member from a third country market;

(c) the effect of the subsidy is a significant price undercutting by the subsidized product as compared with the price of a like product of another Member in the same market or significant price suppression, price depression or lost sales in the same market;

(d) the effect of the subsidy is an increase in the world market share of the subsidizing Member in a particular subsidized primary product or commodity[17] as compared to the average share it had during the previous period of three years and this increase follows a consistent trend over a period when subsidies have been granted.

6.4 For the purpose of paragraph 3(b), the displacement or impeding of exports shall include any case in which, subject to the provisions of paragraph 7, it has been demonstrated that there has been a change in relative shares of the market to the disadvantage of the non-subsidized like product (over an appropriately representative period sufficient to demonstrate clear trends in the development of the market for the product concerned, which, in normal circumstances, shall be at least one year). "Change in relative shares of the market" shall include any of the following situations: *(a)* there is an increase in the market share of the subsidized product; *(b)* the market share of the subsidized product remains constant in circumstances in which, in the absence of the subsidy, it would have declined; *(c)* the market share of the subsidized product declines, but at a slower rate than would have been the case in the absence of the subsidy.

6.5 For the purpose of paragraph 3(c), price undercutting shall include any case in which such price undercutting has been demonstrated through a comparison of prices of the subsidized product with prices of a non-subsidized like product supplied to the same market. The comparison shall be made at the same level of trade and at comparable times, due account being taken of any other factor affecting price comparability. However, if such a direct comparison is not possible, the existence of price undercutting may be demonstrated on the basis of export unit values.

6.6 Each Member in the market of which serious prejudice is alleged to have arisen shall, subject to the provisions of paragraph 3 of Annex V, make available to the parties to a dispute arising under Article 7, and to the panel established pursuant to paragraph 4 of Article 7, all relevant information

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[16]Members recognize that where royalty-based financing for a civil aircraft programme is not being fully repaid due to the level of actual sales falling below the level of forecast sales, this does not in itself constitute serious prejudice for the purposes of this subparagraph.

[17]Unless other multilaterally agreed specific rules apply to the trade in the product or commodity in question.

that can be obtained as to the changes in market shares of the parties to the dispute as well as concerning prices of the products involved.

6.7 Displacement or impediment resulting in serious prejudice shall not arise under paragraph 3 where any of the following circumstances exist[18] during the relevant period:

(a) prohibition or restriction on exports of the like product from the complaining Member or on imports from the complaining Member into the third country market concerned;

(b) decision by an importing government operating a monopoly of trade or state trading in the product concerned to shift, for non-commercial reasons, imports from the complaining Member to another country or countries;

(c) natural disasters, strikes, transport disruptions or other *force majeure* substantially affecting production, qualities, quantities or prices of the product available for export from the complaining Member;

(d) existence of arrangements limiting exports from the complaining Member;

(e) voluntary decrease in the availability for export of the product concerned from the complaining Member (including, *inter alia*, a situation where firms in the complaining Member have been autonomously reallocating exports of this product to new markets);

(f) failure to conform to standards and other regulatory requirements in the importing country.

6.8 In the absence of circumstances referred to in paragraph 7, the existence of serious prejudice should be determined on the basis of the information submitted to or obtained by the panel, including information submitted in accordance with the provisions of Annex V.

6.9 This Article does not apply to subsidies maintained on agricultural products as provided in Article 13 of the Agreement on Agriculture.

Article 7

Remedies

7.1 Except as provided in Article 13 of the Agreement on Agriculture, whenever a Member has reason to believe that any subsidy referred to in Article 1, granted or maintained by another Member, results in injury to its domestic industry, nullification or impairment or serious prejudice, such Member may request consultations with such other Member.

7.2 A request for consultations under paragraph 1 shall include a statement of available evidence with regard to *(a)* the existence and nature of the subsidy in question, and *(b)* the injury caused to the

[18]The fact that certain circumstances are referred to in this paragraph does not, in itself, confer upon them any legal status in terms of either GATT 1994 or this Agreement. These circumstances must not be isolated, sporadic or otherwise insignificant.

domestic industry, or the nullification or impairment, or serious prejudice[19] caused to the interests of the Member requesting consultations.

7.3 Upon request for consultations under paragraph 1, the Member believed to be granting or maintaining the subsidy practice in question shall enter into such consultations as quickly as possible. The purpose of the consultations shall be to clarify the facts of the situation and to arrive at a mutually agreed solution.

7.4 If consultations do not result in a mutually agreed solution within 60 days[20], any Member party to such consultations may refer the matter to the DSB for the establishment of a panel, unless the DSB decides by consensus not to establish a panel. The composition of the panel and its terms of reference shall be established within 15 days from the date when it is established.

7.5 The panel shall review the matter and shall submit its final report to the parties to the dispute. The report shall be circulated to all Members within 120 days of the date of the composition and establishment of the panel's terms of reference.

7.6 Within 30 days of the issuance of the panel's report to all Members, the report shall be adopted by the DSB[21] unless one of the parties to the dispute formally notifies the DSB of its decision to appeal or the DSB decides by consensus not to adopt the report.

7.7 Where a panel report is appealed, the Appellate Body shall issue its decision within 60 days from the date when the party to the dispute formally notifies its intention to appeal. When the Appellate Body considers that it cannot provide its report within 60 days, it shall inform the DSB in writing of the reasons for the delay together with an estimate of the period within which it will submit its report. In no case shall the proceedings exceed 90 days. The appellate report shall be adopted by the DSB and unconditionally accepted by the parties to the dispute unless the DSB decides by consensus not to adopt the appellate report within 20 days following its issuance to the Members.[22]

7.8 Where a panel report or an Appellate Body report is adopted in which it is determined that any subsidy has resulted in adverse effects to the interests of another Member within the meaning of Article 5, the Member granting or maintaining such subsidy shall take appropriate steps to remove the adverse effects or shall withdraw the subsidy.

7.9 In the event the Member has not taken appropriate steps to remove the adverse effects of the subsidy or withdraw the subsidy within six months from the date when the DSB adopts the panel report or the Appellate Body report, and in the absence of agreement on compensation, the DSB shall grant authorization to the complaining Member to take countermeasures, commensurate with the degree and nature of the adverse effects determined to exist, unless the DSB decides by consensus to reject the request.

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[19] In the event that the request relates to a subsidy deemed to result in serious prejudice in terms of paragraph 1 of Article 6, the available evidence of serious prejudice may be limited to the available evidence as to whether the conditions of paragraph 1 of Article 6 have been met or not.

[20] Any time-periods mentioned in this Article may be extended by mutual agreement.

[21] If a meeting of the DSB is not scheduled during this period, such a meeting shall be held for this purpose.

[22] If a meeting of the DSB is not scheduled during this period, such a meeting shall be held for this purpose.

7.10 In the event that a party to the dispute requests arbitration under paragraph 6 of Article 22 of the DSU, the arbitrator shall determine whether the countermeasures are commensurate with the degree and nature of the adverse effects determined to exist.

PART IV: NON-ACTIONABLE SUBSIDIES

Article 8

Identification of Non-Actionable Subsidies

8.1 The following subsidies shall be considered as non-actionable[23]:

(a) subsidies which are not specific within the meaning of Article 2;

(b) subsidies which are specific within the meaning of Article 2 but which meet all of the conditions provided for in paragraphs 2(a), 2(b) or 2(c) below.

8.2 Notwithstanding the provisions of Parts III and V, the following subsidies shall be non-actionable:

(a) assistance for research activities conducted by firms or by higher education or research establishments on a contract basis with firms if:[24, 25, 26]

the assistance covers[27] not more than 75 per cent of the costs of industrial research[28] or 50 per cent of the costs of pre-competitive development activity[29, 30];

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[23]It is recognized that government assistance for various purposes is widely provided by Members and that the mere fact that such assistance may not qualify for non-actionable treatment under the provisions of this Article does not in itself restrict the ability of Members to provide such assistance.

[24]Since it is anticipated that civil aircraft will be subject to specific multilateral rules, the provisions of this subparagraph do not apply to that product.

[25]Not later than 18 months after the date of entry into force of the WTO Agreement, the Committee on Subsidies and Countervailing Measures provided for in Article 24 (referred to in this Agreement as "the Committee") shall review the operation of the provisions of subparagraph 2(a) with a view to making all necessary modifications to improve the operation of these provisions. In its consideration of possible modifications, the Committee shall carefully review the definitions of the categories set forth in this subparagraph in the light of the experience of Members in the operation of research programmes and the work in other relevant international institutions.

[26]The provisions of this Agreement do not apply to fundamental research activities undependently conducted by higher education or research establishments. The term "fundamental research" means an enlargement of general scientific and technical knowledge not linked to industrial or commercial objectives.

[27]The allowable levels of non-actionable assistance referred to in this subparagraph shall be established by reference to the total eligible costs incurred over the duration of an individual project.

[28]The term "industrial research" means planned search or critical investigation aimed at discovery of new knowledge, with the objective that such knowledge may be useful in developing new products, processes or services, or in bringing about a significant improvement to existing products, processes or services.

[29]The term "pre-competitive development activity" means the translation of industrial research findings into a plan, blueprint or design for new, modified or improved products, processes or services whether intended for sale or use, including the creation of a first prototype which would not be capable of commercial use. It may further include the conceptual formulation and design of products, processes or services alternatives and initial demonstration or pilot projects, provided that these same

and provided that such assistance is limited exclusively to:

(i) costs of personnel (researchers, technicians and other supporting staff employed exclusively in the research activity);

(ii) costs of instruments, equipment, land and buildings used exclusively and permanently (except when disposed of on a commercial basis) for the research activity;

(iii) costs of consultancy and equivalent services used exclusively for the research activity, including bought-in research, technical knowledge, patents, etc.;

(iv) additional overhead costs incurred directly as a result of the research activity;

(v) other running costs (such as those of materials, supplies and the like), incurred directly as a result of the research activity.

(b) assistance to disadvantaged regions within the territory of a Member given pursuant to a general framework of regional development[31] and non-specific (within the meaning of Article 2) within eligible regions provided that:

(i) each disadvantaged region must be a clearly designated contiguous geographical area with a definable economic and administrative identity;

(ii) the region is considered as disadvantaged on the basis of neutral and objective criteria[32], indicating that the region's difficulties arise out of more than temporary circumstances; such criteria must be clearly spelled out in law, regulation, or other official document, so as to be capable of verification;

(iii) the criteria shall include a measurement of economic development which shall be based on at least one of the following factors:

- one of either income per capita or household income per capita, or GDP per capita, which must not be above 85 per cent of the average for the territory concerned;

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projects cannot be converted or used for industrial application or commercial exploitation. It does not include routine or periodic alterations to existing products, production lines, manufacturing processes, services, and other on-going operations even though those alterations may represent improvements.

[30] In the case of programmes which span industrial research and pre-competitive development activity, the allowable level of non-actionable assistance shall not exceed the simple average of the allowable levels of non-actionable assistance applicable to the above two categories, calculated on the basis of all eligible costs as set forth in items (i) to (v) of this subparagraph.

[31] A "general framework of regional development" means that regional subsidy programmes are part of an internally consistent and generally applicable regional development policy and that regional development subsidies are not granted in isolated geographical points having no, or virtually no, influence on the development of a region.

[32] "Neutral and objective criteria" means criteria which do not favour certain regions beyond what is appropriate for the elimination or reduction of regional disparities within the framework of the regional development policy. In this regard, regional subsidy programmes shall include ceilings on the amount of assistance which can be granted to each subsidized project. Such ceilings must be differentiated according to the different levels of development of assisted regions and must be expressed in terms of investment costs or cost of job creation. Within such ceilings, the distribution of assistance shall be sufficiently broad and even to avoid the predominant use of a subsidy by, or the granting of disproportionately large amounts of subsidy to, certain enterprises as provided for in Article 2.

- unemployment rate, which must be at least 110 per cent of the average for the territory concerned;

as measured over a three-year period; such measurement, however, may be a composite one and may include other factors.

(c) assistance to promote adaptation of existing facilities[41] to new environmental requirements imposed by law and/or regulations which result in greater constraints and financial burden on firms, provided that the assistance:

(i) is a one-time non-recurring measure; and

(ii) is limited to 20 per cent of the cost of adaptation; and

(iii) does not cover the cost of replacing and operating the assisted investment, which must be fully borne by firms; and

(iv) is directly linked to and proportionate to a firm's planned reduction of nuisances and pollution, and does not cover any manufacturing cost savings which may be achieved; and

(v) is available to all firms which can adopt the new equipment and/or production processes.

8.3 A subsidy programme for which the provisions of paragraph 2 are invoked shall be notified in advance of its implementation to the Committee in accordance with the provisions of Part VII. Any such notification shall be sufficiently precise to enable other Members to evaluate the consistency of the programme with the conditions and criteria provided for in the relevant provisions of paragraph 2. Members shall also provide the Committee with yearly updates of such notifications, in particular by supplying information on global expenditure for each programme, and on any modification of the programme. Other Members shall have the right to request information about individual cases of subsidization under a notified programme.[42]

8.4 Upon request of a Member, the Secretariat shall review a notification made pursuant to paragraph 3 and, where necessary, may require additional information from the subsidizing Member concerning the notified programme under review. The Secretariat shall report its findings to the Committee. The Committee shall, upon request, promptly review the findings of the Secretariat (or, if a review by the Secretariat has not been requested, the notification itself), with a view to determining whether the conditions and criteria laid down in paragraph 2 have not been met. The procedure provided for in this paragraph shall be completed at the latest at the first regular meeting of the Committee following the notification of a subsidy programme, provided that at least two months have elapsed between such notification and the regular meeting of the Committee. The review procedure described in this paragraph shall also apply, upon request, to substantial modifications of a programme notified in the yearly updates referred to in paragraph 3.

8.5 Upon the request of a Member, the determination by the Committee referred to in paragraph 4, or a failure by the Committee to make such a determination, as well as the violation, in individual

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[41]The term "existing facilities" means facilities which have been in operation for at least two years at the time when new environmental requirements are imposed.

[42]It is recognized that nothing in this notification provision requires the provision of confidential information, including confidential business information.

cases, of the conditions set out in a notified programme, shall be submitted to binding arbitration. The arbitration body shall present its conclusions to the Members within 120 days from the date when the matter was referred to the arbitration body. Except as otherwise provided in this paragraph, the DSU shall apply to arbitrations conducted under this paragraph.

Article 9

Consultations and Authorized Remedies

9.1 If, in the course of implementation of a programme referred to in paragraph 2 of Article 8, notwithstanding the fact that the programme is consistent with the criteria laid down in that paragraph, a Member has reasons to believe that this programme has resulted in serious adverse effects to the domestic industry of that Member, such as to cause damage which would be difficult to repair, such Member may request consultations with the Member granting or maintaining the subsidy.

9.2 Upon request for consultations under paragraph 1, the Member granting or maintaining the subsidy programme in question shall enter into such consultations as quickly as possible. The purpose of the consultations shall be to clarify the facts of the situation and to arrive at a mutually acceptable solution.

9.3 If no mutually acceptable solution has been reached in consultations under paragraph 2 within 60 days of the request for such consultations, the requesting Member may refer the matter to the Committee.

9.4 Where a matter is referred to the Committee, the Committee shall immediately review the facts involved and the evidence of the effects referred to in paragraph 1. If the Committee determines that such effects exist, it may recommend to the subsidizing Member to modify this programme in such a way as to remove these effects. The Committee shall present its conclusions within 120 days from the date when the matter is referred to it under paragraph 3. In the event the recommendation is not followed within six months, the Committee shall authorize the requesting Member to take appropriate countermeasures commensurate with the nature and degree of the effects determined to exist.

PART V. COUNTERVAILING MEASURES

Article 10

Application of Article VI of GATT 1994[35]

Members shall take all necessary steps to ensure that the imposition of a countervailing duty[36] on any product of the territory of any Member imported into the territory of another Member is in accordance with the provisions of Article VI of GATT 1994 and the terms of this Agreement. Countervailing duties may only be imposed pursuant to investigations initiated[37] and conducted in accordance with the provisions of this Agreement and the Agreement on Agriculture.

Article 11

Initiation and Subsequent Investigation

11.1 Except as provided in paragraph 6, an investigation to determine the existence, degree and effect of any alleged subsidy shall be initiated upon a written application by or on behalf of the domestic industry.

11.2 An application under paragraph 1 shall include sufficient evidence of the existence of *(a)* a subsidy and, if possible, its amount, *(b)* injury within the meaning of Article VI of GATT 1994 as interpreted by this Agreement, and *(c)* a causal link between the subsidized imports and the alleged injury. Simple assertion, unsubstantiated by relevant evidence, cannot be considered sufficient to meet the requirements of this paragraph. The application shall contain such information as is reasonably available to the applicant on the following:

(i) the identity of the applicant and a description of the volume and value of the domestic production of the like product by the applicant. Where a written application is made on behalf of the domestic industry, the application shall identify the industry on behalf of which the application is made by a list of all known domestic producers of the like product (or associations of domestic producers of the like product) and, to the extent possible, a description of the volume and value of domestic production of the like product accounted for by such producers;

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[35]The provisions of Part II or III may be invoked in parallel with the provisions of Part V, however, with regard to the effects of a particular subsidy in the domestic market of the importing Member, only one form of relief (either a countervailing duty, if the requirements of Part V are met, or a countermeasure under Articles 4 or 7) shall be available. The provisions of Parts III and V shall not be invoked regarding measures considered non-actionable in accordance with the provisions of Part IV. However, measures referred to in paragraph 1(a) of Article 8 may be investigated in order to determine whether or not they are specific within the meaning of Article 2. In addition, in the case of a subsidy referred to in paragraph 2 of Article 8 conferred pursuant to a programme which has not been notified in accordance with paragraph 3 of Article 8, the provisions of Part III or V may be invoked, but such subsidy shall be treated as non-actionable if it is found to conform to the standards set forth in paragraph 2 of Article 8.

[36]The term "countervailing duty" shall be understood to mean a special duty levied for the purpose of offsetting any subsidy bestowed directly or indirectly upon the manufacture, production or export of any merchandise, as provided for in paragraph 3 of Article VI of GATT 1994.

[37]The term "initiated" as used hereinafter means procedural action by which a Member formally commences an investigation as provided in Article 11.

(ii) a complete description of the allegedly subsidized product, the names of the country or countries of origin or export in question, the identity of each known exporter or foreign producer and a list of known persons importing the product in question;

(iii) evidence with regard to the existence, amount and nature of the subsidy in question;

(iv) evidence that alleged injury to a domestic industry is caused by subsidized imports through the effects of the subsidies; this evidence includes information on the evolution of the volume of the allegedly subsidized imports, the effect of these imports on prices of the like product in the domestic market and the consequent impact of the imports on the domestic industry, as demonstrated by relevant factors and indices having a bearing on the state of the domestic industry, such as those listed in paragraphs 2 and 4 of Article 15.

11.3 The authorities shall review the accuracy and adequacy of the evidence provided in the application to determine whether the evidence is sufficient to justify the initiation of an investigation.

11.4 An investigation shall not be initiated pursuant to paragraph 1 unless the authorities have determined, on the basis of an examination of the degree of support for, or opposition to, the application expressed[38] by domestic producers of the like product, that the application has been made by or on behalf of the domestic industry.[39] The application shall be considered to have been made "by or on behalf of the domestic industry" if it is supported by those domestic producers whose collective output constitutes more than 50 per cent of the total production of the like product produced by that portion of the domestic industry expressing either support for or opposition to the application. However, no investigation shall be initiated when domestic producers expressly supporting the application account for less than 25 per cent of total production of the like product produced by the domestic industry.

11.5 The authorities shall avoid, unless a decision has been made to initiate an investigation, any publicizing of the application for the initiation of an investigation.

11.6 If, in special circumstances, the authorities concerned decide to initiate an investigation without having received a written application by or on behalf of a domestic industry for the initiation of such investigation, they shall proceed only if they have sufficient evidence of the existence of a subsidy, injury and causal link, as described in paragraph 2, to justify the initiation of an investigation.

11.7 The evidence of both subsidy and injury shall be considered simultaneously *(a)* in the decision whether or not to initiate an investigation and *(b)* thereafter, during the course of the investigation, starting on a date not later than the earliest date on which in accordance with the provisions of this Agreement provisional measures may be applied.

11.8 In cases where products are not imported directly from the country of origin but are exported to the importing Member from an intermediate country, the provisions of this Agreement shall be fully applicable and the transaction or transactions shall, for the purposes of this Agreement, be regarded as having taken place between the country of origin and the importing Member.

11.9 An application under paragraph 1 shall be rejected and an investigation shall be terminated promptly as soon as the authorities concerned are satisfied that there is not sufficient evidence of either

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[38] In the case of fragmented industries involving an exceptionally large number of producers, authorities may determine support and opposition by using statistically valid sampling techniques.

[39] Members are aware that in the territory of certain Members employees of domestic producers of the like product or representatives of those employees may make or support an application for an investigation under paragraph 1.

subsidization or of injury to justify proceeding with the case. There shall be immediate termination in cases where the amount of a subsidy is *de minimis*, or where the volume of subsidized imports, actual or potential, or the injury, is negligible. For the purpose of this paragraph, the amount of the subsidy shall be considered to be *de minimis* if the subsidy is less than 1 per cent ad valorem.

11.10 An investigation shall not hinder the procedures of customs clearance.

11.11 Investigations shall, except in special circumstances, be concluded within one year, and in no case more than 18 months, after their initiation.

Article 12

Evidence

12.1 Interested Members and all interested parties in a countervailing duty investigation shall be given notice of the information which the authorities require and ample opportunity to present in writing all evidence which they consider relevant in respect of the investigation in question.

12.1.1 Exporters, foreign producers or interested Members receiving questionnaires used in a countervailing duty investigation shall be given at least 30 days for reply.[40] Due consideration should be given to any request for an extension of the 30-day period and, upon cause shown, such an extension should be granted whenever practicable.

12.1.2 Subject to the requirement to protect confidential information, evidence presented in writing by one interested Member or interested party shall be made available promptly to other interested Members or interested parties participating in the investigation.

12.1.3 As soon as an investigation has been initiated, the authorities shall provide the full text of the written application received under paragraph 1 of Article 11 to the known exporters[41] and to the authorities of the exporting Member and shall make it available, upon request, to other interested parties involved. Due regard shall be paid to the protection of confidential information, as provided for in paragraph 4.

12.2 Interested Members and interested parties also shall have the right, upon justification, to present information orally. Where such information is provided orally, the interested Members and interested parties subsequently shall be required to reduce such submissions to writing. Any decision of the investigating authorities can only be based on such information and arguments as were on the written record of this authority and which were available to interested Members and interested parties participating in the investigation, due account having been given to the need to protect confidential information.

12.3 The authorities shall whenever practicable provide timely opportunities for all interested Members and interested parties to see all information that is relevant to the presentation of their cases, that is

[40] As a general rule, the time-limit for exporters shall be counted from the date of receipt of the questionnaire, which for this purpose shall be deemed to have been received one week from the date on which it was sent to the respondent or transmitted to the appropriate diplomatic representatives of the exporting Member or, in the case of a separate customs territory Member of the WTO, an official representative of the exporting territory.

[41] It being understood that where the number of exporters involved is particularly high, the full text of the application should instead be provided only to the authorities of the exporting Member or to the relevant trade association who then should forward copies to the exporters concerned.

not confidential as defined in paragraph 4, and that is used by the authorities in a countervailing duty investigation, and to prepare presentations on the basis of this information.

12.4 Any information which is by nature confidential (for example, because its disclosure would be of significant competitive advantage to a competitor or because its disclosure would have a significantly adverse effect upon a person supplying the information or upon a person from whom the supplier acquired the information), or which is provided on a confidential basis by parties to an investigation shall, upon good cause shown, be treated as such by the authorities. Such information shall not be disclosed without specific permission of the party submitting it.[42]

12.4.1 The authorities shall require interested Members or interested parties providing confidential information to furnish non-confidential summaries thereof. These summaries shall be in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence. In exceptional circumstances, such Members or parties may indicate that such information is not susceptible of summary. In such exceptional circumstances, a statement of the reasons why summarization is not possible must be provided.

12.4.2 If the authorities find that a request for confidentiality is not warranted and if the supplier of the information is either unwilling to make the information public or to authorize its disclosure in generalized or summary form, the authorities may disregard such information unless it can be demonstrated to their satisfaction from appropriate sources that the information is correct.[43]

12.5 Except in circumstances provided for in paragraph 7, the authorities shall during the course of an investigation satisfy themselves as to the accuracy of the information supplied by interested Members or interested parties upon which their findings are based.

12.6 The investigating authorities may carry out investigations in the territory of other Members as required, provided that they have notified in good time the Member in question and unless that Member objects to the investigation. Further, the investigating authorities may carry out investigations on the premises of a firm and may examine the records of a firm if *(a)* the firm so agrees and *(b)* the Member in question is notified and does not object. The procedures set forth in Annex VI shall apply to investigations on the premises of a firm. Subject to the requirement to protect confidential information, the authorities shall make the results of any such investigations available, or shall provide disclosure thereof pursuant to paragraph 8, to the firms to which they pertain and may make such results available to the applicants.

12.7 In cases in which any interested Member or interested party refuses access to, or otherwise does not provide, necessary information within a reasonable period or significantly impedes the investigation, preliminary and final determinations, affirmative or negative, may be made on the basis of the facts available.

12.8 The authorities shall, before a final determination is made, inform all interested Members and interested parties of the essential facts under consideration which form the basis for the decision whether to apply definitive measures. Such disclosure should take place in sufficient time for the parties to defend their interests.

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[42]Members are aware that in the territory of certain Members disclosure pursuant to a narrowly-drawn protective order may be required.

[43]Members agree that requests for confidentiality should not be arbitrarily rejected. Members further agree that the investigating authority may request the waiving of confidentiality only regarding information relevant to the proceedings.

12.9 For the purposes of this Agreement, "interested parties" shall include:

(i) an exporter or foreign producer or the importer of a product subject to investigation, or a trade or business association a majority of the members of which are producers, exporters or importers of such product; and

(ii) a producer of the like product in the importing Member or a trade and business association a majority of the members of which produce the like product in the territory of the importing Member.

This list shall not preclude Members from allowing domestic or foreign parties other than those mentioned above to be included as interested parties.

12.10 The authorities shall provide opportunities for industrial users of the product under investigation, and for representative consumer organizations in cases where the product is commonly sold at the retail level, to provide information which is relevant to the investigation regarding subsidization, injury and causality.

12.11 The authorities shall take due account of any difficulties experienced by interested parties, in particular small companies, in supplying information requested, and shall provide any assistance practicable.

12.12 The procedures set out above are not intended to prevent the authorities of a Member from proceeding expeditiously with regard to initiating an investigation, reaching preliminary or final determinations, whether affirmative or negative, or from applying provisional or final measures, in accordance with relevant provisions of this Agreement.

Article 13

Consultations

13.1 As soon as possible after an application under Article 11 is accepted, and in any event before the initiation of any investigation, Members the products of which may be subject to such investigation shall be invited for consultations with the aim of clarifying the situation as to the matters referred to in paragraph 2 of Article 11 and arriving at a mutually agreed solution.

13.2 Furthermore, throughout the period of investigation, Members the products of which are the subject of the investigation shall be afforded a reasonable opportunity to continue consultations, with a view to clarifying the factual situation and to arriving at a mutually agreed solution.[41]

13.3 Without prejudice to the obligation to afford reasonable opportunity for consultation, these provisions regarding consultations are not intended to prevent the authorities of a Member from proceeding expeditiously with regard to initiating the investigation, reaching preliminary or final determinations, whether affirmative or negative, or from applying provisional or final measures, in accordance with the provisions of this Agreement.

13.4 The Member which intends to initiate any investigation or is conducting such an investigation shall permit, upon request, the Member or Members the products of which are subject to such

[41] It is particularly important, in accordance with the provisions of this paragraph, that no affirmative determination whether preliminary or final be made without reasonable opportunity for consultations having been given. Such consultations may establish the basis for proceeding under the provisions of Part II, III or X.

investigation access to non-confidential evidence, including the non-confidential summary of confidential data being used for initiating or conducting the investigation.

Article 14

Calculation of the Amount of a Subsidy in Terms of the Benefit to the Recipient

For the purpose of Part V, any method used by the investigating authority to calculate the benefit to the recipient conferred pursuant to paragraph 1 of Article 1 shall be provided for in the national legislation or implementing regulations of the Member concerned and its application to each particular case shall be transparent and adequately explained. Furthermore, any such method shall be consistent with the following guidelines:

(a) government provision of equity capital shall not be considered as conferring a benefit, unless the investment decision can be regarded as inconsistent with the usual investment practice (including for the provision of risk capital) of private investors in the territory of that Member;

(b) a loan by a government shall not be considered as conferring a benefit, unless there is a difference between the amount that the firm receiving the loan pays on the government loan and the amount the firm would pay on a comparable commercial loan which the firm could actually obtain on the market. In this case the benefit shall be the difference between these two amounts;

(c) a loan guarantee by a government shall not be considered as conferring a benefit, unless there is a difference between the amount that the firm receiving the guarantee pays on a loan guaranteed by the government and the amount that the firm would pay on a comparable commercial loan absent the government guarantee. In this case the benefit shall be the difference between these two amounts adjusted for any differences in fees;

(d) the provision of goods or services or purchase of goods by a government shall not be considered as conferring a benefit unless the provision is made for less than adequate remuneration, or the purchase is made for more than adequate remuneration. The adequacy of remuneration shall be determined in relation to prevailing market conditions for the good or service in question in the country of provision or purchase (including price, quality, availability, marketability, transportation and other conditions of purchase or sale).

Article 15

Determination of Injury[45]

15.1 A determination of injury for purposes of Article VI of GATT 1994 shall be based on positive evidence and involve an objective examination of both *(a)* the volume of the subsidized imports and

[45]Under this Agreement the term "injury" shall, unless otherwise specified, be taken to mean material injury to a domestic industry, threat of material injury to a domestic industry or material retardation of the establishment of such an industry and shall be interpreted in accordance with the provisions of this Article.

the effect of the subsidized imports on prices in the domestic market for like products[46] and *(b)* the consequent impact of these imports on the domestic producers of such products.

15.2 With regard to the volume of the subsidized imports, the investigating authorities shall consider whether there has been a significant increase in subsidized imports, either in absolute terms or relative to production or consumption in the importing Member. With regard to the effect of the subsidized imports on prices, the investigating authorities shall consider whether there has been a significant price undercutting by the subsidized imports as compared with the price of a like product of the importing Member, or whether the effect of such imports is otherwise to depress prices to a significant degree or to prevent price increases, which otherwise would have occurred, to a significant degree. No one or several of these factors can necessarily give decisive guidance.

15.3 Where imports of a product from more than one country are simultaneously subject to countervailing duty investigations, the investigating authorities may cumulatively assess the effects of such imports only if they determine that *(a)* the amount of subsidization established in relation to the imports from each country is more than *de minimis* as defined in paragraph 9 of Article 11 and the volume of imports from each country is not negligible and *(b)* a cumulative assessment of the effects of the imports is appropriate in light of the conditions of competition between the imported products and the conditions of competition between the imported products and the like domestic product.

15.4 The examination of the impact of the subsidized imports on the domestic industry shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including actual and potential decline in output, sales, market share, profits, productivity, return on investments, or utilization of capacity; factors affecting domestic prices; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments and, in the case of agriculture, whether there has been an increased burden on government support programmes. This list is not exhaustive, nor can one or several of these factors necessarily give decisive guidance.

15.5 It must be demonstrated that the subsidized imports are, through the effects[47] of subsidies, causing injury within the meaning of this Agreement. The demonstration of a causal relationship between the subsidized imports and the injury to the domestic industry shall be based on an examination of all relevant evidence before the authorities. The authorities shall also examine any known factors other than the subsidized imports which at the same time are injuring the domestic industry, and the injuries caused by these other factors must not be attributed to the subsidized imports. Factors which may be relevant in this respect include, *inter alia*, the volumes and prices of non-subsidized imports of the product in question, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry.

15.6 The effect of the subsidized imports shall be assessed in relation to the domestic production of the like product when available data permit the separate identification of that production on the basis of such criteria as the production process, producers' sales and profits. If such separate identification of that production is not possible, the effects of the subsidized imports shall be assessed by the examination of the production of the narrowest group or range of products, which includes the like product, for which the necessary information can be provided.

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[46] Throughout this Agreement the term "like product" ("produit similaire") shall be interpreted to mean a product which is identical, i.e. alike in all respects to the product under consideration, or in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration.

[47] As set forth in paragraphs 2 and 4.

15.7 A determination of a threat of material injury shall be based on facts and not merely on allegation, conjecture or remote possibility. The change in circumstances which would create a situation in which the subsidy would cause injury must be clearly foreseen and imminent. In making a determination regarding the existence of a threat of material injury, the investigating authorities should consider, *inter alia*, such factors as:

(i) nature of the subsidy or subsidies in question and the trade effects likely to arise therefrom;

(ii) a significant rate of increase of subsidized imports into the domestic market indicating the likelihood of substantially increased importation;

(iii) sufficient freely disposable, or an imminent, substantial increase in, capacity of the exporter indicating the likelihood of substantially increased subsidized exports to the importing Member's market, taking into account the availability of other export markets to absorb any additional exports;

(iv) whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further imports; and

(v) inventories of the product being investigated.

No one of these factors by itself can necessarily give decisive guidance but the totality of the factors considered must lead to the conclusion that further subsidized exports are imminent and that, unless protective action is taken, material injury would occur.

15.8 With respect to cases where injury is threatened by subsidized imports, the application of countervailing measures shall be considered and decided with special care.

Article 16

Definition of Domestic Industry

16.1 For the purposes of this Agreement, the term "domestic industry" shall, except as provided in paragraph 2, be interpreted as referring to the domestic producers as a whole of the like products or to those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products, except that when producers are related[*] to the exporters or importers or are themselves importers of the allegedly subsidized product or a like product from other countries, the term "domestic industry" may be interpreted as referring to the rest of the producers.

16.2 In exceptional circumstances, the territory of a Member may, for the production in question, be divided into two or more competitive markets and the producers within each market may be regarded as a separate industry if *(a)* the producers within such market sell all or almost all of their production of the product in question in that market, and *(b)* the demand in that market is not to any substantial

[*] For the purpose of this paragraph, producers shall be deemed to be related to exporters or importers only if *(a)* one of them directly or indirectly controls the other; or *(b)* both of them are directly or indirectly controlled by a third person; or *(c)* together they directly or indirectly control a third person, provided that there are grounds for believing or suspecting that the effect of the relationship is such as to cause the producer concerned to behave differently from non-related producers. For the purpose of this paragraph, one shall be deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the latter.

degree supplied by producers of the product in question located elsewhere in the territory. In such circumstances, injury may be found to exist even where a major portion of the total domestic industry is not injured, provided there is a concentration of subsidized imports into such an isolated market and provided further that the subsidized imports are causing injury to the producers of all or almost all of the production within such market.

16.3 When the domestic industry has been interpreted as referring to the producers in a certain area, i.e. a market as defined in paragraph 2, countervailing duties shall be levied only on the products in question consigned for final consumption to that area. When the constitutional law of the importing Member does not permit the levying of countervailing duties on such a basis, the importing Member may levy the countervailing duties without limitation only if *(a)* the exporters shall have been given an opportunity to cease exporting at subsidized prices to the area concerned or otherwise give assurances pursuant to Article 18, and adequate assurances in this regard have not been promptly given, and *(b)* such duties cannot be levied only on products of specific producers which supply the area in question.

16.4 Where two or more countries have reached under the provisions of paragraph 8(a) of Article XXIV of GATT 1994 such a level of integration that they have the characteristics of a single, unified market, the industry in the entire area of integration shall be taken to be the domestic industry referred to in paragraphs 1 and 2.

16.5 The provisions of paragraph 6 of Article 15 shall be applicable to this Article

Article 17

Provisional Measures

17.1 Provisional measures may be applied only if:

(a) an investigation has been initiated in accordance with the provisions of Article 11, a public notice has been given to that effect and interested Members and interested parties have been given adequate opportunities to submit information and make comments;

(b) a preliminary affirmative determination has been made that a subsidy exists and that there is injury to a domestic industry caused by subsidized imports; and

(c) the authorities concerned judge such measures necessary to prevent injury being caused during the investigation.

17.2 Provisional measures may take the form of provisional countervailing duties guaranteed by cash deposits or bonds equal to the amount of the provisionally calculated amount of subsidization.

17.3 Provisional measures shall not be applied sooner than 60 days from the date of initiation of the investigation.

17.4 The application of provisional measures shall be limited to as short a period as possible, not exceeding four months.

17.5 The relevant provisions of Article 19 shall be followed in the application of provisional measures.

Article 18

Undertakings

18.1 Proceedings may[47] be suspended or terminated without the imposition of provisional measures or countervailing duties upon receipt of satisfactory voluntary undertakings under which:

(a) the government of the exporting Member agrees to eliminate or limit the subsidy or take other measures concerning its effects; or

(b) the exporter agrees to revise its prices so that the investigating authorities are satisfied that the injurious effect of the subsidy is eliminated. Price increases under such undertakings shall not be higher than necessary to eliminate the amount of the subsidy. It is desirable that the price increases be less than the amount of the subsidy if such increases would be adequate to remove the injury to the domestic industry.

18.2 Undertakings shall not be sought or accepted unless the authorities of the importing Member have made a preliminary affirmative determination of subsidization and injury caused by such subsidization and, in case of undertakings from exporters, have obtained the consent of the exporting Member.

18.3 Undertakings offered need not be accepted if the authorities of the importing Member consider their acceptance impractical, for example if the number of actual or potential exporters is too great, or for other reasons, including reasons of general policy. Should the case arise and where practicable, the authorities shall provide to the exporter the reasons which have led them to consider acceptance of an undertaking as inappropriate, and shall, to the extent possible, give the exporter an opportunity to make comments thereon.

18.4 If an undertaking is accepted, the investigation of subsidization and injury shall nevertheless be completed if the exporting Member so desires or the importing Member so decides. In such a case, if a negative determination of subsidization or injury is made, the undertaking shall automatically lapse, except in cases where such a determination is due in large part to the existence of an undertaking. In such cases, the authorities concerned may require that an undertaking be maintained for a reasonable period consistent with the provisions of this Agreement. In the event that an affirmative determination of subsidization and injury is made, the undertaking shall continue consistent with its terms and the provisions of this Agreement.

18.5 Price undertakings may be suggested by the authorities of the importing Member, but no exporter shall be forced to enter into such undertakings. The fact that governments or exporters do not offer such undertakings, or do not accept an invitation to do so, shall in no way prejudice the consideration of the case. However, the authorities are free to determine that a threat of injury is more likely to be realized if the subsidized imports continue.

18.6 Authorities of an importing Member may require any government or exporter from whom an undertaking has been accepted to provide periodically information relevant to the fulfilment of such an undertaking, and to permit verification of pertinent data. In case of violation of an undertaking, the authorities of the importing Member may take, under this Agreement in conformity with its provisions, expeditious actions which may constitute immediate application of provisional measures

[47]The word "may" shall not be interpreted to allow the simultaneous continuation of proceedings with the implementation of undertakings, except as provided in paragraph 4.

using the best information available. In such cases, definitive duties may be levied in accordance with this Agreement on products entered for consumption not more than 90 days before the application of such provisional measures, except that any such retroactive assessment shall not apply to imports entered before the violation of the undertaking.

Article 19

Imposition and Collection of Countervailing Duties

19.1 If, after reasonable efforts have been made to complete consultations, a Member makes a final determination of the existence and amount of the subsidy and that, through the effects of the subsidy, the subsidized imports are causing injury, it may impose a countervailing duty in accordance with the provisions of this Article unless the subsidy or subsidies are withdrawn.

19.2 The decision whether or not to impose a countervailing duty in cases where all requirements for the imposition have been fulfilled, and the decision whether the amount of the countervailing duty to be imposed shall be the full amount of the subsidy or less, are decisions to be made by the authorities of the importing Member. It is desirable that the imposition should be permissive in the territory of all Members, that the duty should be less than the total amount of the subsidy if such lesser duty would be adequate to remove the injury to the domestic industry, and that procedures should be established which would allow the authorities concerned to take due account of representations made by domestic interested parties[50] whose interests might be adversely affected by the imposition of a countervailing duty.

19.3 When a countervailing duty is imposed in respect of any product, such countervailing duty shall be levied, in the appropriate amounts in each case, on a non-discriminatory basis on imports of such product from all sources found to be subsidized and causing injury, except as to imports from those sources which have renounced any subsidies in question or from which undertakings under the terms of this Agreement have been accepted. Any exporter whose exports are subject to a definitive countervailing duty but who was not actually investigated for reasons other than a refusal to cooperate, shall be entitled to an expedited review in order that the investigating authorities promptly establish an individual countervailing duty rate for that exporter.

19.4 No countervailing duty shall be levied[51] on any imported product in excess of the amount of the subsidy found to exist, calculated in terms of subsidization per unit of the subsidized and exported product.

Article 20

Retroactivity

20.1 Provisional measures and countervailing duties shall only be applied to products which enter for consumption after the time when the decision under paragraph 1 of Article 17 and paragraph 1 of Article 19, respectively, enters into force, subject to the exceptions set out in this Article.

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[50]For the purpose of this paragraph, the term "domestic interested parties" shall include consumers and industrial users of the imported product subject to investigation.

[51]As used in this Agreement "levy" shall mean the definitive or final legal assessment or collection of a duty or tax.

20.2 Where a final determination of injury (but not of a threat thereof or of a material retardation of the establishment of an industry) is made or, in the case of a final determination of a threat of injury, where the effect of the subsidized imports would, in the absence of the provisional measures, have led to a determination of injury, countervailing duties may be levied retroactively for the period for which provisional measures, if any, have been applied.

20.3 If the definitive countervailing duty is higher than the amount guaranteed by the cash deposit or bond, the difference shall not be collected. If the definitive duty is less than the amount guaranteed by the cash deposit or bond, the excess amount shall be reimbursed or the bond released in an expeditious manner.

20.4 Except as provided in paragraph 2, where a determination of threat of injury or material retardation is made (but no injury has yet occurred) a definitive countervailing duty may be imposed only from the date of the determination of threat of injury or material retardation, and any cash deposit made during the period of the application of provisional measures shall be refunded and any bonds released in an expeditious manner.

20.5 Where a final determination is negative, any cash deposit made during the period of the application of provisional measures shall be refunded and any bonds released in an expeditious manner.

20.6 In critical circumstances where for the subsidized product in question the authorities find that injury which is difficult to repair is caused by massive imports in a relatively short period of a product benefiting from subsidies paid or bestowed inconsistently with the provisions of GATT 1994 and of this Agreement and where it is deemed necessary, in order to preclude the recurrence of such injury, to assess countervailing duties retroactively on those imports, the definitive countervailing duties may be assessed on imports which were entered for consumption not more than 90 days prior to the date of application of provisional measures.

Article 21

Duration and Review of Countervailing Duties and Undertakings

21.1 A countervailing duty shall remain in force only as long as and to the extent necessary to counteract subsidization which is causing injury.

21.2 The authorities shall review the need for the continued imposition of the duty, where warranted, on their own initiative or, provided that a reasonable period of time has elapsed since the imposition of the definitive countervailing duty, upon request by any interested party which submits positive information substantiating the need for a review. Interested parties shall have the right to request the authorities to examine whether the continued imposition of the duty is necessary to offset subsidization, whether the injury would be likely to continue or recur if the duty were removed or varied, or both. If, as a result of the review under this paragraph, the authorities determine that the countervailing duty is no longer warranted, it shall be terminated immediately.

21.3 Notwithstanding the provisions of paragraphs 1 and 2, any definitive countervailing duty shall be terminated on a date not later than five years from its imposition (or from the date of the most recent review under paragraph 2 if that review has covered both subsidization and injury, or under this paragraph), unless the authorities determine, in a review initiated before that date on their own initiative or upon a duly substantiated request made by or on behalf of the domestic industry within a reasonable period of time prior to that date, that the expiry of the duty would be likely to lead to continuation

or recurrence of subsidization and injury.[12] The duty may remain in force pending the outcome of such a review.

21.4 The provisions of Article 12 regarding evidence and procedure shall apply to any review carried out under this Article. Any such review shall be carried out expeditiously and shall normally be concluded within 12 months of the date of initiation of the review.

21.5 The provisions of this Article shall apply *mutatis mutandis* to undertakings accepted under Article 18.

Article 22

Public Notice and Explanation of Determinations

22.1 When the authorities are satisfied that there is sufficient evidence to justify the initiation of an investigation pursuant to Article 11, the Member or Members the products of which are subject to such investigation and other interested parties known to the investigating authorities to have an interest therein shall be notified and a public notice shall be given.

22.2 A public notice of the initiation of an investigation shall contain, or otherwise make available through a separate report[13], adequate information on the following:

(i) the name of the exporting country or countries and the product involved;

(ii) the date of initiation of the investigation;

(iii) a description of the subsidy practice or practices to be investigated;

(iv) a summary of the factors on which the allegation of injury is based;

(v) the address to which representations by interested Members and interested parties should be directed; and

(vi) the time-limits allowed to interested Members and interested parties for making their views known.

22.3 Public notice shall be given of any preliminary or final determination, whether affirmative or negative, of any decision to accept an undertaking pursuant to Article 18, of the termination of such an undertaking, and of the termination of a definitive countervailing duty. Each such notice shall set forth, or otherwise make available through a separate report, in sufficient detail the findings and conclusions reached on all issues of fact and law considered material by the investigating authorities. All such notices and reports shall be forwarded to the Member or Members the products of which are subject to such determination or undertaking and to other interested parties known to have an interest therein.

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[12]When the amount of the countervailing duty is assessed on a retrospective basis, a finding in the most recent assessment proceeding that no duty is to be levied shall not by itself require the authorities to terminate the definitive duty.

[13]Where authorities provide information and explanations under the provisions of this Article in a separate report, they shall ensure that such report is readily available to the public.

22.4 A public notice of the imposition of provisional measures shall set forth, or otherwise make available through a separate report, sufficiently detailed explanations for the preliminary determinations on the existence of a subsidy and injury and shall refer to the matters of fact and law which have led to arguments being accepted or rejected. Such a notice or report shall, due regard being paid to the requirement for the protection of confidential information, contain in particular:

(i) the names of the suppliers or, when this is impracticable, the supplying countries involved;

(ii) a description of the product which is sufficient for customs purposes;

(iii) the amount of subsidy established and the basis on which the existence of a subsidy has been determined;

(iv) considerations relevant to the injury determination as set out in Article 15;

(v) the main reasons leading to the determination.

22.5 A public notice of conclusion or suspension of an investigation in the case of an affirmative determination providing for the imposition of a definitive duty or the acceptance of an undertaking shall contain, or otherwise make available through a separate report, all relevant information on the matters of fact and law and reasons which have led to the imposition of final measures or the acceptance of an undertaking, due regard being paid to the requirement for the protection of confidential information. In particular, the notice or report shall contain the information described in paragraph 4, as well as the reasons for the acceptance or rejection of relevant arguments or claims made by interested Members and by the exporters and importers.

22.6 A public notice of the termination or suspension of an investigation following the acceptance of an undertaking pursuant to Article 18 shall include, or otherwise make available through a separate report, the non-confidential part of this undertaking.

22.7 The provisions of this Article shall apply *mutatis mutandis* to the initiation and completion of reviews pursuant to Article 21 and to decisions under Article 20 to apply duties retroactively.

Article 23

Judicial Review

Each Member whose national legislation contains provisions on countervailing duty measures shall maintain judicial, arbitral or administrative tribunals or procedures for the purpose, *inter alia*, of the prompt review of administrative actions relating to final determinations and reviews of determinations within the meaning of Article 21. Such tribunals or procedures shall be independent of the authorities responsible for the determination or review in question, and shall provide all interested parties who participated in the administrative proceeding and are directly and individually affected by the administrative actions with access to review.

PART VI: INSTITUTIONS

Article 24

Committee on Subsidies and Countervailing Measures and Subsidiary Bodies

24.1 There is hereby established a Committee on Subsidies and Countervailing Measures composed of representatives from each of the Members. The Committee shall elect its own Chairman and shall meet not less than twice a year and otherwise as envisaged by relevant provisions of this Agreement at the request of any Member. The Committee shall carry out responsibilities as assigned to it under this Agreement or by the Members and it shall afford Members the opportunity of consulting on any matter relating to the operation of the Agreement or the furtherance of its objectives. The WTO Secretariat shall act as the secretariat to the Committee.

24.2 The Committee may set up subsidiary bodies as appropriate.

24.3 The Committee shall establish a Permanent Group of Experts composed of five independent persons, highly qualified in the fields of subsidies and trade relations. The experts will be elected by the Committee and one of them will be replaced every year. The PGE may be requested to assist a panel, as provided for in paragraph 5 of Article 4. The Committee may also seek an advisory opinion on the existence and nature of any subsidy.

24.4 The PGE may be consulted by any Member and may give advisory opinions on the nature of any subsidy proposed to be introduced or currently maintained by that Member. Such advisory opinions will be confidential and may not be invoked in proceedings under Article 7.

24.5 In carrying out their functions, the Committee and any subsidiary bodies may consult with and seek information from any source they deem appropriate. However, before the Committee or a subsidiary body seeks such information from a source within the jurisdiction of a Member, it shall inform the Member involved.

PART VII: NOTIFICATION AND SURVEILLANCE

Article 25

Notifications

25.1 Members agree that, without prejudice to the provisions of paragraph 1 of Article XVI of GATT 1994, their notifications of subsidies shall be submitted not later than 30 June of each year and shall conform to the provisions of paragraphs 2 through 6.

25.2 Members shall notify any subsidy as defined in paragraph 1 of Article 1, which is specific within the meaning of Article 2, granted or maintained within their territories.

25.3 The content of notifications should be sufficiently specific to enable other Members to evaluate the trade effects and to understand the operation of notified subsidy programmes. In this connection,

and without prejudice to the contents and form of the questionnaire on subsidies[34], Members shall ensure that their notifications contain the following information:

(i) form of a subsidy (i.e. grant, loan, tax concession, etc.);

(ii) subsidy per unit or, in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy (indicating, if possible, the average subsidy per unit in the previous year);

(iii) policy objective and/or purpose of a subsidy;

(iv) duration of a subsidy and/or any other time-limits attached to it;

(v) statistical data permitting an assessment of the trade effects of a subsidy.

25.4 Where specific points in paragraph 3 have not been addressed in a notification, an explanation shall be provided in the notification itself.

25.5 If subsidies are granted to specific products or sectors, the notifications should be organized by product or sector.

25.6 Members which consider that there are no measures in their territories requiring notification under paragraph 1 of Article XVI of GATT 1994 and this Agreement shall so inform the Secretariat in writing.

25.7 Members recognize that notification of a measure does not prejudge either its legal status under GATT 1994 and this Agreement, the effects under this Agreement, or the nature of the measure itself.

25.8 Any Member may, at any time, make a written request for information on the nature and extent of any subsidy granted or maintained by another Member (including any subsidy referred to in Part IV), or for an explanation of the reasons for which a specific measure has been considered as not subject to the requirement of notification.

25.9 Members so requested shall provide such information as quickly as possible and in a comprehensive manner, and shall be ready, upon request, to provide additional information to the requesting Member. In particular, they shall provide sufficient details to enable the other Member to assess their compliance with the terms of this Agreement. Any Member which considers that such information has not been provided may bring the matter to the attention of the Committee.

25.10 Any Member which considers that any measure of another Member having the effects of a subsidy has not been notified in accordance with the provisions of paragraph 1 of Article XVI of GATT 1994 and this Article may bring the matter to the attention of such other Member. If the alleged subsidy is not thereafter notified promptly, such Member may itself bring the alleged subsidy in question to the notice of the Committee.

25.11 Members shall report without delay to the Committee all preliminary or final actions taken with respect to countervailing duties. Such reports shall be available in the Secretariat for inspection by other Members. Members shall also submit, on a semi-annual basis, reports on any countervailing

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[34]The Committee shall establish a Working Party to review the contents and form of the questionnaire as contained in BISD 9S/193-194.

duty actions taken within the preceding six months. The semi-annual reports shall be submitted on an agreed standard form.

25.12 Each Member shall notify the Committee *(a)* which of its authorities are competent to initiate and conduct investigations referred to in Article 11 and *(b)* its domestic procedures governing the initiation and conduct of such investigations.

Article 26

Surveillance

26.1 The Committee shall examine new and full notifications submitted under paragraph 1 of Article XVI of GATT 1994 and paragraph 1 of Article 25 of this Agreement at special sessions held every third year. Notifications submitted in the intervening years (updating notifications) shall be examined at each regular meeting of the Committee.

26.2 The Committee shall examine reports submitted under paragraph 11 of Article 25 at each regular meeting of the Committee.

PART VIII: DEVELOPING COUNTRY MEMBERS

Article 27

Special and Differential Treatment of Developing Country Members

27.1 Members recognize that subsidies may play an important role in economic development programmes of developing country Members.

27.2 The prohibition of paragraph 1(a) of Article 3 shall not apply to:

(a) developing country Members referred to in Annex VII.

(b) other developing country Members for a period of eight years from the date of entry into force of the WTO Agreement, subject to compliance with the provisions in paragraph 4.

27.3 The prohibition of paragraph 1(b) of Article 3 shall not apply to developing country Members for a period of five years, and shall not apply to least developed country Members for a period of eight years, from the date of entry into force of the WTO Agreement.

27.4 Any developing country Member referred to in paragraph 2(b) shall phase out its export subsidies within the eight-year period, preferably in a progressive manner. However, a developing country Member shall not increase the level of its export subsidies[35], and shall eliminate them within a period shorter than that provided for in this paragraph when the use of such export subsidies is inconsistent with its development needs. If a developing country Member deems it necessary to apply such subsidies beyond the 8-year period, it shall not later than one year before the expiry of this period enter into

[35]For a developing country Member not granting export subsidies as of the date of entry into force of the WTO Agreement, this paragraph shall apply on the basis of the level of export subsidies granted in 1986.

consultation with the Committee, which will determine whether an extension of this period is justified, after examining all the relevant economic, financial and development needs of the developing country Member in question. If the Committee determines that the extension is justified, the developing country Member concerned shall hold annual consultations with the Committee to determine the necessity of maintaining the subsidies. If no such determination is made by the Committee, the developing country Member shall phase out the remaining export subsidies within two years from the end of the last authorized period.

27.5 A developing country Member which has reached export competitiveness in any given product shall phase out its export subsidies for such product(s) over a period of two years. However, for a developing country Member which is referred to in Annex VII and which has reached export competitiveness in one or more products, export subsidies on such products shall be gradually phased out over a period of eight years.

27.6 Export competitiveness in a product exists if a developing country Member's exports of that product have reached a share of at least 3.25 per cent in world trade of that product for two consecutive calendar years. Export competitiveness shall exist either *(a)* on the basis of notification by the developing country Member having reached export competitiveness, or *(b)* on the basis of a computation undertaken by the Secretariat at the request of any Member. For the purpose of this paragraph, a product is defined as a section heading of the Harmonized System Nomenclature. The Committee shall review the operation of this provision five years from the date of the entry into force of the WTO Agreement.

27.7 The provisions of Article 4 shall not apply to a developing country Member in the case of export subsidies which are in conformity with the provisions of paragraphs 2 through 5. The relevant provisions in such a case shall be those of Article 7.

27.8 There shall be no presumption in terms of paragraph 1 of Article 6 that a subsidy granted by a developing country Member results in serious prejudice, as defined in this Agreement. Such serious prejudice, where applicable under the terms of paragraph 9, shall be demonstrated by positive evidence, in accordance with the provisions of paragraphs 3 through 8 of Article 6.

27.9 Regarding actionable subsidies granted or maintained by a developing country Member other than those referred to in paragraph 1 of Article 6, action may not be authorized or taken under Article 7 unless nullification or impairment of tariff concessions or other obligations under GATT 1994 is found to exist as a result of such a subsidy, in such a way as to displace or impede imports of a like product of another Member into the market of the subsidizing developing country Member or unless injury to a domestic industry in the market of an importing Member occurs.

27.10 Any countervailing duty investigation of a product originating in a developing country Member shall be terminated as soon as the authorities concerned determine that:

(a) the overall level of subsidies granted upon the product in question does not exceed 2 per cent of its value calculated on a per unit basis; or

(b) the volume of the subsidized imports represents less than 4 per cent of the total imports of the like product in the importing Member, unless imports from developing country Members whose individual shares of total imports represent less than 4 per cent collectively account for more than 9 per cent of the total imports of the like product in the importing Member.

27.11 For those developing country Members within the scope of paragraph 2(b) which have eliminated export subsidies prior to the expiry of the period of eight years from the date of entry into force of the WTO Agreement, and for those developing country Members referred to in Annex VII, the number

in paragraph 10(a) shall be 3 per cent rather than 2 per cent. This provision shall apply from the date that the elimination of export subsidies is notified to the Committee, and for so long as export subsidies are not granted by the notifying developing country Member. This provision shall expire eight years from the date of entry into force of the WTO Agreement.

27.12 The provisions of paragraphs 10 and 11 shall govern any determination of *de minimis* under paragraph 3 of Article 15.

27.13 The provisions of Part III shall not apply to direct forgiveness of debts, subsidies to cover social costs, in whatever form, including relinquishment of government revenue and other transfer of liabilities when such subsidies are granted within and directly linked to a privatization programme of a developing country Member, provided that both such programme and the subsidies involved are granted for a limited period and notified to the Committee and that the programme results in eventual privatization of the enterprise concerned.

27.14 The Committee shall, upon request by an interested Member, undertake a review of a specific export subsidy practice of a developing country Member to examine whether the practice is in conformity with its development needs.

27.15 The Committee shall, upon request by an interested developing country Member, undertake a review of a specific countervailing measure to examine whether it is consistent with the provisions of paragraphs 10 and 11 as applicable to the developing country Member in question.

PART IX: TRANSITIONAL ARRANGEMENTS

Article 28

Existing Programmes

28.1 Subsidy programmes which have been established within the territory of any Member before the date on which such a Member signed the WTO Agreement and which are inconsistent with the provisions of this Agreement shall be:

(a) notified to the Committee not later than 90 days after the date of entry into force of the WTO Agreement for such Member; and

(b) brought into conformity with the provisions of this Agreement within three years of the date of entry into force of the WTO Agreement for such Member and until then shall not be subject to Part II.

28.2 No Member shall extend the scope of any such programme, nor shall such a programme be renewed upon its expiry.

Article 29

Transformation into a Market Economy

29.1 Members in the process of transformation from a centrally-planned into a market, free-enterprise economy may apply programmes and measures necessary for such a transformation.

29.2 For such Members, subsidy programmes falling within the scope of Article 3, and notified according to paragraph 3, shall be phased out or brought into conformity with Article 3 within a period of seven years from the date of entry into force of the WTO Agreement. In such a case, Article 4 shall not apply. In addition during the same period:

(a) Subsidy programmes falling within the scope of paragraph 1(d) of Article 6 shall not be actionable under Article 7;

(b) With respect to other actionable subsidies, the provisions of paragraph 9 of Article 27 shall apply.

29.3 Subsidy programmes falling within the scope of Article 3 shall be notified to the Committee by the earliest practicable date after the date of entry into force of the WTO Agreement. Further notifications of such subsidies may be made up to two years after the date of entry into force of the WTO Agreement.

29.4 In exceptional circumstances Members referred to in paragraph 1 may be given departures from their notified programmes and measures and their time-frame by the Committee if such departures are deemed necessary for the process of transformation.

PART X: DISPUTE SETTLEMENT

Article 30

The provisions of Articles XXII and XXIII of GATT 1994 as elaborated and applied by the Dispute Settlement Understanding shall apply to consultations and the settlement of disputes under this Agreement, except as otherwise specifically provided herein.

PART XI: FINAL PROVISIONS

Article 31

Provisional Application

The provisions of paragraph 1 of Article 6 and the provisions of Article 8 and Article 9 shall apply for a period of five years, beginning with the date of entry into force of the WTO Agreement. Not later than 180 days before the end of this period, the Committee shall review the operation of those provisions, with a view to determining whether to extend their application, either as presently drafted or in a modified form, for a further period.

Article 32

Other Final Provisions

32.1 No specific action against a subsidy of another Member can be taken except in accordance with the provisions of GATT 1994, as interpreted by this Agreement.[36]

32.2 Reservations may not be entered in respect of any of the provisions of this Agreement without the consent of the other Members.

32.3 Subject to paragraph 4, the provisions of this Agreement shall apply to investigations, and reviews of existing measures, initiated pursuant to applications which have been made on or after the date of entry into force for a Member of the WTO Agreement.

32.4 For the purposes of paragraph 3 of Article 21, existing countervailing measures shall be deemed to be imposed on a date not later than the date of entry into force for a Member of the WTO Agreement, except in cases in which the domestic legislation of a Member in force at that date already included a clause of the type provided for in that paragraph.

32.5 Each Member shall take all necessary steps, of a general or particular character, to ensure, not later than the date of entry into force of the WTO Agreement for it, the conformity of its laws, regulations and administrative procedures with the provisions of this Agreement as they may apply to the Member in question.

32.6 Each Member shall inform the Committee of any changes in its laws and regulations relevant to this Agreement and in the administration of such laws and regulations.

32.7 The Committee shall review annually the implementation and operation of this Agreement, taking into account the objectives thereof. The Committee shall inform annually the Council for Trade in Goods of developments during the period covered by such reviews.

32.8 The Annexes to this Agreement constitute an integral part thereof.

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[36] This paragraph is not intended to preclude action under other relevant provisions of GATT 1994, where appropriate.

ANNEX I

ILLUSTRATIVE LIST OF EXPORT SUBSIDIES

(a) The provision by governments of direct subsidies to a firm or an industry contingent upon export performance.

(b) Currency retention schemes or any similar practices which involve a bonus on exports.

(c) Internal transport and freight charges on export shipments, provided or mandated by governments, on terms more favourable than for domestic shipments.

(d) The provision by governments or their agencies either directly or indirectly through government-mandated schemes, of imported or domestic products or services for use in the production of exported goods, on terms or conditions more favourable than for provision of like or directly competitive products or services for use in the production of goods for domestic consumption, if (in the case of products) such terms or conditions are more favourable than those commercially available[57] on world markets to their exporters.

(e) The full or partial exemption remission, or deferral specifically related to exports, of direct taxes[58] or social welfare charges paid or payable by industrial or commercial enterprises.[59]

(f) The allowance of special deductions directly related to exports or export performance, over and above those granted in respect to production for domestic consumption, in the calculation of the base on which direct taxes are charged.

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[57]The term "commercially available" means that the choice between domestic and imported products is unrestricted and depends only on commercial considerations.

[58]For the purpose of this Agreement:

The term "direct taxes" shall mean taxes on wages, profits, interests, rents, royalties, and all other forms of income, and taxes on the ownership of real property;

The term "import charges" shall mean tariffs, duties, and other fiscal charges not elsewhere enumerated in this note that are levied on imports;

The term "indirect taxes" shall mean sales, excise, turnover, value added, franchise, stamp, transfer, inventory and equipment taxes, border taxes and all taxes other than direct taxes and import charges;

"Prior-stage" indirect taxes are those levied on goods or services used directly or indirectly in making the product;

"Cumulative" indirect taxes are multi-staged taxes levied where there is no mechanism for subsequent crediting of the tax if the goods or services subject to tax at one stage of production are used in a succeeding stage of production;

"Remission" of taxes includes the refund or rebate of taxes;

"Remission or drawback" includes the full or partial exemption or deferral of import charges.

[59]The Members recognize that deferral need not amount to an export subsidy where, for example, appropriate interest charges are collected. The Members reaffirm the principle that prices for goods in transactions between exporting enterprises and foreign buyers under their or under the same control should for tax purposes be the prices which would be charged between independent enterprises acting at arm's length. Any Member may draw the attention of another Member to administrative or other practices which may contravene this principle and which result in a significant saving of direct taxes in export transactions. In such circumstances the Members shall normally attempt to resolve their differences using the facilities of existing bilateral tax treaties or other specific international mechanisms, without prejudice to the rights and obligations of Members under GATT 1994, including the right of consultation created in the preceding sentence.

Paragraph (e) is not intended to limit a Member from taking measures to avoid the double taxation of foreign-source income earned by its enterprises or the enterprises of another Member.

(g) The exemption or remission, in respect of the production and distribution of exported products, of indirect taxes[59] in excess of those levied in respect of the production and distribution of like products when sold for domestic consumption.

(h) The exemption, remission or deferral of prior-stage cumulative indirect taxes[59] on goods or services used in the production of exported products in excess of the exemption, remission or deferral of like prior-stage cumulative indirect taxes on goods or services used in the production of like products when sold for domestic consumption; provided, however, that prior-stage cumulative indirect taxes may be exempted, remitted or deferred on exported products even when not exempted, remitted or deferred on like products when sold for domestic consumption, if the prior-stage cumulative indirect taxes are levied on inputs that are consumed in the production of the exported product (making normal allowance for waste).[60] This item shall be interpreted in accordance with the guidelines on consumption of inputs in the production process contained in Annex II.

(i) The remission or drawback of import charges[59] in excess of those levied on imported inputs that are consumed in the production of the exported product (making normal allowance for waste); provided, however, that in particular cases a firm may use a quantity of home market inputs equal to, and having the same quality and characteristics as, the imported inputs as a substitute for them in order to benefit from this provision if the import and the corresponding export operations both occur within a reasonable time period, not to exceed two years. This item shall be interpreted in accordance with the guidelines on consumption of inputs in the production process contained in Annex II and the guidelines in the determination of substitution drawback systems as export subsidies contained in Annex III.

(j) The provision by governments (or special institutions controlled by governments) of export credit guarantee or insurance programmes, of insurance or guarantee programmes against increases in the cost of exported products or of exchange risk programmes, at premium rates which are inadequate to cover the long-term operating costs and losses of the programmes.

(k) The grant by governments (or special institutions controlled by and/or acting under the authority of governments) of export credits at rates below those which they actually have to pay for the funds so employed (or would have to pay if they borrowed on international capital markets in order to obtain funds of the same maturity and other credit terms and denominated in the same currency as the export credit), or the payment by them of all or part of the costs incurred by exporters or financial institutions in obtaining credits, in so far as they are used to secure a material advantage in the field of export credit terms.

Provided, however, that if a Member is a party to an international undertaking on official export credits to which at least twelve original Members to this Agreement are parties as of 1 January 1979 (or a successor undertaking which has been adopted by those original Members), or if in practice a Member applies the interest rates provisions of the relevant undertaking, an export credit practice which is in conformity with those provisions shall not be considered an export subsidy prohibited by this Agreement.

(l) Any other charge on the public account constituting an export subsidy in the sense of Article XVI of GATT 1994.

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[59]Paragraph (h) does not apply to value added tax systems and border-tax adjustment in lieu thereof; the problem of the excessive remission of value added taxes is exclusively covered by paragraph (g).

ANNEX II

GUIDELINES ON CONSUMPTION OF INPUTS IN THE PRODUCTION PROCESS[61]

I

1. Indirect tax rebate schemes can allow for exemption, remission or deferral of prior-stage cumulative indirect taxes levied on inputs that are consumed in the production of the exported product (making normal allowance for waste). Similarly, drawback schemes can allow for the remission or drawback of import charges levied on inputs that are consumed in the production of the exported product (making normal allowance for waste).

2. The Illustrative List of Export Subsidies in Annex I of this Agreement makes reference to the term "inputs that are consumed in the production of the exported product" in paragraphs (h) and (i). Pursuant to paragraph (h), indirect tax rebate schemes can constitute an export subsidy to the extent that they result in exemption, remission or deferral of prior-stage cumulative indirect taxes in excess of the amount of such taxes actually levied on inputs that are consumed in the production of the exported product. Pursuant to paragraph (i), drawback schemes can constitute an export subsidy to the extent that they result in a remission or drawback of import charges in excess of those actually levied on inputs that are consumed in the production of the exported product. Both paragraphs stipulate that normal allowance for waste must be made in findings regarding consumption of inputs in the production of the exported product. Paragraph (i) also provides for substitution, where appropriate.

II

In examining whether inputs are consumed in the production of the exported product, as part of a countervailing duty investigation pursuant to this Agreement, investigating authorities should proceed on the following basis:

1. Where it is alleged that an indirect tax rebate scheme, or a drawback scheme, conveys a subsidy by reason of over-rebate or excess drawback of indirect taxes or import charges on inputs consumed in the production of the exported product, the investigating authorities should first determine whether the government of the exporting Member has in place and applies a system or procedure to confirm which inputs are consumed in the production of the exported product and in what amounts. Where such a system or procedure is determined to be applied, the investigating authorities should then examine the system or procedure to see whether it is reasonable, effective for the purpose intended, and based on generally accepted commercial practices in the country of export. The investigating authorities may deem it necessary to carry out, in accordance with paragraph 6 of Article 12, certain practical tests in order to verify information or to satisfy themselves that the system or procedure is being effectively applied.

2. Where there is no such system or procedure, where it is not reasonable, or where it is instituted and considered reasonable but is found not to be applied or not to be applied effectively, a further examination by the exporting Member based on the actual inputs involved would need to be carried out in the context of determining whether an excess payment occurred. If the investigating authorities deemed it necessary, a further examination would be carried out in accordance with paragraph 1.

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[61] Inputs consumed in the production process are inputs physically incorporated, energy, fuels and oil used in the production process and catalysts which are consumed in the course of their use to obtain the exported product.

3. Investigating authorities should treat inputs as physically incorporated if such inputs are used in the production process and are physically present in the product exported. The Members note that an input need not be present in the final product in the same form in which it entered the production process.

4. In determining the amount of a particular input that is consumed in the production of the exported product, a "normal allowance for waste" should be taken into account, and such waste should be treated as consumed in the production of the exported product. The term "waste" refers to that portion of a given input which does not serve an independent function in the production process, is not consumed in the production of the exported product (for reasons such as inefficiencies) and is not recovered, used or sold by the same manufacturer.

5. The investigating authority's determination of whether the claimed allowance for waste is "normal" should take into account the production process, the average experience of the industry in the country of export, and other technical factors, as appropriate. The investigating authority should bear in mind that an important question is whether the authorities in the exporting Member have reasonably calculated the amount of waste, when such an amount is intended to be included in the tax or duty rebate or remission.

ANNEX III

GUIDELINES IN THE DETERMINATION OF SUBSTITUTION DRAWBACK SYSTEMS AS EXPORT SUBSIDIES

I

Drawback systems can allow for the refund or drawback of import charges on inputs which are consumed in the production process of another product and where the export of this latter product contains domestic inputs having the same quality and characteristics as those substituted for the imported inputs. Pursuant to paragraph (i) of the Illustrative List of Export Subsidies in Annex I, substitution drawback systems can constitute an export subsidy to the extent that they result in an excess drawback of the import charges levied initially on the imported inputs for which drawback is being claimed.

II

In examining any substitution drawback system as part of a countervailing duty investigation pursuant to this Agreement, investigating authorities should proceed on the following basis:

1. Paragraph (i) of the Illustrative List stipulates that home market inputs may be substituted for imported inputs in the production of a product for export provided such inputs are equal in quantity to, and have the same quality and characteristics as, the imported inputs being substituted. The existence of a verification system or procedure is important because it enables the government of the exporting Member to ensure and demonstrate that the quantity of inputs for which drawback is claimed does not exceed the quantity of similar products exported, in whatever form, and that there is not drawback of import charges in excess of those originally levied on the imported inputs in question.

2. Where it is alleged that a substitution drawback system conveys a subsidy, the investigating authorities should first proceed to determine whether the government of the exporting Member has in place and applies a verification system or procedure. Where such a system or procedure is determined to be applied, the investigating authorities should then examine the verification procedures to see whether they are reasonable, effective for the purpose intended, and based on generally accepted commercial practices in the country of export. To the extent that the procedures are determined to meet this test and are effectively applied, no subsidy should be presumed to exist. It may be deemed necessary by the investigating authorities to carry out, in accordance with paragraph 6 of Article 12, certain practical tests in order to verify information or to satisfy themselves that the verification procedures are being effectively applied.

3. Where there are no verification procedures, where they are not reasonable, or where such procedures are instituted and considered reasonable but are found not to be actually applied or not applied effectively, there may be a subsidy. In such cases a further examination by the exporting Member based on the actual transactions involved would need to be carried out to determine whether an excess payment occurred. If the investigating authorities deemed it necessary, a further examination would be carried out in accordance with paragraph 2.

4. The existence of a substitution drawback provision under which exporters are allowed to select particular import shipments on which drawback is claimed should not of itself be considered to convey a subsidy.

5. An excess drawback of import charges in the sense of paragraph (i) would be deemed to exist where governments paid interest on any monies refunded under their drawback schemes, to the extent of the interest actually paid or payable.

ANNEX IV

CALCULATION OF THE TOTAL AD VALOREM SUBSIDIZATION (PARAGRAPH 1(A) OF ARTICLE 6)[49]

1. Any calculation of the amount of a subsidy for the purpose of paragraph 1(a) of Article 6 shall be done in terms of the cost to the granting government.

2. Except as provided in paragraphs 3 through 5, in determining whether the overall rate of subsidization exceeds 5 per cent of the value of the product, the value of the product shall be calculated as the total value of the recipient firm's[50] sales in the most recent 12-month period, for which sales data is available, preceding the period in which the subsidy is granted.[51]

3. Where the subsidy is tied to the production or sale of a given product, the value of the product shall be calculated as the total value of the recipient firm's sales of that product in the most recent 12-month period, for which sales data is available, preceding the period in which the subsidy is granted.

4. Where the recipient firm is in a start-up situation, serious prejudice shall be deemed to exist if the overall rate of subsidization exceeds 15 per cent of the total funds invested. For purposes of this paragraph, a start-up period will not extend beyond the first year of production.[52]

5. Where the recipient firm is located in an inflationary economy country, the value of the product shall be calculated as the recipient firm's total sales (or sales of the relevant product, if the subsidy is tied) in the preceding calendar year indexed by the rate of inflation experienced in the 12 months preceding the month in which the subsidy is to be given.

6. In determining the overall rate of subsidization in a given year, subsidies given under different programmes and by different authorities in the territory of a Member shall be aggregated.

7. Subsidies granted prior to the date of entry into force of the WTO Agreement, the benefits of which are allocated to future production, shall be included in the overall rate of subsidization.

8. Subsidies which are non-actionable under relevant provisions of this Agreement shall not be included in the calculation of the amount of a subsidy for the purpose of paragraph 1(a) of Article 6.

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[49] An understanding among Members should be developed, as necessary, on matters which are not specified in this Annex or which need further clarification for the purposes of paragraph 1(a) of Article 6.

[50] The recipient firm is a firm in the territory of the subsidizing Member.

[51] In the case of tax-related subsidies the value of the product shall be calculated as the total value of the recipient firm's sales in the fiscal year in which the tax-related measure was earned.

[52] Start-up situations include instances where financial commitments for product development or construction of facilities to manufacture products benefiting from the subsidy have been made, even though production has not begun.

ANNEX V

PROCEDURES FOR DEVELOPING INFORMATION CONCERNING SERIOUS PREJUDICE

1. Every Member shall cooperate in the development of evidence to be examined by a panel in procedures under paragraphs 4 through 6 of Article 7. The parties to the dispute and any third-country Member concerned shall notify to the DSB, as soon as the provisions of paragraph 4 of Article 7 have been invoked, the organization responsible for administration of this provision within its territory and the procedures to be used to comply with requests for information.

2. In cases where matters are referred to the DSB under paragraph 4 of Article 7, the DSB shall, upon request, initiate the procedure to obtain such information from the government of the subsidizing Member as necessary to establish the existence and amount of subsidization, the value of total sales of the subsidized firms, as well as information necessary to analyze the adverse effects caused by the subsidized product.[66] This process may include, where appropriate, presentation of questions to the government of the subsidizing Member and of the complaining Member to collect information, as well as to clarify and obtain elaboration of information available to the parties to a dispute through the notification procedures set forth in Part VII.[67]

3. In the case of effects in third-country markets, a party to a dispute may collect information, including through the use of questions to the government of the third-country Member, necessary to analyse adverse effects, which is not otherwise reasonably available from the complaining Member or the subsidizing Member. This requirement should be administered in such a way as not to impose an unreasonable burden on the third-country Member. In particular, such a Member is not expected to make a market or price analysis specially for that purpose. The information to be supplied is that which is already available or can be readily obtained by this Member (e.g. most recent statistics which have already been gathered by relevant statistical services but which have not yet been published, customs data concerning imports and declared values of the products concerned, etc.). However, if a party to a dispute undertakes a detailed market analysis at its own expense, the task of the person or firm conducting such an analysis shall be facilitated by the authorities of the third-country Member and such a person or firm shall be given access to all information which is not normally maintained confidential by the government.

4. The DSB shall designate a representative to serve the function of facilitating the information-gathering process. The sole purpose of the representative shall be to ensure the timely development of the information necessary to facilitate expeditious subsequent multilateral review of the dispute. In particular, the representative may suggest ways to most efficiently solicit necessary information as well as encourage the cooperation of the parties.

5. The information-gathering process outlined in paragraphs 2 through 4 shall be completed within 60 days of the date on which the matter has been referred to the DSB under paragraph 4 of Article 7. The information obtained during this process shall be submitted to the panel established by the DSB in accordance with the provisions of Part X. This information should include, *inter alia*, data concerning the amount of the subsidy in question (and, where appropriate, the value of total sales of the subsidized firms), prices of the subsidized product, prices of the non-subsidized product, prices of other suppliers to the market, changes in the supply of the subsidized product to the market in question and changes

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[66] In cases where the existence of serious prejudice has to be demonstrated.

[67] The information-gathering process by the DSB shall take into account the need to protect information which is by nature confidential or which is provided on a confidential basis by any Member involved in this process.

in market shares. It should also include rebuttal evidence, as well as such supplemental information as the panel deems relevant in the course of reaching its conclusions.

6. If the subsidizing and/or third-country Member fail to cooperate in the information-gathering process, the complaining Member will present its case of serious prejudice, based on evidence available to it, together with facts and circumstances of the non-cooperation of the subsidizing and/or third-country Member. Where information is unavailable due to non-cooperation by the subsidizing and/or third-country Member, the panel may complete the record as necessary relying on best information otherwise available.

7. In making its determination, the panel should draw adverse inferences from instances of non-cooperation by any party involved in the information-gathering process.

8. In making a determination to use either best information available or adverse inferences, the panel shall consider the advice of the DSB representative nominated under paragraph 4 as to the reasonableness of any requests for information and the efforts made by parties to comply with these requests in a cooperative and timely manner.

9. Nothing in the information-gathering process shall limit the ability of the panel to seek such additional information it deems essential to a proper resolution to the dispute, and which was not adequately sought or developed during that process. However, ordinarily the panel should not request additional information to complete the record where the information would support a particular party's position and the absence of that information in the record is the result of unreasonable non-cooperation by that party in the information-gathering process.

ANNEX VI

PROCEDURES FOR ON-THE-SPOT INVESTIGATIONS PURSUANT TO PARAGRAPH 6 OF ARTICLE 12

1. Upon initiation of an investigation, the authorities of the exporting Member and the firms known to be concerned should be informed of the intention to carry out on-the-spot investigations.

2. If in exceptional circumstances it is intended to include non-governmental experts in the investigating team, the firms and the authorities of the exporting Member should be so informed. Such non-governmental experts should be subject to effective sanctions for breach of confidentiality requirements.

3. It should be standard practice to obtain explicit agreement of the firms concerned in the exporting Member before the visit is finally scheduled.

4. As soon as the agreement of the firms concerned has been obtained, the investigating authorities should notify the authorities of the exporting Member of the names and addresses of the firms to be visited and the dates agreed.

5. Sufficient advance notice should be given to the firms in question before the visit is made.

6. Visits to explain the questionnaire should only be made at the request of an exporting firm. In case of such a request the investigating authorities may place themselves at the disposal of the firm; such a visit may only be made if *(a)* the authorities of the importing Member notify the representatives of the government of the Member in question and *(b)* the latter do not object to the visit.

7. As the main purpose of the on-the-spot investigation is to verify information provided or to obtain further details, it should be carried out after the response to the questionnaire has been received unless the firm agrees to the contrary and the government of the exporting Member is informed by the investigating authorities of the anticipated visit and does not object to it; further, it should be standard practice prior to the visit to advise the firms concerned of the general nature of the information to be verified and of any further information which needs to be provided, though this should not preclude requests to be made on the spot for further details to be provided in the light of information obtained.

8. Enquiries or questions put by the authorities or firms of the exporting Members and essential to a successful on-the-spot investigation should, whenever possible, be answered before the visit is made.

ANNEX VII

DEVELOPING COUNTRY MEMBERS REFERRED TO IN PARAGRAPH 2(A) OF ARTICLE 27

The developing country Members not subject to the provisions of paragraph 1(a) of Article 3 under the terms of paragraph 2(a) of Article 27 are:

(a) Least-developed countries designated as such by the United Nations which are Members of the WTO.

(b) Each of the following developing countries which are Members of the WTO shall be subject to the provisions which are applicable to other developing country Members according to paragraph 2(b) of Article 27 when GNP per capita has reached $1,000 per annum[4]: Bolivia, Cameroon, Congo, Côte d'Ivoire, Dominican Republic, Egypt, Ghana, Guatemala, Guyana, India, Indonesia, Kenya, Morocco, Nicaragua, Nigeria, Pakistan, Philippines, Senegal, Sri Lanka and Zimbabwe.

[4]The inclusion of developing country Members in the list in paragraph (b) is based on the most recent data from the World Bank on GNP per capita

AGREEMENT ON SAFEGUARDS

Members,

Having in mind the overall objective of the Members to improve and strengthen the international trading system based on GATT 1994;

Recognizing the need to clarify and reinforce the disciplines of GATT 1994, and specifically those of its Article XIX (Emergency Action on Imports of Particular Products), to re-establish multilateral control over safeguards and eliminate measures that escape such control;

Recognizing the importance of structural adjustment and the need to enhance rather than limit competition in international markets; and

Recognizing further that, for these purposes, a comprehensive agreement, applicable to all Members and based on the basic principles of GATT 1994, is called for,

Hereby *agree* as follows:

Article 1

General Provision

This Agreement establishes rules for the application of safeguard measures which shall be understood to mean those measures provided for in Article XIX of GATT 1994.

Article 2

Conditions

1. A Member[1] may apply a safeguard measure to a product only if that Member has determined, pursuant to the provisions set out below, that such product is being imported into its territory in such increased quantities, absolute or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive products.

2. Safeguard measures shall be applied to a product being imported irrespective of its source.

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[1]A customs union may apply a safeguard measure as a single unit or on behalf of a member State. When a customs union applies a safeguard measure as a single unit, all the requirements for the determination of serious injury or threat thereof under this Agreement shall be based on the conditions existing in the customs union as a whole. When a safeguard measure is applied on behalf of a member State, all the requirements for the determination of serious injury or threat thereof shall be based on the conditions existing in that member State and the measure shall be limited to that member State. Nothing in this Agreement prejudges the interpretation of the relationship between Article XIX and paragraph 8 of Article XXIV of GATT 1994.

Article 3

Investigation

1. A Member may apply a safeguard measure only following an investigation by the competent authorities of that Member pursuant to procedures previously established and made public in consonance with Article X of GATT 1994. This investigation shall include reasonable public notice to all interested parties and public hearings or other appropriate means in which importers, exporters and other interested parties could present evidence and their views, including the opportunity to respond to the presentations of other parties and to submit their views, *inter alia*, as to whether or not the application of a safeguard measure would be in the public interest. The competent authorities shall publish a report setting forth their findings and reasoned conclusions reached on all pertinent issues of fact and law.

2. Any information which is by nature confidential or which is provided on a confidential basis shall, upon cause being shown, be treated as such by the competent authorities. Such information shall not be disclosed without permission of the party submitting it. Parties providing confidential information may be requested to furnish non-confidential summaries thereof or, if such parties indicate that such information cannot be summarized, the reasons why a summary cannot be provided. However, if the competent authorities find that a request for confidentiality is not warranted and if the party concerned is either unwilling to make the information public or to authorize its disclosure in generalized or summary form, the authorities may disregard such information unless it can be demonstrated to their satisfaction from appropriate sources that the information is correct.

Article 4

Determination of Serious Injury or Threat Thereof

1. For the purposes of this Agreement:

(a) "serious injury" shall be understood to mean a significant overall impairment in the position of a domestic industry;

(b) "threat of serious injury" shall be understood to mean serious injury that is clearly imminent, in accordance with the provisions of paragraph 2. A determination of the existence of a threat of serious injury shall be based on facts and not merely on allegation, conjecture or remote possibility; and

(c) in determining injury or threat thereof, a "domestic industry" shall be understood to mean the producers as a whole of the like or directly competitive products operating within the territory of a Member, or those whose collective output of the like or directly competitive products constitutes a major proportion of the total domestic production of those products.

2. (a) In the investigation to determine whether increased imports have caused or are threatening to cause serious injury to a domestic industry under the terms of this Agreement, the competent authorities shall evaluate all relevant factors of an objective and quantifiable nature having a bearing on the situation of that industry, in particular, the rate and amount of the increase in imports of the product concerned in absolute and relative terms, the share of the domestic market taken by increased imports, changes in the level of sales, production, productivity, capacity utilization, profits and losses, and employment.

(b) The determination referred to in subparagraph (a) shall not be made unless this investigation demonstrates, on the basis of objective evidence, the existence of the causal link between increased imports of the product concerned and serious injury or threat thereof. When factors other than increased imports are causing injury to the domestic industry at the same time, such injury shall not be attributed to increased imports.

(c) The competent authorities shall publish promptly, in accordance with the provisions of Article 3, a detailed analysis of the case under investigation as well as a demonstration of the relevance of the factors examined.

Article 5

Application of Safeguard Measures

1. A Member shall apply safeguard measures only to the extent necessary to prevent or remedy serious injury and to facilitate adjustment. If a quantitative restriction is used, such a measure shall not reduce the quantity of imports below the level of a recent period which shall be the average of imports in the last three representative years for which statistics are available, unless clear justification is given that a different level is necessary to prevent or remedy serious injury. Members should choose measures most suitable for the achievement of these objectives.

2. (a) In cases in which a quota is allocated among supplying countries, the Member applying the restrictions may seek agreement with respect to the allocation of shares in the quota with all other Members having a substantial interest in supplying the product concerned. In cases in which this method is not reasonably practicable, the Member concerned shall allot to Members having a substantial interest in supplying the product shares based upon the proportions, supplied by such Members during a previous representative period, of the total quantity or value of imports of the product, due account being taken of any special factors which may have affected or may be affecting the trade in the product.

(b) A Member may depart from the provisions in subparagraph (a) provided that consultations under paragraph 3 of Article 12 are conducted under the auspices of the Committee on Safeguards provided for in paragraph 1 of Article 13 and that clear demonstration is provided to the Committee that (*i*) imports from certain Members have increased in disproportionate percentage in relation to the total increase of imports of the product concerned in the representative period, (*ii*) the reasons for the departure from the provisions in subparagraph (a) are justified, and (*iii*) the conditions of such departure are equitable to all suppliers of the product concerned. The duration of any such measure shall not be extended beyond the initial period under paragraph 1 of Article 7. The departure referred to above shall not be permitted in the case of threat of serious injury.

Article 6

Provisional Safeguard Measures

In critical circumstances where delay would cause damage which it would be difficult to repair, a Member may take a provisional safeguard measure pursuant to a preliminary determination that there is clear evidence that increased imports have caused or are threatening to cause serious injury. The duration of the provisional measure shall not exceed 200 days, during which period the pertinent requirements of Articles 2 through 7 and 12 shall be met. Such measures should take the form of tariff increases to be promptly refunded if the subsequent investigation referred to in paragraph 2 of Article 4 does not determine that increased imports have caused or threatened to cause serious injury

to a domestic industry. The duration of any such provisional measure shall be counted as a part of the initial period and any extension referred to in paragraphs 1, 2 and 3 of Article 7.

Article 7

Duration and Review of Safeguard Measures

1. A Member shall apply safeguard measures only for such period of time as may be necessary to prevent or remedy serious injury and to facilitate adjustment. The period shall not exceed four years, unless it is extended under paragraph 2.

2. The period mentioned in paragraph 1 may be extended provided that the competent authorities of the importing Member have determined, in conformity with the procedures set out in Articles 2, 3, 4 and 5, that the safeguard measure continues to be necessary to prevent or remedy serious injury and that there is evidence that the industry is adjusting, and provided that the pertinent provisions of Articles 8 and 12 are observed.

3. The total period of application of a safeguard measure including the period of application of any provisional measure, the period of initial application and any extension thereof, shall not exceed eight years.

4. In order to facilitate adjustment in a situation where the expected duration of a safeguard measure as notified under the provisions of paragraph 1 of Article 12 is over one year, the Member applying the measure shall progressively liberalize it at regular intervals during the period of application. If the duration of the measure exceeds three years, the Member applying such a measure shall review the situation not later than the mid-term of the measure and, if appropriate, withdraw it or increase the pace of liberalization. A measure extended under paragraph 2 shall not be more restrictive than it was at the end of the initial period, and should continue to be liberalized.

5. No safeguard measure shall be applied again to the import of a product which has been subject to such a measure, taken after the date of entry into force of the WTO Agreement, for a period of time equal to that during which such measure had been previously applied, provided that the period of non-application is at least two years.

6. Notwithstanding the provisions of paragraph 5, a safeguard measure with a duration of 180 days or less may be applied again to the import of a product if:

(a) at least one year has elapsed since the date of introduction of a safeguard measure on the import of that product; and

(b) such a safeguard measure has not been applied on the same product more than twice in the five-year period immediately preceding the date of introduction of the measure.

Article 8

Level of Concessions and Other Obligations

1. A Member proposing to apply a safeguard measure or seeking an extension of a safeguard measure shall endeavour to maintain a substantially equivalent level of concessions and other obligations to that existing under GATT 1994 between it and the exporting Members which would be affected by such a measure, in accordance with the provisions of paragraph 3 of Article 12. To achieve this

objective, the Members concerned may agree on any adequate means of trade compensation for the adverse effects of the measure on their trade.

2. If no agreement is reached within 30 days in the consultations under paragraph 3 of Article 12, then the affected exporting Members shall be free, not later than 90 days after the measure is applied, to suspend, upon the expiration of 30 days from the day on which written notice of such suspension is received by the Council for Trade in Goods, the application of substantially equivalent concessions or other obligations under GATT 1994, to the trade of the Member applying the safeguard measure, the suspension of which the Council for Trade in Goods does not disapprove.

3. The right of suspension referred to in paragraph 2 shall not be exercised for the first three years that a safeguard measure is in effect, provided that the safeguard measure has been taken as a result of an absolute increase in imports and that such a measure conforms to the provisions of this Agreement.

Article 9

Developing Country Members

1. Safeguard measures shall not be applied against a product originating in a developing country Member as long as its share of imports of the product concerned in the importing Member does not exceed 3 per cent, provided that developing country Members with less than 3 per cent import share collectively account for not more than 9 per cent of total imports of the product concerned.[2]

2. A developing country Member shall have the right to extend the period of application of a safeguard measure for a period of up to two years beyond the maximum period provided for in paragraph 3 of Article 7. Notwithstanding the provisions of paragraph 5 of Article 7, a developing country Member shall have the right to apply a safeguard measure again to the import of a product which has been subject to such a measure, taken after the date of entry into force of the WTO Agreement, after a period of time equal to half that during which such a measure has been previously applied, provided that the period of non-application is at least two years.

Article 10

Pre-existing Article XIX Measures

Members shall terminate all safeguard measures taken pursuant to Article XIX of GATT 1947 that were in existence on the date of entry into force of the WTO Agreement not later than eight years after the date on which they were first applied or five years after the date of entry into force of the WTO Agreement, whichever comes later.

[2] A Member shall immediately notify an action taken under paragraph 1 of Article 9 to the Committee on Safeguards.

Article 11

Prohibition and Elimination of Certain Measures

1. (a) A Member shall not take or seek any emergency action on imports of particular products as set forth in Article XIX of GATT 1994 unless such action conforms with the provisions of that Article applied in accordance with this Agreement.

(b) Furthermore, a Member shall not seek, take or maintain any voluntary export restraints, orderly marketing arrangements or any other similar measures on the export or the import side.[3,4] These include actions taken by a single Member as well as actions under agreements, arrangements and understandings entered into by two or more Members. Any such measure in effect on the date of entry into force of the WTO Agreement shall be brought into conformity with this Agreement or phased out in accordance with paragraph 2.

(c) This Agreement does not apply to measures sought, taken or maintained by a Member pursuant to provisions of GATT 1994 other than Article XIX, and Multilateral Trade Agreements in Annex 1A other than this Agreement, or pursuant to protocols and agreements or arrangements concluded within the framework of GATT 1994.

2. The phasing out of measures referred to in paragraph 1(b) shall be carried out according to timetables to be presented to the Committee on Safeguards by the Members concerned not later than 180 days after the date of entry into force of the WTO Agreement. These timetables shall provide for all measures referred to in paragraph 1 to be phased out or brought into conformity with this Agreement within a period not exceeding four years after the date of entry into force of the WTO Agreement, subject to not more than one specific measure per importing Member[5], the duration of which shall not extend beyond 31 December 1999. Any such exception must be mutually agreed between the Members directly concerned and notified to the Committee on Safeguards for its review and acceptance within 90 days of the entry into force of the WTO Agreement. The Annex to this Agreement indicates a measure which has been agreed as falling under this exception.

3. Members shall not encourage or support the adoption or maintenance by public and private enterprises of non-governmental measures equivalent to those referred to in paragraph 1.

Article 12

Notification and Consultation

1 A Member shall immediately notify the Committee on Safeguards upon:

(a) initiating an investigatory process relating to serious injury or threat thereof and the reasons for it;

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[3]An import quota applied as a safeguard measure in conformity with the relevant provisions of GATT 1994 and this Agreement may, by mutual agreement, be administered by the exporting Member.

[4]Examples of similar measures include export moderation, export-price or import-price monitoring systems, export or import surveillance, compulsory import cartels and discretionary export or import licensing schemes, any of which afford protection.

[5]The only such exception to which the European Communities is entitled is indicated in the Annex to this Agreement.

(b) making a finding of serious injury or threat thereof caused by increased imports; and

(c) taking a decision to apply or extend a safeguard measure.

2. In making the notifications referred to in paragraphs 1(b) and 1(c), the Member proposing to apply or extend a safeguard measure shall provide the Committee on Safeguards with all pertinent information, which shall include evidence of serious injury or threat thereof caused by increased imports, precise description of the product involved and the proposed measure, proposed date of introduction, expected duration and timetable for progressive liberalization. In the case of an extension of a measure, evidence that the industry concerned is adjusting shall also be provided. The Council for Trade in Goods or the Committee on Safeguards may request such additional information as they may consider necessary from the Member proposing to apply or extend the measure.

3. A Member proposing to apply or extend a safeguard measure shall provide adequate opportunity for prior consultations with those Members having a substantial interest as exporters of the product concerned, with a view to, *inter alia*, reviewing the information provided under paragraph 2, exchanging views on the measure and reaching an understanding on ways to achieve the objective set out in paragraph 1 of Article 8.

4. A Member shall make a notification to the Committee on Safeguards before taking a provisional safeguard measure referred to in Article 6. Consultations shall be initiated immediately after the measure is taken.

5. The results of the consultations referred to in this Article, as well as the results of mid-term reviews referred to in paragraph 4 of Article 7, any form of compensation referred to in paragraph 1 of Article 8, and proposed suspensions of concessions and other obligations referred to in paragraph 2 of Article 8, shall be notified immediately to the Council for Trade in Goods by the Members concerned.

6. Members shall notify promptly the Committee on Safeguards of their laws, regulations and administrative procedures relating to safeguard measures as well as any modifications made to them.

7. Members maintaining measures described in Article 10 and paragraph 1 of Article 11 which exist on the date of entry into force of the WTO Agreement shall notify such measures to the Committee on Safeguards not later than 60 days after the date of entry into force of the WTO Agreement.

8. Any Member may notify the Committee on Safeguards of all laws, regulations, administrative procedures and any measures or actions dealt with in this Agreement that have not been notified by other Members that are required by this Agreement to make such notifications.

9. Any Member may notify the Committee on Safeguards of any non-governmental measures referred to in paragraph 3 of Article 11.

10. All notifications to the Council for Trade in Goods referred to in this Agreement shall normally be made through the Committee on Safeguards.

11. The provisions on notification in this Agreement shall not require any Member to disclose confidential information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.

Article 13

Surveillance

1. A Committee on Safeguards is hereby established, under the authority of the Council for Trade in Goods, which shall be open to the participation of any Member indicating its wish to serve on it. The Committee will have the following functions:

(a) to monitor, and report annually to the Council for Trade in Goods on, the general implementation of this Agreement and make recommendations towards its improvement;

(b) to find, upon request of an affected Member, whether or not the procedural requirements of this Agreement have been complied with in connection with a safeguard measure, and report its findings to the Council for Trade in Goods;

(c) to assist Members, if they so request, in their consultations under the provisions of this Agreement;

(d) to examine measures covered by Article 10 and paragraph 1 of Article 11, monitor the phase-out of such measures and report as appropriate to the Council for Trade in Goods;

(e) to review, at the request of the Member taking a safeguard measure, whether proposals to suspend concessions or other obligations are "substantially equivalent", and report as appropriate to the Council for Trade in Goods;

(f) to receive and review all notifications provided for in this Agreement and report as appropriate to the Council for Trade in Goods; and

(g) to perform any other function connected with this Agreement that the Council for Trade in Goods may determine.

2. To assist the Committee in carrying out its surveillance function, the Secretariat shall prepare annually a factual report on the operation of this Agreement based on notifications and other reliable information available to it.

Article 14

Dispute Settlement

The provisions of Articles XXII and XXIII of GATT 1994 as elaborated and applied by the Dispute Settlement Understanding shall apply to consultations and the settlement of disputes arising under this Agreement.

ANNEX

EXCEPTION REFERRED TO IN PARAGRAPH 2 OF ARTICLE 11

Members concerned	Product	Termination
EC/Japan	Passenger cars, off road vehicles, light commercial vehicles, light trucks (up to 5 tonnes), and the same vehicles in wholly knocked-down form (CKD sets).	31 December 1999

ANNEX 1B

GENERAL AGREEMENT ON TRADE IN SERVICES

GENERAL AGREEMENT ON TRADE IN SERVICES

Members,

Recognizing the growing importance of trade in services for the growth and development of the world economy;

Wishing to establish a multilateral framework of principles and rules for trade in services with a view to the expansion of such trade under conditions of transparency and progressive liberalization and as a means of promoting the economic growth of all trading partners and the development of developing countries;

Desiring the early achievement of progressively higher levels of liberalization of trade in services through successive rounds of multilateral negotiations aimed at promoting the interests of all participants on a mutually advantageous basis and at securing an overall balance of rights and obligations, while giving due respect to national policy objectives;

Recognizing the right of Members to regulate, and to introduce new regulations, on the supply of services within their territories in order to meet national policy objectives and, given asymmetries existing with respect to the degree of development of services regulations in different countries, the particular need of developing countries to exercise this right;

Desiring to facilitate the increasing participation of developing countries in trade in services and the expansion of their service exports including, *inter alia*, through the strengthening of their domestic services capacity and its efficiency and competitiveness;

Taking particular account of the serious difficulty of the least-developed countries in view of their special economic situation and their development, trade and financial needs;

Hereby *agree* as follows:

PART I

SCOPE AND DEFINITION

Article 1

Scope and Definition

1 This Agreement applies to measures by Members affecting trade in services.

2 For the purposes of this Agreement, trade in services is defined as the supply of a service:

(a) from the territory of one Member into the territory of any other Member;

(b) in the territory of one Member to the service consumer of any other Member;

(c) by a service supplier of one Member, through commercial presence in the territory of any other Member;

(d) by a service supplier of one Member, through presence of natural persons of a Member in the territory of any other Member.

3. For the purposes of this Agreement:

(a) "measures by Members" means measures taken by:

(i) central, regional or local governments and authorities; and

(ii) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities;

In fulfilling its obligations and commitments under the Agreement, each Member shall take such reasonable measures as may be available to it to ensure their observance by regional and local governments and authorities and non-governmental bodies within its territory;

(b) "services" includes any service in any sector except services supplied in the exercise of governmental authority;

(c) "a service supplied in the exercise of governmental authority" means any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers.

PART II

GENERAL OBLIGATIONS AND DISCIPLINES

Article II

Most-Favoured-Nation Treatment

1. With respect to any measure covered by this Agreement, each Member shall accord immediately and unconditionally to services and service suppliers of any other Member treatment no less favourable than that it accords to like services and service suppliers of any other country.

2. A Member may maintain a measure inconsistent with paragraph 1 provided that such a measure is listed in, and meets the conditions of, the Annex on Article II Exemptions.

3. The provisions of this Agreement shall not be so construed as to prevent any Member from conferring or according advantages to adjacent countries in order to facilitate exchanges limited to contiguous frontier zones of services that are both locally produced and consumed.

Article III

Transparency

1. Each Member shall publish promptly and, except in emergency situations, at the latest by the time of their entry into force, all relevant measures of general application which pertain to or affect the operation of this Agreement. International agreements pertaining to or affecting trade in services to which a Member is a signatory shall also be published.

2. Where publication as referred to in paragraph 1 is not practicable, such information shall be made otherwise publicly available.

3. Each Member shall promptly and at least annually inform the Council for Trade in Services of the introduction of any new, or any changes to existing, laws, regulations or administrative guidelines which significantly affect trade in services covered by its specific commitments under this Agreement.

4. Each Member shall respond promptly to all requests by any other Member for specific information on any of its measures of general application or international agreements within the meaning of paragraph 1. Each Member shall also establish one or more enquiry points to provide specific information to other Members, upon request, on all such matters as well as those subject to the notification requirement in paragraph 3. Such enquiry points shall be established within two years from the date of entry into force of the Agreement Establishing the WTO (referred to in this Agreement as the "WTO Agreement"). Appropriate flexibility with respect to the time-limit within which such enquiry points are to be established may be agreed upon for individual developing country Members. Enquiry points need not be depositories of laws and regulations.

5. Any Member may notify to the Council for Trade in Services any measure, taken by any other Member, which it considers affects the operation of this Agreement.

Article III bis

Disclosure of Confidential Information

Nothing in this Agreement shall require any Member to provide confidential information, the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice legitimate commercial interests of particular enterprises, public or private.

Article IV

Increasing Participation of Developing Countries

1. The increasing participation of developing country Members in world trade shall be facilitated through negotiated specific commitments, by different Members pursuant to Parts III and IV of this Agreement, relating to:

(a) the strengthening of their domestic services capacity and its efficiency and competitiveness, *inter alia* through access to technology on a commercial basis;

(b) the improvement of their access to distribution channels and information networks; and

(c) the liberalization of market access in sectors and modes of supply of export interest to them.

2. Developed country Members, and to the extent possible other Members, shall establish contact points within two years from the date of entry into force of the WTO Agreement to facilitate the access of developing country Members' service suppliers to information, related to their respective markets, concerning:

(a) commercial and technical aspects of the supply of services;

(b) registration, recognition and obtaining of professional qualifications; and

(c) the availability of services technology.

3. Special priority shall be given to the least-developed country Members in the implementation of paragraphs 1 and 2. Particular account shall be taken of the serious difficulty of the least-developed countries in accepting negotiated specific commitments in view of their special economic situation and their development, trade and financial needs.

Article V

Economic Integration

1. This Agreement shall not prevent any of its Members from being a party to or entering into an agreement liberalizing trade in services between or among the parties to such an agreement, provided that such an agreement:

(a) has substantial sectoral coverage[1], and

(b) provides for the absence or elimination of substantially all discrimination, in the sense of Article XVII, between or among the parties, in the sectors covered under subparagraph (a), through:

(i) elimination of existing discriminatory measures, and/or

(ii) prohibition of new or more discriminatory measures,

either at the entry into force of that agreement or on the basis of a reasonable time-frame, except for measures permitted under Articles XI, XII, XIV and XIV bis.

2. In evaluating whether the conditions under paragraph 1(b) are met, consideration may be given to the relationship of the agreement to a wider process of economic integration or trade liberalization among the countries concerned.

3. (a) Where developing countries are parties to an agreement of the type referred to in paragraph 1, flexibility shall be provided for regarding the conditions set out in paragraph 1, particularly with reference to subparagraph (b) thereof, in accordance with the level of development of the countries concerned, both overall and in individual sectors and subsectors.

(b) Notwithstanding paragraph 6, in the case of an agreement of the type referred to in paragraph 1 involving only developing countries, more favourable treatment may be granted to juridical persons owned or controlled by natural persons of the parties to such an agreement.

4. Any agreement referred to in paragraph 1 shall be designed to facilitate trade between the parties to the agreement and shall not in respect of any Member outside the agreement raise the overall level of barriers to trade in services within the respective sectors or subsectors compared to the level applicable prior to such an agreement.

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[1]This condition is understood in terms of number of sectors, volume of trade affected and modes of supply. In order to meet this condition, agreements should not provide for the *a priori* exclusion of any mode of supply.

5. If, in the conclusion, enlargement or any significant modification of any agreement under paragraph 1, a Member intends to withdraw or modify a specific commitment inconsistently with the terms and conditions set out in its Schedule, it shall provide at least 90 days advance notice of such modification or withdrawal and the procedure set forth in paragraphs 2, 3 and 4 of Article XXI shall apply.

6. A service supplier of any other Member that is a juridical person constituted under the laws of a party to an agreement referred to in paragraph 1 shall be entitled to treatment granted under such agreement, provided that it engages in substantive business operations in the territory of the parties to such agreement.

7. (a) Members which are parties to any agreement referred to in paragraph 1 shall promptly notify any such agreement and any enlargement or any significant modification of that agreement to the Council for Trade in Services. They shall also make available to the Council such relevant information as may be requested by it. The Council may establish a working party to examine such an agreement or enlargement or modification of that agreement and to report to the Council on its consistency with this Article.

(b) Members which are parties to any agreement referred to in paragraph 1 which is implemented on the basis of a time-frame shall report periodically to the Council for Trade in Services on its implementation. The Council may establish a working party to examine such reports if it deems such a working party necessary.

(c) Based on the reports of the working parties referred to in subparagraphs (a) and (b), the Council may make recommendations to the parties as it deems appropriate.

8. A Member which is a party to any agreement referred to in paragraph 1 may not seek compensation for trade benefits that may accrue to any other Member from such agreement.

Article V bis

Labour Markets Integration Agreements

This Agreement shall not prevent any of its Members from being a party to an agreement establishing full integration[7] of the labour markets between or among the parties to such an agreement, provided that such an agreement:

(a) exempts citizens of parties to the agreement from requirements concerning residency and work permits;

(b) is notified to the Council for Trade in Services.

Article VI

Domestic Regulation

1. In sectors where specific commitments are undertaken, each Member shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.

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[7]Typically, such integration provides citizens of the parties concerned with a right of free entry to the employment markets of the parties and includes measures concerning conditions of pay, other conditions of employment and social benefits.

2. (a) Each Member shall maintain or institute as soon as practicable judicial, arbitral or administrative tribunals or procedures which provide, at the request of an affected service supplier, for the prompt review of, and where justified, appropriate remedies for, administrative decisions affecting trade in services. Where such procedures are not independent of the agency entrusted with the administrative decision concerned, the Member shall ensure that the procedures in fact provide for an objective and impartial review.

(b) The provisions of subparagraph (a) shall not be construed to require a Member to institute such tribunals or procedures where this would be inconsistent with its constitutional structure or the nature of its legal system.

3. Where authorization is required for the supply of a service on which a specific commitment has been made, the competent authorities of a Member shall, within a reasonable period of time after the submission of an application considered complete under domestic laws and regulations, inform the applicant of the decision concerning the application. At the request of the applicant, the competent authorities of the Member shall provide, without undue delay, information concerning the status of the application.

4. With a view to ensuring that measures relating to qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade in services, the Council for Trade in Services shall, through appropriate bodies it may establish, develop any necessary disciplines. Such disciplines shall aim to ensure that such requirements are, *inter alia*:

(a) based on objective and transparent criteria, such as competence and the ability to supply the service;

(b) not more burdensome than necessary to ensure the quality of the service;

(c) in the case of licensing procedures, not in themselves a restriction on the supply of the service.

5. (a) In sectors in which a Member has undertaken specific commitments, pending the entry into force of disciplines developed in these sectors pursuant to paragraph 4, the Member shall not apply licensing and qualification requirements and technical standards that nullify or impair such specific commitments in a manner which:

(i) does not comply with the criteria outlined in subparagraphs 4(a), (b) or (c); and

(ii) could not reasonably have been expected of that Member at the time the specific commitments in those sectors were made.

(b) In determining whether a Member is in conformity with the obligation under paragraph 5(a), account shall be taken of international standards of relevant international organizations[3] applied by that Member.

6. In sectors where specific commitments regarding professional services are undertaken, each Member shall provide for adequate procedures to verify the competence of professionals of any other Member.

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[3]The term "relevant international organizations" refers to international bodies whose membership is open to the relevant bodies of at least all Members of the WTO.

Article VII

Recognition

1. For the purposes of the fulfilment, in whole or in part, of its standards or criteria for the authorization, licensing or certification of services suppliers, and subject to the requirements of paragraph 3, a Member may recognize the education or experience obtained, requirements met, or licenses or certifications granted in a particular country. Such recognition, which may be achieved through harmonization or otherwise, may be based upon an agreement or arrangement with the country concerned or may be accorded autonomously.

2. A Member that is a party to an agreement or arrangement of the type referred to in paragraph 1, whether existing or future, shall afford adequate opportunity for other interested Members to negotiate their accession to such an agreement or arrangement or to negotiate comparable ones with it. Where a Member accords recognition autonomously, it shall afford adequate opportunity for any other Member to demonstrate that education, experience, licenses, or certifications obtained or requirements met in that other Member's territory should be recognized.

3. A Member shall not accord recognition in a manner which would constitute a means of discrimination between countries in the application of its standards or criteria for the authorization, licensing or certification of services suppliers, or a disguised restriction on trade in services.

4. Each Member shall:

(a) within 12 months from the date on which the WTO Agreement takes effect for it, inform the Council for Trade in Services of its existing recognition measures and state whether such measures are based on agreements or arrangements of the type referred to in paragraph 1;

(b) promptly inform the Council for Trade in Services as far in advance as possible of the opening of negotiations on an agreement or arrangement of the type referred to in paragraph 1 in order to provide adequate opportunity to any other Member to indicate their interest in participating in the negotiations before they enter a substantive phase;

(c) promptly inform the Council for Trade in Services when it adopts new recognition measures or significantly modifies existing ones and state whether the measures are based on an agreement or arrangement of the type referred to in paragraph 1.

5. Wherever appropriate, recognition should be based on multilaterally agreed criteria. In appropriate cases, Members shall work in cooperation with relevant intergovernmental and non-governmental organizations towards the establishment and adoption of common international standards and criteria for recognition and common international standards for the practice of relevant services trades and professions.

Article VIII

Monopolies and Exclusive Service Suppliers

1. Each Member shall ensure that any monopoly supplier of a service in its territory does not, in the supply of the monopoly service in the relevant market, act in a manner inconsistent with that Member's obligations under Article II and specific commitments.

2. Where a Member's monopoly supplier competes, either directly or through an affiliated company, in the supply of a service outside the scope of its monopoly rights and which is subject to that Member's

specific commitments, the Member shall ensure that such a supplier does not abuse its monopoly position to act in its territory in a manner inconsistent with such commitments.

3. The Council for Trade in Services may, at the request of a Member which has a reason to believe that a monopoly supplier of a service of any other Member is acting in a manner inconsistent with paragraph 1 or 2, request the Member establishing, maintaining or authorizing such supplier to provide specific information concerning the relevant operations.

4. If, after the date of entry into force of the WTO Agreement, a Member grants monopoly rights regarding the supply of a service covered by its specific commitments, that Member shall notify the Council for Trade in Services no later than three months before the intended implementation of the grant of monopoly rights and the provisions of paragraphs 2, 3 and 4 of Article XXI shall apply.

5. The provisions of this Article shall also apply to cases of exclusive service suppliers, where a Member, formally or in effect, (*a*) authorizes or establishes a small number of service suppliers and (*b*) substantially prevents competition among those suppliers in its territory.

Article IX

Business Practices

1 Members recognize that certain business practices of service suppliers, other than those falling under Article VIII, may restrain competition and thereby restrict trade in services.

2. Each Member shall, at the request of any other Member, enter into consultations with a view to eliminating practices referred to in paragraph 1. The Member addressed shall accord full and sympathetic consideration to such a request and shall cooperate through the supply of publicly available non-confidential information of relevance to the matter in question. The Member addressed shall also provide other information available to the requesting Member, subject to its domestic law and to the conclusion of satisfactory agreement concerning the safeguarding of its confidentiality by the requesting Member.

Article X

Emergency Safeguard Measures

1. There shall be multilateral negotiations on the question of emergency safeguard measures based on the principle of non-discrimination. The results of such negotiations shall enter into effect on a date not later than three years from the date of entry into force of the WTO Agreement.

2. In the period before the entry into effect of the results of the negotiations referred to in paragraph 1, any Member may, notwithstanding the provisions of paragraph 1 of Article XXI, notify the Council on Trade in Services of its intention to modify or withdraw a specific commitment after a period of one year from the date on which the commitment enters into force: provided that the Member shows cause to the Council that the modification or withdrawal cannot await the lapse of the three-year period provided for in paragraph 1 of Article XXI.

3. The provisions of paragraph 2 shall cease to apply three years after the date of entry into force of the WTO Agreement.

Article XI

Payments and Transfers

1. Except under the circumstances envisaget in Article XII, a Member shall not apply restrictions on international transfers and payments for current transactions relating to its specific commitments.

2. Nothing in this Agreement shall affect the rights and obligations of the members of the International Monetary Fund under the Articles of Agreement of the Fund, including the use of exchange actions which are in conformity with the Articles of Agreement, provided that a Member shall not impose restrictions on any capital transactions inconsistently with its specific commitments regarding such transactions, except under Article XII or at the request of the Fund.

Article XII

Restrictions to Safeguard the Balance of Payments

1. In the event of serious balance-of-payments and external financial difficulties or threat thereof, a Member may adopt or maintain restrictions on trade in services on which it has undertaken specific commitments, including on payments or transfers for transactions related to such commitments. It is recognized that particular pressures on the balance of payments of a Member in the process of economic development or economic transition may necessitate the use of restrictions to ensure, *inter alia*, the maintenance of a level of financial reserves adequate for the implementation of its programme of economic development or economic transition.

2. The restrictions referred to in paragraph 1:

(a) shall not discriminate among Members;

(b) shall be consistent with the Articles of Agreement of the International Monetary Fund;

(c) shall avoid unnecessary damage to the commercial, economic and financial interests of any other Member;

(d) shall not exceed those necessary to deal with the circumstances described in paragraph 1;

(e) shall be temporary and be phased out progressively as the situation specified in paragraph 1 improves.

3. In determining the incidence of such restrictions, Members may give priority to the supply of services which are more essential to their economic or development programmes. However, such restrictions shall not be adopted or maintained for the purpose of protecting a particular service sector.

4. Any restrictions adopted or maintained under paragraph 1, or any changes therein, shall be promptly notified to the General Council.

5. (a) Members applying the provisions of this Article shall consult promptly with the Committee on Balance-of-Payments Restrictions on restrictions adopted under this Article.

(b) The Ministerial Conference shall establish procedures[4] for periodic consultations with the objective of enabling such recommendations to be made to the Member concerned as it may deem appropriate.

(c) Such consultations shall assess the balance-of-payment situation of the Member concerned and the restrictions adopted or maintained under this Article, taking into account, *inter alia*, such factors as:

(i) the nature and extent of the balance-of-payments and the external financial difficulties;

(ii) the external economic and trading environment of the consulting Member;

(iii) alternative corrective measures which may be available.

(d) The consultations shall address the compliance of any restrictions with paragraph 2, in particular the progressive phaseout of restrictions in accordance with paragraph 2(e).

(e) In such consultations, all findings of statistical and other facts presented by the International Monetary Fund relating to foreign exchange, monetary reserves and balance of payments shall be accepted and conclusions shall be based on the assessment by the Fund of the balance-of-payments and the external financial situation of the consulting Member.

6. If a Member which is not a member of the International Monetary Fund wishes to apply the provisions of this Article, the Ministerial Conference shall establish a review procedure and any other procedures necessary.

Article XIII

Government Procurement

1. Articles II, XVI and XVII shall not apply to laws, regulations or requirements governing the procurement by governmental agencies of services purchased for governmental purposes and not with a view to commercial resale or with a view to use in the supply of services for commercial sale.

2. There shall be multilateral negotiations on government procurement in services under this Agreement within two years from the date of entry into force of the WTO Agreement.

Article XIV

General Exceptions

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on trade in services, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any Member of measures:

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[4]It is understood that the procedures under paragraph 5 shall be the same as the GATT 1994 procedures.

(a) necessary to protect public morals or to maintain public order;[5]

(b) necessary to protect human, animal or plant life or health;

(c) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement including those relating to:

(i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on services contracts;

(ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts;

(iii) safety;

(d) inconsistent with Article XVII, provided that the difference in treatment is aimed at ensuring the equitable or effective[6] imposition or collection of direct taxes in respect of services or service suppliers of other Members;

(e) inconsistent with Article II, provided that the difference in treatment is the result of an agreement on the avoidance of double taxation or provisions on the avoidance of double taxation in any other international agreement or arrangement by which the Member is bound.

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[5]The public order exception may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.

[6]Measures that are aimed at ensuring the equitable or effective imposition or collection of direct taxes include measures taken by a Member under its taxation system which:

(i) apply to non-resident service suppliers in recognition of the fact that the tax obligation of non-residents is determined with respect to taxable items sourced or located in the Member's territory; or

(ii) apply to non-residents in order to ensure the imposition or collection of taxes in the Member's territory; or

(iii) apply to non-residents or residents in order to prevent the avoidance or evasion of taxes, including compliance measures; or

(iv) apply to consumers of services supplied in or from the territory of another Member in order to ensure the imposition or collection of taxes on such consumers derived from sources in the Member's territory; or

(v) distinguish service suppliers subject to tax on worldwide taxable items from other service suppliers, in recognition of the difference in the nature of the tax base between them; or

(vi) determine, allocate or apportion income, profit, gain, loss, deduction or credit of resident persons or branches, or between related persons or branches of the same person, in order to safeguard the Member's tax base.

Tax terms or concepts in paragraph (d) of Article XIV and in this footnote are determined according to tax definitions and concepts, or equivalent or similar definitions and concepts, under the domestic law of the Member taking the measure.

Article XIV bis

Security Exceptions

1. Nothing in this Agreement shall be construed:

(a) to require any Member to furnish any information, the disclosure of which it considers contrary to its essential security interests; or

(b) to prevent any Member from taking any action which it considers necessary for the protection of its essential security interests:

(i) relating to the supply of services as carried out directly or indirectly for the purpose of provisioning a military establishment;

(ii) relating to fissionable and fusionable materials or the materials from which they are derived;

(iii) taken in time of war or other emergency in international relations; or

(c) to prevent any Member from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

2. The Council for Trade in Services shall be informed to the fullest extent possible of measures taken under paragraphs 1(b) and (c) and of their termination.

Article XV

Subsidies

1. Members recognize that, in certain circumstances, subsidies may have distortive effects on trade in services. Members shall enter into negotiations with a view to developing the necessary multilateral disciplines to avoid such trade-distortive effects.[7] The negotiations shall also address the appropriateness of countervailing procedures. Such negotiations shall recognize the role of subsidies in relation to the development programmes of developing countries and take into account the needs of Members, particularly developing country Members, for flexibility in this area. For the purpose of such negotiations, Members shall exchange information concerning all subsidies related to trade in services that they provide to their domestic service suppliers.

2. Any Member which considers that it is adversely affected by a subsidy of another Member may request consultations with that Member on such matters. Such requests shall be accorded sympathetic consideration.

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[7] A future work programme shall determine how, and in what time-frame, negotiations on such multilateral disciplines will be conducted

PART III

SPECIFIC COMMITMENTS

Article XVI

Market Access

1. With respect to market access through the modes of supply identified in Article I, each Member shall accord services and service suppliers of any other Member treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule.[8]

2. In sectors where market-access commitments are undertaken, the measures which a Member shall not maintain or adopt either on the basis of a regional subdivision or on the basis of its entire territory, unless otherwise specified in its Schedule, are defined as:

(a) limitations on the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test;

(b) limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;

(c) limitations on the total number of service operations or on the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;[9]

(d) limitations on the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test;

(e) measures which restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service; and

(f) limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment.

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[8] If a Member undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in subparagraph 2(a) of Article I and if the cross-border movement of capital is an essential part of the service itself, that Member is thereby committed to allow such movement of capital. If a Member undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in subparagraph 2(c) of Article I, it is thereby committed to allow related transfers of capital into its territory.

[9] Subparagraph 2(c) does not cover measures of a Member which limit inputs for the supply of services.

Article XVII

National Treatment

1. In the sectors inscribed in its Schedule, and subject to any conditions and qualifications set out therein, each Member shall accord to services and service suppliers of any other Member, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers.[10]

2. A Member may meet the requirement of paragraph 1 by according to services and service suppliers of any other Member, either formally identical treatment or formally different treatment to that it accords to its own like services and service suppliers.

3. Formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of services or service suppliers of the Member compared to like services or service suppliers of any other Member.

Article XVIII

Additional Commitments

Members may negotiate commitments with respect to measures affecting trade in services not subject to scheduling under Articles XVI or XVII, including those regarding qualifications, standards or licensing matters. Such commitments shall be inscribed in a Member's Schedule.

PART IV

PROGRESSIVE LIBERALIZATION

Article XIX

Negotiation of Specific Commitments

1. In pursuance of the objectives of this Agreement, Members shall enter into successive rounds of negotiations, beginning not later than five years from the date of entry into force of the WTO Agreement and periodically thereafter, with a view to achieving a progressively higher level of liberalization. Such negotiations shall be directed to the reduction or elimination of the adverse effects on trade in services of measures as a means of providing effective market access. This process shall take place with a view to promoting the interests of all participants on a mutually advantageous basis and to securing an overall balance of rights and obligations.

2. The process of liberalization shall take place with due respect for national policy objectives and the level of development of individual Members, both overall and in individual sectors. There shall be appropriate flexibility for individual developing country Members for opening fewer sectors, liberalizing fewer types of transactions, progressively extending market access in line with their development situation and, when making access to their markets available to foreign service suppliers, attaching to such access conditions aimed at achieving the objectives referred to in Article IV.

[10]Specific commitments assumed under this Article shall not be construed to require any Member to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant services or service suppliers.

3. For each round, negotiating guidelines and procedures shall be established. For the purposes of establishing such guidelines, the Council for Trade in Services shall carry out an assessment of trade in services in overall terms and on a sectoral basis with reference to the objectives of this Agreement, including those set out in paragraph 1 of Article IV. Negotiating guidelines shall establish modalities for the treatment of liberalization undertaken autonomously by Members since previous negotiations, as well as for the special treatment for least developed country Members under the provisions of paragraph 3 of Article IV.

4. The process of progressive liberalization shall be advanced in each such round through bilateral, plurilateral or multilateral negotiations directed towards increasing the general level of specific commitments undertaken by Members under this Agreement.

Article XX

Schedules of Specific Commitments

1. Each Member shall set out in a schedule the specific commitments it undertakes under Part III of this Agreement. With respect to sectors where such commitments are undertaken, each Schedule shall specify:

(a) terms, limitations and conditions on market access;

(b) conditions and qualifications on national treatment;

(c) undertakings relating to additional commitments;

(d) where appropriate the time-frame for implementation of such commitments; and

(e) the date of entry into force of such commitments.

2. Measures inconsistent with both Articles XVI and XVII shall be inscribed in the column relating to Article XVI. In this case the inscription will be considered to provide a condition or qualification to Article XVII as well.

3. Schedules of specific commitments shall be annexed to this Agreement and shall form an integral part thereof.

Article XXI

Modification of Schedules

1. (a) A Member (referred to in this Article as the "modifying Member") may modify or withdraw any commitment in its Schedule, at any time after three years have elapsed from the date on which that commitment entered into force, in accordance with the provisions of this Article.

(b) A modifying Member shall notify its intent to modify or withdraw a commitment pursuant to this Article to the Council for Trade in Services no later than three months before the intended date of implementation of the modification or withdrawal.

2. (a) At the request of any Member the benefits of which under this Agreement may be affected (referred to in this Article as an "affected Member") by a proposed modification or withdrawal notified under subparagraph 1(b), the modifying Member shall enter into negotiations with a view to reaching agreement on any necessary compensatory adjustment. In such negotiations and agreement, the Members

concerned shall endeavour to maintain a general level of mutually advantageous commitments not less favourable to trade than that provided for in Schedules of specific commitments prior to such negotiations.

(b) Compensatory adjustments shall be made on a most favoured-nation basis.

3. (a) If agreement is not reached between the modifying Member and any affected Member before the end of the period provided for negotiations, such affected Member may refer the matter to arbitration. Any affected Member that wishes to enforce a right that it may have to compensation must participate in the arbitration.

(b) If no affected Member has requested arbitration, the modifying Member shall be free to implement the proposed modification or withdrawal.

4. (a) The modifying Member may not modify or withdraw its commitment until it has made compensatory adjustments in conformity with the findings of the arbitration.

(b) If the modifying Member implements its proposed modification or withdrawal and does not comply with the findings of the arbitration, any affected Member that participated in the arbitration may modify or withdraw substantially equivalent benefits in conformity with those findings. Notwithstanding Article II, such a modification or withdrawal may be implemented solely with respect to the modifying Member.

5. The Council for Trade in Services shall establish procedures for rectification or modification of Schedules. Any Member which has modified or withdrawn scheduled commitments under this Article shall modify its Schedule according to such procedures.

PART V

INSTITUTIONAL PROVISIONS

Article XXII

Consultation

1. Each Member shall accord sympathetic consideration to, and shall afford adequate opportunity for, consultation regarding such representations as may be made by any other Member with respect to any matter affecting the operation of this Agreement. The Dispute Settlement Understanding (DSU) shall apply to such consultations.

2. The Council for Trade in Services or the Dispute Settlement Body (DSB) may, at the request of a Member, consult with any Member or Members in respect of any matter for which it has not been possible to find a satisfactory solution through consultation under paragraph 1.

3. A Member may not invoke Article XVII, either under this Article or Article XXIII, with respect to a measure of another Member that falls within the scope of an international agreement between them relating to the avoidance of double taxation. In case of disagreement between Members as to whether a measure falls within the scope of such an agreement between them, it shall be open to either Member

to bring this matter before the Council for Trade in Services.[1] The Council shall refer the matter to arbitration. The decision of the arbitrator shall be final and binding on the Members.

Article XXIII

Dispute Settlement and Enforcement

1. If any Member should consider that any other Member fails to carry out its obligations or specific commitments under this Agreement, it may with a view to reaching a mutually satisfactory resolution of the matter have recourse to the DSU.

2. If the DSB considers that the circumstances are serious enough to justify such action, it may authorize a Member or Members to suspend the application to any other Member or Members of obligations and specific commitments in accordance with Article 22 of the DSU.

3. If any Member considers that any benefit it could reasonably have expected to accrue to it under a specific commitment of another Member under Part III of this Agreement is being nullified or impaired as a result of the application of any measure which does not conflict with the provisions of this Agreement, it may have recourse to the DSU. If the measure is determined by the DSB to have nullified or impaired such a benefit, the Member affected shall be entitled to a mutually satisfactory adjustment on the basis of paragraph 2 of Article XXI, which may include the modification or withdrawal of the measure. In the event an agreement cannot be reached between the Members concerned, Article 22 of the DSU shall apply.

Article XXIV

Council for Trade in Services

1. The Council for Trade in Services shall carry out such functions as may be assigned to it to facilitate the operation of this Agreement and further its objectives. The Council may establish such subsidiary bodies as it considers appropriate for the effective discharge of its functions.

2. The Council and, unless the Council decides otherwise, its subsidiary bodies shall be open to participation by representatives of all Members.

3 The Chairman of the Council shall be elected by the Members.

Article XXV

Technical Cooperation

1. Service suppliers of Members which are in need of such assistance shall have access to the services of contact points referred to in paragraph 2 of Article IV.

2. Technical assistance to developing countries shall be provided at the multilateral level by the Secretariat and shall be decided upon by the Council for Trade in Services.

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[1] With respect to agreements on the avoidance of double taxation which exist on the date of entry into force of the WTO Agreement, such a matter may be brought before the Council for Trade in Services only with the consent of both parties to such an agreement.

Article XXVI

Relationship with Other International Organizations

The General Council shall make appropriate arrangements for consultation and cooperation with the United Nations and its specialized agencies as well as with other intergovernmental organizations concerned with services

PART VI

FINAL PROVISIONS

Article XXVII

Denial of Benefits

A Member may deny the benefits of this Agreement:

(a) to the supply of a service, if it establishes that the service is supplied from or in the territory of a non-Member or of a Member to which the denying Member does not apply the WTO Agreement;

(b) in the case of the supply of a maritime transport service, if it establishes that the service is supplied:

(i) by a vessel registered under the laws of a non-Member or of a Member to which the denying Member does not apply the WTO Agreement, and

(ii) by a person which operates and/or uses the vessel in whole or in part but which is of a non-Member or of a Member to which the denying Member does not apply the WTO Agreement;

(c) to a service supplier that is a juridical person, if it establishes that it is not a service supplier of another Member, or that it is a service supplier of a Member to which the denying Member does not apply the WTO Agreement.

Article XXVIII

Definitions

For the purpose of this Agreement:

(a) "measure" means any measure by a Member, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form;

(b) "supply of a service" includes the production, distribution, marketing, sale and delivery of a service;

(c) "measures by Members affecting trade in services" include measures in respect of

(i) the purchase, payment or use of a service;

(ii) the access to and use of, in connection with the supply of a service, services which are required by those Members to be offered to the public generally;

(iii) the presence, including commercial presence, of persons of a Member for the supply of a service in the territory of another Member;

(d) "commercial presence" means any type of business or professional establishment, including through

(i) the constitution, acquisition or maintenance of a juridical person, or

(ii) the creation or maintenance of a branch or a representative office,

within the territory of a Member for the purpose of supplying a service;

(e) "sector" of a service means,

(i) with reference to a specific commitment, one or more, or all, subsectors of that service, as specified in a Member's Schedule,

(ii) otherwise, the whole of that service sector, including all of its subsectors;

(f) "service of another Member" means a service which is supplied,

(i) from or in the territory of that other Member, or in the case of maritime transport, by a vessel registered under the laws of that other Member, or by a person of that other Member which supplies the service through the operation of a vessel and/or its use in whole or in part; or

(ii) in the case of the supply of a service through commercial presence or through the presence of natural persons, by a service supplier of that other Member;

(g) "service supplier" means any person that supplies a service;[2]

(h) "monopoly supplier of a service" means any person, public or private, which in the relevant market of the territory of a Member is authorized or established formally or in effect by that Member as the sole supplier of that service;

(i) "service consumer" means any person that receives or uses a service;

(j) "person" means either a natural person or a juridical person;

(k) "natural person of another Member" means a natural person who resides in the territory of that other Member or any other Member, and who under the law of that other Member;

(i) is a national of that other Member; or

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[2] Where the service is not supplied directly by a juridical person but through other forms of commercial presence such as a branch or a representative office, the service supplier (i.e. the juridical person) shall, nonetheless, through such presence be accorded the treatment provided for service suppliers under the Agreement. Such treatment shall be extended to the presence through which the service is supplied and need not be extended to any other parts of the supplier located outside the territory where the service is supplied.

(ii) has the right of permanent residence in that other Member, in the case of a Member which:

1. does not have nationals; or

2. accords substantially the same treatment to its permanent residents as it does to its nationals in respect of measures affecting trade in services, as notified in its acceptance of or accession to the WTO Agreement, provided that no Member is obligated to accord to such permanent residents treatment more favourable than would be accorded by that other Member to such permanent residents. Such notification shall include the assurance to assume, with respect to those permanent residents, in accordance with its laws and regulations, the same responsibilities that other Member bears with respect to its nationals;

(l) "juridical person" means any legal entity duly constituted or otherwise organized under applicable law, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association;

(m) "juridical person of another Member" means a juridical person which is either:

(i) constituted or otherwise organized under the law of that other Member, and is engaged in substantive business operations in the territory of that Member or any other Member; or

(ii) in the case of the supply of a service through commercial presence, owned or controlled by:

1. natural persons of that Member; or

2. juridical persons of that other Member identified under subparagraph (i);

(n) a juridical person is:

(i) "owned" by persons of a Member if more than 50 per cent of the equity interest in it is beneficially owned by persons of that Member;

(ii) "controlled" by persons of a Member if such persons have the power to name a majority of its directors or otherwise to legally direct its actions;

(iii) "affiliated" with another person when it controls, or is controlled by, that other person; or when it and the other person are both controlled by the same person;

(o) "direct taxes" comprise all taxes on total income, on total capital or on elements of income or of capital, including taxes on gains from the alienation of property, taxes on estates, inheritances and gifts, and taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

Article XXIX

Annexes

The Annexes to this Agreement are an integral part of this Agreement.

ANNEX ON ARTICLE II EXEMPTIONS

Scope

1. This Annex specifies the conditions under which a Member, at the entry into force of this Agreement, is exempted from its obligations under paragraph 1 of Article II.

2. Any new exemptions applied for after the date of entry into force of the WTO Agreement shall be dealt with under paragraph 3 of Article IX of that Agreement.

Review

3. The Council for Trade in Services shall review all exemptions granted for a period of more than 5 years. The first such review shall take place no more than 5 years after the entry into force of the WTO Agreement.

4. The Council for Trade in Services in a review shall:

(a) examine whether the conditions which created the need for the exemption still prevail: and

(b) determine the date of any further review.

Termination

5. The exemption of a Member from its obligations under paragraph 1 of Article II of the Agreement with respect to a particular measure terminates on the date provided for in the exemption.

6. In principle, such exemptions should not exceed a period of 10 years. In any event, they shall be subject to negotiation in subsequent trade liberalizing rounds.

7. A Member shall notify the Council for Trade in Services at the termination of the exemption period that the inconsistent measure has been brought into conformity with paragraph 1 of Article II of the Agreement.

Lists of Article II Exemptions

[The agreed lists of exemptions under paragraph 2 of Article II will be annexed here in the treaty copy of the WTO Agreement.]

ANNEX ON MOVEMENT OF NATURAL PERSONS SUPPLYING SERVICES UNDER THE AGREEMENT

1. This Annex applies to measures affecting natural persons who are service suppliers of a Member, and natural persons of a Member who are employed by a service supplier of a Member, in respect of the supply of a service.

2. The Agreement shall not apply to measures affecting natural persons seeking access to the employment market of a Member, nor shall it apply to measures regarding citizenship, residence or employment on a permanent basis.

3. In accordance with Parts III and IV of the Agreement, Members may negotiate specific commitments applying to the movement of all categories of natural persons supplying services under the Agreement. Natural persons covered by a specific commitment shall be allowed to supply the service in accordance with the terms of that commitment.

4. The Agreement shall not prevent a Member from applying measures to regulate the entry of natural persons into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across, its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to any Member under the terms of a specific commitment.[1]

[1]The sole fact of requiring a visa for natural persons of certain Members and not for those of others shall not be regarded as nullifying or impairing benefits under a specific commitment.

ANNEX ON AIR TRANSPORT SERVICES

1. This Annex applies to measures affecting trade in air transport services, whether scheduled or non-scheduled, and ancillary services. It is confirmed that any specific commitment or obligation assumed under this Agreement shall not reduce or affect a Member's obligations under bilateral or multilateral agreements that are in effect on the date of entry into force of the WTO Agreement.

2. The Agreement, including its dispute settlement procedures, shall not apply to measures affecting:

(a) traffic rights, however granted; or

(b) services directly related to the exercise of traffic rights,

except as provided in paragraph 3 of this Annex.

3. The Agreement shall apply to measures affecting:

(a) aircraft repair and maintenance services;

(b) the selling and marketing of air transport services;

(c) computer reservation system (CRS) services.

4. The dispute settlement procedures of the Agreement may be invoked only where obligations or specific commitments have been assumed by the concerned Members and where dispute settlement procedures in bilateral and other multilateral agreements or arrangements have been exhausted.

5. The Council for Trade in Services shall review periodically, and at least every five years, developments in the air transport sector and the operation of this Annex with a view to considering the possible further application of the Agreement in this sector.

6. Definitions:

(a) "Aircraft repair and maintenance services" mean such activities when undertaken on an aircraft or a part thereof while it is withdrawn from service and do not include so-called line maintenance.

(b) "Selling and marketing of air transport services" mean opportunities for the air carrier concerned to sell and market freely its air transport services including all aspects of marketing such as market research, advertising and distribution. These activities do not include the pricing of air transport services nor the applicable conditions.

(c) "Computer reservation system (CRS) services" mean services provided by computerised systems that contain information about air carriers' schedules, availability, fares and fare rules, through which reservations can be made or tickets may be issued.

(d) "Traffic rights" mean the right for scheduled and non-scheduled services to operate and/or to carry passengers, cargo and mail for remuneration or hire from, to, within, or over the territory of a Member, including points to be served, routes to be operated, types of traffic to be carried, capacity to be provided, tariffs to be charged and their conditions, and criteria for designation of airlines, including such criteria as number, ownership, and control.

ANNEX ON FINANCIAL SERVICES

1. *Scope and Definition*

(a) This Annex applies to measures affecting the supply of financial services. Reference to the supply of a financial service in this Annex shall mean the supply of a service as defined in paragraph 2 of Article I of the Agreement.

(b) For the purposes of subparagraph 3(b) of Article I of the Agreement, "services supplied in the exercise of governmental authority" means the following:

(i) activities conducted by a central bank or monetary authority or by any other public entity in pursuit of monetary or exchange rate policies;

(ii) activities forming part of a statutory system of social security or public retirement plans; and

(iii) other activities conducted by a public entity for the account or with the guarantee or using the financial resources of the Government.

(c) For the purposes of subparagraph 3(b) of Article I of the Agreement, if a Member allows any of the activities referred to in subparagraphs (b)(ii) or (b)(iii) of this paragraph to be conducted by its financial service suppliers in competition with a public entity or a financial service supplier, "services" shall include such activities.

(d) Subparagraph 3(c) of Article I of the Agreement shall not apply to services covered by this Annex.

2. *Domestic Regulation*

(a) Notwithstanding any other provisions of the Agreement, a Member shall not be prevented from taking measures for prudential reasons, including for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by a financial service supplier, or to ensure the integrity and stability of the financial system. Where such measures do not conform with the provisions of the Agreement, they shall not be used as a means of avoiding the Member's commitments or obligations under the Agreement.

(b) Nothing in the Agreement shall be construed to require a Member to disclose information relating to the affairs and accounts of individual customers or any confidential or proprietary information in the possession of public entities.

3. *Recognition*

(a) A Member may recognize prudential measures of any other country in determining how the Member's measures relating to financial services shall be applied. Such recognition, which may be achieved through harmonization or otherwise, may be based upon an agreement or arrangement with the country concerned or may be accorded autonomously.

(b) A Member that is a party to such an agreement or arrangement referred to in subparagraph (a), whether future or existing, shall afford adequate opportunity for other interested Members to negotiate their accession to such agreements or arrangements, or to negotiate comparable ones with it, under circumstances in which there would be equivalent regulation, oversight, implementation of such regulation, and, if appropriate, procedures concerning the sharing of information between the parties to the agreement or arrangement. Where a Member accords recognition

autonomously, it shall afford adequate opportunity for any other Member to demonstrate that such circumstances exist.

(c) Where a Member is contemplating according recognition to prudential measures of any other country, paragraph 4(b) of Article VII shall not apply.

4. *Dispute Settlement*

Panels for disputes on prudential issues and other financial matters shall have the necessary expertise relevant to the specific financial service under dispute.

5. *Definitions*

For the purposes of this Annex:

(a) A financial service is any service of a financial nature offered by a financial service supplier of a Member. Financial services include all insurance and insurance-related services, and all banking and other financial services (excluding insurance). Financial services include the following activities:

Insurance and insurance-related services

(i) Direct insurance (including co-insurance):

(A) life
(B) non-life

(ii) Reinsurance and retrocession;

(iii) Insurance intermediation, such as brokerage and agency;

(iv) Services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services.

Banking and other financial services (excluding insurance)

(v) Acceptance of deposits and other repayable funds from the public;

(vi) Lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transaction;

(vii) Financial leasing;

(viii) All payment and money transmission services, including credit, charge and debit cards, travellers cheques and bankers drafts;

(ix) Guarantees and commitments;

(x) Trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:

(A) money market instruments (including cheques, bills, certificates of deposits);
(B) foreign exchange;
(C) derivative products including, but not limited to, futures and options;

(D) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;

(E) transferable securities;

(F) other negotiable instruments and financial assets, including bullion.

(xi) Participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services related to such issues;

(xii) Money broking;

(xiii) Asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;

(xiv) Settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;

(xv) Provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services;

(xvi) Advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs (v) through (xv), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy.

(b) A financial service supplier means any natural or juridical person of a Member wishing to supply or supplying financial services but the term "financial service supplier" does not include a public entity.

(c) "Public entity" means:

(i) a government, a central bank or a monetary authority, of a Member, or an entity owned or controlled by a Member, that is principally engaged in carrying out governmental functions or activities for governmental purposes, not including an entity principally engaged in supplying financial services on commercial terms; or

(ii) a private entity, performing functions normally performed by a central bank or monetary authority, when exercising those functions.

SECOND ANNEX ON FINANCIAL SERVICES

1. Notwithstanding Article II of the Agreement and paragraphs 1 and 2 of the Annex on Article II Exemptions, a Member may, during a period of 60 days beginning four months after the date of entry into force of the WTO Agreement, list in that Annex measures relating to financial services which are inconsistent with paragraph 1 of Article II of the Agreement.

2. Notwithstanding Article XXI of the Agreement, a Member may, during a period of 60 days beginning four months after the date of entry into force of the WTO Agreement, improve, modify or withdraw all or part of the specific commitments on financial services inscribed in its Schedule.

3. The Council for Trade in Services shall establish any procedures necessary for the application of paragraphs 1 and 2.

ANNEX ON NEGOTIATIONS ON MARITIME TRANSPORT SERVICES

1. Article II and the Annex on Article II Exemptions, including the requirement to list in the Annex any measure inconsistent with most-favoured-nation treatment that a Member will maintain, shall enter into force for international shipping, auxiliary services and access to and use of port facilities only on:

(a) the implementation date to be determined under paragraph 4 of the Ministerial Decision on Negotiations on Maritime Transport Services; or,

(b) should the negotiations not succeed, the date of the final report of the Negotiating Group on Maritime Transport Services provided for in that Decision.

2. Paragraph 1 shall not apply to any specific commitment on maritime transport services which is inscribed in a Member's Schedule.

3. From the conclusion of the negotiations referred to in paragraph 1, and before the implementation date, a Member may improve, modify or withdraw all or part of its specific commitments in this sector without offering compensation, notwithstanding the provisions of Article XXI.

ANNEX ON TELECOMMUNICATIONS

1. *Objectives*

Recognizing the specificities of the telecommunications services sector and, in particular, its dual role as a distinct sector of economic activity and as the underlying transport means for other economic activities, the Members have agreed to the following Annex with the objective of elaborating upon the provisions of the Agreement with respect to measures affecting access to and use of public telecommunications transport networks and services. Accordingly, this Annex provides notes and supplementary provisions to the Agreement.

2. *Scope*

(a) This Annex shall apply to all measures of a Member that affect access to and use of public telecommunications transport networks and services.[1]

(b) This Annex shall not apply to measures affecting the cable or broadcast distribution of radio or television programming.

(c) Nothing in this Annex shall be construed:

(i) to require a Member to authorize a service supplier of any other Member to establish, construct, acquire, lease, operate, or supply telecommunications transport networks or services, other than as provided for in its Schedule; or

(ii) to require a Member (or to require a Member to oblige service suppliers under its jurisdiction) to establish, construct, acquire, lease, operate or supply telecommunications transport networks or services not offered to the public generally.

3. *Definitions*

For the purposes of this Annex:

(a) "Telecommunications" means the transmission and reception of signals by any electromagnetic means.

(b) "Public telecommunications transport service" means any telecommunications transport service required, explicitly or in effect, by a Member to be offered to the public generally. Such services may include, *inter alia*, telegraph, telephone, telex, and data transmission typically involving the real-time transmission of customer-supplied information between two or more points without any end-to-end change in the form or content of the customer's information.

(c) "Public telecommunications transport network" means the public telecommunications infrastructure which permits telecommunications between and among defined network termination points.

(d) "Intra-corporate communications" means telecommunications through which a company communicates within the company or with or among its subsidiaries, branches and, subject to a Member's domestic laws and regulations, affiliates. For these purposes, "subsidiaries", "branches"

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[1] This paragraph is understood to mean that each Member shall ensure that the obligations of this Annex are applied with respect to suppliers of public telecommunications transport networks and services by whatever measures are necessary.

and, where applicable, 'affiliates' shall be as defined by each Member. "Intra-corporate communications" in this Annex excludes commercial or non-commercial services that are supplied to companies that are not related subsidiaries, branches or affiliates, or that are offered to customers or potential customers.

(e) Any reference to a paragraph or subparagraph of this Annex includes all subdivisions thereof.

4. *Transparency*

In the application of Article III of the Agreement, each Member shall ensure that relevant information on conditions affecting access to and use of public telecommunications transport networks and services is publicly available, including: tariffs and other terms and conditions of service, specifications of technical interfaces with such networks and services; information on bodies responsible for the preparation and adoption of standards affecting such access and use; conditions applying to attachment of terminal or other equipment; and notifications, registration or licensing requirements, if any.

5. *Access to and use of Public Telecommunications Transport Networks and Services*

(a) Each Member shall ensure that any service supplier of any other Member is accorded access to and use of public telecommunications transport networks and services on reasonable and non-discriminatory terms and conditions, for the supply of a service included in its Schedule. This obligation shall be applied, *inter alia*, through paragraphs (b) through (f).[7]

(b) Each Member shall ensure that service suppliers of any other Member have access to and use of any public telecommunications transport network or service offered within or across the border of that Member, including private leased circuits, and to this end shall ensure, subject to paragraphs (e) and (f), that such suppliers are permitted:

(i) to purchase or lease and attach terminal or other equipment which interfaces with the network and which is necessary to supply a supplier's services;

(ii) to interconnect private leased or owned circuits with public telecommunications transport networks and services or with circuits leased or owned by another service supplier; and

(iii) to use operating protocols of the service supplier's choice in the supply of any service, other than as necessary to ensure the availability of telecommunications transport networks and services to the public generally.

(c) Each Member shall ensure that service suppliers of any other Member may use public telecommunications transport networks and services for the movement of information within and across borders, including for intra-corporate communications of such service suppliers, and for access to information contained in data bases or otherwise stored in machine-readable form in the territory of any Member. Any new or amended measures of a Member significantly affecting such use shall be notified and shall be subject to consultation, in accordance with relevant provisions of the Agreement.

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[7]The term "non-discriminatory" is understood to refer to most-favoured-nation and national treatment as defined in the Agreement, as well as to reflect sector-specific usage of the term to mean "terms and conditions no less favourable than those accorded to any other user of like public telecommunications transport networks or services under like circumstances".

(d) Notwithstanding the preceding paragraph, a Member may take such measures as are necessary to ensure the security and confidentiality of messages, subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade in services.

(e) Each Member shall ensure that no condition is imposed on access to and use of public telecommunications transport networks and services other than as necessary:

(i) to safeguard the public service responsibilities of suppliers of public telecommunications transport networks and services, in particular their ability to make their networks or services available to the public generally;

(ii) to protect the technical integrity of public telecommunications transport networks or services; or

(iii) to ensure that service suppliers of any other Member do not supply services unless permitted pursuant to commitments in the Member's Schedule.

(f) Provided that they satisfy the criteria set out in paragraph (e), conditions for access to and use of public telecommunications transport networks and services may include:

(i) restrictions on resale or shared use of such services;

(ii) a requirement to use specified technical interfaces, including interface protocols, for inter-connection with such networks and services;

(iii) requirements, where necessary, for the inter-operability of such services and to encourage the achievement of the goals set out in paragraph 7(a);

(iv) type approval of terminal or other equipment which interfaces with the network and technical requirements relating to the attachment of such equipment to such networks;

(v) restrictions on inter-connection of private leased or owned circuits with such networks or services or with circuits leased or owned by another service supplier; or

(vi) notification, registration and licensing.

(g) Notwithstanding the preceding paragraphs of this section, a developing country Member may, consistent with its level of development, place reasonable conditions on access to and use of public telecommunications transport networks and services necessary to strengthen its domestic telecommunications infrastructure and service capacity and to increase its participation in international trade in telecommunications services. Such conditions shall be specified in the Member's Schedule.

6. *Technical Cooperation*

(a) Members recognize that an efficient, advanced telecommunications infrastructure in countries, particularly developing countries, is essential to the expansion of their trade in services. To this end, Members endorse and encourage the participation, to the fullest extent practicable, of developed and developing countries and their suppliers of public telecommunications transport networks and services and other entities in the development programmes of international and regional organizations, including the International Telecommunication Union, the United Nations Development Programme, and the International Bank for Reconstruction and Development.

(b) Members shall encourage and support telecommunications cooperation among developing countries at the international, regional and sub-regional levels.

(c) In cooperation with relevant international organizations, Members shall make available, where practicable, to developing countries information with respect to telecommunications services and developments in telecommunications and information technology to assist in strengthening their domestic telecommunications services sector.

(d) Members shall give special consideration to opportunities for the least-developed countries to encourage foreign suppliers of telecommunications services to assist in the transfer of technology, training and other activities that support the development of their telecommunications infrastructure and expansion of their telecommunications services trade.

7. *Relation to International Organizations and Agreements*

(a) Members recognize the importance of international standards for global compatibility and inter-operability of telecommunication networks and services and undertake to promote such standards through the work of relevant international bodies, including the International Telecommunication Union and the International Organization for Standardization.

(b) Members recognize the role played by intergovernmental and non-governmental organizations and agreements in ensuring the efficient operation of domestic and global telecommunications services, in particular the International Telecommunication Union. Members shall make appropriate arrangements, where relevant, for consultation with such organizations on matters arising from the implementation of this Annex.

ANNEX ON NEGOTIATIONS ON BASIC TELECOMMUNICATIONS

1. Article II and the Annex on Article II Exemptions, including the requirement to list in the Annex any measure inconsistent with most-favoured-nation treatment that a Member will maintain, shall enter into force for basic telecommunications only on:

(a) the implementation date to be determined under paragraph 5 of the Ministerial Decision on Negotiations on Basic Telecommunications; or,

(b) should the negotiations not succeed, the date of the final report of the Negotiating Group on Basic Telecommunications provided for in that Decision.

2. Paragraph 1 shall not apply to any specific commitment on basic telecommunications which is inscribed in a Member's Schedule.

REPUBLIC OF SLOVENIA

Schedule of Specific Commitments

(This is authentic in English only)

Notes:

1) The classification of sectors is based on the 1991 provisional Central Product Classification (CPC) of the United Nations Statistical Office, while the ordering reflects the Services Sectoral Classification List (MTN.GNS/W/120 of July 1991). The appearance of ** against individual CPC listings indicates that the service specified constitutes only a part of the total range of activities covered by the CPC concordance.

2) The entry "Unbound*" means unbound due to lack of technical feasibility.

December 1994

REPUBLIC OF SLOVENIA - SCHEDULE OF SPECIFIC COMMITMENTS

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or subsector	Limitations on market access	Limitations on national treatment	Additional commitments
I. HORIZONTAL COMMITMENTS			
ALL SECTORS INCLUDED IN THIS SCHEDULE	Investments: 3) a) Foreign participation in companies in the privatization process under the Law on Ownership Transformation, when exceeding 10 per cent of the total value of the company, is subject to authorization and is limited to an amount, determined by the Government. b) Prior authorization, by the Government is required for any foreign purchases exceeding 10 per cent of the capital or voting rights in an existing Slovenian company already privatized under the Law on Ownership Transformation with a value exceeding 5 million ECU, and for any purchases of equity of an existing Slovenian company, when it exceeds 1.25 million ECU, if this equity is used with respect to an independent part, division or plant of an enterprise. An assessment of investments under a) and b) is made in light of the effect on the economy of the country. An assessment of such investments is made on the basis of the following criteria: - the situation of the company on the domestic and foreign markets from the aspect of monopoly position and the influence of the foreign investor on the monopoly position of an existing company, in accordance with the Law on Protection of Competition; - the price of the acquired stake or shares in relation with the competitive capability of the company on the domestic and foreign markets; - the potential threat to fair competition of incorporating foreign investors; - the prevention of acquisition or take-over that may result in the closing down of otherwise profitable and competitive production and in the elimination of competition from and within Republic of Slovenia for given products or markets;	3) The establishement of branches by foreign companies is conditioned with the registration of the parent company in a court register in the country of origin for at least one year. Subsidies: None, other than for branches established in the Republic of Slovenia by a foreign company. Eligibility for subsidies from the Republic of Slovenia may be limited to juridical persons established within the territory of the Republic of Slovenia or a particular geographical sub-division thereof. Unbound for subsidies for research and development. The supply of a service, or its subsidisation, within the public sector is not in breach of this commitment. At least half of the ordinary members of the Board of Directors have to be nationals of the Republic of Slovenia. The managing director of a limited liability company or at least the procurator has to be a Slovenian national. Non-Slovenian national, director of a branch, established in the Republic of Slovenia by a foreign juridical person, has to be a resident in the Republic of Slovenia.	

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or subsector	Limitations on market access	Limitations on national treatment	Additional commitments
	- the current ownership structure of the company; - the effect of the purchase on the development of the company with respect to the manner and period of purchase. In the case of investment under a) the following additional criteria shall be considered: - the importance of a trademark; - the effect of the foreign investment in the company on the acquisition of new technologies or modern equipment; - the effect of the foreign investment in the company on the acquisition of additional financial means as working or fixed capital; - the effect of the foreign investment in the company on maintaining the current employment level or the employment of new personnel. For financial services, authorization is issued by the authorities indicated in sector specific commitments and according to conditions indicated in sector specific commitments. There are no limitations on establishment of a new business establishment (“greenfield” investments). Services considered in the Republic of Slovenia as public utilities at a national or local level may be subject to public monopolies or to granting of concessions to private operators, as indicated in sector specific commitments. <u>Real estate:</u> Juridical persons established in the Republic of Slovenia with foreign capital participation may only acquire real estate necessary for the conduct of the economic activities for which they are established. Branches* established in the Republic of Slovenia by foreign persons may only acquire real estate, except land, necessary for the conduct of the economic activities for which they are established. Ownership of real estate in the border areas of 10 km by companies in which majority of capital or voting rights belongs directly or indirectly to juridical persons or nationals of another Member is subject to special permission.		

* According to the Law on Commercial Companies, a branch established in the Republic of Slovenia is not considered a juridical person, but as regards their operation, their treatment is equal to a subsidiary, which is in line with Article XXVIII para.(g) of the GATS.

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or subsector	Limitations on market access	Limitations on national treatment	Additional commitments
	4) Unbound, except for measures concerning the entry into and temporary stay, without requiring compliance with an economic need test*, of a natural person which falls in one of the following categories: Business visitors A natural person, who stays in the Republic of Slovenia without acquiring remuneration from or within the Republic of Slovenia and without engaging in making direct sales to the general public or supplying services, for the purpose of participating in business meetings, business contacts, including negotiations for the sale of services or other similar activities, including those to prepare the establishment of commercial presence in the Republic of Slovenia. The duration of temporary stay is limited with a 90 day visa.	4) Unbound except for measures concerning the categories of natural persons referred to in the Market Access Column. To the extent that any subsidy is made available to natural persons, their availability may be limited to nationals of the Republic of Slovenia.	

* All other requirements of laws and regulations regarding entry, stay, work and social security measures shall continue to apply, including regulations concerning period of stay, minimum wages as well as collective wage agreements.

	Intra-Corporate Transferee* Natural persons of another Member who have been employed by juridical persons of another Member for a period of not less than three years immediately preceding the entry or have been partners in it (other than majority shareholders): a) Natural persons occupying a senior position, who primarily direct the management of the establishment, receiving general supervision, direction, principally from the board of directors or stockholders of the business or their equivalent, including: - directing the establishement or a department or sub-division of the establishment; - supervising and controling the work of other supervisory, professional or managerial employees; - having the authority personally to hire and fire or other personnel actions.		

* An "intra-corporate transferee" is defined as a natural person working within a juridical person, other than a non-profit making organisation, established in the territory of a WTO Member, and being temporarily transferred in the context of the provision of a service through commercial presence in the territory of the Republic of Slovenia; the juridical persons concerned must have their principal place of business in the territory of a WTO Member and the transfer must be to an establishment of that juridical person, effectively providing like services in the territory of the Republic of Slovenia.

	b) Natural persons working within a juridical person who posses special knowledge and uncommon qualifications essential to the establishment's service, research equipment, techniques or management. In assessing such special knowledge, account will not be taken only of knowledge specific to the establishement, but also of whether the person has a high level of qualifications referring to a type of work or trade requiring specific technical knowledge, including membership of an accredited profession.		

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or subsector	Limitations on market access	Limitations on national treatment	Additional commitments
	The duration of temporary stay for "intra-corporate transferees" is limited with a "business visa" and a residence permit, which may be granted up to 1 year with extensions.		
II. SECTOR-SPECIFIC COMMITMENTS			
1. BUSINESS SERVICES			
A. Professional Services			
a) Legal Services (CPC 861)	1) Unbound for drafting of legal documents	1) Unbound for drafting of legal documents	
	2) None	2) None	
	3) Commercial presence is restricted to sole proprietorship or to a law firm with unlimited responsibility (partnership) only. Only lawyers with licence to practice may be partners. For activities involving national law acceptance into the Bar Association ("Odvetniška zbornica Slovenije") is required. Consent of the Bar Association is required for the establishment of any law firm.		
	Conditions for acceptance into the Bar Association for lawyers who are not Slovenian nationals and have a licence to practice in an another Member, have to have a certificate of knowledge of the Slovenian law and must be proficient in the Slovenian language.	3) Conditions for acceptance into the Bar Association for lawyers who are not Slovenian nationals and have a licence to practice in an another Member, have to have a certificate of knowledge of the Slovenian law and must be proficient in the Slovenian language.	
	Notaries Public are persons performing a public service. Concession rights can be acquired by license.		
	4) Unbound except as indicated in Part I	4) Unbound except as indicated in Part I	
b) Accounting, Auditing and Bookkeeping services * (CPC 862)	1) Unbound	1) Unbound	
	2) None	2) None	
	3) Commercial presence should take the form of a juridical person. The share of foreign persons in auditing companies may not exceed 49 per cent of the equity. Provision of auditing services through auditing companies only.	3) None	
	4) Unbound except as indicated in Part I and subject to limitations on natural persons employed by juridical persons only.	4) Unbound except as indicated in Part I and in the Market Access Column	
d) Architectural Services (CPC 8671)	1) Unbound	1) None	
	2) None	2) None	
	3) None	3) None	
	4) Unbound except as indicated in PartI	4) Unbound except as indicated in Part I	

* According to Slovene Law, auditing services are a matter of firms, not natural persons.

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or subsector	Limitations on market access	Limitations on national treatment	Additional commitments
e) Engineering Services (CPC 8672)	1) None	1) None for pure planning services; the submission of plans for approval by the competent authorities requires co-operation with an established supplier of planning services.	
	2) None	2) None	
	3) None	3) None	
	4) Unbound except as indicated in Part I	4) Unbound except as indicated in Part I	
f) Integrated Engineering Services (CPC 8673)	1) None	1) None for pure planning services; the submission of plans for approval by the competent authorities requires co-operation with an established supplier of planning services.	
	2) None	2) None	
	3) None	3) None	
	4) Unbound except as indicated in Part I	4) Unbound except as indicated in Part I	
h) Medical* and Dental Services (CPC 93121, 93122**)	1) Unbound	1) Unbound	
	2) None	2) None	
	3) Membership of Doctors Association required. Conditions for acceptance into Doctors Association for doctors who are not Slovenian nationals is licence to practice in an another Member and have a good command of the Slovenian language**.	3) None	
	4) Unbound except as indicated in Part I	4) Unbound except as indicated in Part I	

* excluding the following activities: social medicine, sanitary, epidemiological, medical/ecological services; the supply of blood, blood preparations and transplats; autopsy.

** Establishment in the form of legal person is subject to authorization by Ministry of Health. Entry into Public Health Network is subject to a concession from the Institute for Health Insurance of the Republic of Slovenia.

B. Computer and Related Services		
a) Consultancy Services related to the Installation of Computer Hardware (CPC 841)	1) None	1) None
	2) None	2) None
	3) None	3) None
	4) Unbound except as indicated in Part I	4) Unbound except as indicated in Part I
b) Software Implementation Services (CPC 842)	1) None	1) None
	2) None	2) None
	3) None	3) None
	4) Unbound except as indicated in Part I	4) Unbound except as indicated in Part I
c) Data Processing Services (CPC 843)	1) None	1) None
	2) None	2) None
	3) None	3) None
	4) Unbound except as indicated in Part I	4) Unbound except as indicated in Part I

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or subsector	Limitations on market access	Limitations on national treatment	Additional commitments
d) Data Base Services (CPC 844)	1) None	1) None	
	2) None	2) None	
	3) None	3) None	
	4) Unbound except as indicated in Part I	4) Unbound except as indicated in Part I	
e) Other (CPC 845+849)	1) None	1) None	
	2) None	2) None	
	3) None	3) None	
	4) Unbound except as indicated in Part I	4) Unbound except as indicated in Part I	
C. Research and Development Services*			
a) R&D Services on natural sciences (CPC 851)	1) None	1) None	
	2) None	2) None	
	3) None	3) None	
	4) Unbound except as indicated in Part I	4) Unbound except as indicated in Part I	
b) R&D Services on social sciences and humanities (CPC 852)	1) None	1) None	
	2) None	2) None	
	3) None	3) None	
	4) Unbound except as indicated in Part I	4) Unbound except as indicated in Part I	
c) Interdisciplinary R&D Services (CPC 853)	1) None	1) None	
	2) None	2) None	
	3) None	3) None	
	4) Unbound except as indicated in Part I	4) Unbound except as indicated in Part I	

* Public utility exist; concession rights can be granted to the private operators established in the Republic of Slovenia.

E. Rental/Leasing Services without Operators			
a) Relating to Ships (CPC 83103)	1) None	1) None	
	2) None	2) None	
	3 None	3) None	
	4) Unbound except as indicated in Part I	4) Unbound except as indicated in Part I	
b) Relating to Aircraft (CPC 83104)	1) None	1) None	
	2) None	2) None	
	3) To be registered in the aircraft register of the Republic of Slovenia, the aircraft must be owned either by a juridical or natural persons meeting specific nationality or domicile criteria, which are applied as well to the member of the board.	3) None	
	4) Unbound except as indicated in Part I	4) Unbound except as indicated in Part I	

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or subsector	Limitations on market access	Limitations on national treatment	Additional commitments
c) Relating to Other Transport Equipment (CPC 83102, 83105)	1) Unbound	1) None	
	2) None	2) None	
	3) None	3) None	
	4) Unbound except as indicated in Part I	4) Unbound except as indicated in Part I	
d) Relating to Other Machinery and Equipment (CPC 83106, 83107, 83108, 83109)	1) None	1) None	
	2) None	2) None	
	3) None	3) None	
	4) Unbound except as indicated in Part I	4) Unbound except as indicated in Part I	
F. Other Business Services			
a) Advertising Services, excluding direct mail advertising, outdoor advertising and excluding for goods subject to import authorization and excluding pharmaceutical products, alcohol, tobacco, toxic explosives, weapons and ammunition (8711** 8712**)	1) None	1) None	
	2) None	2) None	
	3) None	3) None	
	4) Unbound except as indicated in Part I	4) Unbound except as indicated in Part I	
b) Market Research and Opinion Polling (CPC 864)	1) None	1) None	
	2) None	2) None	
	3) None	3) None	
	4) Unbound except as indicated in Part I	4) Unbound except as indicated in Part I	
c) Management Consulting Services (CPC 865)	1) None	1) None	
	2) None	2) None	
	3) None	3) None	
	4) Unbound except as indicated in Part I	4) Unbound except as indicated in Part I	
d) Services related to Management Consulting (CPC 866)	1) None	1) None	
	2) None	2) None	
	3) None	3) None	
	4) Unbound except as indicated in Part I	4) Unbound except as indicated in Part I	
e) Technical Testing and Analysis Services * (CPC 8676)	1) None	1) None	
	2) None	2) None	
	3) None	3) None	
	4) Unbound except as indicated in Part I	4) Unbound except as indicated in Part I	
j) Services Incidental to Energy Distribution - for gas only * (CPC 887**)	1) None	1) None	
	2) None	2) None	
	3) None	3) None	
	4) Unbound except as indicated in Part I	4) Unbound except as indicated in Part I	

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Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or subsector	Limitations on market access	Limitations on national treatment	Additional commitments
n) Maintenance and Repair of Equipment (not incl. maritime vessels, aircraft or other transport equipment) (CPC 633+8861-8866)	1) None	1) None	
	2) None	2) None	
	3) None	3) None	
	4) Unbound except as indicated in Part I	4) Unbound except as indicated in Part I	
p) Photographic Services (CPC 876)	1) None	1) None	
	2) None	2) None	
	3) None	3) None	
	4) Unbound except as indicated in Part I	4) Unbound except as indicated in Part I	
2. COMMUNICATION SERVICES			
B. Courrier services			
Special Delivery Service only (CPC 7512**)	1) Unbound	1) Unbound	
	2) None	2) None	
	3) None	3) None	
	4) Unbound except as indicated in Part I	4) Unbound except as indicated in Part I	
C. Telecommunication Services			
The setting up and operation of telecommunication networks infrastructure as well as the provision of voice telephone, packet and circuit switched data services, telegraph, telex, mobile radio telephone, satellite and paging services are excluded (public monopoly).			
Value-added services including:			
h) Electronic Mail (CPC 7523**)	1) None as from January 1, 1998	1) None as from January 1, 1998	
	2) None	2) None	
i) Voice Mail (CPC 7523**)	3) Foreign participation may not exceed 99 per cent of the equity.	3) None	
j) On-line Information and Data Base Retrieval (CPC 7523**)	Licence for operation granted is subject to obligations of value-added telecommunication services providers, to use the basic telecommunications network.		
l) Enhanced/Value-added Facsimile Services, incl. store and forward, store and retrieve (CPC 7523**)	4) Unbound except as indicated in Part I	4) Unbound except as indicated in Part I	
m) Code and Protocol Conversion (CPC n.a.)			

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or subsector	Limitations on market access	Limitations on national treatment	Additional commitments
3. CONSTRUCTION AND RELATED ENGINEERING SERVICES			
A. General Construction Work for Buildings (CPC 512)	1) Unbound*	1) Unbound*	
	2) None	2) None	
	3) None	3) None	
	4) Unbound except as indicated in Part I and: commercial presence required	4) Unbound except as indicated in Part I and commercial presence required	
B. General Construction Work for Civil Engineering (CPC 513)	1) Unbound*	1) Unbound*	
	2) None	2) None	
	3) None	3) None	
	4) Unbound except as indicated in Part I and: commercial presence required	4) Unbound except as indicated in Part I and: commercial presence required	
C. Installation and Assembly Work (CPC 514, 516)	1) Unbound*	1) Unbound*	
	2) None	2) None	
	3) None	3) None	
	4) Unbound except as indicated in Part I and: commercial presence required	4) Unbound except as indicated in Part I and: commercial presence required	
D. Building Completion and Finishing Work (CPC 517)	1) Unbound*	1) Unbound*	
	2) None	2) None	
	3) None	3) None	
	4) Unbound except as indicated in Part I and: commercial presence required	4) Unbound except as indicated in Part I and: commercial presence required	
E. Other:			
- Pre-erection work at construction sites and special trade construction work (CPC 511, 515)	1) Unbound*	1) Unbound*	
	2) None	2) None	
	3) None	3) None	
	4) Unbound except as indicated in Part I and: commercial presence required	4) Unbound except as indicated in Part I and: commercial presence required	
4. DISTRIBUTION SERVICES			
(Excluding distribution of pyrotechnical goods, ignitable articles and blasting devices, firearms, ammunition and military equipment, toxic substances and certain medical substances).			
A. Commission Agents' Services (CPC 621)	1) None	1) None	
	2) None	2) None	
	3) None	3) None	
	4) Unbound except as indicated in Part I	4) Unbound except as indicated in Part I	
B. Wholesale Trade Services (CPC 622)	1) None	1) None	
	2) None	2) None	
	3) None	3) None	
	4) Unbound except as indicated in Part I	4) Unbound except as indicated in Part I	

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or subsector	Limitations on market access	Limitations on national treatment	Additional commitments
C. Retailing Services (CPC 631, 632**, 61112, 6113, 6121 excluding 63211)	1) None	1) None	
	2) None	2) None	
	3) None	3) None	
	4) Unbound except as indicated in Part I	4) Unbound except as indicated in Part I	
D. Franchising (CPC 8929)	1) None	1) None	
	2) None	2) None	
	3) None	3) None	
	4) Unbound except as indicated in Part I	4) Unbound except as indicated in Part I	
5. EDUCATIONAL SERVICES			
B. Secondary Education Services - Privately Funded Only (CPC 922**)	1) None	1) None	
	2) None	2) None	
	3) None	3) None	
	4) Unbound except as indicated in Part I	4) Unbound except as indicated in Part I	
C. Higher Education Services Privately Funded Only (CPC 923**)	1) None	1) None	
	2) None	2) None	
	3) None	3) None	
	4) Unbound except as indicated in Part I	4) Unbound except as indicated in Part I	
D. Adult Education Services (CPC 924)	1) None	1) None	
	2) None	2) None	
	3) None	3) None	
	4) Unbound except as indicated in Part I	4) Unbound except as indicated in Part I	
6. ENVIRONMENTAL SERVICES *			
A. Sewage Services (CPC 9401)	1) Unbound*	1) Unbound*	
	2) None	2) None	
	3) None	3) None	
	4) Unbound except as indicated in Part I	4) Unbound except as indicated in Part I	
B. Refuse Disposal Services (CPC 9402)	1) Unbound*	1) Unbound*	
	2) None	2) None	
	3) None	3) None	
	4) Unbound except as indicated in Part I	4) Unbound except as indicated in Part I	
C. Sanitation and Similar Services (CPC 9403)	1) Unbound*	1) Unbound*	
	2) None	2) None	
	3) None	3) None	
	4) Unbound except as indicated in Part I	4) Unbound except as indicated in Part I	

* Public utility exist; concession rights can be granted to the private operators established in the Republic of Slovenia.

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or subsector	Limitations on market access	Limitations on national treatment	Additional commitments
D. Other:			
- Nature and Landscape Protection Services CPC 9406)	1) Unbound* 2) None 3) None 4) Unbound except as indicated in Part I	1) Unbound* 2) None 3) None 4) Unbound except as indicated in Part I	

7. FINANCIAL SERVICES

1. The admission to the market of new financial services or products may be subject to the existence of, and consistency with, a regulatory framework aimed at achieving the objectives indicated in Article 2.(a) of the Annex on Financial Services.
2. As a general rule and in a non-discriminatory manner, financial institutions incorporated in the Republic of Slovenia must adopt a specific legal form.
3. Insurance and banking activities should be performed by legaly separate suppliers of financial services.
4. Investment services can be provided only through banks and investment firms.

A. Insurance and Insurance-Related Services as defined in the "Annex on Financial Services" (Para.5.(a)(i)-5.(a)(iv))			
(i) Direct insurance (including co-insurance) (A) life (B) non-life	1), 2) Unbound except for maritime shipping and commercial aviation and freight, with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods and any liability arising therefrom; and goods in international transit.	1),2) Unbound except for maritime shipping and commercial aviation and freight, with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods and any liability arising therefrom; and goods in international transit.	
	3) Establishment is subject to a licence issued by the Ministry of Finance. Foreign persons can establish an insurance company only as a joint venture with domestic person, where participation of foreign persons is limited up to 99 per cent. A foreign person may acquire or increase shares in a domestic insurance company subject to a prior approval of the Ministry of Finance. Ministry of Finance, when issuing a licence or approval of acquiring shares in a domestic insurance company, takes into account the following criteria: - the dispersion of ownership of shares and the existance of shareholders from different countries, - the supply of new insurance products and the transfer of related knowhow, if the foreign investor is an insurance company. Unbound for foreign participation in insurance company under privatization. Unbound with respect to branches, representative offices and agencies of insurers.	3) None.	

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or subsector	Limitations on market access	Limitations on national treatment	Additional commitments
	Insurance activities provided by mutual insurance institutions are limited to incorporated companies established in the Republic of Slovenia.		
	4) Unbound except as indicated in Part I	4) Unbound except as indicated in Part I	
(ii) Reinsurance and retrocession	1) Unbound	1) Unbound	
	2) Reinsurance companies in the Republic of Slovenia have priority in the collection of insurance premiums. In case that these companies are not able to equalize all risks, these can be reinsured and retroceded abroad.	2) None	
	3) Foreign participation in reinsurance company is limited up to a controlling share of the capital.	3) None other than insurance company with a controlling share of foreign capital may not be engaged in reinsurance or establish reinsurance company.	
	4) Unbound except as indicated in Part I	4) Unbound except as indicated in Part I	
(iii) Insurance intermediation, such as brokerage and agency	1) Unbound	1) None	
	2) None	2) None	
(iv)Services auxiliary to insurance, such as: - consultancy, - actuarial, - risk assessment - claim settlement services	3) For providing consultancy and claim settlement services, incorporation is required as a legal entity by consent of the Bureau of insurance. For actuaries and risk assessment activities provision of services through professional establishment only. Operation is limited to activities referred under 7 A (i) and (ii) of this Schedule.	3) For sole proprietors a residence in the Republic of Slovenia is required.	
	4) Unbound except as indicated in Part I and for actuarial and risk assessment residence is required in addition to a qualiffying examination, membership in the Actuarial Association of the Republic of Slovenia and proficiency in the Slovene language.	4) Unbound except as indicated in Part I	
B. Banking and Other Financial Services as defined in the "Annex on Financial Services"			
(v) Acceptance of deposits and other repayable funds from the public (vi)Lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transactions (viii)All payment and money transmission services, including credit, charge and debit cards, travellers cheques and bankers drafts	1), 2) Unbound except accepting credits (borrowing of all types, excluding consumer credit), and accepting guarantees and commitments from foreign credit institutions by domestic legal entities and sole proprietors. All above mentioned credit arrangements must be registered with the Bank of Slovenia.	1) None other than foreign persons can only offer foreign securities through domestic banks and stock broking company. Members of the Slovenian Stock Exchange must be incorporated in the Republic of Slovenia. 2) None other than legal entities established in the Republic of Slovenia can be depositories of the assets of Investments Funds.	

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or subsector	Limitations on market access	Limitations on national treatment	Additional commitments
(ix) Guarantees and commitments (excluding guarantees and commitments of the State Treasury)			
(x) Trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:			
(A) money market instruments (including cheques, bills, certificate of deposits)	3) Establishment of all types of banks are subject to a licence of the Bank of Slovenia. Foreign persons may become shareholders of banks or acquire additional shares of banks only subject to prior approval of the Bank of Slovenia.	3) None.	
(B) foreign exchange			
(C) derivative products including, but not limited to, futures and options	When considering issuing a licence to a bank to set up as a wholly owned or with a majority of foreign investors or approval of acquiring additional shares of banks, the Bank of Slovenia shall take into account the following guidelines*:		
(D) exchange rate and interest rate instruments including products such as swaps, forward rate agreements	- the existance of investors from different countries, - the opinion of the foreign institution in charge of banking supervision.		
(E) transferable securities	Unbound in relation to foreign participation in banks under privatization.		
(F) other negotiable instruments and financial assets, including bullion	Under licence of the Bank of Slovenia, banks, subsidiaries and branches of foreign banks can be permitted to provide all or limited banking services, depending on the amount of the capital.		
(xi) Participation in issues of all kinds of securities, including underwriting and placement as agent and provision of services related to such issues (excluding treasury bonds)	Branches of foreign banks must be incorporated in the Republic of Slovenia and have legal personality. Unbound with respect to all types of mortgage banks, savings and loans institutions.		

* Besides the amount of the capital the Bank of Slovenia shall, when considering issuing an unlimited or a limited banking licence also take into account the following guidelines (for both domestic and foreign applicants):
- the national-economic preferences for certain banking activities;
- the existing regional coverage of the Republic of Slovenia by banks;
- the actual bank's performance of activities compared to those stipulated by the existing licence.

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or subsector	Limitations on market access	Limitations on national treatment	Additional commitments
(xii) Money broking			
(xiii) Asset management, such as cash or portfolio management, all forms of collective investment management,custodial, depository and trust services (excluding pension fund management)	Unbound with respect to establishment of private pension funds (Non compulsory pension funds). Management Companies are commercial companies established solely for the purpose of managing investment funds. Foreign persons may directly or indirectly acquire a maximum up to 20 per cent of shares or voting rights of management companies; for a larger percentage an approval of the Securities Market Agency is required.		
(xiv) Settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments	An Authorized (privatization) Investment Company is an investment company established solely for the purpose of gathering the ownership certificates (vouchers) and the purchase of shares issued in accordance with regulations on ownership transformation. An Authorized Management Company is established solely for the purpose of managing the authorized investment companies. Foreign persons may directly or indirectly acquire a maximum up to 10 per cent of shares or voting rights of Authorized (privatization) Management Companies; for a larger percentage an approval of the Securities Market Agency is required with the consent of the Ministry of Economic Relations and Development. Investments of the Investments Funds into securities of foreign issuers are limited to 10 per cent of the investments of the Investments Funds. Such securities shall be listed on those stock exchanges previously determined by the Securities Market Agency. Foreign persons may become shareholders or partners in a Stock Broking Company up to 24 per cent of the capital of the Stock Broking Company by prior approval of the Securities Market Agency. Securities of a foreign issuer which have not yet been offered in the territory of the Republic of Slovenia may only be offered by a Stock Broking Company or a bank licensed to carry out such transactions. Prior to launching the offer the Stock Broking Company or a bank shall obtain the permission of Securities Market Agency. The request for this permission for offer securities of a foreign issuer in the Republic of Slovenia shall be accompained by draft prospectus, documentation that the guarantor of the issue of securities of the foreign issuer is a bank or a stock broking company, except in the case of the issue of shares of a foreign issuer.		
	4) Unbound except as indicated in Part I	4) Unbound except as indicated in Part I	

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or subsector	Limitations on market access	Limitations on national treatment	Additional commitments
(xv) Provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services	1) None 2) None 3) None 4) Unbound except as indicated in Part I	1) None 2) None 3) None 4) Unbound except as indicated in Part I	
(xvi) Advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs (v) through (xv), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy			
8. HEALTH SERVICES AND SOCIAL SERVICES			
A. Hospital Services			
- Private Hospital and Sanatorium Services (CPC 9311** excluding services provided by the public sector)	1) Unbound* 2) Public medical insurance programs may not cover cost of medicare supplied abroad 3) Authorization by health authorities; when authorizing the establishment of hospitals due consideration on a case-by-case basis is taken of the density of population, existing facilities, transport infrastructure, specialization and the distance between hospitals. Entry into public Health network is subject to concession from Institute for Health Insurance of the Republic of Slovenia. 4) Unbound except as indicated in Part I	1) Unbound* 2) Service consumers may not be entitled to receive financial support from public resources. Subject to authorization by Institute for Health Insurance of the Republic of Slovenia (“Zavod za zdravstveno zavarovanje”). 3) Foreign private establishment and their service consumers may not be entitled to receive financial support from public resources including usage of public medical insurance programs. 4) Unbound except as indicated in Part I	
B. Other Human Health Services			
- Residential Health Facilities Services like Health Resort Hotels and Therapeutic Bath Services (CPC 93193)	1) Unbound* 2) None 3) None 4) Unbound except as indicated in Part I	1) Unbound* 2) None 3) None 4) Unbound except as indicated in Part I	

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or subsector	Limitations on market access	Limitations on national treatment	Additional commitments
9. TOURISM AND TRAVEL RELATED SERVICES			
A. Hotels, Restaurants and Catering (CPC 641, 642, 643 excluding catering in transport services sector)	1) Unbound*	1) Unbound*	
	2) None	2) None	
	3) None other than location in the protected areas of particular historic and artistic interest and within national or landscape parks is subject to authorization which can be denied.	3) None	
	4) Unbound except as indicated in Part I	4) Unbound except as indicated in Part I	
B. Travel Agencies and Tour Operators Services (CPC 7471)	1) Commercial presence required	1) Commercial presence required	
	2) None	2) None	
	3) None	3) None	
	4) Unbound except as indicated in Part I and commercial presence required	4) Unbound except as indicated in Part I and commercial presence required	
10. RECREATIONAL, CULTURAL AND SPORTING SERVICES (other than Audio-visual Services)			
D. Sporting and Other Recreational Services other than ski school services, ski and mountain guide services, gambling and betting services (CPC 9641, 96491)	1) None	1) None	
	2) None	2) None	
	3) None	3) None	
	4) Unbound except as indicated in Part I	4) Unbound except as indicated in Part I	
11. TRANSPORT SERVICES			
A. Maritime Transport Services			
d) Maintenance and Repair of Vessels (CPC 8868**)	1) Unbound*	1) Unbound*	
	2) None	2) None	
	3) None	3) None	
	4) Unbound except as indicated in Part I	4) Unbound except as indicated in Part I	
C. Air Transport Services			
d) Maintenance and Repair of Aircraft (CPC 8868**)	1) Unbound*	1) Unbound*	
	2) None	2) None	
	3) None	3) None	
	4) Unbound except as indicated in Part I	4) Unbound except as indicated in Part I	

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or subsector	Limitations on market access	Limitations on national treatment	Additional commitments
- Computer Reservation System (CRS)	1) None	1) For obligation of parent or participating carriers in respect of a Computer Reservation System controlled by an air carrier of one or more third Countries: unbound	
	2) None	2) None	
	3) None	3) For obligations of parent or participating carriers in respect of a Computer Reservation System controlled by an air carrier of one or more third countries: unbound	
	4) Unbound except as indicated in Part I	4) Unbound except as indicated in Part I	
- Sales and Marketing	1) None	1) For distribution through CRS of air transport services provided by CRS parent carrier: unbound.	
	2) None	2) None	
	3) None	3) For distribution through CRS of air transport services provided by CRS parent carrier: unbound.	
	4) Unbound except as indicated in Part I	4) Unbound except as indicated in Part I	
E. Rail Transport Services			
d) Maintenance and Repair of Rail Transport Equipment (CPC 8868**)	1) Unbound*	1) Unbound	
	2) None	2) None	
	3) None	3) None	
	4) Unbound except as indicated in Part I	4) Unbound except as indicated in Part I	
F. Road Transport Services			
d) Maintenance and Repair of Road Transport Equipment (CPC 6112**)	1) None	1) None	
	2) None	2) None	
	3) None	3) None	
	4) Unbound except as indicated in Part I	4) Unbound except as indicated in Part I	
H. Services auxiliary to all modes of transport			
b) Storage and Warehouse Services (CPC 742)	1) Unbound*	1) Unbound*	
	2) None	2) None	
	3) None	3) None	
	4) Unbound except as indicated in Part I	4) Unbound except as indicated in Part I	
c) Freight Transport Agency Services/Freight Forwarding Services CPC 748)	1) None	1) None other than customs clearance is subject to limitation to juridical person established in the Republic of Slovenia	
	2) None	2) None	
	3) None	3) None other than customs clearance is subject to limitation to juridical person established in the Republic of Slovenia	
	4) Unbound except as indicated in Part I	4) Unbound except as indicated in Part I	

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or subsector	Limitations on market access	Limitations on national treatment	Additional commitments
Pre-Shipment Inspection (CPC 749**)	1) None	1) None	
	2) None	2) None	
	3) None	3) None	
	4) Unbound except as indicated in Part I	4) Unbound except as indicated in Part I	

REPUBLIC OF SLOVENIA - LIST OF ARTICLE II (MFN) EXEMPTIONS

Sector or subsector	Description of measure indicating its inconsistency with Article II	Countries to which the measure applies	Intended duration	Conditions creating the need for the exemption
Audiovisual Services	Measures applied for the implementation of and in conformity with existing or future co-production agreements and which provide for national treatment to the works covered	Parties to the agreements	Indefinite	The promotion of cultural links between the parties concerned.
	Measures applied for the implementation of and in conformity with support programmes such as the Council of Europe Convention on Transfrontier Television, Eureca, Media and Eurimages to audiovisual programmes and supplies to these programmes meeting specific origin criteria	European Countries	Indefinite	The promotion of cultural exchange among European countries based on traditional cultural links
	Preferential treatment of audiovisual works meeting European origin criteria regarding screen-time access	European countries	Indefinite	Promoting common cultural links and protection of common cultural heritage
Road Transport Passenger and Freight	Measures applied under existing or future agreements and which reserve or limit the provision of transport services and specify operating conditions, including transit permits and/or preferential road taxes of a transport services into, in, across and out of the Republic of Slovenia to the parties concerned.	All countries with which agreements are or will be in force	Indefinite	To protect the integrity of of road transport infrastructure and the environment and to regulate traffic rights in the territory of the Republic of Slovenia and between the the countries concerned
Computer Reservation System and marketing of Air Transport Services	Provision of Article 7 of Regulation (EC) No. 2299/89 as amended by Regulation (EC) No. 3089/93, whereby the obligations of CRS systems vendors or of parent and participating air carriers shall not apply where equivalent treatment to that applied under the Regulation is not accorded in the country of origin of the parent carrier or of the system vendor	All countries where a CRS system vendor or a parent air carrier is located	Indefinite	The need for the exemption results from the insufficient development of multilaterally agreed rules for the operation of CRS.
Financial Services	Authorization for a service supplier of another Member to establish a commercial presence or conduct new activities may be denied in cases when Slovenian suppliers are denied such access and treatment in the country of origin of the service concerned	All countries	Conditional upon the level of commitments undertaken by other members	To obtain equal market access possibilities for Slovenian suppliers

ANNEX 1C

AGREEMENT ON TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS

AGREEMENT ON TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS

Members,

Desiring to reduce distortions and impediments to international trade, and taking into account the need to promote effective and adequate protection of intellectual property rights, and to ensure that measures and procedures to enforce intellectual property rights do not themselves become barriers to legitimate trade;

Recognizing, to this end, the need for new rules and disciplines concerning:

(a) the applicability of the basic principles of GATT 1994 and of relevant international intellectual property agreements or conventions;

(b) the provision of adequate standards and principles concerning the availability, scope and use of trade-related intellectual property rights;

(c) the provision of effective and appropriate means for the enforcement of trade-related intellectual property rights, taking into account differences in national legal systems;

(d) the provision of effective and expeditious procedures for the multilateral prevention and settlement of disputes between governments; and

(e) transitional arrangements aiming at the fullest participation in the results of the negotiations;

Recognizing the need for a multilateral framework of principles, rules and disciplines dealing with international trade in counterfeit goods;

Recognizing that intellectual property rights are private rights;

Recognizing the underlying public policy objectives of national systems for the protection of intellectual property, including developmental and technological objectives;

Recognizing also the special needs of the least-developed country Members in respect of maximum flexibility in the domestic implementation of laws and regulations in order to enable them to create a sound and viable technological base;

Emphasizing the importance of reducing tensions by reaching strengthened commitments to resolve disputes on trade-related intellectual property issues through multilateral procedures;

Desiring to establish a mutually supportive relationship between the WTO and the World Intellectual Property Organization (referred to in this Agreement as "WIPO") as well as other relevant international organizations;

Hereby agree as follows:

PART I

GENERAL PROVISIONS AND BASIC PRINCIPLES

Article 1

Nature and Scope of Obligations

1. Members shall give effect to the provisions of this Agreement. Members may, but shall not be obliged to, implement in their law more extensive protection than is required by this Agreement, provided that such protection does not contravene the provisions of this Agreement. Members shall be free to determine the appropriate method of implementing the provisions of this Agreement within their own legal system and practice.

2. For the purposes of this Agreement, the term "intellectual property" refers to all categories of intellectual property that are the subject of Sections 1 through 7 of Part II.

3. Members shall accord the treatment provided for in this Agreement to the nationals of other Members.[1] In respect of the relevant intellectual property right, the nationals of other Members shall be understood as those natural or legal persons that would meet the criteria for eligibility for protection provided for in the Paris Convention (1967), the Berne Convention (1971), the Rome Convention and the Treaty on Intellectual Property in Respect of Integrated Circuits, were all Members of the WTO members of those conventions.[2] Any Member availing itself of the possibilities provided in paragraph 3 of Article 5 or paragraph 2 of Article 6 of the Rome Convention shall make a notification as foreseen in those provisions to the Council for Trade-Related Aspects of Intellectual Property Rights (the "Council for TRIPS").

Article 2

Intellectual Property Conventions

1. In respect of Parts II, III and IV of this Agreement, Members shall comply with Articles 1 through 12, and Article 19, of the Paris Convention (1967).

2. Nothing in Parts I to IV of this Agreement shall derogate from existing obligations that Members may have to each other under the Paris Convention, the Berne Convention, the Rome Convention and the Treaty on Intellectual Property in Respect of Integrated Circuits.

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[1] When "nationals" are referred to in this Agreement, they shall be deemed, in the case of a separate customs territory Member of the WTO, to mean persons, natural or legal, who are domiciled or who have a real and effective industrial or commercial establishment in that customs territory.

[2] In this Agreement, "Paris Convention" refers to the Paris Convention for the Protection of Industrial Property; "Paris Convention (1967)" refers to the Stockholm Act of this Convention of 14 July 1967. "Berne Convention" refers to the Berne Convention for the Protection of Literary and Artistic Works; "Berne Convention (1971)" refers to the Paris Act of this Convention of 24 July 1971. "Rome Convention" refers to the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, adopted at Rome on 26 October 1961. "Treaty on Intellectual Property in Respect of Integrated Circuits" (IPIC Treaty) refers to the Treaty on Intellectual Property in Respect of Integrated Circuits, adopted at Washington on 26 May 1989. "WTO Agreement" refers to the Agreement Establishing the WTO.

Article 3

National Treatment

1. Each Member shall accord to the nationals of other Members treatment no less favourable than that it accords to its own nationals with regard to the protection[3] of intellectual property, subject to the exceptions already provided in, respectively, the Paris Convention (1967), the Berne Convention (1971), the Rome Convention or the Treaty on Intellectual Property in Respect of Integrated Circuits. In respect of performers, producers of phonograms and broadcasting organizations, this obligation only applies in respect of the rights provided under this Agreement. Any Member availing itself of the possibilities provided in Article 6 of the Berne Convention (1971) or paragraph 1(b) of Article 16 of the Rome Convention shall make a notification as foreseen in those provisions to the Council for TRIPS.

2. Members may avail themselves of the exceptions permitted under paragraph 1 in relation to judicial and administrative procedures, including the designation of an address for service or the appointment of an agent within the jurisdiction of a Member, only where such exceptions are necessary to secure compliance with laws and regulations which are not inconsistent with the provisions of this Agreement and where such practices are not applied in a manner which would constitute a disguised restriction on trade.

Article 4

Most-Favoured-Nation Treatment

With regard to the protection of intellectual property, any advantage, favour, privilege or immunity granted by a Member to the nationals of any other country shall be accorded immediately and unconditionally to the nationals of all other Members. Exempted from this obligation are any advantage, favour, privilege or immunity accorded by a Member:

(a) deriving from international agreements on judicial assistance or law enforcement of a general nature and not particularly confined to the protection of intellectual property;

(b) granted in accordance with the provisions of the Berne Convention (1971) or the Rome Convention authorizing that the treatment accorded be a function not of national treatment but of the treatment accorded in another country;

(c) in respect of the rights of performers, producers of phonograms and broadcasting organizations not provided under this Agreement;

(d) deriving from international agreements related to the protection of intellectual property which entered into force prior to the entry into force of the WTO Agreement, provided that such agreements are notified to the Council for TRIPS and do not constitute an arbitrary or unjustifiable discrimination against nationals of other Members.

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[3]For the purposes of Articles 3 and 4, "protection" shall include matters affecting the availability, acquisition, scope, maintenance and enforcement of intellectual property rights as well as those matters affecting the use of intellectual property rights specifically addressed in this Agreement.

Article 5

Multilateral Agreements on Acquisition or Maintenance of Protection

The obligations under Articles 3 and 4 do not apply to procedures provided in multilateral agreements concluded under the auspices of WIPO relating to the acquisition or maintenance of intellectual property rights.

Article 6

Exhaustion

For the purposes of dispute settlement under this Agreement, subject to the provisions of Articles 3 and 4 nothing in this Agreement shall be used to address the issue of the exhaustion of intellectual property rights.

Article 7

Objectives

The protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations.

Article 8

Principles

1. Members may, in formulating or amending their laws and regulations, adopt measures necessary to protect public health and nutrition, and to promote the public interest in sectors of vital importance to their socio-economic and technological development, provided that such measures are consistent with the provisions of this Agreement.

2. Appropriate measures, provided that they are consistent with the provisions of this Agreement, may be needed to prevent the abuse of intellectual property rights by right holders or the resort to practices which unreasonably restrain trade or adversely affect the international transfer of technology.

PART II

STANDARDS CONCERNING THE AVAILABILITY, SCOPE AND USE OF INTELLECTUAL PROPERTY RIGHTS

SECTION 1: COPYRIGHT AND RELATED RIGHTS

Article 9

Relation to the Berne Convention

1. Members shall comply with Articles 1 through 21 of the Berne Convention (1971) and the Appendix thereto. However, Members shall not have rights or obligations under this Agreement in respect of the rights conferred under Article 6*bis* of that Convention or of the rights derived therefrom.

2. Copyright protection shall extend to expressions and not to ideas, procedures, methods of operation or mathematical concepts as such.

Article 10

Computer Programs and Compilations of Data

1. Computer programs, whether in source or object code, shall be protected as literary works under the Berne Convention (1971).

2. Compilations of data or other material, whether in machine readable or other form, which by reason of the selection or arrangement of their contents constitute intellectual creations shall be protected as such. Such protection, which shall not extend to the data or material itself, shall be without prejudice to any copyright subsisting in the data or material itself.

Article 11

Rental Rights

In respect of at least computer programs and cinematographic works, a Member shall provide authors and their successors in title the right to authorize or to prohibit the commercial rental to the public of originals or copies of their copyright works. A Member shall be excepted from this obligation in respect of cinematographic works unless such rental has led to widespread copying of such works which is materially impairing the exclusive right of reproduction conferred in that Member on authors and their successors in title. In respect of computer programs, this obligation does not apply to rentals where the program itself is not the essential object of the rental.

Article 12

Term of Protection

Whenever the term of protection of a work, other than a photographic work or a work of applied art, is calculated on a basis other than the life of a natural person, such term shall be no less than

50 years from the end of the calendar year of authorized publication, or, failing such authorized publication within 50 years from the making of the work, 50 years from the end of the calendar year of making.

Article 13

Limitations and Exceptions

Members shall confine limitations or exceptions to exclusive rights to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder.

Article 14

Protection of Performers, Producers of Phonograms (Sound Recordings) and Broadcasting Organizations

1. In respect of a fixation of their performance on a phonogram, performers shall have the possibility of preventing the following acts when undertaken without their authorization: the fixation of their unfixed performance and the reproduction of such fixation. Performers shall also have the possibility of preventing the following acts when undertaken without their authorization: the broadcasting by wireless means and the communication to the public of their live performance.

2. Producers of phonograms shall enjoy the right to authorize or prohibit the direct or indirect reproduction of their phonograms.

3. Broadcasting organizations shall have the right to prohibit the following acts when undertaken without their authorization: the fixation, the reproduction of fixations, and the rebroadcasting by wireless means of broadcasts, as well as the communication to the public of television broadcasts of the same. Where Members do not grant such rights to broadcasting organizations, they shall provide owners of copyright in the subject matter of broadcasts with the possibility of preventing the above acts, subject to the provisions of the Berne Convention (1971).

4. The provisions of Article 11 in respect of computer programs shall apply *mutatis mutandis* to producers of phonograms and any other right holders in phonograms as determined in a Member's law. If on 15 April 1994 a Member has in force a system of equitable remuneration of right holders in respect of the rental of phonograms, it may maintain such system provided that the commercial rental of phonograms is not giving rise to the material impairment of the exclusive rights of reproduction of right holders.

5. The term of the protection available under this Agreement to performers and producers of phonograms shall last at least until the end of a period of 50 years computed from the end of the calendar year in which the fixation was made or the performance took place. The term of protection granted pursuant to paragraph 3 shall last for at least 20 years from the end of the calendar year in which the broadcast took place.

6. Any Member may, in relation to the rights conferred under paragraphs 1, 2 and 3, provide for conditions, limitations, exceptions and reservations to the extent permitted by the Rome Convention. However, the provisions of Article 18 of the Berne Convention (1971) shall also apply, *mutatis mutandis*, to the rights of performers and producers of phonograms in phonograms.

SECTION 2. TRADEMARKS

Article 15

Protectable Subject Matter

1. Any sign, or any combination of signs, capable of distinguishing the goods or services of one undertaking from those of other undertakings, shall be capable of constituting a trademark. Such signs, in particular words including personal names, letters, numerals, figurative elements and combinations of colours as well as any combination of such signs, shall be eligible for registration as trademarks. Where signs are not inherently capable of distinguishing the relevant goods or services, Members may make registrability depend on distinctiveness acquired through use. Members may require, as a condition of registration, that signs be visually perceptible.

2 Paragraph 1 shall not be understood to prevent a Member from denying registration of a trademark on other grounds, provided that they do not derogate from the provisions of the Paris Convention (1967).

3 Members may make registrability depend on use. However, actual use of a trademark shall not be a condition for filing an application for registration. An application shall not be refused solely on the ground that intended use has not taken place before the expiry of a period of three years from the date of application.

4. The nature of the goods or services to which a trademark is to be applied shall in no case form an obstacle to registration of the trademark.

5. Members shall publish each trademark either before it is registered or promptly after it is registered and shall afford a reasonable opportunity for petitions to cancel the registration. In addition, Members may afford an opportunity for the registration of a trademark to be opposed.

Article 16

Rights Conferred

1. The owner of a registered trademark shall have the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs for goods or services which are identical or similar to those in respect of which the trademark is registered where such use would result in a likelihood of confusion. In case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed. The rights described above shall not prejudice any existing prior rights, nor shall they affect the possibility of Members making rights available on the basis of use.

2. Article 6*bis* of the Paris Convention (1967) shall apply, *mutatis mutandis*, to services. In determining whether a trademark is well-known, Members shall take account of the knowledge of the trademark in the relevant sector of the public, including knowledge in the Member concerned which has been obtained as a result of the promotion of the trademark.

3. Article 6*bis* of the Paris Convention (1967) shall apply, *mutatis mutandis*, to goods or services which are not similar to those in respect of which a trademark is registered, provided that use of that trademark in relation to those goods or services would indicate a connection between those goods or

services and the owner of the registered trademark and provided that the interests of the owner of the registered trademark are likely to be damaged by such use.

Article 17

Exceptions

Members may provide limited exceptions to the rights conferred by a trademark, such as fair use of descriptive terms, provided that such exceptions take account of the legitimate interests of the owner of the trademark and of third parties.

Article 18

Term of Protection

Initial registration, and each renewal of registration, of a trademark shall be for a term of no less than seven years. The registration of a trademark shall be renewable indefinitely.

Article 19

Requirement of Use

1. If use is required to maintain a registration, the registration may be cancelled only after an uninterrupted period of at least three years of non-use, unless valid reasons based on the existence of obstacles to such use are shown by the trademark owner. Circumstances arising independently of the will of the owner of the trademark which constitute an obstacle to the use of the trademark, such as import restrictions on or other government requirements for goods or services protected by the trademark, shall be recognized as valid reasons for non-use.

2. When subject to the control of its owner, use of a trademark by another person shall be recognized as use of the trademark for the purpose of maintaining the registration.

Article 20

Other Requirements

The use of a trademark in the course of trade shall not be unjustifiably encumbered by special requirements, such as use with another trademark, use in a special form or use in a manner detrimental to its capability to distinguish the goods or services of one undertaking from those of other undertakings. This will not preclude a requirement prescribing the use of the trademark identifying the undertaking producing the goods or services along with, but without linking it to, the trademark distinguishing the specific goods or services in question of that undertaking.

Article 21

Licensing and Assignment

Members may determine conditions on the licensing and assignment of trademarks, it being understood that the compulsory licensing of trademarks shall not be permitted and that the owner of a registered trademark shall have the right to assign the trademark with or without the transfer of the business to which the trademark belongs.

SECTION 3: GEOGRAPHICAL INDICATIONS

Article 22

Protection of Geographical Indications

1. Geographical indications are, for the purposes of this Agreement, indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.

2. In respect of geographical indications, Members shall provide the legal means for interested parties to prevent:

(a) the use of any means in the designation or presentation of a good that indicates or suggests that the good in question originates in a geographical area other than the true place of origin in a manner which misleads the public as to the geographical origin of the good;

(b) any use which constitutes an act of unfair competition within the meaning of Article 10*bis* of the Paris Convention (1967).

3. A Member shall, *ex officio* if its legislation so permits or at the request of an interested party, refuse or invalidate the registration of a trademark which contains or consists of a geographical indication with respect to goods not originating in the territory indicated, if use of the indication in the trademark for such goods in that Member is of such a nature as to mislead the public as to the true place of origin.

4. The protection under paragraphs 1, 2 and 3 shall be applicable against a geographical indication which, although literally true as to the territory, region or locality in which the goods originate, falsely represents to the public that the goods originate in another territory.

Article 23

Additional Protection for Geographical Indications for Wines and Spirits

1. Each Member shall provide the legal means for interested parties to prevent use of a geographical indication identifying wines for wines not originating in the place indicated by the geographical indication in question or identifying spirits for spirits not originating in the place indicated by the geographical indication in question, even where the true origin of the goods is indicated or the geographical indication is used in translation or accompanied by expressions such as "kind", "type", "style", "imitation" or the like.*

2. The registration of a trademark for wines which contains or consists of a geographical indication identifying wines or for spirits which contains or consists of a geographical indication identifying spirits shall be refused or invalidated, *ex officio* if a Member's legislation so permits or at the request of an interested party, with respect to such wines or spirits not having this origin.

3. In the case of homonymous geographical indications for wines, protection shall be accorded to each indication, subject to the provisions of paragraph 4 of Article 22. Each Member shall determine the practical conditions under which the homonymous indications in question will be differentiated from each other, taking into account the need to ensure equitable treatment of the producers concerned and that consumers are not misled.

4. In order to facilitate the protection of geographical indications for wines, negotiations shall be undertaken in the Council for TRIPS concerning the establishment of a multilateral system of notification and registration of geographical indications for wines eligible for protection in those Members participating in the system.

Article 24

International Negotiations; Exceptions

1. Members agree to enter into negotiations aimed at increasing the protection of individual geographical indications under Article 23. The provisions of paragraphs 4 through 8 below shall not be used by a Member to refuse to conduct negotiations or to conclude bilateral or multilateral agreements. In the context of such negotiations, Members shall be willing to consider the continued applicability of these provisions to individual geographical indications whose use was the subject of such negotiations.

2. The Council for TRIPS shall keep under review the application of the provisions of this Section; the first such review shall take place within two years of the entry into force of the WTO Agreement. Any matter affecting the compliance with the obligations under these provisions may be drawn to the attention of the Council, which, at the request of a Member, shall consult with any Member or Members in respect of such matter in respect of which it has not been possible to find a satisfactory solution through bilateral or plurilateral consultations between the Members concerned. The Council shall take such action as may be agreed to facilitate the operation and further the objectives of this Section.

*Notwithstanding the first sentence of Article 42, Members may, with respect to these obligations, instead provide for enforcement by administrative action.

3. In implementing this Section, a Member shall not diminish the protection of geographical indications that existed in that Member immediately prior to the date of entry into force of the WTO Agreement.

4. Nothing in this Section shall require a Member to prevent continued and similar use of a particular geographical indication of another Member identifying wines or spirits in connection with goods or services by any of its nationals or domiciliaries who have used that geographical indication in a continuous manner with regard to the same or related goods or services in the territory of that Member either (*a*) for at least 10 years preceding 15 April 1994 or (*b*) in good faith preceding that date.

5. Where a trademark has been applied for or registered in good faith, or where rights to a trademark have been acquired through use in good faith either:

(a) before the date of application of these provisions in that Member as defined in Part VI; or

(b) before the geographical indication is protected in its country of origin;

measures adopted to implement this Section shall not prejudice eligibility for or the validity of the registration of a trademark, or the right to use a trademark, on the basis that such a trademark is identical with, or similar to, a geographical indication.

6. Nothing in this Section shall require a Member to apply its provisions in respect of a geographical indication of any other Member with respect to goods or services for which the relevant indication is identical with the term customary in common language as the common name for such goods or services in the territory of that Member. Nothing in this Section shall require a Member to apply its provisions in respect of a geographical indication of any other Member with respect to products of the vine for which the relevant indication is identical with the customary name of a grape variety existing in the territory of that Member as of the date of entry into force of the WTO Agreement.

7. A Member may provide that any request made under this Section in connection with the use or registration of a trademark must be presented within five years after the adverse use of the protected indication has become generally known in that Member or after the date of registration of the trademark in that Member provided that the trademark has been published by that date, if such date is earlier than the date on which the adverse use became generally known in that Member, provided that the geographical indication is not used or registered in bad faith.

8. The provisions of this Section shall in no way prejudice the right of any person to use, in the course of trade, that person's name or the name of that person's predecessor in business, except where such name is used in such a manner as to mislead the public.

9. There shall be no obligation under this Agreement to protect geographical indications which are not or cease to be protected in their country of origin, or which have fallen into disuse in that country.

SECTION 4: INDUSTRIAL DESIGNS

Article 25

Requirements for Protection

1. Members shall provide for the protection of independently created industrial designs that are new or original. Members may provide that designs are not new or original if they do not significantly differ from known designs or combinations of known design features. Members may provide that such protection shall not extend to designs dictated essentially by technical or functional considerations.

2. Each Member shall ensure that requirements for securing protection for textile designs, in particular in regard to any cost, examination or publication, do not unreasonably impair the opportunity to seek and obtain such protection. Members shall be free to meet this obligation through industrial design law or through copyright law.

Article 26

Protection

1. The owner of a protected industrial design shall have the right to prevent third parties not having the owner's consent from making, selling or importing articles bearing or embodying a design which is a copy, or substantially a copy, of the protected design, when such acts are undertaken for commercial purposes.

2. Members may provide limited exceptions to the protection of industrial designs, provided that such exceptions do not unreasonably conflict with the normal exploitation of protected industrial designs and do not unreasonably prejudice the legitimate interests of the owner of the protected design, taking account of the legitimate interests of third parties.

3. The duration of protection available shall amount to at least 10 years.

SECTION 5: PATENTS

Article 27

Patentable Subject Matter

1. Subject to the provisions of paragraphs 2 and 3, patents shall be available for any inventions, whether products or processes, in all fields of technology, provided that they are new, involve an inventive step and are capable of industrial application.[5] Subject to paragraph 4 of Article 65, paragraph 8 of Article 70 and paragraph 3 of this Article, patents shall be available and patent rights enjoyable without discrimination as to the place of invention, the field of technology and whether products are imported or locally produced.

2. Members may exclude from patentability inventions, the prevention within their territory of the commercial exploitation of which is necessary to protect *ordre public* or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to the environment, provided that such exclusion is not made merely because the exploitation is prohibited by their law.

3. Members may also exclude from patentability:

[5] For the purposes of this Article, the terms "inventive step" and "capable of industrial application" may be deemed by a Member to be synonymous with the terms "non-obvious" and "useful" respectively.

(a) diagnostic, therapeutic and surgical methods for the treatment of humans or animals;

(b) plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes. However, Members shall provide for the protection of plant varieties either by patents or by an effective *sui generis* system or by any combination thereof. The provisions of this subparagraph shall be reviewed four years after the date of entry into force of the WTO Agreement.

Article 28

Rights Conferred

1. A patent shall confer on its owner the following exclusive rights:

(a) where the subject matter of a patent is a product, to prevent third parties not having the owner's consent from the acts of: making, using, offering for sale, selling, or importing[6] for these purposes that product;

(b) where the subject matter of a patent is a process, to prevent third parties not having the owner's consent from the act of using the process, and from the acts of: using, offering for sale, selling, or importing for these purposes at least the product obtained directly by that process.

2. Patent owners shall also have the right to assign, or transfer by succession, the patent and to conclude licensing contracts.

Article 29

Conditions on Patent Applicants

1. Members shall require that an applicant for a patent shall disclose the invention in a manner sufficiently clear and complete for the invention to be carried out by a person skilled in the art and may require the applicant to indicate the best mode for carrying out the invention known to the inventor at the filing date or, where priority is claimed, at the priority date of the application.

2. Members may require an applicant for a patent to provide information concerning the applicant's corresponding foreign applications and grants.

Article 30

Exceptions to Rights Conferred

Members may provide limited exceptions to the exclusive rights conferred by a patent, provided that such exceptions do not unreasonably conflict with a normal exploitation of the patent and do not

[6] This right, like all other rights conferred under this Agreement in respect of the use, sale, importation or other distribution of goods, is subject to the provisions of Article 6.

unreasonably prejudice the legitimate interests of the patent owner, taking account of the legitimate interests of third parties.

Article 31

Other Use Without Authorization of the Right Holder

Where the law of a Member allows for other use[1] of the subject matter of a patent without the authorization of the right holder, including use by the government or third parties authorized by the government, the following provisions shall be respected:

(a) authorization of such use shall be considered on its individual merits;

(b) such use may only be permitted if, prior to such use, the proposed user has made efforts to obtain authorization from the right holder on reasonable commercial terms and conditions and that such efforts have not been successful within a reasonable period of time. This requirement may be waived by a Member in the case of a national emergency or other circumstances of extreme urgency or in cases of public non-commercial use. In situations of national emergency or other circumstances of extreme urgency, the right holder shall, nevertheless, be notified as soon as reasonably practicable. In the case of public non-commercial use, where the government or contractor, without making a patent search, knows or has demonstrable grounds to know that a valid patent is or will be used by or for the government, the right holder shall be informed promptly;

(c) the scope and duration of such use shall be limited to the purpose for which it was authorized, and in the case of semi-conductor technology shall only be for public non-commercial use or to remedy a practice determined after judicial or administrative process to be anti-competitive;

(d) such use shall be non-exclusive;

(e) such use shall be non-assignable, except with that part of the enterprise or goodwill which enjoys such use;

(f) any such use shall be authorized predominantly for the supply of the domestic market of the Member authorizing such use;

(g) authorization for such use shall be liable, subject to adequate protection of the legitimate interests of the persons so authorized, to be terminated if and when the circumstances which led to it cease to exist and are unlikely to recur. The competent authority shall have the authority to review, upon motivated request, the continued existence of these circumstances;

(h) the right holder shall be paid adequate remuneration in the circumstances of each case, taking into account the economic value of the authorization;

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[1] "Other use" refers to use other than that allowed under Article 30

(i) the legal validity of any decision relating to the authorization of such use shall be subject to judicial review or other independent review by a distinct higher authority in that Member;

(j) any decision relating to the remuneration provided in respect of such use shall be subject to judicial review or other independent review by a distinct higher authority in that Member;

(k) Members are not obliged to apply the conditions set forth in subparagraphs (b) and (f) where such use is permitted to remedy a practice determined after judicial or administrative process to be anti-competitive. The need to correct anti-competitive practices may be taken into account in determining the amount of remuneration in such cases. Competent authorities shall have the authority to refuse termination of authorization if and when the conditions which led to such authorization are likely to recur;

(l) where such use is authorized to permit the exploitation of a patent ("the second patent") which cannot be exploited without infringing another patent ("the first patent"), the following additional conditions shall apply:

(i) the invention claimed in the second patent shall involve an important technical advance of considerable economic significance in relation to the invention claimed in the first patent;

(ii) the owner of the first patent shall be entitled to a cross-licence on reasonable terms to use the invention claimed in the second patent; and

(iii) the use authorized in respect of the first patent shall be non-assignable except with the assignment of the second patent.

Article 32

Revocation/Forfeiture

An opportunity for judicial review of any decision to revoke or forfeit a patent shall be available.

Article 33

Term of Protection

The term of protection available shall not end before the expiration of a period of twenty years counted from the filing date.[8]

[8] It is understood that those Members which do not have a system of original grant may provide that the term of protection shall be computed from the filing date in the system of original grant.

Article 34

Process Patents: Burden of Proof

1. For the purposes of civil proceedings in respect of the infringement of the rights of the owner referred to in paragraph 1(b) of Article 28, if the subject matter of a patent is a process for obtaining a product, the judicial authorities shall have the authority to order the defendant to prove that the process to obtain an identical product is different from the patented process. Therefore, Members shall provide, in at least one of the following circumstances, that any identical product when produced without the consent of the patent owner shall, in the absence of proof to the contrary, be deemed to have been obtained by the patented process:

(a) if the product obtained by the patented process is new;

(b) if there is a substantial likelihood that the identical product was made by the process and the owner of the patent has been unable through reasonable efforts to determine the process actually used.

2. Any Member shall be free to provide that the burden of proof indicated in paragraph 1 shall be on the alleged infringer only if the condition referred to in subparagraph (a) is fulfilled or only if the condition referred to in subparagraph (b) is fulfilled.

3. In the adduction of proof to the contrary, the legitimate interests of defendants in protecting their manufacturing and business secrets shall be taken into account.

SECTION 6: LAYOUT-DESIGNS (TOPOGRAPHIES) OF INTEGRATED CIRCUITS

Article 35

Relation to the IPIC Treaty

Members agree to provide protection to the layout-designs (topographies) of integrated circuits (referred to in this Agreement as "layout-designs") in accordance with Articles 2 through 7 (other than paragraph 3 of Article 6), Article 12 and paragraph 3 of Article 16 of the Treaty on Intellectual Property in Respect of Integrated Circuits and, in addition, to comply with the following provisions.

Article 36

Scope of the Protection

Subject to the provisions of paragraph 1 of Article 37, Members shall consider unlawful the following acts if performed without the authorization of the right holder:* importing, selling, or otherwise distributing for commercial purposes a protected layout-design, an integrated circuit in which a protected layout-design is incorporated, or an article incorporating such an integrated circuit only in so far as it continues to contain an unlawfully reproduced layout-design.

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*The term "right holder" in this Section shall be understood as having the same meaning as the term "holder of the right" in the IPIC Treaty.

Article 37

Acts Not Requiring the Authorization of the Right Holder

1. Notwithstanding Article 36, no Member shall consider unlawful the performance of any of the acts referred to in that Article in respect of an integrated circuit incorporating an unlawfully reproduced layout-design or any article incorporating such an integrated circuit where the person performing or ordering such acts did not know and had no reasonable ground to know, when acquiring the integrated circuit or article incorporating such an integrated circuit, that it incorporated an unlawfully reproduced layout-design. Members shall provide that, after the time that such person has received sufficient notice that the layout-design was unlawfully reproduced, that person may perform any of the acts with respect to the stock on hand or ordered before such time, but shall be liable to pay to the right holder a sum equivalent to a reasonable royalty such as would be payable under a freely negotiated licence in respect of such a layout-design.

2. The conditions set out in subparagraphs (a) through (k) of Article 31 shall apply *mutatis mutandis* in the event of any non-voluntary licensing of a layout-design or of its use by or for the government without the authorization of the right holder.

Article 38

Term of Protection

1. In Members requiring registration as a condition of protection, the term of protection of layout-designs shall not end before the expiration of a period of 10 years counted from the date of filing an application for registration or from the first commercial exploitation wherever in the world it occurs.

2. In Members not requiring registration as a condition for protection, layout-designs shall be protected for a term of no less than 10 years from the date of the first commercial exploitation wherever in the world it occurs.

3. Notwithstanding paragraphs 1 and 2, a Member may provide that protection shall lapse 15 years after the creation of the layout-design.

SECTION 7: PROTECTION OF UNDISCLOSED INFORMATION

Article 39

1. In the course of ensuring effective protection against unfair competition as provided in Article 10*bis* of the Paris Convention (1967), Members shall protect undisclosed information in accordance with paragraph 2 and data submitted to governments or governmental agencies in accordance with paragraph 3.

2. Natural and legal persons shall have the possibility of preventing information lawfully within their control from being disclosed to, acquired by, or used by others without their consent in a manner contrary to honest commercial practices[10] so long as such information:

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[10]For the purpose of this provision, "a manner contrary to honest commercial practices" shall mean at least practices such as breach of contract, breach of confidence and inducement to breach, and includes the acquisition of undisclosed information by third parties who knew, or were grossly negligent in failing to know, that such practices were involved in the acquisition.

(a) is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;

(b) has commercial value because it is secret; and

(c) has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret.

3. Members, when requiring, as a condition of approving the marketing of pharmaceutical or of agricultural chemical products which utilize new chemical entities, the submission of undisclosed test or other data, the origination of which involves a considerable effort, shall protect such data against unfair commercial use. In addition, Members shall protect such data against disclosure, except where necessary to protect the public, or unless steps are taken to ensure that the data are protected against unfair commercial use.

SECTION 8: CONTROL OF ANTI-COMPETITIVE PRACTICES IN CONTRACTUAL LICENCES

Article 40

1. Members agree that some licensing practices or conditions pertaining to intellectual property rights which restrain competition may have adverse effects on trade and may impede the transfer and dissemination of technology.

2. Nothing in this Agreement shall prevent Members from specifying in their legislation licensing practices or conditions that may in particular cases constitute an abuse of intellectual property rights having an adverse effect on competition in the relevant market. As provided above, a Member may adopt, consistently with the other provisions of this Agreement, appropriate measures to prevent or control such practices, which may include for example exclusive grantback conditions, conditions preventing challenges to validity and coercive package licensing, in the light of the relevant laws and regulations of that Member.

3. Each Member shall enter, upon request, into consultations with any other Member which has cause to believe that an intellectual property right owner that is a national or domiciliary of the Member to which the request for consultations has been addressed is undertaking practices in violation of the requesting Member's laws and regulations on the subject matter of this Section, and which wishes to secure compliance with such legislation, without prejudice to any action under the law and to the full freedom of an ultimate decision of either Member. The Member addressed shall accord full and sympathetic consideration to, and shall afford adequate opportunity for, consultations with the requesting Member, and shall cooperate through supply of publicly available non confidential information of relevance to the matter in question and of other information available to the Member, subject to domestic law and to the conclusion of mutually satisfactory agreements concerning the safeguarding of its confidentiality by the requesting Member.

4. A Member whose nationals or domiciliaries are subject to proceedings in another Member concerning alleged violation of that other Member's laws and regulations on the subject matter of this Section shall, upon request, be granted an opportunity for consultations by the other Member under the same conditions as those foreseen in paragraph 3.

PART III

ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

SECTION 1: GENERAL OBLIGATIONS

Article 41

1. Members shall ensure that enforcement procedures as specified in this Part are available under their law so as to permit effective action against any act of infringement of intellectual property rights covered by this Agreement, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements. These procedures shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.

2. Procedures concerning the enforcement of intellectual property rights shall be fair and equitable. They shall not be unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays.

3. Decisions on the merits of a case shall preferably be in writing and reasoned. They shall be made available at least to the parties to the proceeding without undue delay. Decisions on the merits of a case shall be based only on evidence in respect of which parties were offered the opportunity to be heard.

4. Parties to a proceeding shall have an opportunity for review by a judicial authority of final administrative decisions and, subject to jurisdictional provisions in a Member's law concerning the importance of a case, of at least the legal aspects of initial judicial decisions on the merits of a case. However, there shall be no obligation to provide an opportunity for review of acquittals in criminal cases.

5. It is understood that this Part does not create any obligation to put in place a judicial system for the enforcement of intellectual property rights distinct from that for the enforcement of law in general, nor does it affect the capacity of Members to enforce their law in general. Nothing in this Part creates any obligation with respect to the distribution of resources as between enforcement of intellectual property rights and the enforcement of law in general.

SECTION 2: CIVIL AND ADMINISTRATIVE PROCEDURES AND REMEDIES

Article 42

Fair and Equitable Procedures

Members shall make available to right holders[3] civil judicial procedures concerning the enforcement of any intellectual property right covered by this Agreement. Defendants shall have the right to written notice which is timely and contains sufficient detail, including the basis of the claims. Parties shall be allowed to be represented by independent legal counsel, and procedures shall not impose overly burdensome requirements concerning mandatory personal appearances. All parties to such procedures shall be duly entitled to substantiate their claims and to present all relevant evidence. The procedure shall provide a means to identify and protect confidential information, unless this would be contrary to existing constitutional requirements.

Article 43

Evidence

1. The judicial authorities shall have the authority, where a party has presented reasonably available evidence sufficient to support its claims and has specified evidence relevant to substantiation of its claims which lies in the control of the opposing party, to order that this evidence be produced by the opposing party, subject in appropriate cases to conditions which ensure the protection of confidential information.

2. In cases in which a party to a proceeding voluntarily and without good reason refuses access to, or otherwise does not provide necessary information within a reasonable period, or significantly impedes a procedure relating to an enforcement action, a Member may accord judicial authorities the authority to make preliminary and final determinations, affirmative or negative, on the basis of the information presented to them, including the complaint or the allegation presented by the party adversely affected by the denial of access to information, subject to providing the parties an opportunity to be heard on the allegations or evidence.

Article 44

Injunctions

1. The judicial authorities shall have the authority to order a party to desist from an infringement, *inter alia* to prevent the entry into the channels of commerce in their jurisdiction of imported goods that involve the infringement of an intellectual property right, immediately after customs clearance of such goods. Members are not obliged to accord such authority in respect of protected subject matter acquired or ordered by a person prior to knowing or having reasonable grounds to know that dealing in such subject matter would entail the infringement of an intellectual property right.

2. Notwithstanding the other provisions of this Part and provided that the provisions of Part II specifically addressing use by governments, or by third parties authorized by a government, without the authorization of the right holder are complied with, Members may limit the remedies available

[3] For the purpose of this Part, the term "right holder" includes federations and associations having legal standing to assert such rights.

against such use to payment of remuneration in accordance with subparagraph (h) of Article 31. In other cases, the remedies under this Part shall apply or, where these remedies are inconsistent with a Member's law, declaratory judgments and adequate compensation shall be available.

Article 45

Damages

1. The judicial authorities shall have the authority to order the infringer to pay the right holder damages adequate to compensate for the injury the right holder has suffered because of an infringement of that person's intellectual property right by an infringer who knowingly, or with reasonable grounds to know, engaged in infringing activity.

2. The judicial authorities shall also have the authority to order the infringer to pay the right holder expenses, which may include appropriate attorney's fees. In appropriate cases, Members may authorize the judicial authorities to order recovery of profits and/or payment of pre-established damages even where the infringer did not knowingly, or with reasonable grounds to know, engage in infringing activity.

Article 46

Other Remedies

In order to create an effective deterrent to infringement, the judicial authorities shall have the authority to order that goods that they have found to be infringing be, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to avoid any harm caused to the right holder, or, unless this would be contrary to existing constitutional requirements, destroyed. The judicial authorities shall also have the authority to order that materials and implements the predominant use of which has been in the creation of the infringing goods be, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to minimize the risks of further infringements. In considering such requests, the need for proportionality between the seriousness of the infringement and the remedies ordered as well as the interests of third parties shall be taken into account. In regard to counterfeit trademark goods, the simple removal of the trademark unlawfully affixed shall not be sufficient, other than in exceptional cases, to permit release of the goods into the channels of commerce.

Article 47

Right of Information

Members may provide that the judicial authorities shall have the authority, unless this would be out of proportion to the seriousness of the infringement, to order the infringer to inform the right holder of the identity of third persons involved in the production and distribution of the infringing goods or services and of their channels of distribution.

Article 48

Indemnification of the Defendant

1. The judicial authorities shall have the authority to order a party at whose request measures were taken and who has abused enforcement procedures to provide to a party wrongfully enjoined or restrained adequate compensation for the injury suffered because of such abuse. The judicial authorities shall also have the authority to order the applicant to pay the defendant expenses, which may include appropriate attorney's fees.

2. In respect of the administration of any law pertaining to the protection or enforcement of intellectual property rights, Members shall only exempt both public authorities and officials from liability to appropriate remedial measures where actions are taken or intended in good faith in the course of the administration of that law.

Article 49

Administrative Procedures

To the extent that any civil remedy can be ordered as a result of administrative procedures on the merits of a case, such procedures shall conform to principles equivalent in substance to those set forth in this Section.

SECTION 3: PROVISIONAL MEASURES

Article 50

1. The judicial authorities shall have the authority to order prompt and effective provisional measures:

(a) to prevent an infringement of any intellectual property right from occurring, and in particular to prevent the entry into the channels of commerce in their jurisdiction of goods, including imported goods immediately after customs clearance;

(b) to preserve relevant evidence in regard to the alleged infringement.

2. The judicial authorities shall have the authority to adopt provisional measures *inaudita altera parte* where appropriate, in particular where any delay is likely to cause irreparable harm to the right holder, or where there is a demonstrable risk of evidence being destroyed.

3. The judicial authorities shall have the authority to require the applicant to provide any reasonably available evidence in order to satisfy themselves with a sufficient degree of certainty that the applicant is the right holder and that the applicant's right is being infringed or that such infringement is imminent, and to order the applicant to provide a security or equivalent assurance sufficient to protect the defendant and to prevent abuse.

4. Where provisional measures have been adopted *inaudita altera parte*, the parties affected shall be given notice, without delay after the execution of the measures at the latest. A review, including a right to be heard, shall take place upon request of the defendant with a view to deciding, within a

reasonable period after the notification of the measures, whether these measures shall be modified, revoked or confirmed.

5. The applicant may be required to supply other information necessary for the identification of the goods concerned by the authority that will execute the provisional measures.

6. Without prejudice to paragraph 4, provisional measures taken on the basis of paragraphs 1 and 2 shall, upon request by the defendant, be revoked or otherwise cease to have effect, if proceedings leading to a decision on the merits of the case are not initiated within a reasonable period, to be determined by the judicial authority ordering the measures where a Member's law so permits or, in the absence of such a determination, not to exceed 20 working days or 31 calendar days, whichever is the longer.

7. Where the provisional measures are revoked or where they lapse due to any act or omission by the applicant, or where it is subsequently found that there has been no infringement or threat of infringement of an intellectual property right, the judicial authorities shall have the authority to order the applicant, upon request of the defendant, to provide the defendant appropriate compensation for any injury caused by these measures.

8. To the extent that any provisional measure can be ordered as a result of administrative procedures, such procedures shall conform to principles equivalent in substance to those set forth in this Section.

SECTION 4: SPECIAL REQUIREMENTS RELATED TO BORDER MEASURES[12]

Article 51

Suspension of Release by Customs Authorities

Members shall, in conformity with the provisions set out below, adopt procedures[13] to enable a right holder, who has valid grounds for suspecting that the importation of counterfeit trademark or pirated copyright goods[14] may take place, to lodge an application in writing with competent authorities, administrative or judicial, for the suspension by the customs authorities of the release into free circulation of such goods. Members may enable such an application to be made in respect of goods which involve other infringements of intellectual property rights, provided that the requirements of this Section are

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[12]Where a Member has dismantled substantially all controls over movement of goods across its border with another Member with which it forms part of a customs union, it shall not be required to apply the provisions of this Section at that border.

[13]It is understood that there shall be no obligation to apply such procedures to imports of goods put on the market in another country by or with the consent of the right holder, or to goods in transit.

[14]For the purposes of this Agreement:

(a) "counterfeit trademark goods" shall mean any goods, including packaging, bearing without authorization a trademark which is identical to the trademark validly registered in respect of such goods, or which cannot be distinguished in its essential aspects from such a trademark, and which thereby infringes the rights of the owner of the trademark in question under the law of the country of importation;

(b) "pirated copyright goods" shall mean any goods which are copies made without the consent of the right holder or person duly authorized by the right holder in the country of production and which are made directly or indirectly from an article where the making of that copy would have constituted an infringement of a copyright or a related right under the law of the country of importation.

met. Members may also provide for corresponding procedures concerning the suspension by the customs authorities of the release of infringing goods destined for exportation from their territories.

Article 52

Application

Any right holder initiating the procedures under Article 51 shall be required to provide adequate evidence to satisfy the competent authorities that, under the laws of the country of importation, there is *prima facie* an infringement of the right holder's intellectual property right and to supply a sufficiently detailed description of the goods to make them readily recognizable by the customs authorities. The competent authorities shall inform the applicant within a reasonable period whether they have accepted the application and, where determined by the competent authorities, the period for which the customs authorities will take action.

Article 53

Security or Equivalent Assurance

1. The competent authorities shall have the authority to require an applicant to provide a security or equivalent assurance sufficient to protect the defendant and the competent authorities and to prevent abuse. Such security or equivalent assurance shall not unreasonably deter recourse to these procedures.

2. Where pursuant to an application under this Section the release of goods involving industrial designs, patents, layout-designs or undisclosed information into free circulation has been suspended by customs authorities on the basis of a decision other than by a judicial or other independent authority, and the period provided for in Article 55 has expired without the granting of provisional relief by the duly empowered authority, and provided that all other conditions for importation have been complied with, the owner, importer, or consignee of such goods shall be entitled to their release on the posting of a security in an amount sufficient to protect the right holder for any infringement. Payment of such security shall not prejudice any other remedy available to the right holder, it being understood that the security shall be released if the right holder fails to pursue the right of action within a reasonable period of time.

Article 54

Notice of Suspension

The importer and the applicant shall be promptly notified of the suspension of the release of goods according to Article 51.

Article 55

Duration of Suspension

If, within a period not exceeding 10 working days after the applicant has been served notice of the suspension, the customs authorities have not been informed that proceedings leading to a decision on the merits of the case have been initiated by a party other than the defendant, or that the duly empowered authority has taken provisional measures prolonging the suspension of the release of the goods, the goods shall be released, provided that all other conditions for importation or exportation have been complied with; in appropriate cases, this time-limit may be extended by another 10 working days. If proceedings leading to a decision on the merits of the case have been initiated, a review, including a right to be heard, shall take place upon request of the defendant with a view to deciding, within a reasonable period, whether these measures shall be modified, revoked or confirmed. Notwithstanding the above, where the suspension of the release of goods is carried out or continued in accordance with a provisional judicial measure, the provisions of paragraph 6 of Article 50 shall apply.

Article 56

Indemnification of the Importer and of the Owner of the Goods

Relevant authorities shall have the authority to order the applicant to pay the importer, the consignee and the owner of the goods appropriate compensation for any injury caused to them through the wrongful detention of goods or through the detention of goods released pursuant to Article 55.

Article 57

Right of Inspection and Information

Without prejudice to the protection of confidential information, Members shall provide the competent authorities the authority to give the right holder sufficient opportunity to have any goods detained by the customs authorities inspected in order to substantiate the right holder's claims. The competent authorities shall also have authority to give the importer an equivalent opportunity to have any such goods inspected. Where a positive determination has been made on the merits of a case, Members may provide the competent authorities the authority to inform the right holder of the names and addresses of the consignor, the importer and the consignee and of the quantity of the goods in question.

Article 58

Ex Officio Action

Where Members require competent authorities to act upon their own initiative and to suspend the release of goods in respect of which they have acquired *prima facie* evidence that an intellectual property right is being infringed:

(a) the competent authorities may at any time seek from the right holder any information that may assist them to exercise these powers;

(b) the importer and the right holder shall be promptly notified of the suspension. Where the importer has lodged an appeal against the suspension with the competent authorities, the suspension shall be subject to the conditions, *mutatis mutandis*, set out at Article 55;

(c) Members shall only exempt both public authorities and officials from liability to appropriate remedial measures where actions are taken or intended in good faith.

Article 59

Remedies

Without prejudice to other rights of action open to the right holder and subject to the right of the defendant to seek review by a judicial authority, competent authorities shall have the authority to order the destruction or disposal of infringing goods in accordance with the principles set out in Article 46. In regard to counterfeit trademark goods, the authorities shall not allow the re-exportation of the infringing goods in an unaltered state or subject them to a different customs procedure, other than in exceptional circumstances.

Article 60

De Minimis Imports

Members may exclude from the application of the above provisions small quantities of goods of a non-commercial nature contained in travellers' personal luggage or sent in small consignments.

SECTION 5: CRIMINAL PROCEDURES

Article 61

Members shall provide for criminal procedures and penalties to be applied at least in cases of wilful trademark counterfeiting or copyright piracy on a commercial scale. Remedies available shall include imprisonment and/or monetary fines sufficient to provide a deterrent, consistently with the level of penalties applied for crimes of a corresponding gravity. In appropriate cases, remedies available shall also include the seizure, forfeiture and destruction of the infringing goods and of any materials and implements the predominant use of which has been in the commission of the offence. Members may provide for criminal procedures and penalties to be applied in other cases of infringement of intellectual property rights, in particular where they are committed wilfully and on a commercial scale.

PART IV

ACQUISITION AND MAINTENANCE OF INTELLECTUAL PROPERTY RIGHTS AND RELATED *INTER-PARTES* PROCEDURES

Article 62

1. Members may require, as a condition of the acquisition or maintenance of the intellectual property rights provided for under Sections 2 through 6 of Part II, compliance with reasonable procedures and formalities. Such procedures and formalities shall be consistent with the provisions of this Agreement.

2. Where the acquisition of an intellectual property right is subject to the right being granted or registered, Members shall ensure that the procedures for grant or registration, subject to compliance with the substantive conditions for acquisition of the right, permit the granting or registration of the right within a reasonable period of time so as to avoid unwarranted curtailment of the period of protection.

3. Article 4 of the Paris Convention (1967) shall apply *mutatis mutandis* to service marks.

4. Procedures concerning the acquisition or maintenance of intellectual property rights and, where a Member's law provides for such procedures, administrative revocation and *inter partes* procedures such as opposition, revocation and cancellation, shall be governed by the general principles set out in paragraphs 2 and 3 of Article 41.

5. Final administrative decisions in any of the procedures referred to under paragraph 4 shall be subject to review by a judicial or quasi-judicial authority. However, there shall be no obligation to provide an opportunity for such review of decisions in cases of unsuccessful opposition or administrative revocation, provided that the grounds for such procedures can be the subject of invalidation procedures.

PART V

DISPUTE PREVENTION AND SETTLEMENT

Article 63

Transparency

1. Laws and regulations, and final judicial decisions and administrative rulings of general application, made effective by a Member pertaining to the subject matter of this Agreement (the availability, scope, acquisition, enforcement and prevention of the abuse of intellectual property rights) shall be published, or where such publication is not practicable made publicly available, in a national language, in such a manner as to enable governments and right holders to become acquainted with them. Agreements concerning the subject matter of this Agreement which are in force between the government or a governmental agency of a Member and the government or a governmental agency of another Member shall also be published.

2. Members shall notify the laws and regulations referred to in paragraph 1 to the Council for TRIPS in order to assist that Council in its review of the operation of this Agreement. The Council shall attempt to minimize the burden on Members in carrying out this obligation and may decide to

waive the obligation to notify such laws and regulations directly to the Council if consultations with WIPO on the establishment of a common register containing these laws and regulations are successful. The Council shall also consider in this connection any action required regarding notifications pursuant to the obligations under this Agreement stemming from the provisions of Article 6*ter* of the Paris Convention (1967).

3. Each Member shall be prepared to supply, in response to a written request from another Member, information of the sort referred to in paragraph 1. A Member, having reason to believe that a specific judicial decision or administrative ruling or bilateral agreement in the area of intellectual property rights affects its rights under this Agreement, may also request in writing to be given access to or be informed in sufficient detail of such specific judicial decisions or administrative rulings or bilateral agreements.

4. Nothing in paragraphs 1, 2 and 3 shall require Members to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.

Article 64

Dispute Settlement

1. The provisions of Articles XXII and XXIII of GATT 1994 as elaborated and applied by the Dispute Settlement Understanding shall apply to consultations and the settlement of disputes under this Agreement except as otherwise specifically provided herein.

2. Subparagraphs 1(b) and 1(c) of Article XXIII of GATT 1994 shall not apply to the settlement of disputes under this Agreement for a period of five years from the date of entry into force of the WTO Agreement.

3. During the time period referred to in paragraph 2, the Council for TRIPS shall examine the scope and modalities for complaints of the type provided for under subparagraphs 1(b) and 1(c) of Article XXIII of GATT 1994 made pursuant to this Agreement, and submit its recommendations to the Ministerial Conference for approval. Any decision of the Ministerial Conference to approve such recommendations or to extend the period in paragraph 2 shall be made only by consensus, and approved recommendations shall be effective for all Members without further formal acceptance process.

PART VI

TRANSITIONAL ARRANGEMENTS

Article 65

Transitional Arrangements

1. Subject to the provisions of paragraphs 2, 3 and 4, no Member shall be obliged to apply the provisions of this Agreement before the expiry of a general period of one year following the date of entry into force of the WTO Agreement.

2 A developing country Member is entitled to delay for a further period of four years the date of application, as defined in paragraph 1, of the provisions of this Agreement other than Articles 3, 4 and 5.

3. Any other Member which is in the process of transformation from a centrally-planned into a market, free-enterprise economy and which is undertaking structural reform of its intellectual property system and facing special problems in the preparation and implementation of intellectual property laws and regulations, may also benefit from a period of delay as foreseen in paragraph 2.

4. To the extent that a developing country Member is obliged by this Agreement to extend product patent protection to areas of technology not so protectable in its territory on the general date of application of this Agreement for that Member, as defined in paragraph 2, it may delay the application of the provisions on product patents of Section 5 of Part II to such areas of technology for an additional period of five years.

5. A Member availing itself of a transitional period under paragraphs 1, 2, 3 or 4 shall ensure that any changes in its laws, regulations and practice made during that period do not result in a lesser degree of consistency with the provisions of this Agreement.

Article 66

Least-Developed Country Members

1. In view of the special needs and requirements of least-developed country Members, their economic, financial and administrative constraints, and their need for flexibility to create a viable technological base, such Members shall not be required to apply the provisions of this Agreement, other than Articles 3, 4 and 5, for a period of 10 years from the date of application as defined under paragraph 1 of Article 65. The Council for TRIPS shall, upon duly motivated request by a least-developed country Member, accord extensions of this period.

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

Article 67

Technical Cooperation

In order to facilitate the implementation of this Agreement, developed country Members shall provide, on request and on mutually agreed terms and conditions, technical and financial cooperation in favour of developing and least-developed country Members. Such cooperation shall include assistance in the preparation of laws and regulations on the protection and enforcement of intellectual property rights as well as on the prevention of their abuse, and shall include support regarding the establishment or reinforcement of domestic offices and agencies relevant to these matters, including the training of personnel.

PART VII

INSTITUTIONAL ARRANGEMENTS; FINAL PROVISIONS

Article 68

Council for Trade-Related Aspects of Intellectual Property Rights

The Council for TRIPS shall monitor the operation of this Agreement and, in particular, Members' compliance with their obligations hereunder, and shall afford Members the opportunity of consulting on matters relating to the trade-related aspects of intellectual property rights. It shall carry out such other responsibilities as assigned to it by the Members, and it shall, in particular, provide any assistance requested by them in the context of dispute settlement procedures. In carrying out its functions, the Council for TRIPS may consult with and seek information from any source it deems appropriate. In consultation with WIPO, the Council shall seek to establish, within one year of its first meeting, appropriate arrangements for cooperation with bodies of that Organization.

Article 69

International Cooperation

Members agree to cooperate with each other with a view to eliminating international trade in goods infringing intellectual property rights. For this purpose, they shall establish and notify contact points in their administrations and be ready to exchange information on trade in infringing goods. They shall, in particular, promote the exchange of information and cooperation between customs authorities with regard to trade in counterfeit trademark goods and pirated copyright goods.

Article 70

Protection of Existing Subject Matter

1. This Agreement does not give rise to obligations in respect of acts which occurred before the date of application of the Agreement for the Member in question.

2. Except as otherwise provided for in this Agreement, this Agreement gives rise to obligations in respect of all subject matter existing at the date of application of this Agreement for the Member in question, and which is protected in that Member on the said date, or which meets or comes subsequently to meet the criteria for protection under the terms of this Agreement. In respect of this paragraph and paragraphs 3 and 4, copyright obligations with respect to existing works shall be solely determined under Article 18 of the Berne Convention (1971), and obligations with respect to the rights of producers of phonograms and performers in existing phonograms shall be determined solely under Article 18 of the Berne Convention (1971) as made applicable under paragraph 6 of Article 14 of this Agreement.

3. There shall be no obligation to restore protection to subject matter which on the date of application of this Agreement for the Member in question has fallen into the public domain.

4. In respect of any acts in respect of specific objects embodying protected subject matter which become infringing under the terms of legislation in conformity with this Agreement, and which were

commenced, or in respect of which a significant investment was made, before the date of acceptance of the WTO Agreement by that Member, any Member may provide for a limitation of the remedies available to the right holder as to the continued performance of such acts after the date of application of this Agreement for that Member. In such cases the Member shall, however, at least provide for the payment of equitable remuneration.

5. A Member is not obliged to apply the provisions of Article 11 and of paragraph 4 of Article 14 with respect to originals or copies purchased prior to the date of application of this Agreement for that Member.

6. Members shall not be required to apply Article 31, or the requirement in paragraph 1 of Article 27 that patent rights shall be enjoyable without discrimination as to the field of technology, to use without the authorization of the right holder where authorization for such use was granted by the government before the date this Agreement became known.

7. In the case of intellectual property rights for which protection is conditional upon registration, applications for protection which are pending on the date of application of this Agreement for the Member in question shall be permitted to be amended to claim any enhanced protection provided under the provisions of this Agreement. Such amendments shall not include new matter.

8. Where a Member does not make available as of the date of entry into force of the WTO Agreement patent protection for pharmaceutical and agricultural chemical products commensurate with its obligations under Article 27, that Member shall:

(a) notwithstanding the provisions of Part VI, provide as from the date of entry into force of the WTO Agreement a means by which applications for patents for such inventions can be filed;

(b) apply to these applications, as of the date of application of this Agreement, the criteria for patentability as laid down in this Agreement as if those criteria were being applied on the date of filing in that Member or, where priority is available and claimed, the priority date of the application; and

(c) provide patent protection in accordance with this Agreement as from the grant of the patent and for the remainder of the patent term, counted from the filing date in accordance with Article 33 of this Agreement, for those of these applications that meet the criteria for protection referred to in subparagraph (b).

9. Where a product is the subject of a patent application in a Member in accordance with paragraph 8(a), exclusive marketing rights shall be granted, notwithstanding the provisions of Part VI, for a period of five years after obtaining marketing approval in that Member or until a product patent is granted or rejected in that Member, whichever period is shorter, provided that, subsequent to the entry into force of the WTO Agreement, a patent application has been filed and a patent granted for that product in another Member and marketing approval obtained in such other Member.

Article 71

Review and Amendment

1. The Council for TRIPS shall review the implementation of this Agreement after the expiration of the transitional period referred to in paragraph 2 of Article 65. The Council shall, having regard to the experience gained in its implementation, review it two years after that date, and at identical

intervals thereafter. The Council may also undertake reviews in the light of any relevant new developments which might warrant modification or amendment of this Agreement.

2. Amendments merely serving the purpose of adjusting to higher levels of protection of intellectual property rights achieved, and in force, in other multilateral agreements and accepted under those agreements by all Members of the WTO may be referred to the Ministerial Conference for action in accordance with paragraph 6 of Article X of the WTO Agreement on the basis of a consensus proposal from the Council for TRIPS.

Article 72

Reservations

Reservations may not be entered in respect of any of the provisions of this Agreement without the consent of the other Members.

Article 73

Security Exceptions

Nothing in this Agreement shall be construed:

(a) to require a Member to furnish any information the disclosure of which it considers contrary to its essential security interests; or

(b) to prevent a Member from taking any action which it considers necessary for the protection of its essential security interests;

(i) relating to fissionable materials or the materials from which they are derived;

(ii) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment;

(iii) taken in time of war or other emergency in international relations; or

(c) to prevent a Member from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

ANNEX 2

UNDERSTANDING ON RULES AND PROCEDURES GOVERNING THE SETTLEMENT OF DISPUTES

Members hereby *agree* as follows:

Article 1

Coverage and Application

1. The rules and procedures of this Understanding shall apply to disputes brought pursuant to the consultation and dispute settlement provisions of the agreements listed in Appendix 1 to this Understanding (referred to in this Understanding as the "covered agreements"). The rules and procedures of this Understanding shall also apply to consultations and the settlement of disputes between Members concerning their rights and obligations under the provisions of the Agreement Establishing the World Trade Organization (referred to in this Understanding as the "WTO Agreement") and of this Understanding taken in isolation or in combination with any other covered agreement.

2. The rules and procedures of this Understanding shall apply subject to such special or additional rules and procedures on dispute settlement contained in the covered agreements as are identified in Appendix 2 to this Understanding. To the extent that there is a difference between the rules and procedures of this Understanding and the special or additional rules and procedures set forth in Appendix 2, the special or additional rules and procedures in Appendix 2 shall prevail. In disputes involving rules and procedures under more than one covered agreement, if there is a conflict between special or additional rules and procedures of such agreements under review, and where the parties to the dispute cannot agree on rules and procedures within 20 days of the establishment of the panel, the Chairman of the Dispute Settlement Body provided for in paragraph 1 of Article 2 (referred to in this Understanding as the "DSB"), in consultation with the parties to the dispute, shall determine the rules and procedures to be followed within 10 days after a request by either Member. The Chairman shall be guided by the principle that special or additional rules and procedures should be used where possible, and the rules and procedures set out in this Understanding should be used to the extent necessary to avoid conflict.

Article 2

Administration

1. The Dispute Settlement Body is hereby established to administer these rules and procedures and, except as otherwise provided in a covered agreement, the consultation and dispute settlement provisions of the covered agreements. Accordingly, the DSB shall have the authority to establish panels, adopt panel and Appellate Body reports, maintain surveillance of implementation of rulings and recommendations, and authorize suspension of concessions and other obligations under the covered agreements. With respect to disputes arising under a covered agreement which is a Plurilateral Trade Agreement, the term "Member" as used herein shall refer only to those Members that are parties to the relevant Plurilateral Trade Agreement. Where the DSB administers the dispute settlement provisions of a Plurilateral Trade Agreement, only those Members that are parties to that Agreement may participate in decisions or actions taken by the DSB with respect to that dispute.

2. The DSB shall inform the relevant WTO Councils and Committees of any developments in disputes related to provisions of the respective covered agreements.

3. The DSB shall meet as often as necessary to carry out its functions within the time-frames provided in this Understanding.

4. Where the rules and procedures of this Understanding provide for the DSB to take a decision, it shall do so by consensus.[1]

Article 3

General Provisions

1. Members affirm their adherence to the principles for the management of disputes heretofore applied under Articles XXII and XXIII of GATT 1947, and the rules and procedures as further elaborated and modified herein.

2. The dispute settlement system of the WTO is a central element in providing security and predictability to the multilateral trading system. The Members recognize that it serves to preserve the rights and obligations of Members under the covered agreements, and to clarify the existing provisions of those agreements in accordance with customary rules of interpretation of public international law. Recommendations and rulings of the DSB cannot add to or diminish the rights and obligations provided in the covered agreements.

3. The prompt settlement of situations in which a Member considers that any benefits accruing to it directly or indirectly under the covered agreements are being impaired by measures taken by another Member is essential to the effective functioning of the WTO and the maintenance of a proper balance between the rights and obligations of Members.

4. Recommendations or rulings made by the DSB shall be aimed at achieving a satisfactory settlement of the matter in accordance with the rights and obligations under this Understanding and under the covered agreements.

5. All solutions to matters formally raised under the consultation and dispute settlement provisions of the covered agreements, including arbitration awards, shall be consistent with those agreements and shall not nullify or impair benefits accruing to any Member under those agreements, nor impede the attainment of any objective of those agreements.

6. Mutually agreed solutions to matters formally raised under the consultation and dispute settlement provisions of the covered agreements shall be notified to the DSB and the relevant Councils and Committees, where any Member may raise any point relating thereto.

7. Before bringing a case, a Member shall exercise its judgement as to whether action under these procedures would be fruitful. The aim of the dispute settlement mechanism is to secure a positive solution to a dispute. A solution mutually acceptable to the parties to a dispute and consistent with the covered agreements is clearly to be preferred. In the absence of a mutually agreed solution, the first objective of the dispute settlement mechanism is usually to secure the withdrawal of the measures concerned if these are found to be inconsistent with the provisions of any of the covered agreements.

[1]The DSB shall be deemed to have decided by consensus on a matter submitted for its consideration, if no Member, present at the meeting of the DSB when the decision is taken, formally objects to the proposed decision.

The provision of compensation should be resorted to only if the immediate withdrawal of the measure is impracticable and as a temporary measure pending the withdrawal of the measure which is inconsistent with a covered agreement. The last resort which this Understanding provides to the Member invoking the dispute settlement procedures is the possibility of suspending the application of concessions or other obligations under the covered agreements on a discriminatory basis vis-à-vis the other Member, subject to authorization by the DSB of such measures.

8. In cases where there is an infringement of the obligations assumed under a covered agreement, the action is considered *prima facie* to constitute a case of nullification or impairment. This means that there is normally a presumption that a breach of the rules has an adverse impact on other Members parties to that covered agreement, and in such cases, it shall be up to the Member against whom the complaint has been brought to rebut the charge.

9. The provisions of this Understanding are without prejudice to the rights of Members to seek authoritative interpretation of provisions of a covered agreement through decision-making under the WTO Agreement or a covered agreement which is a Plurilateral Trade Agreement.

10. It is understood that requests for conciliation and the use of the dispute settlement procedures should not be intended or considered as contentious acts and that, if a dispute arises, all Members will engage in these procedures in good faith in an effort to resolve the dispute. It is also understood that complaints and counter-complaints in regard to distinct matters should not be linked.

11. This Understanding shall be applied only with respect to new requests for consultations under the consultation provisions of the covered agreements made on or after the date of entry into force of the WTO Agreement. With respect to disputes for which the request for consultations was made under GATT 1947 or under any other predecessor agreement to the covered agreements before the date of entry into force of the WTO Agreement, the relevant dispute settlement rules and procedures in effect immediately prior to the date of entry into force of the WTO Agreement shall continue to apply.[*]

12. Notwithstanding paragraph 11, if a complaint based on any of the covered agreements is brought by a developing country Member against a developed country Member, the complaining party shall have the right to invoke, as an alternative to the provisions contained in Articles 4, 5, 6 and 12 of this Understanding, the corresponding provisions of the Decision of 5 April 1966 (BISD 14S/18), except that where the Panel considers that the time-frame provided for in paragraph 7 of that Decision is insufficient to provide its report and with the agreement of the complaining party, that time-frame may be extended. To the extent that there is a difference between the rules and procedures of Articles 4, 5, 6 and 12 and the corresponding rules and procedures of the Decision, the latter shall prevail.

Article 4

Consultations

1. Members affirm their resolve to strengthen and improve the effectiveness of the consultation procedures employed by Members.

[*] This paragraph shall also be applied to disputes on which panel reports have not been adopted or fully implemented.

2. Each Member undertakes to accord sympathetic consideration to and afford adequate opportunity for consultation regarding any representations made by another Member concerning measures affecting the operation of any covered agreement taken within the territory of the former.[3]

3. If a request for consultations is made pursuant to a covered agreement, the Member to which the request is made shall, unless otherwise mutually agreed, reply to the request within 10 days after the date of its receipt and shall enter into consultations in good faith within a period of no more than 30 days after the date of receipt of the request, with a view to reaching a mutually satisfactory solution. If the Member does not respond within 10 days after the date of receipt of the request, or does not enter into consultations within a period of no more than 30 days, or a period otherwise mutually agreed, after the date of receipt of the request, then the Member that requested the holding of consultations may proceed directly to request the establishment of a panel.

4. All such requests for consultations shall be notified to the DSB and the relevant Councils and Committees by the Member which requests consultations. Any request for consultations shall be submitted in writing and shall give the reasons for the request, including identification of the measures at issue and an indication of the legal basis for the complaint.

5. In the course of consultations in accordance with the provisions of a covered agreement, before resorting to further action under this Understanding, Members should attempt to obtain satisfactory adjustment of the matter.

6. Consultations shall be confidential, and without prejudice to the rights of any Member in any further proceedings.

7. If the consultations fail to settle a dispute within 60 days after the date of receipt of the request for consultations, the complaining party may request the establishment of a panel. The complaining party may request a panel during the 60-day period if the consulting parties jointly consider that consultations have failed to settle the dispute.

8. In cases of urgency, including those which concern perishable goods, Members shall enter into consultations within a period of no more than 10 days after the date of receipt of the request. If the consultations have failed to settle the dispute within a period of 20 days after the date of receipt of the request, the complaining party may request the establishment of a panel.

9. In cases of urgency, including those which concern perishable goods, the parties to the dispute, panels and the Appellate Body shall make every effort to accelerate the proceedings to the greatest extent possible.

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

11. Whenever a Member other than the consulting Members considers that it has a substantial trade interest in consultations being held pursuant to paragraph 1 of Article XXII of GATT 1994, paragraph 1 of Article XXII of GATS, or the corresponding provisions in other covered agreements[4], such Member

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[3]Where the provisions of any other covered agreement concerning measures taken by regional or local governments or authorities within the territory of a Member contain provisions different from the provisions of this paragraph, the provisions of such other covered agreement shall prevail.

[4]The corresponding consultation provisions in the covered agreements are listed hereunder: Agreement on Agriculture, Article 19; Agreement on the Application of Sanitary and Phytosanitary Measures, paragraph 1 of Article 11; Agreement on Textiles and Clothing, paragraph 4 of Article 8; Agreement on Technical Barriers to Trade, paragraph 1 of Article 14;

may notify the consulting Members and the DSB, within 10 days after the date of the circulation of the request for consultations under said Article, of its desire to be joined in the consultations. Such Member shall be joined in the consultations, provided that the Member to which the request for consultations was addressed agrees that the claim of substantial interest is well-founded. In that event they shall so inform the DSB. If the request to be joined in the consultations is not accepted, the applicant Member shall be free to request consultations under paragraph 1 of Article XXII or paragraph 1 of Article XXIII of GATT 1994, paragraph 1 of Article XXII or paragraph 1 of Article XXIII of GATS, or the corresponding provisions in other covered agreements.

Article 5

Good Offices, Conciliation and Mediation

1. Good offices, conciliation and mediation are procedures that are undertaken voluntarily if the parties to the dispute so agree.

2. Proceedings involving good offices, conciliation and mediation, and in particular positions taken by the parties to the dispute during these proceedings, shall be confidential, and without prejudice to the rights of either party in any further proceedings under these procedures.

3. Good offices, conciliation or mediation may be requested at any time by any party to a dispute. They may begin at any time and be terminated at any time. Once procedures for good offices, conciliation or mediation are terminated, a complaining party may then proceed with a request for the establishment of a panel.

4. When good offices, conciliation or mediation are entered into within 60 days after the date of receipt of a request for consultations, the complaining party must allow a period of 60 days after the date of receipt of the request for consultations before requesting the establishment of a panel. The complaining party may request the establishment of a panel during the 60-day period if the parties to the dispute jointly consider that the good offices, conciliation or mediation process has failed to settle the dispute.

5. If the parties to a dispute agree, procedures for good offices, conciliation or mediation may continue while the panel process proceeds.

6. The Director-General may, acting in an *ex officio* capacity, offer good offices, conciliation or mediation with the view to assisting Members to settle a dispute.

Agreement on Trade-Related Investment Measures, Article 8; Agreement on Implementation of Article VI of GATT 1994, paragraph 2 of Article 17; Agreement on Implementation of Article VII of GATT 1994, paragraph 2 of Article 19; Agreement on Preshipment Inspection, Article 7; Agreement on Rules of Origin, Article 7; Agreement on Import Licensing Procedures, Article 6; Agreement on Subsidies and Countervailing Measures, Article 30; Agreement on Safeguards, Article 14; Agreement on Trade-Related Aspects of Intellectual Property Rights, Article 64.1; and any corresponding consultation provisions in Plurilateral Trade Agreements as determined by the competent bodies of each Agreement and as notified to the DSB.

Article 6

Establishment of Panels

1. If the complaining party so requests, a panel shall be established at the latest at the DSB meeting following that at which the request first appears as an item on the DSB's agenda, unless at that meeting the DSB decides by consensus not to establish a panel.[5]

2. The request for the establishment of a panel shall be made in writing. It shall indicate whether consultations were held, identify the specific measures at issue and provide a brief summary of the legal basis of the complaint sufficient to present the problem clearly. In case the applicant requests the establishment of a panel with other than standard terms of reference, the written request shall include the proposed text of special terms of reference.

Article 7

Terms of Reference of Panels

1. Panels shall have the following terms of reference unless the parties to the dispute agree otherwise within 20 days from the establishment of the panel:

> "To examine, in the light of the relevant provisions in (name of the covered agreement(s) cited by the parties to the dispute), the matter referred to the DSB by (name of party) in document ... and to make such findings as will assist the DSB in making the recommendations or in giving the rulings provided for in that/those agreement(s)."

2. Panels shall address the relevant provisions in any covered agreement or agreements cited by the parties to the dispute.

3. In establishing a panel, the DSB may authorize its Chairman to draw up the terms of reference of the panel in consultation with the parties to the dispute, subject to the provisions of paragraph 1. The terms of reference thus drawn up shall be circulated to all Members. If other than standard terms of reference are agreed upon, any Member may raise any point relating thereto in the DSB.

Article 8

Composition of Panels

1. Panels shall be composed of well-qualified governmental and/or non-governmental individuals, including persons who have served on or presented a case to a panel, served as a representative of a Member or of a contracting party to GATT 1947 or as a representative to the Council or Committee of any covered agreement or its predecessor agreement, or in the Secretariat, taught or published on international trade law or policy, or served as a senior trade policy official of a Member.

2. Panel members should be selected with a view to ensuring the independence of the members, a sufficiently diverse background and a wide spectrum of experience.

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[5] If the complaining party so requests, a meeting of the DSB shall be convened for this purpose within 15 days of the request, provided that at least 10 days' advance notice of the meeting is given.

3. Citizens of Members whose governments[6] are parties to the dispute or third parties as defined in paragraph 2 of Article 10 shall not serve on a panel concerned with that dispute, unless the parties to the dispute agree otherwise.

4. To assist in the selection of panelists, the Secretariat shall maintain an indicative list of governmental and non-governmental individuals possessing the qualifications outlined in paragraph 1, from which panelists may be drawn as appropriate. That list shall include the roster of non-governmental panelists established on 30 November 1984 (BISD 31S/9), and other rosters and indicative lists established under any of the covered agreements, and shall retain the names of persons on those rosters and indicative lists at the time of entry into force of the WTO Agreement. Members may periodically suggest names of governmental and non-governmental individuals for inclusion on the indicative list, providing relevant information on their knowledge of international trade and of the sectors or subject matter of the covered agreements, and those names shall be added to the list upon approval by the DSB. For each of the individuals on the list, the list shall indicate specific areas of experience or expertise of the individuals in the sectors or subject matter of the covered agreements.

5. Panels shall be composed of three panelists unless the parties to the dispute agree, within 10 days from the establishment of the panel, to a panel composed of five panelists. Members shall be informed promptly of the composition of the panel.

6. The Secretariat shall propose nominations for the panel to the parties to the dispute. The parties to the dispute shall not oppose nominations except for compelling reasons.

7. If there is no agreement on the panelists within 20 days after the date of the establishment of a panel, at the request of either party, the Director-General, in consultation with the Chairman of the DSB and the Chairman of the relevant Council or Committee, shall determine the composition of the panel by appointing the panelists whom the Director-General considers most appropriate in accordance with any relevant special or additional rules or procedures of the covered agreement or covered agreements which are at issue in the dispute, after consulting with the parties to the dispute. The Chairman of the DSB shall inform the Members of the composition of the panel thus formed no later than 10 days after the date the Chairman receives such a request.

8. Members shall undertake, as a general rule, to permit their officials to serve as panelists.

9. Panelists shall serve in their individual capacities and not as government representatives, nor as representatives of any organization. Members shall therefore not give them instructions nor seek to influence them as individuals with regard to matters before a panel.

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

11. Panelists' expenses, including travel and subsistence allowance, shall be met from the WTO budget in accordance with criteria to be adopted by the General Council, based on recommendations of the Committee on Budget, Finance and Administration.

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[6] In the case where customs unions or common markets are parties to a dispute, this provision applies to citizens of all member countries of the customs unions or common markets.

Article 9

Procedures for Multiple Complainants

1. Where more than one Member requests the establishment of a panel related to the same matter, a single panel may be established to examine these complaints taking into account the rights of all Members concerned. A single panel should be established to examine such complaints whenever feasible.

2. The single panel shall organize its examination and present its findings to the DSB in such a manner that the rights which the parties to the dispute would have enjoyed had separate panels examined the complaints are in no way impaired. If one of the parties to the dispute so requests, the panel shall submit separate reports on the dispute concerned. The written submissions by each of the complainants shall be made available to the other complainants, and each complainant shall have the right to be present when any one of the other complainants presents its views to the panel.

3. If more than one panel is established to examine the complaints related to the same matter, to the greatest extent possible the same persons shall serve as panelists on each of the separate panels and the timetable for the panel process in such disputes shall be harmonized.

Article 10

Third Parties

1. The interests of the parties to a dispute and those of other Members under a covered agreement at issue in the dispute shall be fully taken into account during the panel process.

2. Any Member having a substantial interest in a matter before a panel and having notified its interest to the DSB (referred to in this Understanding as a "third party") shall have an opportunity to be heard by the panel and to make written submissions to the panel. These submissions shall also be given to the parties to the dispute and shall be reflected in the panel report.

3. Third parties shall receive the submissions of the parties to the dispute to the first meeting of the panel.

4. If a third party considers that a measure already the subject of a panel proceeding nullifies or impairs benefits accruing to it under any covered agreement, that Member may have recourse to normal dispute settlement procedures under this Understanding. Such a dispute shall be referred to the original panel wherever possible.

Article 11

Function of Panels

The function of panels is to assist the DSB in discharging its responsibilities under this Understanding and the covered agreements. Accordingly, a panel should make an objective assessment of the matter before it, including an objective assessment of the facts of the case and the applicability of and conformity with the relevant covered agreements, and make such other findings as will assist the DSB in making the recommendations or in giving the rulings provided for in the covered agreements. Panels should consult regularly with the parties to the dispute and give them adequate opportunity to develop a mutually satisfactory solution.

Article 12

Panel Procedures

1. Panels shall follow the Working Procedures in Appendix 3 unless the panel decides otherwise after consulting the parties to the dispute.

2. Panel procedures should provide sufficient flexibility so as to ensure high-quality panel reports, while not unduly delaying the panel process.

3. After consulting the parties to the dispute, the panelists shall, as soon as practicable and whenever possible within one week after the composition and terms of reference of the panel have been agreed upon, fix the timetable for the panel process, taking into account the provisions of paragraph 9 of Article 4, if relevant.

4. In determining the timetable for the panel process, the panel shall provide sufficient time for the parties to the dispute to prepare their submissions.

5. Panels should set precise deadlines for written submissions by the parties and the parties should respect those deadlines.

6. Each party to the dispute shall deposit its written submissions with the Secretariat for immediate transmission to the panel and to the other party or parties to the dispute. The complaining party shall submit its first submission in advance of the responding party's first submission unless the panel decides, in fixing the timetable referred to in paragraph 3 and after consultations with the parties to the dispute, that the parties should submit their first submissions simultaneously. When there are sequential arrangements for the deposit of first submissions, the panel shall establish a firm time-period for receipt of the responding party's submission. Any subsequent written submissions shall be submitted simultaneously.

7. Where the parties to the dispute have failed to develop a mutually satisfactory solution, the panel shall submit its findings in the form of a written report to the DSB. In such cases, the report of a panel shall set out the findings of fact, the applicability of relevant provisions and the basic rationale behind any findings and recommendations that it makes. Where a settlement of the matter among the parties to the dispute has been found, the report of the panel shall be confined to a brief description of the case and to reporting that a solution has been reached.

8. In order to make the procedures more efficient, the period in which the panel shall conduct its examination, from the date that the composition and terms of reference of the panel have been agreed upon until the date the final report is issued to the parties to the dispute, shall, as a general rule, not exceed six months. In cases of urgency, including those relating to perishable goods, the panel shall aim to issue its report to the parties to the dispute within three months.

9. When the panel considers that it cannot issue its report within six months, or within three months in cases of urgency, it shall inform the DSB in writing of the reasons for the delay together with an estimate of the period within which it will issue its report. In no case should the period from the establishment of the panel to the circulation of the report to the Members exceed nine months.

10. In the context of consultations involving a measure taken by a developing country Member, the parties may agree to extend the periods established in paragraphs 7 and 8 of Article 4. If, after the relevant period has elapsed, the consulting parties cannot agree that the consultations have concluded, the Chairman of the DSB shall decide, after consultation with the parties, whether to extend the relevant period and, if so, for how long. In addition, in examining a complaint against a developing country

Member, the panel shall accord sufficient time for the developing country Member to prepare and present its argumentation. The provisions of paragraph 1 of Article 20 and paragraph 4 of Article 21 are not affected by any action pursuant to this paragraph.

11. Where one or more of the parties is a developing country Member, the panel's report shall explicitly indicate the form in which account has been taken of relevant provisions on differential and more-favourable treatment for developing country Members that form part of the covered agreements which have been raised by the developing country Member in the course of the dispute settlement procedures.

12. The panel may suspend its work at any time at the request of the complaining party for a period not to exceed 12 months. In the event of such a suspension, the time-frames set out in paragraphs 8 and 9 of this Article, paragraph 1 of Article 20, and paragraph 4 of Article 21 shall be extended by the amount of time that the work was suspended. If the work of the panel has been suspended for more than 12 months, the authority for establishment of the panel shall lapse.

Article 13

Right to Seek Information

1. Each panel shall have the right to seek information and technical advice from any individual or body which it deems appropriate. However, before a panel seeks such information or advice from any individual or body within the jurisdiction of a Member it shall inform the authorities of that Member. A Member should respond promptly and fully to any request by a panel for such information as the panel considers necessary and appropriate. Confidential information which is provided shall not be revealed without formal authorization from the individual, body, or authorities of the Member providing the information.

2. Panels may seek information from any relevant source and may consult experts to obtain their opinion on certain aspects of the matter. With respect to a factual issue concerning a scientific or other technical matter raised by a party to a dispute, a panel may request an advisory report in writing from an expert review group. Rules for the establishment of such a group and its procedures are set forth in Appendix 4.

Article 14

Confidentiality

1. Panel deliberations shall be confidential.

2. The reports of panels shall be drafted without the presence of the parties to the dispute in the light of the information provided and the statements made.

3. Opinions expressed in the panel report by individual panelists shall be anonymous.

Article 15

Interim Review Stage

1. Following the consideration of rebuttal submissions and oral arguments, the panel shall issue the descriptive (factual and argument) sections of its draft report to the parties to the dispute. Within a period of time set by the panel, the parties shall submit their comments in writing.

2. Following the expiration of the set period of time for receipt of comments from the parties to the dispute, the panel shall issue an interim report to the parties, including both the descriptive sections and the panel's findings and conclusions. Within a period of time set by the panel, a party may submit a written request for the panel to review precise aspects of the interim report prior to circulation of the final report to the Members. At the request of a party, the panel shall hold a further meeting with the parties on the issues identified in the written comments. If no comments are received from any party within the comment period, the interim report shall be considered the final panel report and circulated promptly to the Members.

3. The findings of the final panel report shall include a discussion of the arguments made at the interim review stage. The interim review stage shall be conducted within the time-period set out in paragraph 8 of Article 12.

Article 16

Adoption of Panel Reports

1. In order to provide sufficient time for the Members to consider panel reports, the reports shall not be considered for adoption by the DSB until 20 days after the date they have been circulated to the Members.

2. Members having objections to a panel report shall give written reasons to explain their objections for circulation at least 10 days prior to the DSB meeting at which the panel report will be considered.

3. The parties to a dispute shall have the right to participate fully in the consideration of the panel report by the DSB, and their views shall be fully recorded.

4. Within 60 days after the date of circulation of a panel report to the Members, the report shall be adopted at a DSB meeting[7] unless a party to the dispute formally notifies the DSB of its decision to appeal or the DSB decides by consensus not to adopt the report. If a party has notified its decision to appeal, the report by the panel shall not be considered for adoption by the DSB until after completion of the appeal. This adoption procedure is without prejudice to the right of Members to express their views on a panel report.

[7] If a meeting of the DSB is not scheduled within this period at a time that enables the requirements of paragraphs 1 and 4 of Article 16 to be met, a meeting of the DSB shall be held for this purpose.

Article 17

Appellate Review

Standing Appellate Body

1. A standing Appellate Body shall be established by the DSB. The Appellate Body shall hear appeals from panel cases. It shall be composed of seven persons, three of whom shall serve on any one case. Persons serving on the Appellate Body shall serve in rotation. Such rotation shall be determined in the working procedures of the Appellate Body.

2. The DSB shall appoint persons to serve on the Appellate Body for a four-year term, and each person may be reappointed once. However, the terms of three of the seven persons appointed immediately after the entry into force of the WTO Agreement shall expire at the end of two years, to be determined by lot. Vacancies shall be filled as they arise. A person appointed to replace a person whose term of office has not expired shall hold office for the remainder of the predecessor's term.

3. The Appellate Body shall comprise persons of recognized authority, with demonstrated expertise in law, international trade and the subject matter of the covered agreements generally. They shall be unaffiliated with any government. The Appellate Body membership shall be broadly representative of membership in the WTO. All persons serving on the Appellate Body shall be available at all times and on short notice, and shall stay abreast of dispute settlement activities and other relevant activities of the WTO. They shall not participate in the consideration of any disputes that would create a direct or indirect conflict of interest.

4. Only parties to the dispute, not third parties, may appeal a panel report. Third parties which have notified the DSB of a substantial interest in the matter pursuant to paragraph 2 of Article 10 may make written submissions to, and be given an opportunity to be heard by, the Appellate Body.

5. As a general rule, the proceedings shall not exceed 60 days from the date a party to the dispute formally notifies its decision to appeal to the date the Appellate Body circulates its report. In fixing its timetable the Appellate Body shall take into account the provisions of paragraph 9 of Article 4, if relevant. When the Appellate Body considers that it cannot provide its report within 60 days, it shall inform the DSB in writing of the reasons for the delay together with an estimate of the period within which it will submit its report. In no case shall the proceedings exceed 90 days.

6. An appeal shall be limited to issues of law covered in the panel report and legal interpretations developed by the panel.

7. The Appellate Body shall be provided with appropriate administrative and legal support as it requires.

8. The expenses of persons serving on the Appellate Body, including travel and subsistence allowance, shall be met from the WTO budget in accordance with criteria to be adopted by the General Council, based on recommendations of the Committee on Budget, Finance and Administration.

Procedures for Appellate Review

9. Working procedures shall be drawn up by the Appellate Body in consultation with the Chairman of the DSB and the Director-General, and communicated to the Members for their information.

10. The proceedings of the Appellate Body shall be confidential. The reports of the Appellate Body shall be drafted without the presence of the parties to the dispute and in the light of the information provided and the statements made.

11. Opinions expressed in the Appellate Body report by individuals serving on the Appellate Body shall be anonymous.

12. The Appellate Body shall address each of the issues raised in accordance with paragraph 6 during the appellate proceeding.

13. The Appellate Body may uphold, modify or reverse the legal findings and conclusions of the panel.

Adoption of Appellate Body Reports

14. An Appellate Body report shall be adopted by the DSB and unconditionally accepted by the parties to the dispute unless the DSB decides by consensus not to adopt the Appellate Body report within 30 days following its circulation to the Members.[8] This adoption procedure is without prejudice to the right of Members to express their views on an Appellate Body report.

Article 18

Communications with the Panel or Appellate Body

1. There shall be no *ex parte* communications with the panel or Appellate Body concerning matters under consideration by the panel or Appellate Body.

2. Written submissions to the panel or the Appellate Body shall be treated as confidential, but shall be made available to the parties to the dispute. Nothing in this Understanding shall preclude a party to a dispute from disclosing statements of its own positions to the public. Members shall treat as confidential information submitted by another Member to the panel or the Appellate Body which that Member has designated as confidential. A party to a dispute shall also, upon request of a Member, provide a non-confidential summary of the information contained in its written submissions that could be disclosed to the public.

Article 19

Panel and Appellate Body Recommendations

1. Where a panel or the Appellate Body concludes that a measure is inconsistent with a covered agreement, it shall recommend that the Member concerned[9] bring the measure into conformity with that agreement.[10] In addition to its recommendations, the panel or Appellate Body may suggest ways in which the Member concerned could implement the recommendations.

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[8] If a meeting of the DSB is not scheduled during this period, such a meeting of the DSB shall be held for this purpose.

[9] The "Member concerned" is the party to the dispute to which the panel or Appellate Body recommendations are directed.

[10] With respect to recommendations in cases not involving a violation of GATT 1994 or any other covered agreement, see Article 26.

2. In accordance with paragraph 2 of Article 3, in their findings and recommendations, the panel and Appellate Body cannot add to or diminish the rights and obligations provided in the covered agreements.

Article 20

Time-frame for DSB Decisions

Unless otherwise agreed to by the parties to the dispute, the period from the date of establishment of the panel by the DSB until the date the DSB considers the panel or appellate report for adoption shall as a general rule not exceed nine months where the panel report is not appealed or 12 months where the report is appealed. Where either the panel or the Appellate Body has acted, pursuant to paragraph 9 of Article 12 or paragraph 5 of Article 17, to extend the time for providing its report, the additional time taken shall be added to the above periods.

Article 21

Surveillance of Implementation of Recommendations and Rulings

1. Prompt compliance with recommendations or rulings of the DSB is essential in order to ensure effective resolution of disputes to the benefit of all Members.

2. Particular attention should be paid to matters affecting the interests of developing country Members with respect to measures which have been subject to dispute settlement.

3. At a DSB meeting held within 30 days[11] after the date of adoption of the panel or Appellate Body report, the Member concerned shall inform the DSB of its intentions in respect of implementation of the recommendations and rulings of the DSB. If it is impracticable to comply immediately with the recommendations and rulings, the Member concerned shall have a reasonable period of time in which to do so. The reasonable period of time shall be:

(a) the period of time proposed by the Member concerned, provided that such period is approved by the DSB; or, in the absence of such approval,

(b) a period of time mutually agreed by the parties to the dispute within 45 days after the date of adoption of the recommendations and rulings; or, in the absence of such agreement,

(c) a period of time determined through binding arbitration within 90 days after the date of adoption of the recommendations and rulings.[12] In such arbitration, a guideline for the arbitrator[13] should be that the reasonable period of time to implement panel or Appellate Body recommendations should not exceed 15 months from the date of adoption of a panel or Appellate Body report. However, that time may be shorter or longer, depending upon the particular circumstances.

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[11]If a meeting of the DSB is not scheduled during this period, such a meeting of the DSB shall be held for this purpose.

[12]If the parties cannot agree on an arbitrator within ten days after referring the matter to arbitration, the arbitrator shall be appointed by the Director-General within ten days, after consulting the parties.

[13]The expression "arbitrator" shall be interpreted as referring either to an individual or a group.

4. Except where the panel or the Appellate Body has extended, pursuant to paragraph 9 of Article 12 or paragraph 5 of Article 17, the time of providing its report, the period from the date of establishment of the panel by the DSB until the date of determination of the reasonable period of time shall not exceed 15 months unless the parties to the dispute agree otherwise. Where either the panel or the Appellate Body has acted to extend the time of providing its report, the additional time taken shall be added to the 15-month period; provided that unless the parties to the dispute agree that there are exceptional circumstances, the total time shall not exceed 18 months.

5. Where there is disagreement as to the existence or consistency with a covered agreement of measures taken to comply with the recommendations and rulings such dispute shall be decided through recourse to these dispute settlement procedures, including wherever possible resort to the original panel. The panel shall circulate its report within 90 days after the date of referral of the matter to it. When the panel considers that it cannot provide its report within this time frame, it shall inform the DSB in writing of the reasons for the delay together with an estimate of the period within which it will submit its report.

6. The DSB shall keep under surveillance the implementation of adopted recommendations or rulings. The issue of implementation of the recommendations or rulings may be raised at the DSB by any Member at any time following their adoption. Unless the DSB decides otherwise, the issue of implementation of the recommendations or rulings shall be placed on the agenda of the DSB meeting after six months following the date of establishment of the reasonable period of time pursuant to paragraph 3 and shall remain on the DSB's agenda until the issue is resolved. At least 10 days prior to each such DSB meeting, the Member concerned shall provide the DSB with a status report in writing of its progress in the implementation of the recommendations or rulings.

7. If the matter is one which has been raised by a developing country Member, the DSB shall consider what further action it might take which would be appropriate to the circumstances.

8. If the case is one brought by a developing country Member, in considering what appropriate action might be taken, the DSB shall take into account not only the trade coverage of measures complained of, but also their impact on the economy of developing country Members concerned.

Article 22

Compensation and the Suspension of Concessions

1. Compensation and the suspension of concessions or other obligations are temporary measures available in the event that the recommendations and rulings are not implemented within a reasonable period of time. However, neither compensation nor the suspension of concessions or other obligations is preferred to full implementation of a recommendation to bring a measure into conformity with the covered agreements. Compensation is voluntary and, if granted, shall be consistent with the covered agreements.

2. If the Member concerned fails to bring the measure found to be inconsistent with a covered agreement into compliance therewith or otherwise comply with the recommendations and rulings within the reasonable period of time determined pursuant to paragraph 3 of Article 21, such Member shall, if so requested, and no later than the expiry of the reasonable period of time, enter into negotiations with any party having invoked the dispute settlement procedures, with a view to developing mutually acceptable compensation. If no satisfactory compensation has been agreed within 20 days after the date of expiry of the reasonable period of time, any party having invoked the dispute settlement procedures may request authorization from the DSB to suspend the application to the Member concerned of concessions or other obligations under the covered agreements.

3. In considering what concessions or other obligations to suspend, the complaining party shall apply the following principles and procedures:

(a) the general principle is that the complaining party should first seek to suspend concessions or other obligations with respect to the same sector(s) as that in which the panel or Appellate Body has found a violation or other nullification or impairment;

(b) if that party considers that it is not practicable or effective to suspend concessions or other obligations with respect to the same sector(s), it may seek to suspend concessions or other obligations in other sectors under the same agreement;

(c) if that party considers that it is not practicable or effective to suspend concessions or other obligations with respect to other sectors under the same agreement, and that the circumstances are serious enough, it may seek to suspend concessions or other obligations under another covered agreement;

(d) in applying the above principles, that party shall take into account:

(i) the trade in the sector or under the agreement under which the panel or Appellate Body has found a violation or other nullification or impairment, and the importance of such trade to that party;

(ii) the broader economic elements related to the nullification or impairment and the broader economic consequences of the suspension of concessions or other obligations;

(e) if that party decides to request authorization to suspend concessions or other obligations pursuant to subparagraphs (b) or (c), it shall state the reasons therefor in its request. At the same time as the request is forwarded to the DSB, it also shall be forwarded to the relevant Councils and also, in the case of a request pursuant to subparagraph (b), the relevant sectoral bodies;

(f) for purposes of this paragraph, "sector" means:

(i) with respect to goods, all goods;

(ii) with respect to services, a principal sector as identified in the current "Services Sectoral Classification List" which identifies such sectors;[14]

(iii) with respect to trade-related intellectual property rights, each of the categories of intellectual property rights covered in Section 1, or Section 2, or Section 3, or Section 4, or Section 5, or Section 6, or Section 7 of Part II, or the obligations under Part III, or Part IV of the Agreement on TRIPS;

(g) for purposes of this paragraph, "agreement" means:

(i) with respect to goods, the agreements listed in Annex 1A of the WTO Agreement, taken as a whole as well as the Plurilateral Trade Agreements in so far as the relevant parties to the dispute are parties to these agreements;

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[14]The list in document MTN.GNS/W/120 identifies eleven sectors.

(ii) with respect to services, the GATS;

(iii) with respect to intellectual property rights, the Agreement on TRIPS.

4. The level of the suspension of concessions or other obligations authorized by the DSB shall be equivalent to the level of the nullification or impairment.

5. The DSB shall not authorize suspension of concessions or other obligations if a covered agreement prohibits such suspension.

6. When the situation described in paragraph 2 occurs, the DSB, upon request, shall grant authorization to suspend concessions or other obligations within 30 days of the expiry of the reasonable period of time unless the DSB decides by consensus to reject the request. However, if the Member concerned objects to the level of suspension proposed, or claims that the principles and procedures set forth in paragraph 3 have not been followed where a complaining party has requested authorization to suspend concessions or other obligations pursuant to paragraph 3(b) or (c), the matter shall be referred to arbitration. Such arbitration shall be carried out by the original panel, if members are available, or by an arbitrator[15] appointed by the Director-General and shall be completed within 60 days after the date of expiry of the reasonable period of time. Concessions or other obligations shall not be suspended during the course of the arbitration.

7. The arbitrator[16] acting pursuant to paragraph 6 shall not examine the nature of the concessions or other obligations to be suspended but shall determine whether the level of such suspension is equivalent to the level of nullification or impairment. The arbitrator may also determine if the proposed suspension of concessions or other obligations is allowed under the covered agreement. However, if the matter referred to arbitration includes a claim that the principles and procedures set forth in paragraph 3 have not been followed, the arbitrator shall examine that claim. In the event the arbitrator determines that those principles and procedures have not been followed, the complaining party shall apply them consistent with paragraph 3. The parties shall accept the arbitrator's decision as final and the parties concerned shall not seek a second arbitration. The DSB shall be informed promptly of the decision of the arbitrator and shall upon request, grant authorization to suspend concessions or other obligations where the request is consistent with the decision of the arbitrator, unless the DSB decides by consensus to reject the request.

8. The suspension of concessions or other obligations shall be temporary and shall only be applied until such time as the measure found to be inconsistent with a covered agreement has been removed, or the Member that must implement recommendations or rulings provides a solution to the nullification or impairment of benefits, or a mutually satisfactory solution is reached. In accordance with paragraph 6 of Article 21, the DSB shall continue to keep under surveillance the implementation of adopted recommendations or rulings, including those cases where compensation has been provided or concessions or other obligations have been suspended but the recommendations to bring a measure into conformity with the covered agreements have not been implemented.

9. The dispute settlement provisions of the covered agreements may be invoked in respect of measures affecting their observance taken by regional or local governments or authorities within the territory of a Member. When the DSB has ruled that a provision of a covered agreement has not been observed, the responsible Member shall take such reasonable measures as may be available to it to ensure its observance. The provisions of the covered agreements and this Understanding relating to

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[15] The expression "arbitrator" shall be interpreted as referring either to an individual or a group

[16] The expression "arbitrator" shall be interpreted as referring either to an individual or a group or to the members of the original panel when serving in the capacity of arbitrator

compensation and suspension of concessions or other obligations apply in cases where it has not been possible to secure such observance.[17]

Article 23

Strengthening of the Multilateral System

1. When Members seek the redress of a violation of obligations or other nullification or impairment of benefits under the covered agreements or an impediment to the attainment of any objective of the covered agreements, they shall have recourse to, and abide by, the rules and procedures of this Understanding.

2. In such cases, Members shall:

(a) not make a determination to the effect that a violation has occurred, that benefits have been nullified or impaired or that the attainment of any objective of the covered agreements has been impeded, except through recourse to dispute settlement in accordance with the rules and procedures of this Understanding, and shall make any such determination consistent with the findings contained in the panel or Appellate Body report adopted by the DSB or an arbitration award rendered under this Understanding;

(b) follow the procedures set forth in Article 21 to determine the reasonable period of time for the Member concerned to implement the recommendations and rulings; and

(c) follow the procedures set forth in Article 22 to determine the level of suspension of concessions or other obligations and obtain DSB authorization in accordance with those procedures before suspending concessions or other obligations under the covered agreements in response to the failure of the Member concerned to implement the recommendations and rulings within that reasonable period of time.

Article 24

Special Procedures Involving Least-Developed Country Members

1. At all stages of the determination of the causes of a dispute and of dispute settlement procedures involving a least-developed country Member, particular consideration shall be given to the special situation of least-developed country Members. In this regard, Members shall exercise due restraint in raising matters under these procedures involving a least-developed country Member. If nullification or impairment is found to result from a measure taken by a least-developed country Member, complaining parties shall exercise due restraint in asking for compensation or seeking authorization to suspend the application of concessions or other obligations pursuant to these procedures.

2. In dispute settlement cases involving a least-developed country Member, where a satisfactory solution has not been found in the course of consultations the Director-General or the Chairman of the DSB shall, upon request by a least-developed country Member offer their good offices, conciliation

[17]Where the provisions of any covered agreement concerning measures taken by regional or local governments or authorities within the territory of a Member contain provisions different from the provisions of this paragraph, the provisions of such covered agreement shall prevail.

and mediation with a view to assisting the parties to settle the dispute, before a request for a panel is made. The Director-General or the Chairman of the DSB, in providing the above assistance, may consult any source which either deems appropriate.

Article 25

Arbitration

1. Expeditious arbitration within the WTO as an alternative means of dispute settlement can facilitate the solution of certain disputes that concern issues that are clearly defined by both parties.

2. Except as otherwise provided in this Understanding, resort to arbitration shall be subject to mutual agreement of the parties which shall agree on the procedures to be followed. Agreements to resort to arbitration shall be notified to all Members sufficiently in advance of the actual commencement of the arbitration process.

3. Other Members may become party to an arbitration proceeding only upon the agreement of the parties which have agreed to have recourse to arbitration. The parties to the proceeding shall agree to abide by the arbitration award. Arbitration awards shall be notified to the DSB and the Council or Committee of any relevant agreement where any Member may raise any point relating thereto.

4. Articles 21 and 22 of this Understanding shall apply *mutatis mutandis* to arbitration awards.

Article 26

1. *Non-Violation Complaints of the Type Described in Paragraph 1(b) of Article XXIII of GATT 1994*

Where the provisions of paragraph 1(b) of Article XXIII of GATT 1994 are applicable to a covered agreement, a panel or the Appellate Body may only make rulings and recommendations where a party to the dispute considers that any benefit accruing to it directly or indirectly under the relevant covered agreement is being nullified or impaired or the attainment of any objective of that Agreement is being impeded as a result of the application by a Member of any measure, whether or not it conflicts with the provisions of that Agreement. Where and to the extent that such party considers and a panel or the Appellate Body determines that a case concerns a measure that does not conflict with the provisions of a covered agreement to which the provisions of paragraph 1(b) of Article XXIII of GATT 1994 are applicable, the procedures in this Understanding shall apply, subject to the following:

(a) the complaining party shall present a detailed justification in support of any complaint relating to a measure which does not conflict with the relevant covered agreement;

(b) where a measure has been found to nullify or impair benefits under, or impede the attainment of objectives, of the relevant covered agreement without violation thereof, there is no obligation to withdraw the measure. However, in such cases, the panel or the Appellate Body shall recommend that the Member concerned make a mutually satisfactory adjustment;

(c) notwithstanding the provisions of Article 21, the arbitration provided for in paragraph 3 of Article 21, upon request of either party, may include a determination of the level of benefits which have been nullified or impaired, and may also suggest ways and means

of reaching a mutually satisfactory adjustment; such suggestions shall not be binding upon the parties to the dispute;

(d) notwithstanding the provisions of paragraph 1 of Article 22, compensation may be part of a mutually satisfactory adjustment as final settlement of the dispute.

2. *Complaints of the Type Described in Paragraph 1(c) of Article XXIII of GATT 1994*

Where the provisions of paragraph 1(c) of Article XXIII of GATT 1994 are applicable to a covered agreement, a panel may only make rulings and recommendations where a party considers that any benefit accruing to it directly or indirectly under the relevant covered agreement is being nullified or impaired or the attainment of any objective of that Agreement is being impeded as a result of the existence of any situation other than those to which the provisions of paragraphs 1(a) and 1(b) of Article XXIII of GATT 1994 are applicable. Where and to the extent that such party considers and a panel determines that the matter is covered by this paragraph, the procedures of this Understanding shall apply only up to and including the point in the proceedings where the panel report has been circulated to the Members. The dispute settlement rules and procedures contained in the Decision of 12 April 1989 (BISD 36S/61-67) shall apply to consideration for adoption, and surveillance and implementation of recommendations and rulings. The following shall also apply:

(a) the complaining party shall present a detailed justification in support of any argument made with respect to issues covered under this paragraph;

(b) in cases involving matters covered by this paragraph, if a panel finds that cases also involve dispute settlement matters other than those covered by this paragraph, the panel shall circulate a report to the DSB addressing any such matters and a separate report on matters falling under this paragraph.

Article 27

Responsibilities of the Secretariat

1. The Secretariat shall have the responsibility of assisting panels, especially on the legal, historical and procedural aspects of the matters dealt with, and of providing secretarial and technical support.

2. While the Secretariat assists Members in respect of dispute settlement at their request, there may also be a need to provide additional legal advice and assistance in respect of dispute settlement to developing country Members. To this end, the Secretariat shall make available a qualified legal expert from the WTO technical cooperation services to any developing country Member which so requests. This expert shall assist the developing country Member in a manner ensuring the continued impartiality of the Secretariat.

3. The Secretariat shall conduct special training courses for interested Members concerning these dispute settlement procedures and practices so as to enable Members' experts to be better informed in this regard.

APPENDIX 1

AGREEMENTS COVERED BY THE UNDERSTANDING

(A) Agreement Establishing the World Trade Organization

(B) Multilateral Trade Agreements

Annex 1A: Multilateral Agreements on Trade in Goods
Annex 1B: General Agreement on Trade in Services
Annex 1C: Agreement on Trade-Related Aspects of Intellectual Property Rights

Annex 2: Understanding on Rules and Procedures Governing the Settlement of Disputes

(C) Plurilateral Trade Agreements

Annex 4: Agreement on Trade in Civil Aircraft
Agreement on Government Procurement
International Dairy Agreement
International Bovine Meat Agreement

The applicability of this Understanding to the Plurilateral Trade Agreements shall be subject to the adoption of a decision by the parties to each agreement setting out the terms for the application of the Understanding to the individual agreement, including any special or additional rules or procedures for inclusion in Appendix 2, as notified to the DSB.

APPENDIX 2

SPECIAL OR ADDITIONAL RULES AND PROCEDURES CONTAINED IN THE COVERED AGREEMENTS

Agreement	*Rules and Procedures*
Agreement on the Application of Sanitary and Phytosanitary Measures	11.2
Agreement on Textiles and Clothing	2.14, 2.21, 4.4, 5.2, 5.4, 5.6, 6.9, 6.10, 6.11, 8.1 through 8.12
Agreement on Technical Barriers to Trade	14.2 through 14.4, Annex 2
Agreement on Implementation of Article VI of GATT 1994	17.4 through 17.7
Agreement on Implementation of Article VII of GATT 1994	19.3 through 19.5, Annex II.2(f), 3, 9, 21
Agreement on Subsidies and Countervailing Measures	4.2 through 4.12, 6.6, 7.2 through 7.10, 8.5, footnote 35, 24.4, 27.7, Annex V
General Agreement on Trade in Services	XXII:3, XXIII:3
Annex on Financial Services	4
Annex on Air Transport Services	4
Decision on Certain Dispute Settlement Procedures for the GATS	1 through 5

The list of rules and procedures in this Appendix includes provisions where only a part of the provision may be relevant in this context.

Any special or additional rules or procedures in the Plurilateral Trade Agreements as determined by the competent bodies of each agreement and as notified to the DSB.

APPENDIX 3

WORKING PROCEDURES

1. In its proceedings the panel shall follow the relevant provisions of this Understanding. In addition, the following working procedures shall apply.

2. The panel shall meet in closed session. The parties to the dispute, and interested parties, shall be present at the meetings only when invited by the panel to appear before it.

3. The deliberations of the panel and the documents submitted to it shall be kept confidential. Nothing in this Understanding shall preclude a party to a dispute from disclosing statements of its own positions to the public. Members shall treat as confidential information submitted by another Member to the panel which that Member has designated as confidential. Where a party to a dispute submits a confidential version of its written submissions to the panel, it shall also, upon request of a Member, provide a non-confidential summary of the information contained in its submissions that could be disclosed to the public.

4. Before the first substantive meeting of the panel with the parties, the parties to the dispute shall transmit to the panel written submissions in which they present the facts of the case and their arguments.

5. At its first substantive meeting with the parties, the panel shall ask the party which has brought the complaint to present its case. Subsequently, and still at the same meeting, the party against which the complaint has been brought shall be asked to present its point of view.

6. All third parties which have notified their interest in the dispute to the DSB shall be invited in writing to present their views during a session of the first substantive meeting of the panel set aside for that purpose. All such third parties may be present during the entirety of this session.

7. Formal rebuttals shall be made at a second substantive meeting of the panel. The party complained against shall have the right to take the floor first to be followed by the complaining party. The parties shall submit, prior to that meeting, written rebuttals to the panel.

8. The panel may at any time put questions to the parties and ask them for explanations either in the course of a meeting with the parties or in writing.

9. The parties to the dispute and any third party invited to present its views in accordance with Article 10 shall make available to the panel a written version of their oral statements.

10. In the interest of full transparency, the presentations, rebuttals and statements referred to in paragraphs 5 to 9 shall be made in the presence of the parties. Moreover, each party's written submissions, including any comments on the descriptive part of the report and responses to questions put by the panel, shall be made available to the other party or parties.

11. Any additional procedures specific to the panel.

12. Proposed timetable for panel work:

(a)	Receipt of first written submissions of the parties:		
	(1) complaining Party:	_____	3-6 weeks
	(2) Party complained against:	_____	2-3 weeks
(b)	Date, time and place of first substantive meeting with the parties; third party session:	_____	1-2 weeks
(c)	Receipt of written rebuttals of the parties:	_____	2-3 weeks
(d)	Date, time and place of second substantive meeting with the parties:	_____	1-2 weeks
(e)	Issuance of descriptive part of the report to the parties:	_____	2-4 weeks
(f)	Receipt of comments by the parties on the descriptive part of the report:	_____	2 weeks
(g)	Issuance of the interim report, including the findings and conclusions, to the parties:	_____	2-4 weeks
(h)	Deadline for party to request review of part(s) of report:	_____	1 week
(i)	Period of review by panel, including possible additional meeting with parties:	_____	2 weeks
(j)	Issuance of final report to parties to dispute:	_____	2 weeks
(k)	Circulation of the final report to the Members:	_____	3 weeks

The above calendar may be changed in the light of unforeseen developments. Additional meetings with the parties shall be scheduled if required.

APPENDIX 4

EXPERT REVIEW GROUPS

The following rules and procedures shall apply to expert review groups established in accordance with the provisions of paragraph 2 of Article 13.

1. Expert review groups are under the panel's authority. Their terms of reference and detailed working procedures shall be decided by the panel, and they shall report to the panel.

2. Participation in expert review groups shall be restricted to persons of professional standing and experience in the field in question.

3. Citizens of parties to the dispute shall not serve on an expert review group without the joint agreement of the parties to the dispute, except in exceptional circumstances when the panel considers that the need for specialized scientific expertise cannot be fulfilled otherwise. Government officials of parties to the dispute shall not serve on an expert review group. Members of expert review groups shall serve in their individual capacities and not as government representatives, nor as representatives of any organization. Governments or organizations shall therefore not give them instructions with regard to matters before an expert review group.

4. Expert review groups may consult and seek information and technical advice from any source they deem appropriate. Before an expert review group seeks such information or advice from a source within the jurisdiction of a Member, it shall inform the government of that Member. Any Member shall respond promptly and fully to any request by an expert review group for such information as the expert review group considers necessary and appropriate.

5. The parties to a dispute shall have access to all relevant information provided to an expert review group, unless it is of a confidential nature. Confidential information provided to the expert review group shall not be released without formal authorization from the government, organization or person providing the information. Where such information is requested from the expert review group but release of such information by the expert review group is not authorized, a non-confidential summary of the information will be provided by the government, organization or person supplying the information.

6. The expert review group shall submit a draft report to the parties to the dispute with a view to obtaining their comments, and taking them into account, as appropriate, in the final report, which shall also be issued to the parties to the dispute when it is submitted to the panel. The final report of the expert review group shall be advisory only.

ANNEX 3

TRADE POLICY REVIEW MECHANISM

Members hereby *agree* as follows:

A. *Objectives*

(i) The purpose of the Trade Policy Review Mechanism ("TPRM") is to contribute to improved adherence by all Members to rules, disciplines and commitments made under the Multilateral Trade Agreements and, where applicable, the Plurilateral Trade Agreements, and hence to the smoother functioning of the multilateral trading system, by achieving greater transparency in, and understanding of, the trade policies and practices of Members. Accordingly, the review mechanism enables the regular collective appreciation and evaluation of the full range of individual Members' trade policies and practices and their impact on the functioning of the multilateral trading system. It is not, however, intended to serve as a basis for the enforcement of specific obligations under the Agreements or for dispute settlement procedures, or to impose new policy commitments on Members.

(ii) The assessment carried out under the review mechanism takes place, to the extent relevant, against the background of the wider economic and developmental needs, policies and objectives of the Member concerned, as well as of its external environment. However, the function of the review mechanism is to examine the impact of a Member's trade policies and practices on the multilateral trading system.

B. *Domestic transparency*

Members recognize the inherent value of domestic transparency of government decision-making on trade policy matters for both Members' economies and the multilateral trading system, and agree to encourage and promote greater transparency within their own systems, acknowledging that the implementation of domestic transparency must be on a voluntary basis and take account of each Member's legal and political systems.

C. *Procedures for review*

(i) The Trade Policy Review Body (referred to herein as the "TPRB") is hereby established to carry out trade policy reviews.

(ii) The trade policies and practices of all Members shall be subject to periodic review. The impact of individual Members on the functioning of the multilateral trading system, defined in terms of their share of world trade in a recent representative period, will be the determining factor in deciding on the frequency of reviews. The first four trading entities so identified (counting the European Communities as one) shall be subject to review every two years. The next 16 shall be reviewed every four years. Other Members shall be reviewed every six years, except that a longer period may be fixed for least-developed country Members. It is understood that the review of entities having a common external policy covering more than one Member shall cover all components of policy affecting trade including relevant policies and practices of the individual Members. Exceptionally, in the event of changes in a Member's trade policies or practices that may have a significant impact on its trading partners, the Member concerned may be requested by the TPRB, after consultation, to bring forward its next review.

(iii) Discussions in the meetings of the TPRB shall be governed by the objectives set forth in paragraph A. The focus of these discussions shall be on the Member's trade policies and practices, which are the subject of the assessment under the review mechanism.

(iv) The TPRB shall establish a basic plan for the conduct of the reviews. It may also discuss and take note of update reports from Members. The TPRB shall establish a programme of reviews for each year in consultation with the Members directly concerned. In consultation with the Member or Members under review, the Chairman may choose discussants who, acting in their personal capacity, shall introduce the discussions in the TPRB.

(v) The TPRB shall base its work on the following documentation:

(a) a full report, referred to in paragraph D, supplied by the Member or Members under review;

(b) a report, to be drawn up by the Secretariat on its own responsibility, based on the information available to it and that provided by the Member or Members concerned. The Secretariat should seek clarification from the Member or Members concerned of their trade policies and practices.

(vi) The reports by the Member under review and by the Secretariat, together with the minutes of the respective meeting of the TPRB, shall be published promptly after the review.

(vii) These documents will be forwarded to the Ministerial Conference, which shall take note of them.

D. *Reporting*

In order to achieve the fullest possible degree of transparency, each Member shall report regularly to the TPRB. Full reports shall describe the trade policies and practices pursued by the Member or Members concerned, based on an agreed format to be decided upon by the TPRB. This format shall initially be based on the Outline Format for Country Reports established by the Decision of 19 July 1989 (BISD 36S/406-409), amended as necessary to extend the coverage of reports to all aspects of trade policies covered by the Multilateral Trade Agreements in Annex 1 and, where applicable, the Plurilateral Trade Agreements. This format may be revised by the TPRB in the light of experience. Between reviews, Members shall provide brief reports when there are any significant changes in their trade policies; an annual update of statistical information will be provided according to the agreed format. Particular account shall be taken of difficulties presented to least-developed country Members in compiling their reports. The Secretariat shall make available technical assistance on request to developing country Members, and in particular to the least-developed country Members. Information contained in reports should to the greatest extent possible be coordinated with notifications made under provisions of the Multilateral Trade Agreements and, where applicable, the Plurilateral Trade Agreements.

E. *Relationship with the balance-of-payments provisions of GATT 1994 and GATS*

Members recognize the need to minimize the burden for governments also subject to full consultations under the balance-of-payments provisions of GATT 1994 or GATS. To this end, the Chairman of the TPRB shall, in consultation with the Member or Members concerned, and with the Chairman of the Committee on Balance-of-Payments Restrictions, devise administrative arrangements that harmonize the normal rhythm of the trade policy reviews with the timetable for balance-of-payments consultations but do not postpone the trade policy review by more than 12 months.

F. *Appraisal of the Mechanism*

The TPRB shall undertake an appraisal of the operation of the TPRM not more than five years after the entry into force of the Agreement Establishing the WTO. The results of the appraisal will be presented to the Ministerial Conference. It may subsequently undertake appraisals of the TPRM at intervals to be determined by it or as requested by the Ministerial Conference.

G. *Overview of Developments in the International Trading Environment*

An annual overview of developments in the international trading environment which are having an impact on the multilateral trading system shall also be undertaken by the TPRB. The overview is to be assisted by an annual report by the Director-General setting out major activities of the WTO and highlighting significant policy issues affecting the trading system.

MARAKEŠKI SPORAZUM O USTANOVITVI SVETOVNE TRGOVINSKE ORGANIZACIJE

Pogodbenice tega sporazuma se

ob spoznanju, da bi morale svoje odnose na področju trgovinskih in gospodarskih prizadevanj razvijati s ciljem dvigovati življenjsko raven, zagotavljati polno zaposlenost ter velik in enakomerno rastoč obseg realnega dohodka in realnega povpraševanja ter širiti proizvodnjo in trgovino z blagom in storitvami ob najugodnejši izrabi svetovnih resursov v skladu s cilji uravnoteženega razvoja ob prizadevanju za varovanje in ohranjanje okolja in večanje sredstev za ta namen na način, ki je skladen z njihovimi ustreznimi potrebami in prizadevanji na različnih ravneh gospodarskega razvoja,

ob nadaljnjem spoznanju, da obstaja potreba po pozitivnih prizadevanjih z namenom, da se državam v razvoju, še posebej najmanj razvitim med njimi, zagotovi delež v rasti mednarodne trgovine, sorazmeren potrebam njihovega gospodarskega razvoja,

z željo prispevati k tem ciljem s sklenitvijo vzajemnih in medsebojno koristnih dogovorov, ki so usmerjeni k bistvenemu zmanjšanju carin in drugih ovir v trgovini ter k odpravi diskriminacijskega obravnavanja v mednarodnih trgovinskih odnosih,

odločene razvijati povezan, funkcionalnejši in trajnejši mnogostranski trgovinski sistem, ki obsega Splošni sporazum o carinah in trgovini, dosežke preteklih prizadevanj za liberalizacijo trgovine in vse dosežke Urugvajskega kroga mnogostranskih trgovinskih pogajanj,

odločene ohraniti temeljna načela in pospeševati cilje, ki so podlaga tega mnogostranskega trgovinskega sistema,

sporazumejo, kot sledi:

I. člen

Ustanovitev organizacije

Ustanovi se Svetovna trgovinska organizacija (World Trade Organization, v nadaljnjem besedilu WTO).

II. člen

Obseg delovanja WTO

1. WTO zagotavlja skupni institucionalni okvir za izvajanje trgovinskih odnosov med svojimi članicami v zadevah, ki se nanašajo na sporazume in z njimi povezane pravne instrumente, zajete v aneksih k temu sporazumu.

2. Sporazumi in z njimi povezani pravni instrumenti, zajeti v Aneksih 1, 2 in 3 (v nadaljnjem besedilu mnogostranski trgovinski sporazumi), so sestavni del tega sporazuma in zavezujejo vse članice.

3. Sporazumi in z njimi povezani pravni instrumenti, zajeti v Aneksu 4 (v nadaljnjem besedilu večstranski trgovinski sporazumi), so prav tako del tega sporazuma za tiste članice, ki so jih sprejele, ter so zanje zavezujoči. Večstranski trgovinski sporazumi za članice, ki jih niso sprejele, ne ustvarjajo obveznosti ali pravic.

4. Splošni sporazum o carinah in trgovini 1994, kot je naveden v Aneksu 1 A (General Agreement on Tariffs and Trade 1994, v nadaljnjem besedilu GATT 1994), se pravno loči od Splošnega sporazuma o carinah in trgovini z dne 30. oktobra 1947, ki je bil priložen Sklepnemu aktu, sprejetemu ob sklenitvi drugega zasedanja Pripravljalnega odbora Konference Združenih narodov o trgovini in zaposlovanju, ter naknadno popravljen, dopolnjen ali spremenjen (General Agreement on Tariffs and Trade 1947, v nadaljnjem besedilu GATT 1947).

III. člen

Naloge WTO

1. WTO omogoča izpolnjevanje, upravljanje in delovanje ter pospešuje cilje tega sporazuma in mnogostranskih trgovinskih sporazumov, prav tako pa tudi zagotavlja okvir za izpolnjevanje, upravljanje in delovanje večstranskih trgovinskih sporazumov.

2. WTO je forum za pogajanja med članicami v zvezi z njihovimi mnogostranskimi trgovinskimi odnosi v zadevah, ki jih obravnavajo sporazumi v aneksih k temu sporazumu. WTO je tudi forum za nadaljnja pogajanja med njegovimi članicami o njihovih mnogostranskih trgovinskih odnosih ter je okvir za izpolnjevanje dosežkov teh pogajanj na podlagi odločitev, ki jih utegne sprejeti Ministrska konferenca.

3. WTO skrbi za izpolnjevanje Dogovora o pravilih in postopkih za reševanje sporov (v nadaljnjem besedilu Dogovor o reševanju sporov ali DSU, Dispute Settlement Understanding) v Aneksu 2 k temu sporazumu.

4. WTO skrbi za izpolnjevanje Mehanizma za presojo trgovinske politike (Trade Policy Review Mechanism, v nadaljnjem besedilu TPRM), ki je določen v Aneksu 3 k temu sporazumu.

5. Z namenom doseči večjo skladnost pri določanju svetovne gospodarske politike WTO po potrebi sodeluje z Mednarodnim denarnim skladom ter Mednarodno banko za obnovo in razvoj in njenimi pridruženimi agencijami.

IV. člen

Sestava WTO

1. Ministrsko konferenco sestavljajo predstavniki vseh članic, ki se sestanejo najmanj enkrat na dve leti. Ministrska konferenca opravlja naloge WTO in sprejema za to potrebne ukrepe. Ministrska konferenca je pristojna za sprejemanje odločitev o vseh zadevah na podlagi kateregakoli mnogostranskega trgovinskega sporazuma, če tako zahteva članica, v skladu s posebnostmi odločanja po tem sporazumu in po ustreznem mnogostranskem trgovinskem sporazumu.

2. Generalni svet sestavljajo predstavniki vseh članic, ki se sestajajo po potrebi. V presledkih med sestanki Ministrske konference njene naloge opravlja Generalni svet. Generalni svet opravlja tudi naloge, ki so mu določene po tem sporazumu. Generalni svet oblikuje svoja pravila o postopkih in potrjuje pravila o postopkih odborov, določenih v sedmem odstavku.

3. Generalni svet se po potrebi sestaja, da bi izpolnjeval naloge, za katere je odgovoren Organ za reševanje sporov, določene v Dogovoru za reševanje sporov. Organ za reševanje sporov lahko ima svojega predsednika in oblikuje tista pravila o postopkih, ki jih šteje za potrebna za izpolnjevanje teh nalog.

4. Generalni svet se po potrebi sestaja, da bi izpolnjeval naloge, za katere je odgovoren Organ za presojo trgovinske politike, določene v TPRM. Organ za presojo trgovinske politike lahko ima svojega predsednika in oblikuje tista pravila o postopkih, ki jih šteje za potrebna za izpolnjevanje teh nalog.

5. Svet za trgovino z blagom, Svet za trgovino s storitvami in Svet za trgovinske vidike pravic intelektualne lastnine (Council for Trade-Related Aspects of Intellectual Property Rights, v nadaljnjem besedilu Svet za TRIPS) delujejo na podlagi splošnih smernic Generalnega sveta. Svet za trgovino z blagom nadzoruje delovanje mnogostranskih trgovinskih sporazumov v Aneksu 1 A. Svet za trgovino s storitvami nadzoruje delovanje Splošnega sporazuma o trgovini s storitvami (General Agreement on Trade in Services, v nadaljnjem besedilu GATS). Svet za TRIPS nadzoruje delovanje Sporazuma o trgovinskih vidikih pravic intelektualne lastni-

ne (Agreement on Trade-Related Intellectual Property Rights, v nadaljnjem besedilu Sporazum o TRIPS). Ti sveti opravljajo naloge, ki jih določajo ustrezni sporazumi in Generalni svet. Oblikujejo vsak svoja pravila o postopkih, ki jih odobri Generalni svet. Članstvo v teh svetih je odprto za predstavnike vseh članic. Ti sveti se za opravljanje svojih nalog sestajajo po potrebi.

6. Svet za trgovino z blagom, Svet za trgovino s storitvami in Svet za TRIPS po potrebi ustanovijo pomožna telesa. Ta pomožna telesa oblikujejo svoja pravila o postopkih, ki jih odobrijo njihovi ustrezni sveti.

7. Ministrska konferenca ustanovi Odbor za trgovino in razvoj, Odbor za plačilnobilančne omejitve in Odbor za proračun, finance in upravo, ki opravljajo naloge, določene s tem sporazumom in mnogostranskimi trgovinskimi sporazumi, ter vse dodatne naloge, ki jim jih določa Generalni svet, lahko pa ustanovi dodatne odbore s takimi nalogami, ki se ji zdijo primerne. Odbor za trgovino in razvoj kot del svojih nalog občasno opravi revizijo posebnih določb mnogostranskih trgovinskih sporazumov, ki so v korist najmanj razvitih držav članic, ter poroča Generalnemu svetu, da bi ta lahko ustrezno ukrepal. V te odbore se lahko včlanijo predstavniki vseh članic.

8. Organi, predvideni v večstranskih trgovinskih sporazumih, opravljajo naloge, ki jim jih ti sporazumi določajo, in delujejo v institucionalnem okviru WTO. Ti organi redno obveščajo Generalni svet o svojih dejavnostih.

V. člen

Odnosi z drugimi organizacijami

1. Generalni svet sklene ustrezne dogovore glede učinkovitega sodelovanja z drugimi medvladnimi organizacijami, katerih odgovornosti so povezane z odgovornostmi WTO.

2. Generalni svet lahko sklene ustrezne dogovore glede posvetovanj in sodelovanja z nevladnimi organizacijami, ki se ukvarjajo z vprašanji, povezanimi z zadevami WTO.

VI. člen

Sekretariat

1. Sekretariat WTO (v nadaljnjem besedilu Sekretariat) vodi generalni direktor.

2. Ministrska konferenca imenuje generalnega direktorja in sprejme pravila, ki določajo pooblastila, dolžnosti, pogoje služboanja in trajanje mandata generalnega direktorja.

3. Generalni direktor imenuje člane osebja Sekretariata in določi njihove dolžnosti in pogoje službovanja v skladu s pravili, ki jih sprejme Ministrska konferenca.

4. Odgovornosti generalnega direktorja in osebja Sekretariata so po naravi izključno mednarodne. Generalni direktor in člani osebja Sekretariata pri izpolnjevanju svojih nalog ne smejo iskati ali sprejemati navodil katerekoli vlade ali druge oblasti zunaj WTO. Vzdržati se morajo kakršnihkoli dejanj, ki bi lahko škodljivo vplivala na njihov položaj mednarodnih uradnikov. Članice WTO spoštujejo mednarodno naravo odgovornosti generalnega direktorja in osebja Sekretariata in ne smejo skušati vplivati nanje pri opravljanju njihovih nalog.

VII. člen

Proračun in prispevki

1. Generalni direktor predloži Odboru za proračun, finance in upravo predračun letnega proračuna in zaključni račun WTO. Odbor za proračun, finance in upravo pregleda predračun letnega proračuna in zaključni račun, ki ju je predložil generalni direktor, in za Generalni svet pripravi priporočila v zvezi z njima. Predračun letnega proračuna odobrava Generalni svet.

2. Odbor za proračun, finance in upravo predlaga Generalnemu svetu finančne predpise, ki vključujejo določbe o:

(a) višini prispevkov, s katerimi se stroški WTO porazdelijo med članice WTO, in

(b) ukrepe, ki jih je treba sprejeti glede članic, ki zaostajajo s plačilom prispevkov.

Finančni predpisi, kolikor je mogoče, temeljijo na pravilih in praksi GATT 1947.

3. Generalni svet sprejme finančne predpise in predračun letnega proračuna z dvotretjinsko večino, ki jo sestavlja več kot polovica članic WTO.

4. Vsaka članica WTO nemudoma prispeva svoj delež stroškov za WTO v skladu s finančnimi predpisi, ki jih je sprejel Generalni svet.

VIII. člen

Pravni položaj WTO

1. WTO je pravna oseba, vsaka od njegovih članic pa mu prizna tako pravno sposobnost, kot jo utegne potrebovati za opravljanje svojih nalog.

2. Vsaka od njegovih članic prizna WTO take privilegije in imunitete, kot jih potrebuje za opravljanje svojih nalog.

3. Vsaka od njegovih članic podobno prizna uslužbencem WTO in predstavnikom članic take privilegije in imunitete, kot jih potrebujejo za neodvisno opravljanje njihovih nalog v zvezi z WTO.

4. Privilegiji in imunitete, ki jih članica prizna WTO, njegovim uslužbencem in predstavnikom njegovih članic, so podobni privilegijem in imunitetam, določenim v Konvenciji o privilegijih in imunitetah specializiranih agencij, ki jo je 21. novembra 1947 odobrila Generalna skupščina Združenih narodov.

5. WTO lahko sklene sporazum o sedežu.

IX. člen

Odločanje

1. WTO nadaljuje s prakso odločanja s konsenzom, ki izhaja iz GATT 1947.[1] Če ni drugače določeno, se o zadevi, o kateri odločitve ni mogoče doseči s konsenzom, odloča z glasovanjem. Na sestankih Ministrske konference in Generalnega sveta ima vsaka članica WTO en glas. Kadar pravico do glasovanja uveljavljajo Evropske skupnosti, imajo tako število glasov, ki je enako številu njihovih držav članic,[2] ki so članice WTO. Odločitve Ministrske konference in Generalnega sveta se sprejemajo z večino oddanih glasov, če v tem sporazumu ali ustreznem mnogostranskem trgovinskem sporazumu[3] ni drugače določeno.

2. Ministrska konferenca in Generalni svet imata izključno pristojnost za tolmačenje tega sporazuma in mnogostranskih trgovinskih sporazumov. Pri tolmačenju mnogostranskega trgovinskega sporazuma v Aneksu 1 izvajata svoje pristojnosti na temelju priporočila sveta, ki nadzoruje delovanje tega sporazuma. Sklep o tolmačenju se sprejme s tričetrtinsko večino članic. Ta odstavek se ne sme uporabljati na način, ki bi izpodbijal določbe o amandmajih v X. členu.

3. V izjemnih okoliščinah Ministrska konferenca lahko odloči, da članico oprosti obveznosti, ki ji jo nalaga ta sporazum ali katerikoli mnogostranski trgovinski sporazum pod

[1] Šteje se, da je določeno telo o zadevi, ki mu je bila predložena v obravnavo, sprejelo odločitev s konsenzom, če nobena na sestanku prisotna članica, na katerem se odločitev sprejme, formalno ne nasprotuje predlagani odločitvi.

[2] Število glasov Evropskih skupnosti in njihovih članic v nobenem primeru ne sme biti večje od števila držav članic Evropskih skupnosti.

[3] Odločitve Generalnega sveta, ko se ta sestaja kot Organ za reševanje sporov, morajo biti sprejete samo v skladu z določbami četrtega odstavka 2. člena Dogovora o reševanju sporov.

pogojem, da vsako tako odločitev sprejmejo tri četrtine[4] članic, če v tem odstavku ni drugače določeno.

(a) Zahteva za oprostitev obveznosti, ki se nanaša na ta sporazum, se predloži Ministrski konferenci v obravnavo v skladu s prakso odločanja s konsenzom. Ministrska konferenca za obravnavo zahteve določi rok, ki ne sme biti daljši od 90 dni. Če v tem obdobju konsenz ni dosežen, morajo vsako odločitev o priznanju oprostitve obveznosti sprejeti tri četrtine[4] članic.

(b) Zahteva za oprostitev obveznosti, ki se nanaša na mnogostranske trgovinske sporazume v Aneksih 1 A ali 1 B ali 1 C in njihove priloge, se v roku do 90 dni najprej predloži v obravnavo Svetu za trgovino z blagom, Svetu za trgovino s storitvami oziroma Svetu za TRIPS. Ob izteku tega roka ustrezni svet Ministrski konferenci predloži poročilo.

4. Odločitev Ministrske konference, s katero se prizna oprostitev obveznosti, navaja izjemne okoliščine, ki odločitev utemeljujejo, in pogoje o uporabi oprostitve obveznosti in datum, ko oprostitev preneha veljati. Oprostitev obveznosti, ki je priznana za obdobje, daljše od enega leta, Ministrska konferenca ponovno prouči najpozneje v enem letu po priznanju oprostitve obveznosti, nato pa vsako leto do prenehanja oprostitve obveznosti. Ob vsaki proučitvi Ministrska konferenca presodi, ali izjemne okoliščine, ki utemeljujejo oprostitev obveznosti, še obstajajo in ali so bili pogoji oprostitve obveznosti izpolnjeni. Na podlagi letne proučitve lahko Ministrska konferenca oprostitev obveznosti podaljša, spremeni ali konča.

5. Odločitve na podlagi večstranskega trgovinskega sporazuma, vključno z odločitvami o tolmačenju in oprostitvah obveznosti, urejajo določbe tega istega sporazuma.

X. člen

Amandmaji

1. Vsaka članica WTO lahko sproži predlog za dopolnitev določb tega sporazuma ali mnogostranskih trgovinskih sporazumov v Aneksu 1, s tem da ga predloži Ministrski konferenci. Sveti, navedeni v petem odstavku IV. člena, lahko Ministrski konferenci prav tako predložijo amandma k določbam ustreznih mnogostranskih trgovinskih sporazumov v Aneksu 1, katerih delovanje nadzorujejo. Če Ministrska konferenca ne odloči o daljšem roku, mora biti vsaka odločitev Ministrske konference, ki se nanaša na predložitev amandmaja članicam v sprejem, sprejeta s konsenzom v 90 dneh po formalni predložitvi Ministrski konferenci. Če ne veljajo določbe drugega, petega ali šestega odstavka, odločitev jasno določa, ali veljajo določbe tretjega ali četrtega odstavka. Če je dosežen konsenz, Ministrska konferenca nemudoma predloži predlagani amandma članicam v sprejem. Če konsenz na sestanku Ministrske konference v določenem roku ni dosežen, Ministrska konferenca z dvotretjinsko večino članic odloči, ali bo predlagani amandma predložila članicam v sprejem. Z izjemo določb drugega, petega in šestega odstavka veljajo za predlagani amandma določbe tretjega odstavka, razen če Ministrska konferenca s tričetrtinsko večino članic ne odloči, da veljajo določbe četrtega odstavka.

2. Amandmaji k določbam tega člena in določbam naslednjih členov začnejo veljati šele, ko jih sprejmejo vse članice:

IX. člen tega sporazuma;
I. in II. člen GATT 1994;
II:1 člen GATS;
4. člen Sporazuma o TRIPS.

3. Amandmaji k določbam tega sporazuma ali mnogostranskih trgovinskih sporazumov v Aneksih 1 A in 1 C - razen tistih, navedenih v drugem in šestem odstavku, ki so take narave, da bi spremenili pravice in obveznosti članic, začnejo veljati za članice, ki so jih sprejele, potem ko jih sprejmeta dve tretjini članic, nato pa za vsako drugo članico, ko jih sprejme. Ministrska konferenca lahko s tričetrtinsko večino članic odloči, ali je amandma, uveljavljen po tem odstavku, take narave, da članica, ki ga ni sprejela v roku, ki ga je določila Ministrska konferenca, lahko v vsakem primeru izstopi iz WTO ali pa s privolitvijo Ministrske konference ostane članica.

4. Amandmaji k določbam tega sporazuma ali mnogostranskih trgovinskih sporazumov v Aneksih 1 A in 1 C - razen tistih, navedenih v drugem in šestem odstavku, ki so take narave, da ne bi spremenili pravic in obveznosti članic, začnejo veljati za vse članice, potem ko jih sprejmeta dve tretjini članic.

5. Z izjemo določb drugega odstavka zgoraj amandmaji k I., II. in III. delu GATS in ustreznim prilogam začnejo veljati za članice, ki so jih sprejele, potem ko jih sprejmeta dve tretjini članic, nato pa za vsako članico, ko jih sprejme. Ministrska konferenca lahko s tričetrtinsko večino članic odloči, ali je amandma, uveljavljen po prejšnji določbi, take narave, da članica, ki ga ni sprejela v roku, ki ga je določila Ministrska konferenca, lahko v vsakem primeru izstopi iz WTO ali s privolitvijo Ministrske konference ostane članica. Amandmaji k IV., V. in VI. delu GATS in ustreznim prilogam začnejo veljati za vse članice, potem ko jih sprejmeta dve tretjini članic.

6. Ne glede na druge določbe tega člena lahko amandmaje k Sporazumu o TRIPS, ki izpolnjujejo zahteve drugega odstavka 71. člena tega sporazuma, Ministrska konferenca sprejme brez nadaljnjega formalnega postopka.

7. Članica, ki sprejme amandma k temu sporazumu ali mnogostranskemu trgovinskemu sporazumu v Aneksu 1 v roku za sprejem, ki ga je določila Ministrska konferenca, deponira listino o sprejemu pri generalnem direktorju WTO.

8. Članica WTO lahko sproži predlog za amandma k določbam mnogostranskih trgovinskih sporazumov v Aneksih 2 in 3, tako da tak predlog predloži Ministrski konferenci. Odločitev o sprejemu amandmajev k mnogostranskemu trgovinskemu sporazumu v Aneksu 2 se sprejme s konsenzom in ti amandmaji začnejo veljati za vse članice, ko jih odobri Ministrska konferenca. Odločitve o sprejemu amandmajev k mnogostranskemu trgovinskemu sporazumu iz Aneksa 3 začnejo veljati za vse članice, ko jih odobri Ministrska konferenca.

9. Ministrska konferenca lahko na zahtevo članic, pogodbenic trgovinskega sporazuma, odloči izključno s konsenzom, ali se ta sporazum doda k Aneksu 4. Ministrska konferenca lahko na zahtevo članic, pogodbenic večstranskega trgovinskega sporazuma, odloči o izbrisu tega sporazuma iz Aneksa 4.

10. Amandmaje k večstranskemu trgovinskemu sporazumu urejajo določbe tega istega sporazuma.

XI. člen

Prvotno članstvo

1. Z dnem začetka veljavnosti tega sporazuma postanejo prvotne članice WTO pogodbenice GATT 1947 ter Evropske skupnosti, ki sprejmejo ta sporazum in mnogostranske trgovinske sporazume, za katere so priložene Liste koncesij in obvez h GATT 1994 in Liste posebnih obvez h GATS.

2. Od najmanj razvitih držav, ki jih kot take priznavajo Združeni narodi, se zahteva le sprejem obvez in koncesij v

[4] Odločitev, da se prizna oprostitev obveznosti, vezane na prehodno obdobje ali obdobje postopnega izvajanja, ki pa je članica, ki jo zahteva, ni uporabila do konca ustreznega obdobja, se sprejme le s konsenzom.

obsegu, ki je v skladu z njihovim posameznim razvojem, finančnimi in trgovinskimi potrebami ali z njihovimi upravnimi in institucionalnimi sposobnostmi.

XII. člen

Pristop

1. Vsaka država ali ločeno carinsko območje, ki ima polno avtonomijo pri izvajanju zunanjetrgovinskih odnosov in v drugih zadevah, določenih v tem sporazumu in mnogostranskih trgovinskih sporazumih, lahko pristopi k temu sporazumu pod pogoji, o katerih je potreben sporazum med njo in WTO. Tak pristop velja za ta sporazum in mnogostranske trgovinske sporazume, ki so mu priloženi.

2. Odločitve o pristopu sprejema Ministrska konferenca. Ministrska konferenca potrdi sporazum o pogojih pristopa z dvotretjinsko večino članic WTO.

3. Pristop k večstranskemu trgovinskemu sporazumu urejajo določbe tega istega sporazuma.

XIII. člen

Neuporaba mnogostranskih trgovinskih sporazumov med članicami

1. Ta sporazum in mnogostranski trgovinski sporazumi v Aneksih 1 in 2 se ne uporabljajo med članico in drugo članico, če ena od obeh v času, ko postane članica, ne privoli v to uporabo.

2. Prvi odstavek se lahko uporabi za tiste prvotne članice WTO, ki so bile pogodbenice GATT 1947 in so že prej uporabljale XXXV. člen tega istega sporazuma in je veljal med temi pogodbenicami v času začetka veljavnosti tega istega sporazuma zanje.

3. Prvi odstavek se uporablja med članico in drugo članico, ki je pristopila po XII. členu le, če je članica, ki ne privoli v uporabo, o tem obvestila Ministrsko konferenco pred potrditvijo sporazuma o pogojih njenega pristopa.

4. Ministrska konferenca lahko v določenih primerih na zahtevo katerekoli članice prouči izvajanje tega člena in da ustrezna priporočila.

5. Neuporabo večstranskega trgovinskega sporazuma med pogodbenicami tega istega sporazuma urejajo določbe tega istega sporazuma.

XIV. člen

Sprejem, začetek veljavnosti in deponiranje

1. Ta sporazum je odprt za sprejem s podpisom ali drugače pogodbenicam GATT 1947 in Evropskim skupnostim, ki izpolnjujejo pogoje za prvotno članstvo v WTO v skladu z XI. členom tega sporazuma. Takšen sprejem velja za ta sporazum in mnogostranske trgovinske sporazume, ki so mu priloženi. Ta sporazum in mnogostranski trgovinski sporazumi, ki so mu priloženi, začnejo veljati z dnem, ki ga določijo ministri, v skladu s tretjim odstavkom Sklepnega akta, ki vsebuje dosežke Urugvajskega kroga mnogostranskih trgovinskih pogajanj, ter ostanejo odprti za sprejem dve leti po tem datumu, razen če ministri ne odločijo drugače. Sprejem po začetku veljavnosti tega sporazuma začne veljati 30. dan po datumu takšnega sprejema.

2. Članica, ki sprejme ta sporazum po njegovem začetku veljavnosti, izvaja tiste koncesije in obveznosti, predvidene v mnogostranskih trgovinskih sporazumih, ki se morajo izvajati v določenem obdobju, ki se začne z dnem uveljavitve tega sporazuma, kot da je ta sporazum sprejela na dan, ko je začel veljati.

3. Do začetka veljavnosti tega sporazuma je besedilo tega sporazuma in mnogostranskih trgovinskih sporazumov deponirano pri generalnem direktorju POGODBENIC GATT 1947. Generalni direktor nemudoma dostavi overjeno kopijo tega sporazuma in mnogostranskih trgovinskih sporazumov in notifikacijo o vsakem sprejetju le-teh vsaki vladi in Evropskim skupnostim, ki so ta sporazum sprejele. Ta sporazum in mnogostranski trgovinski sporazumi ter vsi njihovi amandmaji se ob začetku veljavnosti tega sporazuma deponirajo pri generalnem direktorju WTO.

4. Sprejem in začetek veljavnosti večstranskega trgovinskega sporazuma urejajo določbe tega istega sporazuma. Sporazumi te vrste so deponirani pri generalnem direktorju POGODBENIC GATT 1947. Po začetku veljavnosti tega sporazuma se ti sporazumi deponirajo pri generalnem direktorju WTO.

XV. člen

Odstop

1. Vsaka članica lahko odstopi od tega sporazuma. Odstop velja tako za ta sporazum kot za mnogostranske trgovinske sporazume in začne veljati šest mesecev od dneva, ko generalni direktor WTO prejme pisno obvestilo o odstopu.

2. Odstop od večstranskega trgovinskega sporazuma urejajo določbe tega istega sporazuma.

XVI. člen

Razne določbe

1. Če v tem sporazumu ali mnogostranskih trgovinskih sporazumih ni drugače določeno, WTO upošteva odločitve, postopke in običajno prakso POGODBENIC GATT 1947 in organov, ustanovljenih v okviru GATT 1947.

2. V mejah uresničljivih možnosti Sekretariat GATT 1947 postane Sekretariat WTO, generalni direktor POGODBENIC GATT 1947 pa opravlja naloge generalnega direktorja WTO, dokler Ministrska konferenca ne imenuje generalnega direktorja v skladu z drugim odstavkom VI. člena tega sporazuma.

3. Ob nasprotju med določbo tega sporazuma in določbo kateregakoli mnogostranskega trgovinskega sporazuma, določba tega sporazuma prevladuje v mejah tega nasprotja.

4. Vsaka članica zagotavlja usklajenost svojih zakonov, predpisov in upravnih postopkov s svojimi obveznostmi, kot so določene v priloženih sporazumih.

5. Na nobeno določbo tega sporazuma ni možno dati pridržka. Pridržki v zvezi s katerokoli določbo mnogostranskih trgovinskih sporazumov so možni le v mejah, predvidenih v teh istih sporazumih. Pridržke v zvezi z določbo večstranskega trgovinskega sporazuma urejajo določbe tega istega sporazuma.

6. Ta sporazum se registrira v skladu z določbami 102. člena Ustanovne listine Združenih narodov.

SESTAVLJENO v Marakešu petnajstega aprila tisočdevetstoštiriindevetdesetega v enem izvodu v angleškem, francoskem in španskem jeziku, pri čemer je vsako besedilo verodostojno.

Pojasnila:

Izraz "država" ali "države", ki se uporablja v tem sporazumu in mnogostranskih trgovinskih sporazumih, pomeni vsako ločeno carinsko območje, včlanjeno v WTO.

Če ločeno carinsko območje, včlanjeno v WTO, v tem sporazumu in mnogostranskih sporazumih spremlja izraz "nacionalni", je treba tak izraz tolmačiti, kakor da se nanaša na to isto carinsko območje, če ni drugače določeno.

SEZNAM ANEKSOV

ANEKS 1

ANEKS 1 A: Mnogostranski sporazumi o trgovini z blagom
Splošni sporazum o carinah in trgovini 1994
Sporazum o kmetijstvu
Sporazum o uporabi sanitarnih in fitosanitarnih ukrepov
Sporazum o tekstilu in oblačilih
Sporazum o tehničnih ovirah v trgovini
Sporazum o ukrepih na področju vlaganj, ki vplivajo na trgovino
Sporazum o izvajanju VI. člena Splošnega sporazuma o carinah in trgovini 1994
Sporazum o izvajanju VII. člena Splošnega sporazuma o carinah in trgovini 1994
Sporazum o predodpremni kontroli
Sporazum o pravilih o poreklu blaga
Sporazum o postopkih za izdajanje uvoznih dovoljenj
Sporazum o subvencijah in izravnalnih ukrepih
Sporazum o posebnih zaščitnih ukrepih

ANEKS 1 B: Splošni sporazum o trgovini s storitvami in priloge

ANEKS 1 C: Sporazum o trgovinskih vidikih pravic intelektualne lastnine

ANEKS 2

Dogovor o pravilih in postopkih za reševanje sporov

ANEKS 3

Mehanizem za proučitev trgovinske politike

ANEKS 4

Večstranski trgovinski sporazumi

Sporazum o trgovini na področju civilnega letalstva
Sporazum o vladnih nabavah
Mednarodni sporazum o mleku
Mednarodni sporazum o govejem mesu

ANEKS 1

ANEKS 1 A

MNOGOSTRANSKI SPORAZUMI O TRGOVINI Z BLAGOM

Splošna opomba k Aneksu 1 A:
Ob nasprotju med določbo Splošnega sporazuma o carinah in trgovini 1994 in določbo nekega drugega sporazuma v Aneksu 1 A k Sporazumu o ustanovitvi Svetovne trgovinske organizacije (v nadaljnjem besedilu sporazumov iz Aneksa 1 A Sporazum o WTO), prevlada določba drugega sporazuma v mejah nasprotja.

S P L O Š N I S P O R A Z U M
O CARINAH IN TRGOVINI 1994

1. Splošni sporazum o carinah in trgovini 1994 (GATT 1994) sestavljajo:

(a) določbe v Splošnem sporazumu o carinah in trgovini z dne 30. oktobra 1947, ki je priložen Sklepnemu aktu, sprejetemu ob sklenitvi drugega zasedanja Pripravljalnega odbora Konference Združenih narodov o trgovini in zaposlovanju (brez Protokola o začasni uporabi), ter popravljen, dopolnjen ali spremenjen na podlagi pravnih instrumentov, ki so začeli veljati pred dnevom začetka veljavnosti Sporazuma o WTO;

(b) določbe pravnih instrumentov, navedenih spodaj, ki so začeli veljati na podlagi GATT 1947 pred dnevom začetka veljavnosti Sporazuma o WTO:

(i) protokoli in potrditve, ki se nanašajo na carinske koncesije;

(ii) protokoli o pristopu (brez določb (a) o začasni uporabi in preklicu začasne uporabe ter (b), ki določajo, da se II. del GATT 1947 uporablja začasno v največjem obsegu, ki ni v nasprotju z zakonodajo, ki je veljala na dan Protokola);

(iii) odločitve o oprostitvah obveznosti, priznane na podlagi XXV. člena GATT 1947, ki še veljajo na dan začetka veljavnosti Sporazuma o WTO;[1]

(iv) druge odločitve POGODBENIC GATT 1947;

c) dogovori, navedeni spodaj:

(i) Dogovor o razlagi II. 1. (b) člena Splošnega sporazuma o carinah in trgovini 1994;

(ii) Dogovor o razlagi XVII. člena Splošnega sporazuma o carinah in trgovini 1994;

(iii) Dogovor o plačilnobilančnih določbah Splošnega sporazuma o carinah in trgovini 1994;

(iv) Dogovor o razlagi XXIV. člena Splošnega sporazuma o carinah in trgovini 1994;

(v) Dogovor o oprostitvah obveznosti na podlagi Splošnega sporazuma o carinah in trgovini 1994;

(vi) Dogovor o razlagi XXVIII. člena Splošnega sporazuma o carinah in trgovini 1994;

(d) Marakeški protokol h GATT 1994.

2. *Pojasnila*

(a) Navajanje "pogodbenica" v določbah GATT 1994 je treba razumeti kot "članica". Navajanje "manj razvita pogodbenica" in "razvita pogodbenica" je treba razumeti kot "država članica v razvoju" in "razvita država članica". Navajanje "izvršnega sekretarja" je treba razumeti kot "generalni direktor WTO".

(b) Navajanje POGODBENIC, ki delujejo skupno, v členih XV:1, XV:2, XV:8, XXXVIII in opombah k členu XII in XVIII in v določbah o sporazumih o posebni izmenjavi v členih XV:2, XV:3, XV:6, XV:7 in XV:9 GATT 1994 je treba razumeti tako, da se nanašajo na WTO. Druge naloge, ki se v določbah GATT 1994 nanašajo na POGODBENICE, ki delujejo skupno, mora določiti Ministrska konferenca.

(c) (i) Besedilo GATT 1994 je verodostojno v angleškem, francoskem in španskem jeziku.

(ii) Besedilo GATT 1994 v francoskem jeziku je predmet popravkov izrazov, ki so določeni v Aneksu A k dokumentu MTN.TNC/41.

(iii) Verodostojno besedilo GATT 1994 v španskem jeziku je besedilo v IV. knjigi serije Temeljnih instrumentov in izbranih dokumentov in je predmet popravkov izrazov, ki so določeni v Aneksu B k dokumentu MTN.TNC/41.

3. (a) Določbe II. dela GATT 1994 se ne uporabljajo za ukrepe, ki jih članica sprejme na podlagi posebne obvezne zakonodaje, ki jo je ta članica sprejela, preden je postala

1 Oprostitve obveznosti, na katere se nanaša ta določba, so navedene v sedmi opombi na enajsti in dvanajsti strani II. dela dokumenta MTN/FA z dne 15. decembra 1993 in v dokumentu MTN/FA/Corr. 6 z dne 21. marca 1994. Ministrska konferenca na prvem zasedanju sestavi popravljen seznam oprostitev, na katere se nanaša ta določba, ki doda katerekoli oprostitve, priznane na podlagi GATT 1947 po 15. decembru 1993 in pred dnem začetka veljavnosti Sporazuma o WTO, ter črta vse oprostitve, ki do tedaj potečejo.

pogodbenica GATT 1947 in prepovedujejo uporabo, prodajo ali zakup v tujini zgrajenih ali v tujini obnovljenih ladij v komercialni uporabi med kraji v državnih vodah ali vodah izključne ekonomske cone. Ta izjema se nanaša na: (a) nadaljnjo uporabo ali takojšnjo obnovo neskladne določbe take zakonodaje; in (b) na amandma k neskladni določbi take zakonodaje v mejah, v katerih amandma ne zmanjšuje skladnosti določbe z II. delom GATT 1947. Ta izjema je omejena na ukrepe, sprejete na podlagi zgoraj opisane zakonodaje, ki je bila notificirana in določena pred dnem začetka veljavnosti Sporazuma o WTO. Če se taka zakonodaja kasneje spremeni in se zmanjša skladnost z II. delom GATT 1994, ni več ustrezna vsebini tega odstavka.

(b) Ministrska konferenca prouči to izjemo najpozneje v petih letih po dnevu začetka veljavnosti Sporazuma o WTO ter nato vsaki dve leti toliko časa, dokler izjema velja, zato da bi ugotovila, ali pogoji, ki so narekovali potrebo po izjemi, še vedno obstajajo.

(c) Članica, na katere ukrepe se ta izjema nanaša, vsako leto predloži podrobno statistično obvestilo, katere vsebina je povprečje zadnjih petih let dejanskih in pričakovanih dobav ustreznih ladij, kakor tudi dodatne informacije o uporabi, prodaji, zakupu ali popravilu ustreznih ladij, na katere se ta izjema nanaša.

(d) Članica, ki meni, da ta izjema deluje na ta način, da opravičuje vzajemno in sorazmerno omejitev uporabe, prodaje, zakupa ali popravila ladij, zgrajenih na ozemlju članice, ki izjemo uveljavlja, lahko tako omejitev uvede ob predhodni notifikaciji Ministrski konferenci.

(e) Ta izjema ne posega v rešitve v zvezi s posebnimi vidiki zakonodaje, na katere se ta izjema, ki je predmet pogajanj v okviru sektorskih sporazumov ali drugje, nanaša.

DOGOVOR O RAZLAGI II.: 1. (b) ČLENA SPLOŠNEGA SPORAZUMA O CARINAH IN TRGOVINI 1994

Članice se sporazumejo, kot sledi:

1. Da bi zagotovile preglednost zakonitih pravic in obveznosti, ki izhajajo iz prvega (b) odstavka II. člena, je treba naravo in raven katerihkoli "drugih dajatev ali taks", odmerjenih na podlagi vezanih tarifnih postavk, na katere se nanaša ta določba, zapisati v listah koncesij, priloženih h GATT 1994 ob tarifni postavki, na katero se nanašajo. Razume se, da tak zapis ne spreminja pravne narave "drugih dajatev ali taks".

2. Datum, s katerim so "druge dajatve ali takse" vezane za namen II. člena, je 15. april 1994. "Druge dajatve ali takse" je treba zato zapisati v liste na ravneh, ki so bile v uporabi na ta dan. Ob vsakem naslednjem ponovnem pogajanju o koncesiji ali pogajanju o novi koncesiji velja kot dan uporabe za določeno tarifno postavko datum vpisa nove koncesije v listo. Toda datum instrumenta, na podlagi katerega je bila koncesija v zvezi s katerokoli posebno tarifno postavko najprej vpisana v GATT 1947 ali GATT 1994, se še naprej vodi v stolpcu 6 list s prostimi vložki.

3. "Druge dajatve ali takse" se zapišejo v povezavi z vsemi vezanimi carinskimi stopnjami.

4. Če je bila tarifna postavka že prej predmet koncesije, ne more biti raven "drugih dajatev ali taks", zapisana v listi, višja kakor raven, ki je dosežena ob prvem vpisu koncesije v to listo. Vsaka članica lahko izpodbija veljavnost "drugih dajatev ali taks" in to utemeljuje s tem, da ob prvotni vezavi določene postavke taka "druga dajatev ali taksa" ni obstajala, kakor tudi skladnost zabeležene ravni katerekoli "druge dajatve ali takse" s prejšnjo ravnijo v obdobju treh let po datumu začetka veljavnosti Sporazuma o WTO ali tri leta po datumu deponiranja instrumenta, ki določeno listo vključuje v GATT 1994, pri generalnem direktorju WTO, če je ta datum poznejši.

5. Zapis "drugih dajatev ali taks" v listah ne posega v njihovo skladnost s pravicami in obveznostmi na podlagi GATT 1994, razen tistih, na katere učinkuje četrti odstavek. Vse članice ohranijo pravico, da kadarkoli izpodbijajo skladnost katerekoli "druge dajatve ali takse" s takimi obveznostmi.

6. Za namen tega dogovora se uporabljajo določbe XXII. in XXIII. člena GATT 1994, kot so razčlenjene in uporabljene v Dogovoru o reševanju sporov.

7. "Druge dajatve ali takse", ki so bile izpuščene iz liste ob deponiranju instrumenta, ki določeno listo vključuje v GATT 1994, pri generalnem direktorju POGODBENIC GATT 1947 do dneva začetka veljavnosti Sporazuma o WTO ali po tem datumu pri generalnem direktorju WTO, ne smejo biti naknadno dodane in katerakoli "druga dajatev ali taksa", ki je zapisana na ravni, ki je nižja od tiste, ki velja na dan uporabe, ne sme biti ponovno dvignjena na to raven, razen če se taki dodatki ali spremembe opravijo v šestih mesecih od dneva deponiranja instrumenta.

8. Odločitev v drugem odstavku o datumu, ki se uporablja za vsako koncesijo za namen prvega (b) odstavka II. člena GATT 1994, nadomešča odločitev o datumu uporabe, sprejeto 26. marca 1980 (BISD 27S/24).

DOGOVOR O RAZLAGI XVII. ČLENA SPLOŠNEGA SPORAZUMA O CARINAH IN TRGOVINI 1994

Članice se

ob upoštevanju, da XVII. člen predpisuje obveznosti članic v zvezi z dejavnostjo državnih trgovinskih podjetij, omenjenih v prvem odstavku XVII. člena, ki mora biti v skladu s splošnimi načeli nediskriminacijskega obravnavanja, predpisanega v GATT 1994 za vladne ukrepe, ki zadevajo uvoz ali izvoz zasebnih trgovcev,

ob upoštevanju, da morajo članice izpolnjevati svoje obveznosti na podlagi GATT 1994 v zvezi s tistimi vladnimi ukrepi, ki zadevajo državna trgovinska podjetja,

ob spoznanju, da ta dogovor ne posega v temeljne discipline, ki jih predpisuje XVII. člen,

sporazumejo, kot sledi:

1. Da bi zagotovile preglednost dejavnosti državnih trgovinskih podjetij, članice Svetu za trgovino z blagom notificirajo ta podjetja z namenom, da jih prouči delovna skupina, ki se ustanovi na podlagi petega odstavka v skladu z naslednjo delovno definicijo:

"Vladna ali nevladna podjetja, vključno s tržnimi odbori, ki so jim bile priznane ekskluzivne ali posebne pravice ali privilegiji, vključno z zakonskimi ali ustavnimi pooblastili, z izvajanjem katerih pri nabavah in prodajah vplivajo na raven ali smer uvoza ali izvoza."

Ta zahteva po notifikaciji ne velja za uvoz ali izvoz proizvodov za takojšnjo ali končno porabo vlade ali podjetja, kot je opisano zgoraj, in ne drugače za preprodajo ali uporabo v proizvodnji blaga za prodajo.

2. Vsaka članica ob upoštevanju določb tega dogovora proučuje svojo politiko v zvezi z notifikacijo državnih trgovinskih podjetij Svetu za trgovino z blagom. Pri takem proučevanju mora vsaka članica upoštevati potrebo po zagotovitvi največje možne preglednosti v svojih notifikacijah, tako da omogočajo jasno presojo načina delovanja notificiranih podjetij in učinkov njihove dejavnosti na mednarodno trgovino.

3. Notifikacije morajo biti v skladu z vprašalnikom o državni trgovini, sprejetim 24. maja 1960 (BISD 9S/184 - 185), pri čemer se razume, da članice notificirajo podjetja, omenjena v prvem odstavku, ne glede na to ali je bil uvoz ali izvoz dejansko opravljen.

4. Vsaka članica, ki z razlogom meni, da druga članica ni v ustreznem obsegu izpolnila svoje obveznosti notifikacije, lahko sproži zadevo pri tej članici. Če zadeva ni zadovoljivo rešena, lahko predloži nasprotno notifikacijo Svetu za trgovino z blagom, da jo prouči delovna skupina, ustanovljena na podlagi petega odstavka, ob sočasnem obvestilu te članice.

5. Ustanovi se delovna skupina, ki v imenu Sveta za trgovino z blagom prouči notifikacije in nasprotne notifikacije. V luči te proučitve in brez poseganja v četrti (c) odstavek XVII. člena lahko Svet za trgovino z blagom sprejme priporočila v zvezi z ustreznostjo notifikacij in potrebo po nadaljnjih informacijah. Delovna skupina v zvezi s prejetimi notifikacijami prouči tudi ustreznost zgoraj omenjenega vprašalnika o državni trgovini in vključenost državnih trgovinskih podjetij, notificiranih po prvem odstavku.Sestavi tudi ponazoritveni seznam, ki prikaže vrste povezav med vladami in podjetji ter vrste dejavnosti, ki jih ta podjetja opravljajo, ki so lahko relevantne za namen XVII. člena. Razume se, da Sekretariat delovni skupini zagotovi splošni dopolnilni dokument o delovanju državnih trgovinskih podjetij z vidika vpliva tega delovanja na mednarodno trgovino. Članstvo delovne skupine je odprto za vse članice, ki izrazijo željo, da v njej sodelujejo. Sestane se v enem letu od dneva začetka veljavnosti Sporazuma o WTO in potem vsaj enkrat letno. Letno poroča Svetu za trgovino z blagom.[1]

1 Dejavnosti te delovne skupine je treba uskladiti z dejavnostmi delovne skupine, predvidene v III. poglavju Ministrske odločitve o postopkih notifikacije, sprejete 15. aprila 1994.

DOGOVOR O PLAČILNOBILANČNIH DOLOČBAH SPLOŠNEGA SPORAZUMA O CARINAH IN TRGOVINI 1994

Članice se

ob upoštevanju določb XII. in XVIII:B člena GATT 1994 ter Deklaracije o trgovinskih ukrepih, ki se uporabljajo iz plačilnobilančnih razlogov, sprejete 28. novembra 1979 (BISD 26S/205-209, v nadaljnjem besedilu Deklaracija 1979), z namenom večje jasnosti teh določb[1]

sporazumejo, kot sledi:

Uporaba ukrepov

1. Članice potrjujejo svojo obvezo, kakor hitro je mogoče, javno objaviti časovne razporede za odpravo omejitvenih uvoznih ukrepov, sprejetih iz plačilnobilančnih razlogov. Razume se, da se taki časovni razporedi lahko ustrezno spreminjajo, tako da upoštevajo spremembe v stanju plačilne bilance. Kadarkoli članica časovnih razporedov javno ne objavi, mora utemeljiti razloge za to.

2. Članice potrjujejo svojo obvezo dajati prednost tistim ukrepom, ki najmanj motijo trgovino. Velja, da taki ukrepi (v tem dogovoru imenovani "cenovno zasnovani ukrepi") vključujejo dodatne uvozne dajatve, zahteve po uvoznih depozitih ali druge enakovredne trgovinske ukrepe, ki vplivajo na ceno uvoženega blaga. Ne glede na določbe II. člena se razume, da članica lahko iz plačilnobilančnih razlogov uporabi cenovno zasnovane ukrepe, ki presegajo carinske stopnje, v listi te članice. Dalje, ta članica jasno in ločeno v skladu s postopkom notifikacije navede znesek, ki ustreza presežku cenovno zasnovanega ukrepa nad vezano carinsko stopnjo.

3. Članice si prizadevajo izogibati uvajanju novih količinskih omejitev iz plačilnobilančnih razlogov, razen če v kritičnem plačilnobilančnem položaju cenovno zasnovani ukrepi ne morejo ustaviti hitrega poslabšanja pozicije eksternih plačil. V tistih primerih, v katerih članica uporablja količinske omejitve, utemelji razloge, zakaj cenovno zasnovani ukrepi niso ustrezno sredstvo za reševanje plačilnobilančnega položaja. Članica, ki ohranja količinske omejitve, mora pri naslednjih posvetovanjih prikazati napredek pri znatnem zmanjšanju pogostosti in pri omejevalnem učinku takih ukrepov. Razume se, da za isti proizvod ni mogoče uporabiti več kot ene vrste omejitvenih uvoznih ukrepov, sprejetih iz plačilnobilančnih razlogov.

4. Članice potrjujejo, da se omejitveni ukrepi, ki so sprejeti iz plačilnobilančnih razlogov, lahko uporabijo le za uravnavanje splošne ravni uvoza in ne smejo preseči tega, kar je potrebno, da se rešuje plačilnobilančni položaj. Zato da bi katerekoli stranske posledice take zaščite spravili na najmanjšo možno raven, članica uporablja omejitve na pregleden način. Oblasti članice uvoznice zagotavljajo primerno utemeljitev za merila, uporabljena pri določanju, kateri proizvodi so predmet omejitev. V skladu s tretjim odstavkom XII. člena in desetim odstavkom XVIII. člena lahko članice v primeru določenih osnovnih proizvodov izključijo ali omejijo uporabo dajatev, uporabljenih na splošno, ali drugih ukrepov, ki se uporabljajo iz plačilnobilančnih razlogov. Izraz "osnovni proizvodi" je treba razumeti kot proizvode, ki zadovoljujejo osnovne potrebe porabe ali prispevajo k prizadevanjem članice, da izboljša svoj plačilnobilančni položaj, kot so kapitalne dobrine ali inputi, potrebni za proizvodnjo. Pri uporabi količinskih omejitev članica uporabi neavtomatično izdajanje dovoljenj samo takrat, ko se temu ne more izogniti in ga progresivno postopoma odpravi. Treba je zagotoviti ustrezno utemeljitev meril, uporabljenih za določitev dovoljenih uvoznih količin ali vrednosti.

Postopki plačilnobilančnih posvetovanj

5. Odbor za plačilnobilančne omejitve (v besedilu tega dogovora Odbor) organizira posvetovanja z namenom, da prouči vse omejitvene uvozne ukrepe, ki so sprejeti iz plačilnobilančnih razlogov. Članstvo v Odboru je odprto za vse članice, ki izrazijo željo za sodelovanje v njem. Odbor sledi postopkom za posvetovanja o plačilnobilančnih omejitvah, odobrenih 28. aprila 1970 (BISD 18 S/48-53, v besedilu tega dogovora "postopki polnega posvetovanja"), ki so predmet spodaj določenih določb.

6. Članica, ki uporablja nove omejitve ali dviguje splošno raven obstoječih omejitev z bistveno poostritvijo ukrepov, se mora v štirih mesecih po sprejetju takih ukrepov posvetovati z Odborom. Članica, ki sprejme take ukrepe, lahko zahteva, da se posvetovanje izvede po četrtem (a) odstavku XII. člena ali dvanajstem (a) odstavku XVIII. člena, kar ustreza. Če take zahteve ni, predsednik Odbora povabi članico, da opravi tako posvetovanje. Dejavniki, ki so lahko predmet proučitve med posvetovanjem, so med drugimi uvajanje novih vrst omejitvenih ukrepov iz plačilnobilančnih razlogov ali povišanje ravni omejitev ali širjenje kroga proizvodov, ki so predmet omejitev.

7. Vse omejitve, ki se uporabljajo iz plačilnobilančnih razlogov, so predmet občasne proučitve Odbora na podlagi četrtega (b) odstavka XII. člena ali na podlagi dvanajstega

1 V tem dogovoru nobena določba nima namena spremeniti pravic in obveznosti članic na podlagi XII. ali XVIII.:B člena GATT 1994. V zvezi s katerimikoli zadevami, ki izhajajo iz uporabe omejitvenih uvoznih ukrepov, sprejetih iz plačilnobilančnih razlogov, lahko uveljavlja določbe XXII. in XXIII. člena GATT 1994, kot so razčlenjene in uporabljene v Dogovoru o reševanju sporov.

(b) odstavka XVIII. člena ob možnosti, da se občasnost posvetovanj spremeni v sporazumu s članico ali na podlagi določenega posebnega postopka proučitve, ki ga lahko priporoči Generalni svet.

8. V primeru najmanj razvitih držav članic ali v primeru članic držav v razvoju, ki si prizadevajo za liberalizacijo v skladu z načrtom, ki so ga predstavile Odboru na prejšnjih posvetovanjih, se lahko posvetovanja izvedejo po poenostavljenih postopkih, odobrenih 19. decembra 1972 (BISD 20S/47-49, v besedilu tega dogovora "poenostavljeni postopki posvetovanj"). Poenostavljeni postopki posvetovanj se lahko uporabijo tudi, kadar se v istem koledarskem letu, v katerem je določen datum posvetovanja, predvideva proučitev trgovinske politike države članice v razvoju. V takih primerih se odločitev, ali naj se uporabijo polni postopki posvetovanj, sprejme na podlagi dejavnikov, ki so našteti v osmem odstavku Deklaracije 1979. Po poenostavljenih postopkih posvetovanj se ne moreta izvesti več kot dve zaporedni posvetovanji, razen v primeru najmanj razvitih držav članic.

Notifikacija in dokumentacija

9. Članica Generalnemu svetu notificira uvedbo ali spremembo omejitvenih uvoznih ukrepov, sprejetih iz plačilnobilančnih razlogov, kakor tudi kakršnokoli spremembo v časovnem razporedu za odpravo teh ukrepov, ki so napovedani na podlagi prvega odstavka. Bistvene spremembe morajo biti notificirane Generalnemu svetu prej ali najpozneje v 30 dneh po njihovi napovedi. Vsaka članica enkrat letno Sekretariatu zagotovi konsolidirano notifikacijo, ki vsebuje vse spremembe v zakonih, predpisih, izjavah v zvezi z določeno politiko ali javnih objavah, z namenom, da jih članice proučijo. Notifikacije, kolikor je mogoče, vsebujejo popolne informacije na ravni tarifne postavke, o vrsti uporabljenih ukrepov, merilih, ki jih uporabljajo pri njihovi uporabi, katere proizvode zajemajo in kateri trgovinski tokovi so z njimi prizadeti.

10. Na zahtevo katerekoli članice Odbor lahko prouči notifikacije. Take proučitve je treba omejiti na pojasnila posebnih vprašanj, ki jih vsebuje notifikacija, ali na proučitev potrebe posvetovanja na podlagi četrtega (a) odstavka XII. člena ali dvanajstega (a) odstavka XVIII. člena. Članice, ki utemeljeno domnevajo, da je bil omejitveni uvozni ukrep, ki ga uporablja druga članica, sprejet iz plačilnobilančnih razlogov, lahko na zadevo opozorijo Odbor. Predsednik Odbora zahteva informacije o sprejetem ukrepu in jih da na razpolago vsem članicam. Članica, ki se posvetuje, lahko vnaprej dobi vprašanja v proučitev, kar ne posega v pravico katerekoli članice Odbora, da zahteva ustrezna pojasnila med posvetovanji.

11. Članica, ki se posvetuje, pripravi temeljni dokument za posvetovanje, ki poleg drugih ustreznih informacij vključuje: (a) pregled plačilnobilančnega položaja in izgledov, vključno z oceno notranjih in zunanjih dejavnikov, ki vplivajo na plačilnobilančni položaj, domače ukrepe, sprejete za ponovno vzpostavitev ravnovesja na zdravi in trajni podlagi; (b) popoln opis omejitev, ki se uporabljajo iz plačilnobilančnih razlogov, njihove pravne podlage ter ukrepov, ki se izvajajo za zmanjšanje stranskih učinkov zaščite; (c) ukrepe, ki so sprejeti med zadnjim posvetovanjem za liberalizacijo uvoznih omejitev v luči sklepov Odbora; (d) načrt za odpravo in progresivno sprostitev preostalih omejitev. Če je relevantno, se lahko sklicuje na informacije, ki so dane v drugih notifikacijah ali poročilih, danih WTO. Na podlagi poenostavljenih postopkov posvetovanj članica, ki se posvetuje, da pisno izjavo, ki vsebuje bistvene informacije o elementih, ki jih vsebuje temeljni dokument.

12. Sekretariat z namenom, da Odboru omogoči posvetovanja, pripravi dokument, ki vsebuje dejstva in potrebne informacije in obravnava različne vidike načrta posvetovanj. V primeru članic držav v razvoju dokument Sekretariata vsebuje ustrezno dopolnilno in analitično gradivo o vplivu zunanje trgovinskega okolja na plačilnobilančni položaj in perspektive članice, ki se posvetuje. Služba tehnične pomoči Sekretarita na zahtevo članice države v razvoju pomaga pri pripravi dokumentacije za posvetovanja.

Sklepi posvetovanj o plačilni bilanci

13. Odbor o svojih posvetovanjih poroča Generalnemu svetu. Kadar so uporabljeni polni postopki posvetovanj, poročilo navaja sklepe Odbora o različnih elementih načrta za posvetovanja kakor tudi dejstva in razloge, na katerih temeljijo. Odbor si prizadeva v svoja posvetovanja vključiti predloge priporočil, ki so namenjena pospeševanju izvajanja XII. in XVIII.:B člena, Deklaracije 1979 in tega dogovora. Kadar je predložen časovni razpored odprave omejitvenih ukrepov, sprejetih iz plačilnobilančnih razlogov, Generalni svet lahko priporoči, da mora članica ob spoštovanju takega časovnega razporeda izpolnjevati svoje obveznosti v skladu z GATT 1994. Kadarkoli Generalni svet izdela posebna priporočila, se pravice in obveznosti članic ocenjujejo glede na ta priporočila. Kadar ni posebnih predlogov za priporočila Generalnega sveta, morajo sklepi Odbora vsebovati različne poglede, izražene v Odboru. Kadar se uporabljajo poenostavljeni postopki posvetovanj, poročilo vsebuje povzetek glavnih elementov, ki so obravnavana v Odboru, in odločitev o tem, ali so potrebni polni postopki posvetovanja.

DOGOVOR O RAZLAGI XXIV. ČLENA SPLOŠNEGA SPORAZUMA O CARINAH IN TRGOVINI IZ LETA 1994

Članice se

glede na določbe XXIV. člena GATT 1994,

ob spoznanju, da sta se znatno povečala število in pomen carinskih unij in prostih trgovinskih območij od vzpostavitve GATT 1947 dalje in danes zajemajo pomemben delež svetovne trgovine,

ob spoznanju prispevka k širitvi svetovne trgovine, ki je dosegljiv z boljšim povezovanjem gospodarstev pogodbenic takih sporazumov,

ob spoznanju, da se tak prispevek poveča, če se odprava carin in drugih omejitvenih predpisov med udeleženimi območji razširi na vso trgovino in zmanjša, če je katerikoli pomembnejših sektorjev trgovine izključen,

ob ponovni potrditvi, da mora biti namen takih sporazumov olajšati trgovino med udeleženimi območji in ne postavljati ovir v trgovini drugih članic s temi območji in da bi se morale pogodbenice pri nastajanju ali razširjanju v najširšem možnem obsegu izogibati škodljivim posledicam v trgovini z drugimi članicami,

prepričane o potrebi po okrepitvi učinkovitosti vloge Sveta za trgovino z blagom pri proučevanju sporazumov, notificiranih po XXIV. členu, z razjasnitvijo meril in postopkov za presojo novih ali razširjenih sporazumov in izboljšanjem preglednosti vseh sporazumov po XXIV. členu,

ob spoznanju potrebe po skupnem razumevanju obveznosti članic po dvanajstem odstavku XXIV. člena

sporazumejo, kot sledi:

1. Carinske unije, območja proste trgovine ter začasni sporazumi, ki vodijo k nastajanju carinskih unij ali območij proste trgovine, morajo, da bi bili v skladu z XXIV. členom, med drugim zadostiti določbam petega, šestega, sedmega in osmega odstavka tega člena.

XXIV: 5. člen

2. Na podlagi petega (a) odstavka XXIV. člena ocena splošnih učinkov carin in drugih predpisov v trgovini, ki se uporabljajo pred in po nastanku carinske unije, glede carin in dajatev temelji na celoviti oceni ponderiranih povprečnih carinskih stopenj in zbranih carinskih dajatev. Ta ocena temelji na uvoznih statističnih podatkih za prejšnje reprezentativno obdobje, ki jih carinska unija priskrbi po vrednosti in količini na podlagi tarifne postavke, ter jih razčleni po WTO državi porekla. Sekretariat v skladu z metodologijo, uporabljeno pri oceni carinskih ponudb v okviru mnogostranskih pogajanj v Urugvajskem krogu, izračuna ponderirano povprečje carinskih stopenj in zbranih carinskih dajatev. Za ta namen so carine in dajatve, ki se upoštevajo, dejansko uporabljene carinske stopnje. Priznava se, da je lahko za celovito ovrednotenje vplivov drugih trgovinskih predpisov, katerih količinsko ovrednotenje je težavno, lahko potrebna proučitev posameznih ukrepov, predpisov, določenih obravnavanih proizvodov, in trgovinskih tokov, ki so pod takimi vplivi.

3. "Razumno obdobje", omenjeno v petem (c) odstavku XXIV. člena, sme preseči 10 let le v izjemnih primerih. Kadar članice pogodbenice začasnih sporazumov menijo, da bi bilo 10 let premalo, zagotovijo Svetu za trgovino z blagom popolno pojasnilo potrebe po daljšem obdobju.

XXIV: 6. člen

4. Šesti odstavek XXIV. člena določa postopek, po katerem se je treba ravnati, ko država, ki sestavlja carinsko unijo, predlaga povišanje vezane carinske stopnje. Glede tega članice ponovno potrjujejo, da je treba postopek, določen v XXVIII. členu, ki je razčlenjen v navodilih, sprejetih 10. novembra 1980 (BISD 27S/26- 28), ter v Dogovoru o razlagi XXVIII. člena GATT 1994, začeti, preden se carinske koncesije ob nastajanju carinske unije ali začasnega sporazuma, ki vodi k nastajanju carinske unije, spremenijo ali umaknejo.

5. Ta pogajanja se začnejo v dobri veri z namenom, da bi dosegli medsebojno zadovoljivo kompenzacijo. Pri takih pogajanjih je treba, kot zahteva šesti odstavek XXIV. člena, upoštevati ustrezno znižanje dajatev pri isti tarifni postavki, ki jih sprejmejo druge udeleženke carinske unije ob njenem nastajanju. Če ta znižanja ne bi bila zadostna za kompenzacijo, carinska unija ponudi kompenzacijo, ki je lahko v obliki znižanja dajatev pri drugih tarifnih postavkah. Članice, ki imajo pravico do pogajanj o obveznostih, ki se spreminjajo ali ukinjajo, proučijo tako ponudbo. Če bi kompenzacija ostala nesprejemljiva, je treba s pogajanji nadaljevati. Če kljub takim prizadevanjem ni mogoče doseči sporazuma v pogajanjih o kompenzaciji po XXVIII. členu, kot je razčlenjen z Dogovorom o razlagi XXVIII. člena GATT 1994, v razumnem obdobju od začetka pogajanj, carinska unija kljub temu lahko spremeni ali umakne koncesije; prizadete članice pa imajo pravico umakniti v bistvu enakovredne koncesije v skladu z XXVIII. členom.

6. GATT 1994 ne nalaga obveznosti članicam, ki imajo koristi od znižanja dajatev, ki je posledica nastajanja carinske unije ali začasnega sporazuma, ki vodi k nastajanju carinske unije, da njenim udeleženkam omogoči kompenzacijo.

Proučevanje carinskih unij in območij proste trgovine

7. Vse notifikacije na podlagi sedmega (a) odstavka XXIV. člena prouči delovna skupina ob upoštevanju ustreznih določb GATT 1994 in prvega odstavka tega dogovora. Delovna skupina predloži Svetu za trgovino z blagom poročilo o svojih ugotovitvah. Svet za trgovino z blagom lahko članicam daje taka priporočila, za katera meni, da so ustrezna.

8. Delovna skupina lahko v svojem poročilu glede začasnih sporazumov oblikuje ustrezna priporočila v zvezi s predlogi o časovnih okvirih in potrebnih ukrepih za to, da se dokonča nastajanje carinske unije ali območja proste trgovine. Če je potrebno, lahko poskrbi za nadaljnje proučevanje sporazuma.

9. Članice pogodbenice začasnega sporazuma Svetu za trgovino z blagom notificirajo bistvene spremembe v načrtu in razporedu, ki sta vključena v tem sporazumu, in Svet na zahtevo prouči spremembe.

10. Če začasni sporazum, notificiran po sedmem (a) odstavku XXIV. člena, ne bi vseboval načrta in razporeda, kar je v nasprotju s petim (c) odstavkom XXIV. člena, delovna skupina v svojem poročilu priporoči tak načrt in razpored. Članice ne ohranijo ali uveljavijo takega sporazuma, odvisno od primera, če ga niso pripravljene spremeniti v skladu s temi priporočili. Treba je poskrbeti za naknadno proučitev uresničevanja priporočil.

11. Carinske unije in članice območij proste trgovine morajo v določenih časovnih presledkih poročati Svetu za trgovino z blagom o delovanju ustreznega sporazuma, kot so predvidele POGODBENICE GATT 1947 v svojem navodilu Svetu GATT 1947 v zvezi s poročili o regionalnih sporazumih (BISD 18S/38). O vseh pomembnih spremembah in/ali novostih v zvezi s sporazumi je treba poročati takoj, ko nastanejo.

Reševanje sporov

12. V zvezi z zadevami, ki izhajajo iz uporabe tistih določil XXIV. člena, ki se nanašajo na carinske unije, območja proste trgovine ali začasne sporazume, ki vodijo k nastajanju carinske unije ali območja proste trgovine, se lahko uveljavljajo določbe XXII. in XXIII. člena GATT 1994, kot so razčlenjene in uporabljene v Dogovoru o reševanju sporov.

XXIV: 12. člen

13. Vsaka članica je na podlagi GATT 1994 v polni meri odgovorna za spoštovanje vseh določb GATT 1994 ter mora sprejeti take razumne ukrepe, ki so ji na voljo, da zagotovi, da jih spoštujejo regionalne in lokalne vlade in oblasti znotraj njenega ozemlja.

14. Določbe XXII. in XXIII. člena GATT 1994, kot so razčlenjene in uporabljene v Dogovoru o reševanju sporov, se lahko uveljavijo v zvezi z ukrepi za zagotavljanje spoštovanja teh določb na ravni regionalnih in lokalnih vlad ali oblasti znotraj ozemlja članice. Ko Organ za reševanje sporov ugotovi, da se določba GATT 1994 ne spoštuje, mora odgovorna članica sprejeti take razumne ukrepe, kot so ji na voljo, za zagotovitev njenega spoštovanja. Določbe, ki se nanašajo na kompenzacijo in ukinitev koncesij ali drugih obveznosti, se uporabljajo, kadar takega spoštovanja ni bilo možno doseči.

15. Vsaka članica si bo prizadevala, da bo z naklonjenostjo proučila ter zagotovila ustrezne možnosti za posvetovanje za vsako predstavitev, ki jo pripravi neka druga članica v zvezi z ukrepi, sprejetimi na njenem ozemlju, ki vplivajo na delovanje GATT 1994.

DOGOVOR O OPROSTITVAH OBVEZNOSTI NA PODLAGI SPLOŠNEGA SPORAZUMA O CARINAH IN TRGOVINI 1994

Članice se sporazumejo, kot sledi:

1. Zahteva po oprostitvi obveznosti ali podaljšanju obstoječe oprostitve obveznosti vsebuje ukrepe, ki jih članica namerava sprejeti, cilje posebne politike, ki jih članica želi doseči, ter razloge, ki preprečujejo, da članica doseže cilje svoje politike z ukrepi, ki so v skladu z njenimi obveznostmi

na podlagi GATT 1994.

2. Vsaka oprostitev obveznosti, ki velja na dan začetka veljavnosti Sporazuma o WTO, poteče, razen če je podaljšana v skladu s postopki, opisanimi zgoraj, in postopki IX. člena Sporazuma o WTO na dan poteka njene veljavnosti ali dve leti od dneva začetka veljavnosti Sporazuma o WTO, odvisno od tega, kateri datum je zgodnejši.

3. Vsaka članica, ki meni, da se koristi, ki ji pripadajo po GATT 1994, izničujejo ali okrnejo kot posledica

a) tega, da članica, ki ji je bila oprostitev priznana, ne spoštuje pogojev oprostitve obveznosti, ali

b) uporabe ukrepa, ki je v skladu s pogoji oprostitve obveznosti,

lahko uveljavlja določbe XXIII. člena GATT 1994, kot so razčlenjene in uporabljene v Dogovoru o reševanju sporov.

DOGOVOR O RAZLAGI XXVIII. ČLENA SPLOŠNEGA SPORAZUMA O CARINAH IN TRGOVINI 1994

Članice se sporazumejo, kot sledi:

1. Za namen spremembe ali umika koncesije se šteje, da ima članica z najvišjim razmerjem izvoza, na katerega vpliva koncesija (t.j. izvoza proizvoda na trg članice, ki spreminja ali umika koncesijo), glede na svoj celotni izvoz glavni dobaviteljski interes, če nima že prednostne pogajalske pravice ali glavnega dobaviteljskega interesa, kot je določen s prvim odstavkom XXVIII. člena. Vendar je dogovorjeno, da Svet za trgovino z blagom ta odstavek proučí v petih letih od dneva začetka veljavnosti Sporazuma o WTO, da odloči, ali to merilo zadovoljivo deluje pri zagotavljanju prerazporeditve pogajalskih pravic v korist majhnih in srednje velikih članic izvoznic. Če to ni tako, je treba ob ustreznih podatkih, ki so na razpolago, proučiti možne izboljšave, vključno s sprejemom merila, ki temelji na razmerju izvoza, na katerega vpliva koncesija, do izvoza tega proizvoda na vse trge.

2. Če članica meni, da ima glavni dobaviteljski interes pod pogoji prvega odstavka, mora svoj zahtevek z dokazili pisno sporočiti članici, ki predlaga spremembo ali umik koncesije, ter hkrati obvestiti Sekretariat. V teh primerih se uporablja četrti odstavek Postopkov za pogajanja na podlagi XXVIII. člena, sprejetih 10. novembra 1980 (BISD 27S/26-28).

3. Pri določanju, katere članice imajo glavni dobaviteljski interes (bodisi kakor je predpisano v prvem odstavku zgoraj ali v prvem odstavku XXVIII. člena) ali bistveni interes, se upošteva le trgovina z določenim proizvodom, ki je potekala na osnovi največjih ugodnosti. Vendar se upošteva tudi trgovina z določenim proizvodom, ki se je odvijala na podlagi nepogodbenih preferencialov, če trgovina ni več imela koristi od takega preferencialnega obravnavanja ter je tako postala trgovina na osnovi največjih ugodnosti med pogajanjem za spremembo ali umik koncesije, ali pa se to zgodi do konca tega pogajanja.

4. Če se carinska koncesija za nov proizvod spremeni ali umakne (npr. proizvod, za katerega triletni trgovinski statistični podatki niso na voljo), se šteje, da ima članica, ki ima prednostne pogajalske pravice v zvezi z določeno tarifno postavko, v katero je proizvod uvrščen ali je bil prej uvrščen, prednostno pogajalsko pravico pri določeni koncesiji. Določitev glavnih dobaviteljskih in bistvenih interesov ter izračun kompenzacije mora med drugim upoštevati proizvodne zmogljivosti ter vlaganje v določen proizvod v članici, ki izvaža, ter izračune izvozne rasti kakor tudi napovedi povpraševanja po proizvodu v članici, ki uvaža. Za namen tega odstavka velja, da "novi proizvod" vključuje tarifno postavko, ki nastane z razčlenitvijo obstoječe tarifne postavke.

5. Če članica meni, da ima glavni dobaviteljski ali bistveni interes na podlagi pogojev četrtega odstavka, mora svoj zahtevek z dokazili pisno sporočiti članici, ki predlaga spremembo ali umik koncesije, ter hkrati obvestiti Sekretariat. V teh primerih se uporablja četrti odstavek zgoraj omenjenih Postopkov za pogajanja po XXVIII. členu.

6. Kadar se neomejena carinska koncesija zamenja s carinsko kvoto, bi morala biti vrednost predvidene kompenzacije večja od vrednosti trgovine, ki je dejansko prizadeta s spremembo koncesije. Podlaga za izračun kompenzacije bi morala biti vrednost, za katero pričakovana trgovina presega raven kvote. Razume se, da izračun za pričakovano trgovino temelji na tistem, kar je večje kot:

a) povprečje letne trgovine v zadnjem reprezentativnem triletnem obdobju, povečano za povprečno letno stopnjo rasti uvoza v istem obdobju ali za 10 odstotkov, kar je več; ali

b) trgovina v zadnjem letu, povečana za 10 odstotkov.

V nobenem od teh primerov ne sme obveznost članice v zvezi s kompenzacijo presegati tiste, ki bi bila posledica popolnega umika koncesije.

7. Vsaki članici, ki ima glavni dobaviteljski interes, bodisi po prvem odstavku zgoraj ali prvem odstavku XXVIII. člena, je v zvezi s koncesijo, ki je spremenjena ali umaknjena, dana prednostna pogajalska pravica za kompenzacijo, razen če se določene članice ne dogovorijo o drugačni obliki kompenzacije.

MARAKEŠKI PROTOKOL K SPLOŠNEMU SPORAZUMU O CARINAH IN TRGOVINI 1994

Članice se,

potem ko so opravile pogajanja v okviru GATT 1947 v skladu z Ministrsko deklaracijo o Urugvajskem krogu,

sporazumejo, kot sledi:

1. Lista, priložena k temu protokolu, ki se nanaša na članico, postane lista h GATT 1994, ki se nanaša na to članico na dan, ko zanjo začne veljati Sporazum o WTO. Za vsako listo, dano v skladu z ministrsko odločitvijo o ukrepih v korist najmanj razvitih držav, se šteje, da je priložena k temu protokolu.

2. Znižanja carinskih stopenj, s katerimi se strinja vsaka članica, se izvajajo v petih enakih obrokih, razen če je v listi članice drugače določeno. Prvo tako znižanje začne veljati na dan začetka veljavnosti Sporazuma o WTO, vsako naslednje znižanje pa začne veljati 1. januarja vsako naslednje leto, zadnje znižanje pa začne veljati najkasneje štiri leta od dneva začetka veljavnosti Sporazuma o WTO, razen če je v listi članice drugače določeno. Če ni drugače določeno v njeni listi, članica, ki sprejme Sporazum o WTO po njegovem začetku veljavnosti, na dan, ko Sporazum začne veljati zanjo, uveljavi vse obroke znižanj, ki so že bili izvedeni, skupaj z znižanji, ki bi jih morala po prejšnjem stavku izvesti 1. januarja naslednje leto, in izvaja vsa nadaljnja znižanja po časovnem razporedu, določenem v prejšnjem stavku. Znižana stopnja v vsaki fazi se zaokrožuje na prvo decimalko. Za kmetijske proizvode, kot so določeni v 2. členu Sporazuma o kmetijstvu, se stopnjevanje znižanj uveljavlja, kot je določeno v ustreznih delih list.

3. Izpolnjevanje koncesij in obvez, ki so vsebovane v listah, priloženih k temu protokolu, članice na zahtevo mnogostransko proučijo. To ne posega v pravice in obveznosti članic na podlagi sporazumov v Aneksu 1 A Sporazuma o WTO.

4. Ko lista, priložena k temu protokolu, ki se nanaša na članico, postane lista GATT 1994 v skladu z določbami

prvega odstavka, taka članica lahko kadarkoli pridrži ali umakne v celoti ali deloma koncesijo v tej listi glede katerega koli proizvoda, katerega glavni dobavitelj je neka druga udeleženka Urugvajskega kroga, katere lista še ni postala lista GATT 1994. Vendar pa se tak ukrep lahko sprejme samo potem, ko je bilo pisno sporočilo o pridržani ali umaknjeni koncesiji predloženo Svetu za trgovino z blagom in potem ko so bila na zahtevo opravljena posvetovanja z vsako članico, katere ustrezna lista je postala lista GATT 1994 in ima bistven interes za določeni proizvod. Vsaka tako pridržana ali umaknjena koncesija se uporablja od dneva, ko lista članice, ki ima glavni dobaviteljski interes, postane lista GATT 1994.

5. (a) Datum, ki se uporablja v zvezi z vsakim proizvodom, na katerega se nanaša koncesija, ki je določena v listi koncesij, priloženi k temu protokolu, je datum tega protokola brez poseganja v določbe drugega odstavka 4. člena Sporazuma o kmetijstvu za namen sklicevanja na datum tistega sporazuma v prvem (b) in prvem (c) odstavku II. člena GATT 1994.

(b) Za namen sklicevanja na datum tistega sporazuma v šestem (a) odstavku II. člena GATT 1994 je datum tega protokola veljavni datum, ki se nanaša na listo koncesij, priloženo k temu protokolu.

6. V primerih spremembe ali umika koncesij, ki se nanašajo na necarinske ukrepe, kot so vsebovani v III. delu list, se uporabljajo določbe XXVIII. člena GATT 1994 in Postopki za pogajanja po XXVIII. členu, sprejeti 10. novembra 1980 (BISD 27S/26-28). To ne posega v pravice in obveznosti članic na podlagi GATT 1994.

7. V vsakem primeru, ko je lista, priložena k temu protokolu, za neki proizvod manj ugodna, kot je bilo za ta proizvod predvideno v listah GATT 1947 pred začetkom veljavnosti Sporazuma o WTO, se šteje, da je članica, na katero se lista nanaša, ustrezno ravnala, kot bi bilo sicer potrebno po ustreznih določbah XXVIII. člena GATT 1947 ali 1994. Določbe tega odstavka veljajo le za Egipt, Peru, Južno Afriko in Urugvaj.

8. Liste, ki so tu priložene, so verodostojne v angleškem, francoskem ali španskem jeziku, kakor je določeno v vsaki listi.

9. Ta protokol ima datum 15. april 1994.

S P O R A Z U M
O KMETIJSTVU

Članice se

po odločitvi, da vzpostavijo podlago za začetek postopka za preobrazbo trgovine na področju kmetijstva v skladu s cilji pogajanj, kot so določeni v Deklaraciji iz Punte del Este,

ob upoštevanju, da je njihov dolgoročni cilj, o katerem so se sporazumele v Srednjeročnem pregledu Urugvajskega kroga, "oblikovati pravičen in tržno naravnan sistem kmetijske trgovine in da bi bilo treba s pogajanji o obvezah glede podpore in zaščite ter z oblikovanjem okrepljenih in operativno učinkovitejših pravil in disciplin GATT začeti proces preobrazbe",

ob nadaljnjem upoštevanju, da "je zgoraj omenjeni dolgoročni cilj zagotoviti znatna progresivna zmanjšanja kmetijske podpore in zaščite, ki se ohranjajo v dogovorjenem obdobju in pomenijo popravljanje in preprečevanje omejitev in izkrivljanja na svetovnih kmetijskih trgih",

odločene doseči določene posebne zavezujoče obveze na vsakem od teh področij: dostop na trg, domača podpora, izvozna konkurenca in doseči sporazum o sanitarnih in fitosanitarnih vprašanjih,

glede na to, da so se sporazumele, da pri izpolnjevanju svojih obvez glede dostopa na trg razvite države članice povsem upoštevajo posebne potrebe in pogoje v članicah državah v razvoju, tako da zagotovljajo večjo izboljšavo možnosti in pogojev dostopa za kmetijske proizvode, ki so posebej pomembni za te članice, vključno z največjo možno liberalizacijo trgovine s tropskimi kmetijskimi proizvodi, kot je dogovorjeno v Srednjeročnem pregledu, in za proizvode, posebej pomembne z vidika raznolikosti proizvodnje, da se nadomesti pridelava nedovoljenih narkotičnih pridelkov,

ob ugotavljanju, da bi morale biti sprejete obveze na podlagi programa preobrazbe na pravičen način med vsemi članicami ob upoštevanju problemov netrgovinske narave, vključno z varnostjo preskrbe s hrano in potrebo po varstvu okolja; ob upoštevanju sporazuma, da je posebno in drugačno obravnavanje držav v razvoju sestavni element pogajanj, in ob upoštevanju možnih negativnih vplivov uresničevanja programa preobrazbe na najmanj razvite države in države v razvoju, ki so neto uvoznice hrane,

sporazumejo, kot sledi:

I. del

1. člen
Določitev izrazov

V tem sporazumu, razen če vsebina narekuje drugače:

(a) "skupna mera podpore" (Aggregate Measurement of Support) in "AMS" pomenita denarno izraženo letno raven podpore, ki se daje za kmetijski proizvod v korist proizvajalcev osnovnega kmetijskega proizvoda, ali podpore v splošno korist kmetijskim proizvajalcem, ki ni specifična glede na proizvod, razen podpore, dane na podlagi programov, ki se uvrščajo med tiste, za katere velja oprostitev znižanja na podlagi Priloge 2 k temu sporazumu, ki se:

(i) nanaša na podporo, dano med temeljnim obdobjem, določeno v ustreznih tabelah spremljajočega gradiva, vključenega z napotilom v IV. delu liste članice; in

(ii) nanaša na podporo, dano med katerimkoli letom v obdobju izvajanja in kasneje, izračunano v skladu z določbami Priloge 3 k temu sporazumu in ob upoštevanju osnovnih podatkov in metodologije, uporabljene v tabelah spremljajočega gradiva, vključenega z napotilom v IV. delu liste članice;

(b) "osnovni kmetijski proizvod" v povezavi z obvezami domače podpore je opredeljen kot proizvod, ki je, čim bližje je možno, prvi prodaji, kot je določen v listi članice in v spremljajočem gradivu;

(c) "proračunski izdatki" ali "izdatki" vključujejo proračunske odhodke;

(d) "ekvivalentna mera podpore" pomeni letno raven denarno izražene podpore, ki se daje proizvajalcem osnovnega kmetijskega proizvoda z uporabo enega ali več ukrepov, katere izračun po metodologiji za AMS ni izvedljiv, razen podpore, dane na podlagi programov, ki se uvrščajo med tiste,za katere velja oprostitev znižanja na podlagi Priloge 2, ter se:

(i) nanaša na podporo, dano med temeljnim obdobjem, določeno v ustreznih tabelah spremljajočega gradiva, vključenega z napotilom v IV. delu liste članice; in

(ii) nanaša na podporo, dano med katerimkoli letom v obdobju izvajanja in kasneje, izračunano v skladu z določbami Priloge 4 k temu sporazumu in ob upoštevanju osnovnih podatkov in metodologije, uporabljene v tabelah spremljajočega gradiva, vključenega z napotilom v IV. delu liste članice;

(e) "izvozne subvencije" so subvencije, pogojene z opravljenim izvozom, vključno z izvoznimi subvencijami, navedenimi v 9. členu tega sporazuma;

(f) "obdobje izvajanja" je šestletno obdobje, ki se začne leta 1995, razen za namene 13. člena, ko gre za devetletno obdobje, ki se začne leta 1995;

(g) "koncesije za dostop na trg" vključujejo vse obveze za dostop na trg, sprejete v skladu s tem sporazumom;

(h) "celotna skupna mera podpore" in "celotna AMS" pomenita vsoto vse domače podpore, dane v korist kmetijskih proizvajalcev, izračunane kot vsota vseh skupnih ukrepov podpore za osnovne kmetijske proizvode, vseh skupnih mer podpore, ki niso proizvodno specifične, in vseh ekvivalentnih mer podpore za kmetijske proizvode, ter se:

(i) nanaša na podporo, dano med temeljnim obdobjem (t.j. "osnovna celotna AMS"), in največjo podporo, ki je dovoljena med katerimkoli letom v obdobju izvajanja ali pozneje (t.j. "letne in končne vezane ravni"), kot je določena v IV. delu liste članice; in

(ii) nanaša na raven podpore, dejansko dane med vsakim letom v obdobju izvajanja in pozneje (t.j. "tekoča celotna AMS"), izračunane v skladu z določbami tega sporazuma, vključno s 6. členom ter z osnovnimi podatki in metodologijo, uporabljeno v tabelah spremljajočega gradiva, vključenega z napotilom v IV. delu liste članice;

(i) "leto" v odstavku (f) zgoraj in v zvezi s posebnimi obvezami članice je koledarsko, finančno ali tržno leto, določeno v listi, ki se nanaša na to članico.

2. člen

Obseg proizvodov

Ta sporazum se nanaša na proizvode, navedene v Prilogi 1 k temu sporazumu, v nadaljnjem besedilu kmetijski proizvodi.

II. del

3. člen

Vključitev koncesij in obvez

1. Domača podpora in obveze v zvezi z izvoznimi subvencijami v IV. delu liste vsake članice so obveze, ki omejujejo subvencioniranje ter veljajo za sestavni del GATT 1994.

2. Pod pogoji določb 6. člena članica ne daje podpore v korist domačim proizvajalcem, ki presega raven obvez, določenih v I. poglavju IV. dela njene liste.

3. Pod pogoji določb drugega (b) odstavka in četrtega odstavka 9. člena članica ne daje izvoznih subvencij, navedenih v prvem odstavku 9. člena, v zvezi s kmetijskimi proizvodi ali skupinami proizvodov, določenimi v II. poglavju IV. dela njene liste, ki presegajo proračunske izdatke in ravni količinskih obvez, določenih v njej, ter ne zagotavlja takih subvencij v zvezi s katerimkoli kmetijskim proizvodom, ki ni naveden v tistem poglavju njene liste.

III. del

4. člen

Dostop na trg

1. Koncesije dostopa na trg, ki jih vsebujejo liste, se nanašajo na vezave in zniževanje carin ter na druge obveze dostopa na trg, ki so v njih določene.

2. Članice ne ohranjajo, se ne zatekajo ali se ne vračajo h kakršnimkoli ukrepom, ki so jih morale spremeniti v običajne carinske dajatve,[1] razen če ni drugače določeno v 5. členu in v Prilogi 5.

5. člen

Določbe o posebni zaščiti

1. Ne glede na določbe prvega (b) odstavka II. člena GATT 1994 se lahko vsaka članica zateče k določbam četrtega in petega odstavka spodaj glede uvoza nekega kmetijskega proizvoda, za katerega so bili ukrepi, na katere se nanaša drugi odstavek 4. člena tega sporazuma, spremenjeni v običajno carinsko dajatev in je v njeni listi označen z znakom "SSG", ker je predmet koncesije, v zvezi s katero se lahko uporabijo določbe tega člena, če:

(a) obseg uvoza tega proizvoda, ki se uvaža na carinsko območje članice, ki daje koncesijo, med katerimkoli letom preseže sprožitveno raven, ki temelji na obstoječih možnostih dostopa na trg, kot je določeno v četrtem odstavku; ali, vendar ne sočasno,

(b) cena, po kateri se lahko ta proizvod uvaža na carinsko območje članice, ki daje koncesijo, kot je določena na osnovi c.i.f uvozne cene določene pošiljke, izražene v domači valuti, pade pod sprožitveno ceno, ki je enaka povprečni referenčni ceni[2] za določen proizvod v obdobju od 1986 do 1988.

2. Uvoz na osnovi obvez tekočega in minimalnega dostopa na trg, ki so del koncesije, omenjene v prvem odstavku zgoraj, se upošteva pri določanju obsega uvoza, ki je osnova za uporabo določb prvega (a) pododstavka in četrtega odstavka, vendar na uvoz na podlagi takih obvez ne vplivajo nikakršne dodatne dajatve, naložene na podlagi prvega (a) pododstavka in četrtega odstavka ali prvega (b) pododstavka in petega odstavka spodaj.

3. Vsaka dobava določenega proizvoda, ki je bila na poti na osnovi pogodbe, sklenjene pred uvedbo dodatne dajatve na podlagi prvega (a) pododstavka in četrtega odstavka, je oproščena take dodatne dajatve pod pogojem, da se upošteva pri obsegu uvoza določenega proizvoda v naslednjem letu, z namenom, da se sproži uporaba določb prvega (a) pododstavka v tistem letu.

4. Vsaka dodatna dajatev, naložena na podlagi prvega (a) pododstavka, se ohrani le do konca leta, v katerem je bila uvedena, ter se lahko odmeri le na ravni, ki ne sme preseči ene tretjine ravni običajne carinske dajatve, ki velja v letu, v katerem se ukrep izvaja. Sprožitvena raven se določi v skladu s tem razporedom, ki temelji na možnostih dostopa na trg, določenih kot odstotki uvoza, ki ustrezajo domači porabi[3] v treh predhodnih letih, za katera so na voljo podatki:

(a) če so za proizvod take možnosti dostopa na trg manjše ali enake 10 odstotkom, velja osnovna sprožitvena raven, ki je enaka 125 odstotkom,

(b) če so za proizvod take možnosti dostopa na trg večje od 10 odstotkov, toda manjše ali enake 30 odstotkom, velja osnovna sprožitvena raven, ki je enaka 110 odstotkom,

(c) če so za proizvod take možnosti dostopa na trg večje od 30 odstotkov, velja osnovna sprožitvena raven, ki je enaka 105 odstotkom.

V vseh primerih se lahko uvede dodatna dajatev v vsakem letu, v katerem absolutni obseg uvoza določenih proizvodov, ki prihajajo na carinsko območje članice, ki daje

[1] Ti ukrepi vključujejo količinske uvozne omejitve, varialbilne uvozne dajatve, minimalne uvozne cene, diskrecijska uvozna dovoljenja, necarinske ukrepe, ki se uveljavljajo skozi državna trgovinska podjetja, prostovljne izvozne omejitve in podobne ukrepe na meji, ki niso običajne carinske dajatve, ne glede na to ali se ukrepi uveljavljajo na osnovi odstopanj od določb GATT 1947, ki se nanašajo na določene države, toda ne ukrepov, ki se uveljavljajo na podlagi plačilnobilančnih določb ali drugih splošnih določb GATT 1994, ki niso značilne za kmetijstvo, ali določb drugih mnogostranskih trgovinskih sporazumov v Aneksu 1 A Sporazuma o WTO.

[2] Referenčna cena, ki se uporablja za uveljavitev določb tega pododstavka, mora na splošno biti povprečna c.i.f. vrednost enote določenega proizvoda ali pa sicer ustrezna cena, odvisna od kakovosti proizvoda in njegove stopnje predelave. Po začetni uporabi mora biti objavljena in dostopna v takšni meri, kot je to potrebno, da lahko druge članice ovrednotijo dodatno dajatev, ki se lahko naloži.

[3] Če se domača poraba ne upošteva, se uporablja osnovna sprožitvena raven na podlagi četrtega (a) pododstavka.

koncesijo, presega vsoto (x) osnovne sprožitvene ravni, določene zgoraj, pomnožene s povprečno količino uvoza v treh predhodnih letih, za katera so na voljo podatki, ter (y) absolutno spremembo obsega v domači porabi določenega proizvoda v zadnjem letu, za katero so na voljo podatki, v primerjavi s predhodnim letom, pod pogojem, da sprožitvena raven ne bo manjša od 105 odstotkov povprečne količine uvoza v (x) zgoraj.

5. Dodatna dajatev, ki se uvede na podlagi prvega (b) pododstavka, mora biti določena po tem vrstnem redu:

(a) Če je razlika med c.i.f. uvozno ceno pošiljke, izraženo v domači valuti (v nadaljnjem besedilu "uvozna cena"), in sprožitveno ceno, kot je definirana v tem pododstavku, manjša kot ali enaka 10 odstotkom sprožitvene cene, se dodatna dajatev ne uvede;

(b) če je razlika med uvozno ceno in sprožitveno ceno (v nadaljnjem besedilu "razlika") večja od 10 odstotkov, vendar manjša ali enaka 40 odstotkom sprožitvene cene, je dodatna dajatev enaka 30 odstotkom zneska, za katerega razlika presega 10 odstotkov;

(c) če je razlika večja od 40 odstotkov, toda manjša ali enaka 60 odstotkom sprožitvene cene, je dodatna dajatev enaka 50 odstotkom zneska, za katerega razlika presega 40 odstotkov, pri čemer je dodana dodatna dajatev, dovoljena pod (b);

(d) če je razlika večja od 60 odstotkov, toda manjša ali enaka 75 odstotkom, je dodatna dajatev enaka 70 odstotkom zneska, za katerega razlika presega 60 odstotkov sprožitvene cene, pri čemer sta dodani dodatni dajatvi, dovoljeni pod (b) in (c);

(e) če je razlika večja od 75 odstotkov sprožitvene cene, je dodatna dajatev enaka 90 odstotkom zneska, za katerega razlika presega 75 odstotkov, pri čemer so dodane dodatne dajatve, dovoljene pod (b), (c) in (d).

6. Za pokvarljive in sezonske proizvode se zgornji pogoji uporabljajo tako, da se upoštevajo njihove posebne značilnosti. Še posebej se lahko uporabljajo krajša časovna obdobja po prvem (a) pododstavku in četrtem odstavku, upoštevajoč ustrezna obdobja v temeljnem obdobju, različne referenčne cene pa se lahko uporabljajo po prvem (b) pododstavku za različna obdobja.

7. Uporaba posebnih zaščitnih ukrepov se izvede na pregleden način. Vsaka članica, ki ukrepa po prvem (a) pododstavku zgoraj, pisno obvesti, skupaj z ustreznimi podatki, Odbor za kmetijstvo toliko vnaprej, kot je izvedljivo, v vsakem primeru pa v 10 dneh po uvedbi takega ukrepa. Kadar je treba spremembe v obsegu porabe razporediti na posamezne tarifne postavke, zaradi katerih je treba ukrepati na podlagi četrtega odstavka, morajo ustrezni podatki vključevati uporabljene informacije in metode za razporeditev teh sprememb. Članica, ki ukrepa na podlagi četrtega odstavka, mora dati vsem zainteresiranim članicam možnost, da se z njo posvetujejo v zvezi s pogoji uporabe takega ukrepa. Vsaka članica, ki ukrepa po prvem (b) pododstavku zgoraj, Odbor za kmetijstvo pisno obvesti, vključno z ustreznimi podatki, v 10 dneh po uvedbi prvega takega ukrepa ali prvega ukrepa za pokvarljive in sezonske proizvode v kateremkoli obdobju. Članice se obvezujejo, kolikor je izvedljivo, da se ne bodo zatekale k določbam prvega (b) pododstavka, kadar se zmanjšuje obseg uvoza določenih proizvodov. V obeh primerih članica, ki sprejme tak ukrep, nudi zainteresiranim članicam možnost, da se posvetujejo z njo o pogojih uporabe takega ukrepa.

8. Če se ukrepi sprejemajo v skladu s prvim do sedmim odstavkom zgoraj, se članice obvezujejo, da se v zvezi s temi ukrepi ne bodo zatekale k določbam prvega (a) odstavka in tretjega odstavka XIX. člena GATT 1994 ali drugega odstavka 8. člena Sporazuma o posebnih zaščitnih ukrepih.

9. Določbe tega člena ostanejo veljavne med potekom preobrazbe, kot je določen v 20. členu.

IV. del

6. člen

Obveze v zvezi z domačo podporo

1. Obveze vsake članice o znižanju domače podpore, vsebovane v IV. delu njene liste, veljajo za vse njene ukrepe domače podpore v korist kmetijskih proizvajalcev z izjemo domačih ukrepov, ki niso predmet zniževanja po merilih, določenih v tem členu in v Prilogi 2 k temu sporazumu. Obveznosti se izražajo v okviru skupne mere podpore in končnih vezanih ravni obvez.

2. V skladu s Sporazumom o srednjeročnem pregledu, da se vladni ukrepi pomoči, bodisi posredni ali neposredni, za pospeševanje kmetijskega razvoja in razvoja podeželja, ki so sestavni del razvojnih programov držav v razvoju, subvencionirana vlaganja, ki so na splošno na voljo kmetijstvu v članicah državah v razvoju, ter subvencije za kmetijske inpute, na splošno na voljo proizvajalcem z nizkimi dohodki ali revnimi viri v članicah državah v razvoju, oprostijo obvez zniževanja domače podpore, ki bi sicer za te ukrepe veljale, kakor tudi domače podpore proizvajalcem v članicah državah v razvoju za pospeševanje nadomestne pridelave nedovoljenih narkotičnih pridelkov. Domačo podporo, ki ustreza merilom tega odstavka, članici ni treba vključiti v tekočo celotno AMS.

3. Velja, da članica izpolnjuje svoje obveze zniževanja domače podpore v vsakem letu, ko njena domača podpora v korist kmetijskim proizvajalcem, izražena v tekoči celotni AMS, ne presega ustrezne letne ali končne ravni obveze, podrobno navedene v IV. delu liste članice.

4. (a) Od članice se ne zahteva, da v izračun svoje tekoče celotne AMS vključi in da zniža:

(i) domačo podporo za določen proizvod, ki bi sicer morala biti vključena v izračun tekoče AMS članice, če taka podpora ne presega 5 odstotkov celotne vrednosti proizvodnje osnovnega kmetijskega proizvoda te članice med določenim letom; in

(ii) domačo podporo, ki se ne daje za določen proizvod, ki bi sicer morala biti vključena v izračun tekoče AMS članice, če taka podpora ne presega 5 odstotkov vrednosti skupne kmetijske proizvodnje te članice.

(b) Za članice države v razvoju je de minimis odstotek po tem odstavku 10 odstotkov.

5. (a) Neposredna plačila na podlagi programov omejevanja proizvodnje niso predmet obveze znižanja domače podpore, če:

(i) se taka plačila nanašajo na določeno območje in donose; ali

(ii) se taka plačila izvršujejo za 85 ali manj odstotkov osnovne ravni proizvodnje; ali

(iii) se plačila izvršujejo na določeno število glav živine.

(b) Oprostitev obveze znižanja neposrednih plačil, ki izpolnjujejo zgornja merila, se izraža brez vrednosti teh neposrednih plačil v izračunu tekoče celotne AMS članice.

7. člen

Splošni režim pri domači podpori

1. Vsaka članica zagotavlja, da se vsi ukrepi domače podpore v korist kmetijskih proizvajalcev, ki niso predmet obvez zniževanja, ker izpolnjujejo pogoje v skladu z merili, določenimi v Prilogi 2 k temu sporazumu, ohranjajo v skladu z njim.

2. (a) Vsak ukrep domače podpore v korist kmetijskih proizvajalcev, vključno s kakršnokoli spremembo takega ukrepa, ter vsak ukrep, ki se uvede naknadno in ne more zadostiti merilom v Prilogi 2 k temu sporazumu ali biti oproščen znižanja zaradi katerekoli druge določbe tega sporazuma, se vključi v izračun tekoče celotne AMS članice.

(b) Če v IV. delu liste članice ne obstaja obveza celotne AMS, članica ne sme zagotoviti podpore kmetijskim proizvajalcem, ki presega ustrezno de minimis raven, določeno v četrtem odstavku 6. člena.

V. del

8. člen

Obveze na področju izvozne konkurence

Vsaka članica se obvezuje, da ne bo dajala izvoznih subvencij drugače kot v skladu s tem sporazumom in obveznostmi, določenimi v listi članice.

9. člen

Obveze na področju izvoznih subvencij

1. Naslednje izvozno subvencioniranje je predmet znižanja po tem sporazumu:

(a) neposredne subvencije vlad ali njihovih agencij, vključno s plačili v naravi, podjetju, določeni proizvodni panogi, proizvajalcem kmetijskega proizvoda, zadrugam ali drugemu združenju takih proizvajalcev ali odborom za trženje v zvezi z izvoznimi dosežki;

(b) prodaja ali razdelitev za izvoz nekomercialnih zalog kmetijskih proizvodov s strani vlad ali njihovih agencij po nižji ceni, kot je primerljiva cena, ki se za podoben proizvod zaračuna kupcem na domačem trgu;

(c) plačila na podlagi izvoza kmetijskega proizvoda, ki se financirajo na temelju vladnega ukrepa, ne glede na to, ali gre za plačilo iz proračunskih sredstev, vključno s plačili, ki se financirajo iz dajatev na določeni kmetijski proizvod ali na kmetijski proizvod, iz katerega izhaja izvozni proizvod;

(d) subvencije za znižanje stroškov izvoznega trženja kmetijskih proizvodov (razen razpoložljive izvozne promocije in svetovalnih storitev), vključno z manipulativnimi stroški, stroški izboljševanja in drugimi stroški predelave ter stroški mednarodnega prevoza in tovorjenja;

(e) stroški notranjega prevoza in tovorjenja za izvozne pošiljke, ki so določene s predpisom ali po pooblastilu vlade pod ugodnejšimi pogoji, kot veljajo za domače pošiljke;

(f) subvencije za kmetijske proizvode, ki se uporabijo v proizvodnji za izvoz.

2. (a) Z izjemo pododstavka (b) ravni obvez pri izvoznih subvencijah članice za vsako leto obdobja izvajanja, ki je določeno v listi članice, pomenijo v zvezi z izvoznimi subvencijami, naštetimi v prvem odstavku tega člena:

(i) v primeru obvez znižanja proračunskih izdatkov najvišjo raven izdatkov za take subvencije, ki se lahko dodelijo ali do katerih pride v tistem letu v zvezi z določenim kmetijskim proizvodom ali skupino proizvodov; in

(ii) v primeru obvez znižanja izvozne količine največjo količino kmetijskega proizvoda ali skupine proizvodov, za katere se lahko v tistem letu dodelijo izvozne subvencije.

(b) Članica lahko v kateremkoli od 2. do vključno 5. leta obdobja izvajanja uporablja izvozne subvencije, naštete v prvem odstavku zgoraj, ki presegajo ustrezne letne ravni obveze v zvezi s proizvodi ali skupinami proizvodov, določenih v IV. delu liste članice, pod pogojem, da:

(i) kumulativni zneski proračunskih izdatkov za take subvencije od začetka obdobja izvajanja skozi določeno leto ne presegajo kumulativnih zneskov, ki bi bili posledica polnega izpolnjevanja ustreznih ravni obvez letnih izdatkov, določenih v listi članice, za več kot 3 odstotke ravni proračunskih izdatkov v temeljnem obdobju;

(ii) kumulativne količine, ki se izvažajo z ugodnostjo takih izvoznih subvencij od začetka obdobja izvajanja skozi določeno leto, ne presegajo kumulativnih količin, ki bi bile posledica polnega izpolnjevanja ustreznih ravni obvez letnih količin, določenih v listi članice, za več kot 1,75 odstotka količin v temeljnem obdobju;

(iii) skupni kumulativni zneski proračunskih izdatkov za take izvozne subvencije in količine z ugodnostjo takih izvoznih subvencij v vsem obdobju izvajanja niso večji kot skupni zneski, ki bi bili posledica polnega izpolnjevanja ustreznih letnih ravni obvez, določenih v listi članice; in

(iv) proračunski izdatki članice za izvozne subvencije in količine z ugodnostjo takih subvencij ob koncu obdobja izvajanja niso večji od 64 odstotkov oziroma 79 odstotkov ravni temeljnega obdobja 1986-1990. Za države v razvoju ti odstotki znašajo 76 oziroma 86 odstotkov.

3. Obveze, ki se nanašajo na omejitve širjenja obsega proizvodov, ki so predmet izvoznih subvencij, so take, kot so določene v listah.

4. Med obdobjem izvajanja se od članic držav v razvoju ne sme zahtevati, da prevzamejo obveze v zvezi z izvoznimi subvencijami, navedenimi v pododstavkih (d) in (e) prvega odstavka zgoraj, pod pogojem, da se te ne uporabljajo na način, ki bi zaobšel obveze znižanja.

10. člen

Preprečevanje izogibanja izpolnjevanja obvez v zvezi z izvoznimi subvencijami

1. Izvozne subvencije, ki niso navedene v prvem odstavku 9. člena, se ne uporabljajo tako, da bi povzročile ali ogrozile povzročitev izogibanja obvezam v zvezi z izvoznimi subvencijami; prav tako se ne uporabljajo nekomercialne transakcije z namenom, da se take obveze zaobidejo.

2. Članice se obvezujejo, da si bodo prizadevale za razvoj mednarodno dogovorjenega režima uporabe izvoznih kreditov, izvoznih kreditnih garancij ali programov zavarovanja ter da bodo po takem dogovoru dodeljevale izvozne kredite, izvozne kreditne garancije ali programe zavarovanja le v skladu s tem režimom.

3. Katerakoli članica, ki zatrjuje, da katerakoli količina, ki je bila izvožena nad ravnijo obveze znižanja, ni subvencionirana, mora dokazati, da nobena izvozna subvencija, bodisi navedena v 9. členu ali pa ne, glede količine izvoza določenih proizvodov ni bila dodeljena.

4. Članice darovalke mednarodne pomoči v hrani morajo zagotoviti:

(a) da dajanje mednarodne pomoči v hrani ni neposredno ali posredno povezano s komercialnim izvozom kmetijskih proizvodov v države sprejema;

(b) da se mednarodne transakcije pomoči v hrani, vključno z dvostransko pomočjo v hrani, ki je denarno izražena, izvedejo v skladu z načeli FAO razdelitve presežkov in posvetovalnih obveznosti, vključno, kjer je to ustrezno, s sistemom Običajnih tržnih zahtev (Usual Marketing Requirements ali UMR); in

(c) da se taka pomoč zagotovi, kolikor je to možno, povsem neodplačno ali pa ne pod slabšimi pogoji, ki so določeni v IV. členu Konvencije o pomoči v hrani iz leta 1986.

11. člen

Sestavni proizvodi

V nobenem primeru ne sme subvencija, plačana na enoto sestavnega primarnega kmetijskega proizvoda, preseči izvozne subvencije na enoto, ki bi se plačala na izvoz takega primarnega proizvoda.

VI. del

12. člen

Režim v zvezi z izvoznimi prepovedmi in omejitvami

1. Če katerakoli članica uvede novo izvozno prepoved ali omejitev za živila v skladu z drugim (a) odstavkom IX. člena GATT 1994, mora spoštovati naslednje določbe:

(a) članica, ki uvaja izvozno prepoved ali omejitev, mora upoštevati učinke take prepovedi ali omejitve na varnost preskrbe s hrano v članici, ki je uvoznica;

(b) preden katerakoli članica uvede izvozno prepoved ali omejitev, mora o tem toliko vnaprej, kot je to izvedljivo, pisno obvestiti Odbor za kmetijstvo, vključno s takimi informacijami, kot sta narava in trajanje takega ukrepa, ter se mora na zahtevo posvetovati z vsako drugo članico, ki ima znaten interes kot uvoznica, v zvezi s katerokoli zadevo, povezano z določenim ukrepom. Članica, ki uvaja tako izvozno prepoved ali omejitev, mora na zahtevo zagotoviti taki članici potrebno informacijo.

2. Določbe tega člena se ne uporabljajo za nobeno članico državo v razvoju, razen če je ukrep sprejela članica država v razvoju, ki je neto izvoznica hrane za to konkretno živilo.

VII. del

13. člen

Zmernost pri izvajanju

Ne glede na določbe GATT 1994 in Sporazuma o subvencijah in izravnalnih ukrepih (v tem členu Sporazum o subvencijah) med obdobjem izvajanja:

(a) so ukrepi domače podpore, ki se v celoti skladajo z določbami Priloge 2 k temu sporazumu:

(i) neizpodbojne subvencije za namen izravnalnih dajatev;[4]

(ii) izjema od postopkov, ki temeljijo na XVI. členu GATT 1994 in III. delu Sporazuma o subvencijah; ter

(iii) izjema od postopkov, ki temeljijo na sicer dopustni razveljavitvi ali zmanjšanju koristi carinskih koncesij, ki pripadajo drugi članici po II. členu GATT 1994 v smislu prvega (b) odstavka XXIII. člena GATT 1994;

(b) so ukrepi domače podpore, ki so v celoti v skladu z določbami 6. člena tega sporazuma, vključno z neposrednimi plačili, ki so v skladu s pogoji petega odstavka sporazuma, kot izhajajo iz liste vsake članice, kakor tudi domača podpora v okviru de minimis ravni in v skladu z drugim odstavkom 6. člena:

(i) izjema od uvedbe izravnalnih dajatev, razen če se ugotovi škoda ali grožnja škode, določena v skladu s VI. členom GATT 1994 in V. delom Sporazuma o subvencijah, pri čemer je treba pokazati primerno zadržanost pri sprožitvi kakršnihkoli preiskav v zvezi z izravnalnimi dajatvami;

(ii) izjema od postopkov, ki temeljijo na prvem odstavku XVI. člena GATT 1994 ali 5. in 6. člena Sporazuma o subvencijah, pod pogojem, da taki ukrepi ne priznavajo podpore za določeno blago nad ravnijo tiste podpore, ki je bila določena v tržnem letu 1992; in

(iii) izjema od postopkov, ki temeljijo na sicer dopustni ali zmanjšani koristi carinskih koncesij, ki pripadajo drugi članici po II. členu GATT 1994 v smislu prvega (b)odstavka XXIII. člena GATT 1994, pod pogojem, da ti ukrepi ne priznavajo podpore za določeno blago nad ravnijo tiste podpore, ki je bila določena v tržnem letu 1992;

(c) so izvozne subvencije, ki so povsem v skladu z določbami V. dela tega sporazuma in so določene v listi vsake članice:

(i) predmet izravnalnih dajatev le po ugotovitvi škode ali grožnje škode, ki temelji na obsegu, vplivu na cene ali posledičnem učinku, v skladu s VI. členom GATT 1994 in V. delom Sporazuma o subvencijah, pri čemer pa je treba pokazati tudi primerno zadržanost pri sprožitvi kakršnihkoli preiskav o izravnalnih dajatvah; in

(ii) izjema od postopkov, ki temeljijo na XVI. členu GATT 1994 ali 3., 5. in 6. členu Sporazuma o subvencijah.

VIII. del

14. člen

Sanitarni in fitosanitarni ukrepi

Članice se sporazumejo, da bodo izvajale Sporazum o uporabi sanitarnih in fitosanitarnih ukrepov.

IX. del

15. člen

Posebna in pristranska obravnava

1. V skladu s spoznanjem, da je pristranska in ugodnejša obravnava članic držav v razvoju sestavni del pogajanj, se zagotovi posebna in pristranska obravnava v zvezi z obvezami, kot je določeno v ustreznih določbah tega sporazuma in vključeno v listah koncesij in obvez.

2. Članice države v razvoju lahko na prožen način izvajajo obveze znižanja v obdobju do 10 let. Od najmanj razvitih držav članic se ne zahteva, da izvajajo obveze znižanja.

X. del

16. člen

Najmanj razvite države in države v razvoju, neto uvoznice hrane

1. Razvite države članice sprejmejo take ukrepe, kot so predvideni v Odločitvi o ukrepih v zvezi z možnimi negativnimi posledicami programa preobrazbe na najmanj razvite države in države v razvoju, neto uvoznice hrane.

2. Odbor za kmetijstvo ustrezno spremlja vse, kar izhaja iz te Odločitve.

XI. del

17. člen

Odbor za kmetijstvo

Ustanovi se Odbor za kmetijstvo.

18. člen

Pregled izpolnjevanja obvez

1. Izpolnjevanje obvez, o katerih je dogovorjeno na podlagi programa preobrazbe Urugvajskega kroga, pregleduje Odbor za kmetijstvo.

2. Postopek pregleda se začne na podlagi notifikacij, ki jih članice predložijo v zvezi s takimi zadevami in v takih intervalih, kot se ti določijo, kakor tudi na podlagi take dokumentacije, ki se lahko zahteva od Sekretariata, da jo pripravi, da se omogoči postopek pregleda.

3. Poleg notifikacij, ki jih je treba predložiti po drugem odstavku, je treba takoj sporočiti vsak nov ukrep domače podpore ali spremembo obstoječega ukrepa, za katerega se

[4] Izravnalne dajatve, omenjene v tem členu, so tiste, ki jih vključuje VI. člen GATT 1994 in V. del Sporazuma o subvencijah in izravnalnih ukrepih.

zahteva oprostitev znižanja. Ta notifikacija mora vsebovati podrobnosti o novem ali spremenjenem ukrepu ter njegovi skladnosti z dogovorjenimi merili, kot so določena v 6. členu ali v Prilogi 2.

4. Pri pregledu članica ustrezno upošteva vplive visoke inflacije na sposobnost katerekoli članice, da spoštuje svoje obveze na področju domače podpore.

5. Članice soglašajo, da se letno posvetujejo v Odboru za kmetijstvo o svojem sodelovanju v normalni rasti svetovne trgovine s kmetijskimi proizvodi v okviru obvez pri izvoznih subvencijah po tem sporazumu.

6. Postopek pregleda članicam zagotovi možnost, da sprožijo katerokoli zadevo v zvezi z izvajanjem obvez na podlagi programa preobrazbe, kot ga določa ta sporazum.

7. Katerakoli članica lahko Odbor za kmetijstvo opozori na kakršenkoli ukrep, za katerega meni, da bi ga morala druga članica notificirati.

19. člen

Posvetovanje in reševanje sporov

Za posvetovanja in reševanje sporov na podlagi tega sporazuma se uporabljajo določbe XXII. in XXIII. člena GATT 1994, kot jih razlaga in uporablja Sporazum o reševanju sporov.

XII. del

20. člen

Nadaljevanje procesa preobrazbe

Ob spoznanju, da je dolgoročni cilj bistvenega progresivnega zniževanja podpore in zaščite, katerega rezultat je temeljna preobrazba, nenehen proces, članice soglašajo, da se pogajanja za nadaljevanje tega procesa sprožijo eno leto pred koncem obdobja izvajanja ob upoštevanju:

(a) izkušenj do tega datuma pri izpolnjevanju obvez znižanja;

(b) učinkov obvez znižanja na svetovno trgovino v kmetijstvu;

(c) vprašanj netrgovinske narave, posebne in pristranske obravnave članic držav v razvoju in cilja vzpostaviti pravičen in tržno usmerjen sistem kmetijske trgovine ter drugih ciljev in vprašanj, omenjenih v preambuli tega sporazuma; in

(d) katere nadaljnje obveze so potrebne za doseganje zgoraj omenjenih dolgoročnih ciljev.

XIII. del

21. člen

Končne določbe

1. Določbe GATT 1994 in drugih mnogostranskih trgovinskih sporazumov v Aneksu 1 A k Sporazumu o WTO se uporabljajo na podlagi določb tega sporazuma.

2. Priloge k temu sporazumu so sestavni del tega sporazuma.

PRILOGA 1

OBSEG PROIZVODOV

1. Ta sporazum vključuje te proizvode:

(i) Poglavja HS od 1 do 24 razen rib in ribjih proizvodov, plus*

(ii)

Oznaka HS	2905.43	(manitol)
Oznaka HS	2905.44	(sorbitol)
Tar. št. HS	33.01	(eterična olja)
Tar. št. HS	35.01 do 35.05	(beljakovinaste snovi, modificirani škrobi, lepila)
Oznaka HS	3809.10	(sredstva za dodelavo)
Oznaka HS	3823.60	(sorbitol n.e.p.)
Tar. št. HS	41.01 do 41.03	(kože)
Tar. št. HS	43.01	(surovo krzno)
Tar. št. HS	50.01 do 50.03	(surova svila in svileni odpadki)
Tar. št. HS	51.01 do 51.03	(volna in živalska dlaka)
Tar. št.HS	52.01 do 52.03	(surovi bombaž, odpadki ter mikani ali česani bombaž)
Tar. št. HS	53.01	(surovi lan)
Tar. št. HS	53.02	(surova konoplja)

2. Zgornje ne omejuje obsega proizvodov, na katere se nanaša Sporazum o uporabi sanitarnih in fitosanitarnih ukrepov.

PRILOGA 2

DOMAČA PODPORA: PODLAGA ZA OPROSTITEV OBVEZ ZNIŽANJA

1. Ukrepi domače podpore, za katere se zahteva oprostitev obvez znižanja, morajo zadostiti temeljni zahtevi, da nimajo nobenega vpliva na izkrivljanje trgovanja ali na proizvodnjo ali pa je ta vpliv minimalen. V skladu s tem morajo vsi ukrepi, za katere se zahteva oprostitev, ustrezati tem temeljnim merilom:

(a) podpora se zagotavlja z javno financiranim vladnim programom (vključno z vladnimi izdatki), ki ne vključuje nakazil potrošnikov; in

(b) ta podpora ne sme vplivati na zagotavljanje cenovne podpore proizvajalcem;

vključno z merili posebne politike in pogoji, določenimi spodaj.

Vladni programi storitev

2. Splošne storitve

Politika v tej kategoriji vključuje izdatke (ali državne odhodke) v zvezi s programi, ki zagotavljajo storitve ali koristi kmetijski ali podeželski skupnosti. Ne smejo vključevati neposrednih plačil proizvajalcem ali predelovalcem. Taki programi, ki vključujejo ta seznam, niso pa omejeni z njim, morajo izpolnjevati splošna merila v prvem odstavku zgoraj in pogoje posebne politike, kot so navedeni spodaj:

(a) raziskave, vključno s splošnimi raziskavami, raziskave v zvezi s programi varstva okolja in raziskovalni programi, ki se nanašajo na določene proizvode;

(b) zatiranje škodljivcev in bolezni, vključno s splošnimi in posebnimi ukrepi za zatiranje škodljivcev in bolezni v zvezi z določenimi proizvodi, kot so sistemi zgodnjega opozarjanja, karantene in uničevanja;

(c) storitve usposabljanja, vključno z zmogljivostmi za splošno in specialistično usposabljanje;

(d) kmetijske svetovalne in pospeševalne storitve, vključno z zagotavljanjem sredstev za pospeševanje prenosa informacij in izsledkov raziskav proizvajalcem in potrošnikom;

(e) kontrolne storitve, vključno s splošnimi kontrolnimi storitvami, ter kontrola določenih proizvodov iz zdravstvenih

* Opisi proizvodov v oklepajih niso nujno izčrpni.

in varnostnih razlogov, razlogov razvrščanja v kakovostne razrede in zaradi standardizacije;

(f) promocijske storitve in storitve trženja, vključno s tržnimi informacijami, nasveti in promocijo, ki se nanašajo na določene proizvode, vendar brez izdatkov za nedoločene namene, ki bi jih lahko prodajalci uporabili za znižanje njihove prodajne cene ali jih spremenili v neposredne koristi kupcem; in

(g) infrastrukturne storitve, vključno z električno napeljavo, cestami in drugimi prevoznimi možnostmi, tržnimi in pristaniškimi zmogljivostmi, zmogljivostmi oskrbe z vodo, programi za pregrade in izsuševanje in infrastrukturnimi deli, povezanimi s programi za varstvo okolja. V vseh primerih se izdatki usmerjajo v zagotavljanje ali gradnjo samo investicijskih del ter izključujejo subvencioniraje zmogljivosti na kmetijah, ki niso namenjene priključevanju komunalnim omrežjem v javni rabi. Ne vključujejo subvencij za inpute ali obratovalnih stroškov ali preferenčnih tarif.

3. Blagovne rezerve za varnost pri preskrbi s hrano[5]

Izdatki (ali državni odhodki) v zvezi z zbiranjem in hranjenjem zalog proizvodov, ki so sestavni del programa varnosti pri preskrbi s hrano, ki je določen v nacionalni zakonodaji. Lahko vključuje tudi vladno pomoč za zasebno skladiščenje proizvodov kot del tega programa.

Obseg in zbiranje teh zalog morata ustrezati vnaprej določenim ciljem, ki se nanašajo samo na varnost pri preskrbi s hrano. Postopek zbiranja in praznjenja zalog mora biti finančno pregleden. Vlada mora kupovati hrano po tekočih tržnih cenah, prodaja iz teh zalog pa mora biti po po cenah, ki niso nižje od tekoče domače tržne cene za določeni proizvod in kakovost.

4. Domača pomoč v hrani[6]

Izdatki (ali državni odhodki) v zvezi z zagotavljanjem domače pomoči v hrani za prebivalce, ki jo potrebujejo.

Upravičenost do prejema pomoči v hrani je predmet jasno določenih meril, povezanih s cilji prehranjevanja. Taka pomoč je v obliki neposrednega zagotavljanja hrane tistim, ki jo potrebujejo, ali zagotavljanja sredstev, da lahko prejemniki, ki za to izpolnjujejo pogoje, hrano kupijo na trgu ali pa po subvencioniranih cenah. Vlada hrano kupi po tekočih tržnih cenah, financiranje in razdeljevanje pomoči pa morata biti pregledni.

5. Neposredna plačila proizvajalcem

Podpora, ki se zagotavlja z neposrednimi plačili (ali državnimi odhodki, vključno s plačili v naravi) proizvajalcem, za katere se zahteva oprostitev obvez znižanja, mora ustrezati temeljnim merilom, določenim v prvem odstavku zgoraj, in posebnim merilom, ki se uporabljajo za različne vrste neposrednega plačila, kot so določena v šestem do trinajstem odstavku spodaj. Če se zahteva oprostitev znižanja za neko obstoječo ali novo neposredno vrsto plačila, drugačno od navedenih v šestem do trinajstem odstavku, mora poleg splošnih meril, določenih v prvem odstavku, ustrezati tudi merilom od (b) do (e) v šestem odstavku.

6. Nevezana dohodkovna podpora

(a) Upravičenost do takih plačil se določi z jasno določenimi merili, kot so dohodki, status proizvajalca ali lastnika zemlje, uporaba faktorja ali proizvodna raven v določenem temeljnem obdobju.

(b) Znesek takih plačil v kateremkoli določenem letu ne sme biti v zvezi z ali temeljiti na določeni vrsti ali obsegu proizvodnje (vključno z glavami živine), ki jo proizvajalec opravi v kateremkoli letu po temeljnem obdobju.

(c) Znesek takih plačil v kateremkoli določenem letu ne sme biti v zvezi z ali temeljiti na domačih ali mednarodnih cenah, ki se uporabljajo za katerokoli proizvodnjo, ki se opravlja v kateremkoli letu po temeljnem obdobju.

(d) Znesek takih plačil v kateremkoli določenem letu ne sme biti v zvezi z ali temeljiti na dejavnikih proizvodnje, uporabljenih v kateremkoli letu po temeljnem obdobju.

(e) Za prejemanje takih plačil se ne zahteva opravljanje proizvodnje.

7. Vladno finančo sodelovanje pri zavarovanju dohodka in programi dohodkovne varnosti

(a) Upravičenost do takih plačil je določena z izgubo dohodka ob upoštevanju samo dohodka, ki izvira iz kmetijske dejavnosti in presega 30 odstotkov povprečnega bruto dohodka ali enakovrednega neto dohodka (izključujoč kakršnakoli plačila na podlagi istih ali podobnih programov) v predhodnem triletnem obdobju ali triletnem povprečju, ki temelji na predhodnem petletnem obdobju, brez najvišje in najnižje postavke. Vsak proizvajalec, ki izpolnjuje te pogoje, je upravičen, da prejme ta plačila.

(b) Znesek takih plačil nadomesti manj kot 70 odstotkov proizvajalčeve izgube dohodka v letu, v katerem proizvajalec dobi pravico do prejema te pomoči.

(c) Znesek kateregakoli plačila je vezan zgolj na dohodek in ne sme biti vezan na vrsto ali obseg proizvodnje (vključno s številom glav živine), ki jo proizvajalec opravlja, ali na domače ali mednarodne cene, ki veljajo za tako proizvodnjo ali za uporabljene dejavnike proizvodnje.

(d) Če proizvajalec v istem letu prejme plačila po tem odstavku in po osmem odstavku (pomoč zaradi naravnih nesreč), mora biti skupni znesek teh plačil manjši od 100 odstotkov proizvajalčeve celotne izgube.

8. Plačila (bodisi neposredno ali v obliki vladne finančne udeležbe v programih zavarovanja pridelka) za pomoč pri naravnih nesrečah

(a) Upravičenost do takih plačil izhaja le iz formalnega priznanja vladnih oblasti, da je prišlo do naravne ali podobne nesreče (vključno z izbruhi bolezni, napadi škodljivcev, jedrskimi nesrečami in vojno na ozemlju določene članice), ter morajo biti določena z izgubo proizvodnje, ki presega 30 odstotkov povprečne proizvodnje v predhodnem triletnem obdobju ali triletnega povprečja, ki temelji na predhodnem petletnem obdobju, pri čemer sta najvišja in najnižja postavka izključeni.

(b) Plačila po naravni nesreči se izvajajo le za izgubo dohodka, živine (vključno s plačili za veterinarsko zdravljenje živali), zemljiške in druge proizvodne dejavnike zaradi določene naravne nesreče.

(c) Plačila ne smejo pokrivati več, kot je skupni strošek za nadomestitev teh izgub, ter ne smejo pogojevati ali določati vrste ali količine prihodnje proizvodnje.

(d) Plačila med trajanjem nesreče ne smejo presegati ravni, potrebne za preprečevanje ali ublažitev nadaljnje škode, kot je določena v merilu (b) zgoraj.

(e) Če proizvajalec v istem letu prejme plačila po tem odstavku in po sedmem odstavku (zavarovanje dohodka in

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[5] Za namene tretjega odstavka te priloge velja, da so vladni programi blagovnih rezerv za zagotavljanje varnosti pri preskrbi s hrano v državah v razvoju, katerih izvajanje je pregledno in vodeno v skladu z uradno objavljenimi in objektivnimi merili ali smernicami, v skladu z določbami tega odstavka, vključno z nakupi zalog živil zaradi varnosti preskrbe, ki se sproščajo po administrativno določenih cenah pod pogojem, da se razlika med nabavo in zunanjo referenčno ceno vključi v AMS.

[5&6] Za namene tretjega in četrtega odstavka te priloge velja, da je preskrba z živili po subvencioniranih cenah s ciljem rednega zadovoljevanja potreb po hrani revnih v mestih in na podeželju v državah v razvoju po razumnih cenah, v skladu z določbami tega odstavka.

programi dohodkovne varnosti), mora skupni znesek takih plačil znašati manj kot 100 odstotokov skupne proizvajalčeve izgube.

9. Pomoč za strukturno prilagajanje, ki jo zagotavljajo programi opuščanja proizvodnje

(a) Upravičenost do takih plačil se določi v skladu z jasno določenimi merili v programih, namenjenih pospeševanju upokojitve oseb, ki se ukvarjajo s tržno kmetijsko proizvodnjo, ali njihovemu prehodu na nekmetijske dejavnosti.

(b) Plačila so odvisna od popolnega in trajnega umika prejemnikov plačil iz tržne kmetijske proizvodnje.

10. Pomoč za strukturno prilagajanje, ki se zagotavlja na podlagi programov opuščanja resursov

(a) Upravičenost do takih plačil se določi v skladu z jasno določenimi merili v programih, namenjenih opustitvi zemlje ali drugih resursov, vključno z živino, iz tržne kmetijske proizvodnje.

(b) Plačila so odvisna od opustitve zemlje iz tržne kmetijske proizvodnje za najmanj tri leta, za živino pa z zakolom ali dokončno trajno odstranitvijo.

(c) Plačila ne smejo zahtevati ali določati alternativne uporabe te zemlje ali drugih resursov, ki vključuje proizvodnjo tržnih kmetijskih proizvodov.

(d) Plačila ne smejo pogojevati vrste ali obsega proizvodnje niti domačih ali mednarodnih cen, ki se nanašajo na določeno proizvodnjo ob uporabi zemlje ali drugih virov, ki se še naprej uporabljajo v proizvodnji.

11. Pomoč za strukturno prilagajanje, ki se zagotavlja v obliki pomoči pri vlaganjih

(a) Upravičenost do takih plačil se določi v skladu z jasno določenimi merili v vladnih programih, namenjenih pomoči pri finančnem ali fizičnem prestrukturiranju proizvajalčevega poslovanja kot odgovor na objektivno dokazane strukturne pomanjkljivosti. Upravičenost do takih programov lahko temelji tudi na jasno določenih vladnih programih ponovnega lastninjenja kmetijske zemlje.

(b) Znesek teh plačil v kateremkoli določenem letu ne sme biti v zvezi z ali temeljiti na vrsti ali obsegu proizvodnje (vključno z glavami živine), ki jo proizvajalec opravlja v kateremkoli letu po temeljnem obdobju in je drugačna, kot je predvidena po merilu (e) spodaj.

(c) Znesek teh plačil v kateremkoli določenem letu ne sme biti v zvezi z ali temeljiti na domačih ali mednarodnih cenah, ki se uporabljajo za katerokoli proizvodnjo, ki se opravlja v kateremkoli letu po temeljnem obdobju.

(d) Plačila se opravijo le za tisto obdobje, ki je potrebno za uresničitev vlaganja, v zvezi s katerimi se plačila zagotavljajo.

(e) Plačila ne smejo pogojevati ali kakorkoli določati kmetijskih proizvodov, ki naj jih prejemniki proizvajajo, lahko pa se zahteva, naj določenega proizvoda ne proizvajajo.

(f) Plačila morajo biti omejena na znesek, ki je potreben za nadomestilo strukturne pomanjkljivosti.

12. Plačila na podlagi programov varstva okolja

(a) Upravičenost do takih plačil je določena kot del jasno določenih vladnih programov za varstvo ali ohranjanje okolja ter je odvisna od izpolnjevanja posebnih pogojev vladnega programa, vključno s pogoji, ki se nanašajo na načine ali inpute v proizvodnjo.

(b) Znesek plačila mora biti omejen na dodatne stroške ali izgubo dohodka zaradi izpolnjevanja vladnega programa.

13. Plačila na podlagi programov regionalne pomoči

(a) Upravičenost do takih plačil je omejena na proizvajalce v manj razvitih območjih. Vsako tako območje mora biti jasno določena zemljepisna enota z določljivo gospodarsko in upravno identiteto, ki velja za manj razvito na podlagi nevtralnih in objektivnih meril, ki so jasno navedena v zakonu ali predpisih in kažejo, da težave tega območja izvirajo iz okoliščin, ki so več kot začasne.

(b) Znesek takih plačil v kateremkoli določenem letu ne sme biti v zvezi z ali temeljiti na vrsti ali obsegu proizvodnje (vključno z glavami živine), ki jo proizvajalec opravlja v kateremkoli letu po temeljnem obdobju, razen na zmanjšanju te proizvodnje.

(c) Znesek takih plačil v določenem letu ne sme biti v zvezi z ali temeljiti na domačih ali mednarodnih cenah, ki se uporabljajo za proizvodnjo, opravljeno v kateremkoli letu po temeljnem obdobju.

(d) Plačila so na voljo le proizvajalcem v upravičenih območjih, vendar na splošno na voljo vsem proizvajalcem v takih območjih.

(e) Če so plačila v povezavi z dejavniki proizvodnje, jih je treba izvesti po degresivni stopnji nad vhodno ravnijo določenega dejavnika.

(f) Plačila so omejena na dodatne stroške ali izgubo dohodka zaradi opravljanja kmetijske proizvodnje v določenem območju.

PRILOGA 3

DOMAČA PODPORA:

IZRAČUN SKUPNE MERE PODPORE

1. V skladu z določbami 6. člena je treba Skupno mero podpore (AMS) izračunati na podlagi specifičnega proizvoda za vsak osnoven kmetijski proizvod, ki je deležen tržne cenovne podpore, neizvzetih neposrednih plačil ali katerihkoli drugih subvencij, ki niso oproščene obveze znižanja ("drugi neizvzeti ukrepi"). Podporo, ki ni vezana na določen proizvod, je treba prišteti k enotni AMS, ki ni proizvodno specifična, v celoti v denarni obliki.

2. Subvencije na podlagi prvega odstavka vključujejo tako proračunske izdatke kot odhodke vlad ali njihovih agencij.

3. Vključena mora biti tako podpora na državni kot na lokalni ravni.

4. Posebne kmetijske dajatve ali takse, ki jih plačujejo proizvajalci, se odštejejo od AMS.

5. AMS, izračunana na način, določen spodaj za temeljno obdobje, mora biti temeljna raven za izpolnjevanje obvez zniževanja domače podpore.

6. Za vsak osnoven kmetijski proizvod je treba ugotoviti posebno AMS, izraženo v celoti v denarni vrednosti.

7. AMS se izračuna, če je izvedljivo, najbližje prvi prodaji določenega osnovnega kmetijskega proizvoda. Ukrepi, usmerjeni k predelovalcem hrane, se vključijo v taki višini, ki za proizvajalce osnovnih kmetijskih proizvodov pomeni korist.

8. Tržna cenovna podpora: tržna cenovna podpora je izračunana z uporabo razlike med fiksno zunanjo referenčno ceno in uporabljeno administrativno ceno, pomnoženo s količino proizvodnje, ki je upravičena do uporabljene administrativne cene. Proračunska plačila za ohranjanje te razlike, kot so odkup ali stroški skladiščenja, se ne vključijo v AMS.

9. Fiksna zunanja referenčna cena temelji na letih 1986 do 1988 in je običajno povprečna f.o.b. vrednost na enoto

določenega osnovnega kmetijskega proizvoda v državi neto izvoznici in povprečna c.i.f. vrednost na enoto določenega osnovnega kmetijskega proizvoda v državi neto uvoznici v temeljnem obdobju. Fiksna referenčna cena se lahko po potrebi prilagaja glede na razlike v kakovosti.

10. Neizvzeta neposredna plačila: neizvzeta neposredna plačila, ki so odvisna od razlike v cenah, so izračunana z uporabo razlike med fiksno referenčno ceno in uporabljeno administrativno ceno, pomnoženo s količino proizvodnje, ki je upravičena do administrativne cene ali do proračunskih izdatkov.

11. Fiksna referenčna cena temelji na letih 1986 do 1988 in je običajno dejanska cena, uporabljena za določitev plačilnih tarif.

12. Neizvzeta neposredna plačila, ki temeljijo na dejavnikih, z izjemo cen, se ugotavljajo s proračunskimi izdatki.

13. Drugi neizvzeti ukrepi, vključno s subvencijami inputov ter drugimi ukrepi, kot so ukrepi za zmanjšanje stroškov trženja: vrednost takih ukrepov je izmerjena ob uporabi vladnih proračunskih izdatkov, ali, če uporaba proračunskih izdatkov ne izraža določene subvencije v celoti, je osnova za izračun subvencije razlika med ceno subvencioniranega blaga ali storitve in reprezentativno tržno ceno za podobno blago ali storitev, pomnožena s količino blaga ali storitve.

PRILOGA 4

DOMAČA PODPORA:

IZRAČUN EKVIVALENTNE MERE PODPORE

1. V skladu z določbami 6. člena se ekvivalentna mera podpore izračuna za vse osnovne kmetijske proizvode, če je tržna cenovna podpora taka, kot je določena v Prilogi 3, toda za katero izračun te komponente AMS ni izvedljiv. Za take proizvode je osnovna raven za izpolnjevanje obvez znižanja domače podpore sestavljena iz komponente tržne cenovne podpore, izražene v ekvivalentni meri podpore po drugem odstavku spodaj, kot tudi iz vseh neizvzetih neposrednih plačil ali drugih neizvzetih podpor, ki se ovrednotijo, kot je določeno v tretjem odstavku spodaj. Vključena mora biti podpora tako na državni kot na lokalni ravni.

2. Ekvivalentne mere podpore, določene v prvem odstavku, se izračunavajo na podlagi specifičnega proizvoda za vse osnovne kmetijske proizvode, kolikor je možno najbližje prvi prodaji, ki dobivajo tržno cenovno podporo in za katere izračun komponente tržne cenovne podpore AMS ni izvedljiv. Za te osnovne kmetijske proizvode se ekvivalentna mera tržne cenovne podpore ugotovi z uporabljeno administrativno ceno in količino proizvodnje, ki je upravičena do te cene, ali, če to ni izvedljivo, s proračunskimi izdatki, ki se uporabljajo za ohranjanje proizvajalčeve cene.

3. Če so osnovni kmetijski proizvodi, na katere se nanaša prvi odstavek, predmet neizvzetih neposrednih plačil ali nekih drugih subvencij za specifičen proizvod, ki ni oproščen obveze zniževanja, so osnova za ekvivalentno mero podpore v zvezi s temi ukrepi taki izračuni kot za ustrezne komponente AMS (določene od desetega do trinajstega odstavka Priloge 3).

4. Ekvivalentne mere podpore se izračunajo na podlagi zneska subvencije, ki je, kolikor je možno, najbližje prvi prodaji določenega osnovnega kmetijskega proizvoda. Ukrepi, namenjeni kmetijskim predelovalcem, se vključijo v takem obsegu, ki za prozvajalce osnovnih kmetijskih proizvodov pomenijo korist. Za posebne kmetijske dajatve ali takse, ki jih plačujejo proizvajalci, se zmanjša ustrezen znesek ekvivalentne mere podpore.

PRILOGA 5

POSEBNA OBRAVNAVA V ZVEZI Z DRUGIM ODSTAVKOM 4. ČLENA

Poglavje A

1. Določbe drugega odstavka 4. člena se ne uporabljajo od dneva začetka veljavnosti Sporazuma o WTO za vsak osnoven kmetijski proizvod ter njegove predelane in/ali pripravljene proizvode ("določene proizvode"), v zvezi s katerimi se izpolnjujejo ti pogoji (v nadaljnjem besedilu "posebna obravnava"):

(a) uvoz določenih proizvodov obsega manj kot 3 odstotke ustrezne domače porabe v temeljnem obdobju 1986-1988 ("temeljno obdobje");

(b) od začetka temeljnega obdobja za določene proizvode niso bile dane nobene izvozne subvencije;

(c) za omejevanje proizvodnje primarnih kmetijskih proizvodov se uporabijo učinkoviti ukrepi;

(d) taki proizvodi so določeni z znakom "ST-Priloga 5" v poglavju I-B I. dela liste članice, priložene k Marakeškemu protokolu, ki so predmet posebne obravnave, ki izraža netrgovinske dejavnike, kot sta varnost pri preskrbi s hrano in varstvo okolja; in

(e) minimalne možnosti dostopa na trg v zvezi z določenimi proizvodi ustrezajo, kot je določeno v poglavju I-B I. dela liste določene članice, 4 odstotkom domače porabe določenih proizvodov v temeljnem obdobju od začetka prvega leta obdobja izvajanja in se potem povečajo za 0,8 odstotka ustrezne domače porabe v temeljnem obdobju na leto v preostalem delu obdobja izvajanja.

2. Na začetku kateregakoli leta v obdobju izvajanja lahko članica preneha s posebno obravnavo določenih proizvodov, tako da izpolnjuje določbe šestega odstavka. V takem primeru mora določena članica ohranjati možnosti minimalnega dostopa, ki so že v veljavi, in v preostanku obdobja izvajanja povečati možnosti minimalnega dostopa za 0,4 odstotka ustrezne domače letne porabe v temeljnem obdobju. Potem bo raven možnosti minimalnega dostopa, ki izhaja iz te formule v zadnjem letu obdobja izvajanja, ohranjena v listi določene članice.

3. Katerokoli pogajanje o vprašanju, ali se posebna obravnava, kot je določena v prvem odstavku, po koncu obdobja izvajanja lahko nadaljuje, mora biti končano v časovnem okviru tega kot del pogajanj, določenih v 20. členu tega sporazuma, ob upoštevanju netrgovinskih dejavnikov.

4. Če se doseže sporazum na podlagi pogajanj, omenjenih v tretjem odstavku, da članica lahko nadaljuje s posebno obravnavo, mora ta članica dati dodatne in sprejemljive koncesije, kot je določeno s temi pogajanji.

5. Če se ne nadaljuje posebna obravnava na koncu obdobja izvajanja, mora ta članica uresničiti določbe šestega odstavka. V takem primeru morajo biti možnosti minimalnega dostopa za določene proizvode na koncu obdobja izvajanja v listi določene članice ohranjene na ravni 8 odstotkov ustrezne domače porabe v temeljnem obdobju.

6. Ukrepi na meji, ki niso običajne carinske dajatve, ohranjene v zvezi z določenimi proizvodi, so predmet določb drugega odstavka 4. člena in veljajo od začetka leta, v katerem se posebna obravnava preneha uporabljati. Ti proizvodi so predmet običajnih carinskih dajatev, ki so omejene v listi določene članice in se uporabljajo od začetka leta, v katerem se preneha uporabljati posebna obravnava, ter potem po stopnjah, ki bi se uporabljale, če bi bilo izpolnjeno vsaj 15-odstotno znižanje v enakih letnih obrokih v obdobju izvaja-

nja. Te dajatve se ugotavljajo na osnovi carinskih ekvivalentov, ki se izračunavajo v skladu z navodili, predpisanimi v prilogi.

Poglavje B

7. Določbe drugega odstavka 4. člena se tudi ne uporabljajo od začetka veljavnosti Sporazuma o WTO za primaren kmetijski proizvod, ki prevladuje v tradicionalni prehrani članice države v razvoju ter v zvezi s katerim se poleg pogojev, določenih v prvem (a) odstavku do prvega (d) odstavka, ki se uporabljajo za te proizvode, izpolnjujejo ti pogoji:

(a) minimalne možnosti dostopa v zvezi s proizvodi, kot so določeni v poglavju I-B I. dela liste določene članice države v razvoju, ustrezajo enemu odstotku domače porabe določenega proizvoda v temeljnem obdobju od začetka prvega leta obdobja izvajanja ter se povečajo v enakih letnih obrokih na dva odstotka ustrezne domače porabe v temeljnem obdobju na začetku petega leta obdobja izvajanja. Od začetka šestega leta obdobja izvajanja možnosti minimalnega dostopa v zvezi s temi proizvodi ustrezajo dvema odstotkoma ustrezne domače porabe v temeljnem obdobju ter se v enakih letnih obrokih povečajo na 4 odstotke ustrezne domače porabe v temeljnem obdobju do začetka 10. leta. Potem se raven možnosti minimalnega dostopa, ki izhaja iz te formule v 10. letu, ohrani v listi določene članice države v razvoju;

(b) na podlagi tega sporazuma so zagotovljene ustrezne možnosti dostopa na trg za druge proizvode po tem sporazumu.

8. Katerakoli pogajanja o vprašanju, ali se posebna obravnava, kot je določena v sedmem odstavku, lahko nadaljuje po koncu 10. leta po začetku obdobja izvajanja, se začnejo in končajo v 10. letu po začetku obdobja izvajanja.

9. Če se doseže sporazum kot rezultat pogajanj, omenjenih v osmem odstavku, da članica lahko nadaljuje s posebno obravnavo, mora ta članica dati dodatne in sprejemljive koncesije, kot je določeno s temi pogajanji.

10. Če se posebna obravnava po sedmem odstavku po 10. letu od začetka obdobja izvajanja ne nadaljuje, so ti proizvodi predmet običajnih carinskih dajatev, ugotovljenih na podlagi carinskega ekvivalenta, ki ga je treba izračunati v skladu z navodili, predpisanimi v prilogi, ki so vezane v listi določene članice. V drugih pogledih se določbe šestega odstavka uporabljajo take, kot so spremenjene na osnovi posebne in pristranske obravnave, dane članicam državam v razvoju na podlagi tega sporazuma.

Dodatek k Prilogi 5

Navodila za izračun carinskih ekvivalentov
za posebne namene, določene v
šestem in desetem odstavku te priloge

1. Carinski ekvivalenti, izraženi bodisi ad valorem ali s posebnimi stopnjami, se izračunajo na pregleden način z uporabo dejanske razlike med notranjimi in zunanjimi cenami. Uporabiti je treba podatke za leta 1986 do 1988. Carinski ekvivalenti:

(a) morajo biti najprej določeni na štirimestni ravni HS;

(b) morajo biti, če to ustreza, določeni na šestmestni ali bolj razčlenjeni ravni HS;

(c) morajo biti na splošno ugotovljeni za predelane in/ali pripravljene proizvode z množenjem posebnega carinskega ekvivalenta (ov) za osnoven kmetijski proizvod(e) z deležem(i), izraženim v vrednosti ali fizični količini, kar je ustrezno, osnovnega kmetijskega proizvoda(ov) v predelanih ali pripravljenih proizvodih ter ob upoštevanju, če je potrebno, kakršnihkoli dodatnih elementov, ki zdaj ščitijo industrijo.

2. Zunanje cene so na splošno za državo uvoznico dejanske povprečne c.i.f. vrednosti na enoto. Če povprečne c.i.f. vrednosti na enoto niso znane ali niso ustrezne, so zunanje cene bodisi:

(a) ustrezne povprečne c.i.f. vrednosti na enoto v sosednji državi; ali

(b) izračunane iz povprečnih f.o.b. vrednosti na enoto ustreznega večjega izvoznika (ov) z upoštevanjem ocene stroškov zavarovanja, voznine in drugih ustreznih stroškov do države uvoznice.

3. Zunanje cene se na splošno preračunajo v domačo valuto ob uporabi letnega povprečnega tržnega tečaja za isto obdobje, za katero so na voljo podatki za ceno.

4. Notranja cena je na splošno reprezentativna cena na debelo, ki prevladuje na domačem trgu, ali ocena te cene, če ustreznih podatkov ni.

5. Začetni carinski ekvivalenti se lahko prilagajajo, če je to potrebno, zaradi upoštevanja razlike v kakovosti ali vrsti z uporabo ustreznega koeficienta.

6. Če je carinski ekvivalent, ki izhaja iz teh smernic, negativen ali nižji kot sedanja vezana stopnja, se lahko začetni carinski ekvivalent dvigne na sedanjo raven vezane stopnje ali na raven državnih ponudb tega proizvoda.

7. Če se prilagodi raven carinskega elvivalenta, ki bi izhajala iz zgornjih smernic, mora določena članica na zahtevo zagotoviti vse možnosti posvetovanja z namenom pogajanj o ustreznih rešitvah.

S P O R A Z U M
O UPORABI SANITARNIH IN FITOSANITARNIH UKREPOV

Članice

ponovno potrjujejo, da ne bi smeli preprečevati nobeni članici, da sprejme ali uveljavlja ukrepe, potrebne za zaščito življenja ali zdravja ljudi, živali ali rastlin, pod pogojem, da se ti ukrepi ne uporabljajo na način, ki bi pomenil samovoljno ali neutemeljeno diskriminacijo med članicami, kjer prevladujejo enaki pogoji, ali kot prikrita omejitev mednarodne trgovine,

z željo izboljšati človekovo zdravje, zdravje živali in fitosanitarne razmere v vseh članicah,

ugotavljajo, da se sanitarni in fitosanitarni ukrepi pogosto uporabljajo na podlagi dvostranskih sporazumov ali protokolov,

z željo vzpostaviti mnogostranski okvir pravil in disciplin za vodenje razvoja, sprejema in izvajanja sanitarnih in fitosanitarnih ukrepov, da bi zmanjšali njihove negativne posledice na trgovino na najmanjšo možno mero,

ob spoznanju pomembnega prispevka, ki ga lahko v tem pogledu dajo mednarodni standardi, smernice in priporočila;

z željo, da bi pospešili uporabo harmoniziranih sanitarnih in fitosanitarnih ukrepov med članicami, ki temeljijo na mednarodnih standardih, smernicah in priporočilih, ki so jih razvile ustrezne mednarodne organizacije, vključno s Komisijo za Codex Alimentarius, Mednarodnim uradom za kužne bolezni živali in ustreznimi mednarodnimi in regionalnimi organizacijami, ki delujejo v okviru Konvencije o mednarodnem varstvu rastlin, ne da bi zahtevali, da članice spremenijo ustrezno raven zaščite življenja ali zdravja ljudi, živali ali rastlin,

ob spoznanju, da lahko članice države v razvoju pri izpolnjevanju sanitarnih ali fitosanitarnih ukrepov članic uvoznic naletijo na posebne težave ter kot posledica tega na težave pri dostopu na trge, pa tudi pri oblikovanju in uporabi sanitarnih in fitosanitarnih ukrepov na svojih lastnih ozemljih, ter z željo, da jim pri teh njihovih prizadevanjih pomagajo,

z željo, da zato razčlenijo pravila za uporabo določb GATT 1994, ki se nanašajo na uporabo sanitarnih ali fitosanitarnih ukrepov, zlasti določb XX. (b) člena,[1]

se sporazumejo, kot sledi:

1. člen

Splošne določbe

1. Ta sporazum velja za vse sanitarne in fitosanitarne ukrepe, ki lahko posredno ali neposredno vplivajo na mednarodno trgovino. Taki ukrepi se določajo in uporabljajo v skladu z določbami tega sporazuma.

2. Za namene tega sporazuma se uporabljajo definicije, določene v Prilogi A.

3. Priloge so sestavni del tega sporazuma.

4. V tem sporazumu nič ne vpliva na pravice članic po Sporazumu o tehničnih ovirah v trgovini v zvezi z ukrepi, ki niso predmet tega sporazuma.

2. člen

Temeljne pravice in obveznosti

1. Članice imajo pravico sprejeti sanitarne in fitosanitarne ukrepe, ki so potrebni za zaščito življenja ali zdravja ljudi, živali ali rastlin, pod pogojem, da ti ukrepi niso v nasprotju z določbami tega sporazuma.

2. Članice morajo zagotoviti, da se katerikoli sanitarni ali fitosanitarni ukrep uporablja v mejah, potrebnih za zaščito življenja ali zdravja ljudi, živali ali rastlin, da temelji na znanstvenih načelih ter se ne ohranja brez zadovoljivih znanstvenih dokazov, razen kot je določeno v sedmem odstavku 5. člena.

3. Članice morajo zagotoviti, da sanitarni in fitosanitarni ukrepi ne povzročajo samovoljne ali neutemeljene diskriminacije med članicami, če prevladujejo enaki ali podobni pogoji, vključno med njihovim ozemljem in ozemljem drugih članic. Sanitarni in fitosanitarni ukrepi se ne smejo uporabljati tako, da bi prikrito omejevali mednarodno trgovino.

4. Za sanitarne ali fitosanitarne ukrepe, ki so v skladu z ustreznimi določbami tega sporazuma, se domneva, da so v skladu z obveznostmi članic po določbah GATT 1994, ki se nanašajo na uporabo sanitarnih ali fitosanitarnih ukrepov, zlasti določb XX. (b) člena.

3. člen

Harmonizacija

1. Da bi sanitarne in fitosanitarne ukrepe harmonizirali na čim širši osnovi, članice svoje sanitarne in fitosanitarne ukrepe pripravljajo na podlagi mednarodnih standardov, smernic ali priporočil, če so na voljo, razen če je v tem sporazumu drugače določeno zlasti v tretjem odstavku.

2. Domneva se, da so sanitarni in fitosanitarni ukrepi, potrebni za zaščito življenja in zdravja ljudi, živali in rastlin, ki so usklajeni z mednarodnimi standardi, smernicami ali priporočili, v skladu z ustreznimi določbami tega sporazuma in GATT 1994.

3. Članice smejo uvajati ali ohranjati sanitarne ali fitosanitarne ukrepe, ki pomenijo večjo raven sanitarne ali fitosanitarne zaščite, kot bi bila dosežena z ukrepi, ki temeljijo na ustreznih mednarodnih standardih, smernicah in priporočilih, če je to znanstveno utemeljeno ali kot posledica ravni sanitarne ali fitosanitarne zaščite, ki jo članica določa kot ustrezno v skladu z ustreznimi določbami od prvega do osmega odstavka 5. člena.[2] Ne glede na omenjeno pa vsi ukrepi, ki imajo za posledico tako raven sanitarne ali fitosanitarne zaščite, ki je drugačna od tiste, ki bi bila dosežena z ukrepi, ki temeljijo na mednarodnih standardih, smernicah ali priporočilih, ne smejo biti v nasprotju s katerokoli drugo določbo tega sporazuma.

4. Članice v mejah svojih možnosti sodelujejo v polni meri v ustreznih mednarodnih organizacijah in njihovih podrejenih telesih, zlasti v Komisiji za Codex Alimentarius, Mednarodnem uradu za kužne bolezni živali ter v mednarodnih in regionalnih organizacijah, ki delujejo v okviru Mednarodne konvencije o varstvu rastlin, da bi v teh organizacijah pospeševale razvoj in občasno proučevanje standardov, smernic in priporočil v zvezi z vsemi vidiki sanitarnih in fitosanitarnih ukrepov.

5. Odbor za sanitarne in fitosanitarne ukrepe, določen v prvem in četrtem odstavku 12. člena (v nadaljnjem besedilu sporazuma Odbor), razvija postopek za spremljanje procesa mednarodne harmonizacije in usklajuje ta prizadevanja z ustreznimi mednarodnimi organizacijami.

4. člen

Enakovrednost

1. Članice morajo sprejeti vse sanitarne in fitosanitarne ukrepe drugih članic kot enakovredne, četudi se ti ukrepi razlikujejo od njihovih ali od tistih, ki jih uporabljajo druge članice, ki trgujejo z enakim proizvodom, če članica izvoznica objektivno dokaže članici uvoznici, da njeni ukrepi dosegajo ustrezno raven sanitarne in fitosanitarne zaščite članice uvoznice. V ta namen je treba članici uvoznici na zahtevo omogočiti ustrezen dostop zaradi kontrole, testiranja in drugih ustreznih postopkov.

2. Članice na zahtevo sprožijo posvetovanja z namenom, da se dosežejo dvostranski in mnogostranski sporazumi o priznanju enakovrednosti določenih sanitarnih in fitosanitarnih ukrepov.

5. člen

Presoja tveganja in določitev ustrezne ravni sanitarne ali fitosanitarne zaščite

1. Članice morajo zagotoviti, da njihovi sanitarni ali fitosanitarni ukrepi temeljijo na presoji, ki ustreza okoliščinam tveganja za življenje ali zdravje ljudi, živali ali rastlin, ob upoštevanju tehničnih postopkov za presojo tveganj, ki so jih razvile ustrezne mednarodne organizacije.

2. Pri presoji tveganj morajo članice upoštevati razpoložljive znanstvene dokaze, ustrezne postopke in načine proizvodnje, ustrezno kontrolo, metode vzorčenja in testiranja, razširjenost določenih bolezni ali škodljivcev, obstoj območij brez škodljivcev in območij brez bolezni, ustrezne ekološke razmere in razmere okolja ter karanteno ali druge oblike zdravljenja.

3. Pri presoji tveganja za življenje ali zdravje živali ali rastlin in pri določanju ukrepa, ki ga je treba uporabiti, da bi dosegli ustrezno raven sanitarne ali fitosanitarne zaščite pred takimi tveganji, članice upoštevajo kot ustrezne gospodarske dejavnike: možno škodo v smislu izgub v proizvodnji ali

[1] V tem sporazumu sklicevanje na XX (b). člen vključuje tudi uvod k temu členu.

[2] Za namene tretjega odstavka 3. člena obstaja znanstvena utemeljitev, če na podlagi proučitve in ovrednotenja vseh razpoložljivih znanstvenih informacij v skladu z ustreznimi določbami tega sporazuma članica ugotovi, da ustrezni mednarodni standardi, smernice ali priporočila niso zadostni, da bi dosegli ustrezno raven sanitarne in fitosanitarne zaščite.

prodaji ob vnosu, obstoju ali širjenju škodljivcev ali bolezni; stroške kontrole ali odprave na ozemlju članice uvoznice ter relativno stroškovno učinkovitost drugačnih pristopov k omejevanju tveganj.

4. Pri določanju ustrezne ravni sanitarne in fitosanitarne zaščite bi morale članice upoštevati, da je cilj zmanjšanje negativnih posledic za trgovino.

5. Z namenom, da bi dosegli doslednosti pri izvajanju koncepta ustrezne ravni sanitarne ali fitosanitarne zaščite pred tveganji za človekovo življenje ali zdravje ali za življenje in zdravje živali in rastlin, se mora vsaka članica izogibati samovoljnemu ali neutemeljenemu razlikovanju na ravneh, za katere meni, da so v različnih razmerah ustrezne, če je posledica takega razlikovanja diskriminacija ali prikrito omejevanje mednarodne trgovine. Članice sodelujejo v Odboru v skladu s prvim, drugim in tretjim odstavkom 12. člena, da bi razvijale smernice za pospeševanje praktične uporabe teh določb. Pri razvoju smernic Odbor upošteva vse pomembne dejavnike, vključno z izjemno naravo tveganj za človekovo zdravje, ki so jim ljudje prostovoljno izpostavljeni.

6. Brez vpliva na drugi odstavek 3. člena morajo članice pri določanju ali ohranjanju sanitarnih ali fitosanitarnih ukrepov za doseganje ustrezne ravni sanitarne ali fitosanitarne zaščite zagotoviti, da taki ukrepi ne omejujejo trgovine bolj, kot je potrebno za doseganje ustrezne ravni sanitarne in fitosanitarne zaščite ob upoštevanju tehnične in gospodarske izvedljivosti.[3]

7. Kadar ustrezni znanstveni dokazi ne zadoščajo, lahko članica začasno sprejme sanitarne ali fitosanitarne ukrepe na podlagi razpoložljivih primernih informacij, vključno z informacijami ustreznih mednarodnih organizacij, kakor tudi na podlagi sanitarnih ali fitosanitarnih ukrepov, ki jih uporabljajo druge članice. V takih okoliščinah članica skuša pridobiti dodatne potrebne informacije za objektivnejšo presojo tveganja ter v razumnem obdobju prouči sanitarni ali fitosanitarni ukrep.

8. Kadar članica upravičeno meni, da določen sanitarni ali fitosanitarni ukrep, ki ga uvaja ali ohranja druga članica, ovira ali bi utegnil ovirati njen izvoz ter ne temelji na ustreznih mednarodnih standardih, smernicah ali priporočilih ali pa taki standardi, smernice ali priporočila ne obstajajo, lahko za tak sanitarni ali fitosanitarni ukrep zahteva pojasnilo, ki ga mora dati članica, ki ukrep ohranja.

6. člen

Prilagajanje regionalnim razmeram, vključno z območji brez škodljivcev ali brez bolezni ter območji, kjer bolezni ali škodljivci niso močno razširjeni

1. Članice morajo zagotoviti, da so njihovi sanitarni ali fitosanitarni ukrepi prilagojeni sanitarnim ali fitosanitarnim razmeram območja – bodisi celotne države, dela države ali vseh ali določenih delov več držav, v katerih ima proizvod poreklo in ki jim je proizvod namenjen. Pri presoji sanitarnih in fitosanitarnih razmer območja morajo članice med drugim upoštevati tudi raven razširjenosti določenih bolezni ali škodljivcev, obstoj programov zatiranja ali kontrole ter ustrezna merila ali smernice, ki jih utegnejo razvijati ustrezne mednarodne organizacije.

2. Članice še posebej priznajo koncept območij brez bolezni ali brez škodljivcev ter območij, kjer škodljivci ali bolezni niso močno razširjeni. Določitev takih območij mora upoštevati dejavnike, kot so zemljepisne značilnosti, ekosistemi, epidemiološki nadzor ter učinkovitost sanitarne ali fitosanitarne kontrole.

3. Članice izvoznice, ki trdijo, da so določena območja na njihovih ozemljih brez bolezni ali brez škodljivcev ali območja, kjer bolezni ali škodljivci niso močno razširjeni, morajo priskrbeti primerne dokaze za objektiven dokaz članici uvoznici, da so taka območja brez bolezni in brez škodljivcev ali območja, kjer škodljivci ali bolezni niso močno razširjeni, ter da obstaja verjetnost, da bodo taka tudi ostala. V ta namen je treba članici uvoznici na zahtevo zagotoviti ustrezen dostop zaradi kontrole, testiranja in drugih ustreznih postopkov.

7. člen

Preglednost

Članice sporočijo spremembe v svojih sanitarnih ali fitosanitarnih ukrepih ter priskrbijo informacije o svojih sanitarnih ali fitosanitarnih ukrepih v skladu z določbami Priloge B.

8. člen

Postopki kontrole, pregleda in odobritve

Članice morajo izpolnjevati določbe Priloge C pri postopkih kontrole, pregleda in odobritve, vključno z državnimi sistemi za dovoljenja za uporabo dodatkov ali za določanje dopustnosti kontaminacije hrane, pijač ali krmil, ter drugače zagotoviti, da njihovi postopki niso v nasprotju z določbami tega sporazuma.

9. člen

Tehnična pomoč

1. Članice soglašajo, da bodo omogočale zagotavljanje tehnične pomoči drugim članicam, zlasti članicam državam v razvoju, bodisi dvostransko ali z ustreznimi mednarodnimi organizacijami. Taka pomoč je lahko med drugim na področju tehnologij predelave, raziskav in infrastrukture, vključno z ustanovitvijo državnih izvršnih organov ter je lahko v obliki nasvetov, kreditov, daril in dotacij, vključno z namenom pridobivanja tehničnega znanja, usposabljanja in opremljanja, da bi se te države lahko prilagodile in ravnale v skladu s sanitarnimi ali fitosanitarnimi ukrepi, potrebnimi za doseganje ustrezne ravni sanitarne in fitosanitarne zaščite na njihovih izvoznih trgih.

2. Če so potrebna bistvena vlaganja, da bi lahko članica izvoznica država v razvoju izpolnila sanitarne ali fitosanitarne zahteve članice uvoznice, mora zadnja proučiti zagotovitev take tehnične pomoči, ki bo državi članici v razvoju dovoljevala, da ohrani in razširi svoje možnosti dostopa na trg za določen proizvod.

10. člen

Posebna in pristranska obravnava

1. Pri pripravi in uporabi sanitarnih ali fitosanitarnih ukrepov članice upoštevajo posebne potrebe članic držav v razvoju ter še posebej najmanj razvitih držav članic.

2. Če ustrezna raven sanitarne ali fitosanitarne zaščite dovoljuje postopno uvajanje novih sanitarnih ali fitosanitarnih ukrepov, je treba za proizvode, za katere se članice države v razvoju zanimajo, opredeliti širše časovne okvire, tako da lahko ohranijo možnosti za svoj izvoz.

3. Da bi zagotovili, da članice države v razvoju lahko izpolnjujejo določbe tega sporazuma, je Odbor pooblaščen takim državam na zahtevo v celoti ali delno odobriti določene časovno omejene izjeme od obveznosti po tem sporazumu ob upoštevanju njihovih finančnih, trgovinskih in razvojnih potreb.

[3] Za namene šestega odstavka 5. člena ukrep ne omejuje trgovine bolj, kot je potrebno, razen če obstaja še drug ukrep, ki je razumno na voljo in upošteva tehnično in gospodarsko izvedljivost, s katerim se lahko doseže ustrezna raven sanitarne ali fitosanitarne zaščite in bistveno manj omejuje trgovina.

4. Članice bi morale spodbujati in omogočati dejavno sodelovanje članic držav v razvoju v ustreznih mednarodnih organizacijah.

11. člen

Posvetovanja in reševanje sporov

1. Določbe XXII. in XXIII. člena GATT 1994, kot so razčlenjene in uporabljene v Dogovoru o reševanju sporov, se uporabljajo za posvetovanja in reševanje sporov po tem sporazumu, razen če v njem ni drugače določeno.

2. V sporu po tem sporazumu v zvezi z znanstvenimi ali tehničnimi vprašanji mora ugotovitveni svet poiskati nasvet pri strokovnjakih, ki jih izbere ob posvetovanju z udeleženci spora. V ta namen lahko ugotovitveni svet, če se mu zdi ustrezno, ustanovi svetovalno tehnično skupino strokovnjakov ali se posvetuje z ustreznimi mednarodnimi organizacijami bodisi na zahtevo udeleženca spora ali na svojo lastno pobudo.

3. V tem sporazumu ne more nič okrniti pravic članice po drugih mednarodnih sporazumih, vključno s pravico, da se zateče k posredovanju ali k mehanizmom za reševanje sporov v drugih mednarodnih organizacijah ali ustanovljenih po kateremkoli mednarodnem sporazumu.

12. člen

Upravljanje

1. Ustanovi se Odbor za sanitarne in fitosanitarne ukrepe, ki zagotavlja reden forum za posvetovanja. Opravlja naloge, potrebne za izvajanje določb tega sporazuma in za uresničevanje njegovih ciljev, še posebej glede harmonizacije. Odbor svoje odločitve sprejema s konsenzom.

2. Odbor spodbuja in omogoča ad hoc posvetovanja ali pogajanja med članicami o določenih sanitarnih ali fitosanitarnih vprašanjih. Odbor spodbuja uporabo mednarodnih standardov, smernic in priporočil pri vseh članicah ter v zvezi s tem prevzema pokroviteljstvo nad tehničnimi posvetovanji in študijami z namenom povečanja skladnosti in povezovanja med mednarodnimi in državnimi sistemi ter pristopi za odobravanje uporabe dodatkov v hrani ali za določitev toleranc kontaminantov v hrani, pijači ali krmi.

3. Odbor ohranja tesne stike z ustreznimi mednarodnimi organizacijami na področju sanitarne in fitosanitarne zaščite, še posebej s Komisijo za Codex Alimentarius, Mednarodnim uradom za kužne bolezni živali in Sekretariatom Mednarodne konvencije o varstvu rastlin, da zagotovi najboljši možni znanstveni ali tehnični nasvet za upravljanje v zvezi s tem sporazumom ter da se izogne nepotrebnemu podvajanju.

4. Odbor razvije postopek za spremljanje procesa mednarodne harmonizacije in uporabe mednarodnih standardov, smernic ali priporočil. V ta namen bi moral Odbor v povezavi z ustreznimi mednarodnimi organizacijami pripraviti seznam mednarodnih standardov, smernic ali priporočil, ki se nanašajo na sanitarne ali fitosanitarne ukrepe, za katere Odbor ugotavlja, da imajo velik učinek na trgovino. Ta seznam bi moral vključevati navedbe članic o tistih mednarodnih standardih, smernicah ali priporočilih, ki jih uporabljajo kot pogoj za uvoz ali na podlagi katerih imajo lahko uvoženi proizvodi, ki tem standardom ustrezajo, dostop na njihove trge. V primerih, ko članica ne uporablja mednarodnih standardov, smernic ali priporočil kot pogoj pri uvozu, bi morala navesti razloge za to, še posebej pa, če meni, da standard ni dovolj strog, da bi zagotavljal ustrezno raven sanitarne ali fitosanitarne zaščite. Če članica spremeni svoje stališče po navedbi o uporabi standarda, smernice ali priporočila kot pogoja za uvoz, bi morala to spremembo pojasniti ter o tem obvestiti tako Sekretariat kot ustrezne mednarodne organizacije, razen če se taka notifikacija in pojasnilo dasta v skladu s postopki v Prilogi B.

5. Da se izogne nepotrebnemu podvajanju, lahko Odbor ustrezno odloči, da uporabi informacije, ki izhajajo iz postopkov, še posebej za notifikacijo, ki se uporabljajo v ustreznih mednarodnih organizacijah.

6. Odbor lahko na podlagi pobude ene od članic po ustreznih poteh povabi ustrezne mednarodne organizacije ali njihova podrejena telesa, da proučujejo določene zadeve, povezane s posebnim standardom, smernico ali priporočilom, vključno s pojasnili, zakaj se ne uporabljajo, ki so dana v skladu s četrtim odstavkom.

7. Odbor v treh letih po dnevu začetka veljavnosti Sporazuma o WTO pregleda njegovo delovanje in izvajanje, potem pa, kadar je potrebno. Če ustreza, Odbor lahko predloži Svetu za trgovino z blagom predloge za dopolnitev besedila tega sporazuma, med drugim ob upoštevanju izkušenj, pridobljenih pri njegovem izvajanju.

13. člen

Izvajanje

Članice so po tem sporazumu v celoti odgovorne za spoštovanje vseh obveznosti, določenih v njem. Članice oblikujejo in izvajajo pozitivne ukrepe in mehanizme z namenom, da bi določbe tega sporazuma poleg osrednjih vladnih organov spoštovali tudi drugi. Članice sprejmejo take razumne ukrepe, kot so jim na voljo za zagotovitev, da se nevladni subjekti na njihovem ozemlju kakor tudi regionalni organi, katerih člani so določeni subjekti na njihovih ozemljih, ravnajo po ustreznih določbah tega sporazuma. Poleg tega članice ne smejo sprejeti ukrepov, ki imajo tak vpliv, posredno ali neposredno, da zahtevajo ali spodbujajo take regionalne ali nevladne subjekte ali lokalne oblasti, da delujejo na način, ki ni v skladu z določbami tega sporazuma. Članice morajo zagotoviti, da se zanesejo na storitve nevladnih subjektov za izvajanje sanitarnih ali fitosanitarnih ukrepov le, če ti subjekti izpolnjujejo določbe tega sporazuma.

14. člen

Končne določbe

Najmanj razvite države članice lahko odložijo uporabo določb tega sporazuma glede svojih sanitarnih ali fitosanitarnih ukrepov, ki vplivajo na uvoz ali uvožene proizvode, za obdobje pet let od dneva začetka veljavnosti Sporazuma o WTO. Druge članice države v razvoju lahko za dve leti od dneva začetka veljavnosti Sporazuma o WTO odložijo uporabo določb tega sporazuma, razen osmega odstavka 5. člena in 7. člena, glede svojih sanitarnih ali fitosanitarnih ukrepov, ki vplivajo na uvoz ali uvožene proizvode, kjer tako uporabo onemogoča pomanjkanje tehničnega strokovnega znanja, tehnične infrastrukture ali sredstev.

PRILOGA A

DEFINICIJE[4]

1. *Sanitarni ali fitosanitarni ukrep* – katerikoli ukrep, ki se uporabi:

(a) za zavarovanje življenja ali zdravja živali ali rastlin na ozemlju članice pred tveganji zaradi vnosa, obstoja ali širjenja škodljivcev, bolezni in organizmov, ki prenašajo ali povzročajo bolezni;

(b) za zavarovanje življenja ali zdravja ljudi ali živali na ozemlju članice pred tveganji, ki so posledica dodatkov, kontaminantov, strupov ali organizmov, ki povzročajo bolezni, v hrani, pijači in krmi;

[4] Za namene teh definicij "žival" vključuje ribe in divjad; "rastlina" vključuje gozdove in divje rastlinstvo; "škodljivci" vključujejo plevel; in "kontaminanti" vključujejo pesticide in ostanke veterinarskih zdravil in tujkov.

(c) za zavarovanje življenja ali zdravja ljudi na ozemlju članice pred tveganji zaradi bolezni, ki jih prenašajo živali, rastline ali proizvodi iz njih, ali zaradi vnosa, obstoja ali širjenja škodljivcev; ali

(d) za preprečevanje ali omejevanje druge škode zaradi vnosa, obstoja ali širjenja škodljivcev na ozemlju članice.

Sanitarni ali fitosanitarni ukrepi vključujejo vse ustrezne zakone, uredbe, predpise, zahteve in postopke, ki med drugim vključujejo merila za končni proizvod; postopke in metode proizvodnje; testiranje, kontrolo, postopke izdaje certifikata in odobritve; karantenske postopke vključno z ustreznimi zahtevami, povezanimi s prevozom živali ali rastlin ali z materiali, potrebnimi za njihovo preživetje med prevozom; določbe o ustreznih statističnih metodah, postopke vzorčenja in metode presoje tveganja; zahteve, povezane s pakiranjem in označevanjem, ki se neposredno nanašajo na neoporečnost hrane.

2. *Harmonizacija* – vzpostavitev, priznavanje in uporaba skupnih sanitarnih in fitosanitarnih ukrepov v različnih članicah.

3. *Mednarodni standardi, smernice in priporočila*

(a) za neoporečnost hrane, standardi, smernice in priporočila, ki jih je sprejela Komisija za Codex Alimentarius, ter se nanašajo na dodatke v hrani, veterinarska zdravila in ostanke pesticidov, kontaminante, postopke za analizo in vzorčenje ter kodekse in smernice za vzdrževanje higiene;

(b) za zdravje živali in zoonoze, standardi, smernice in priporočila, razvita pod pokroviteljstvom Mednarodnega urada za kužne bolezni živali;

(c) za zdravje rastlin, mednarodni standardi, smernice in priporočila, razvita pod pokroviteljstvom Sekretariata Mednarodne konvencije o varstvu rastlin v sodelovanju z regionalnimi organizacijami, ki delujejo v okviru Mednarodne konvencije o varstvu rastlin; in

(d) za vprašanja, ki jih ne obravnavajo zgoraj navedene organizacije, ustrezni standardi, smernice in priporočila, ki jih oznanjajo ustrezne mednarodne organizacije, katerih članstvo je dostopno za vse članice, in ki jih Odbor ugotovi.

4. *Presoja tveganja* – presoja verjetnosti vnosa, obstoja ali širjenja škodljivca ali bolezni na ozemlju članice uvoznice v skladu s sanitarnimi ali fitosanitarnimi ukrepi, ki bi lahko bili uporabljeni, ter povezanih možnih bioloških in gospodarskih posledic; ali presoja možnih škodljivih posledic za zdravje človeka ali živali zaradi prisotnosti dodatkov, kontaminantov, strupov ali organizmov, ki povzročajo bolezni, v hrani, pijači ali krmi.

5. *Ustrezna raven sanitarne in fitosanitarne zaščite* – raven zaščite, za katero članica, ki uvaja sanitarni ali fitosanitarni ukrep za zaščito življenja ali zdravja ljudi, živali ali rastlin na svojem ozemlju, meni, da je ustrezna.

OPOMBA: Številne članice ta koncept omenjajo kot "sprejemljiva raven tveganja".

6. *Območje brez škodljivcev ali brez bolezni* – območje, bodisi celotne države, dela države ali vseh ali določenih delov več držav, kot so ga določile pristojne oblasti, kjer se ne pojavljajo določeni škodljivci ali bolezni.

OPOMBA: Območje brez škodljivcev ali bolezni lahko obkrožuje, je obkroženo ali je poleg nekega območja – bodisi v delu države ali v geografskem območju, ki vključuje dele ali celote več držav – za katero se ve, da se je tam pojavila določena bolezen ali škodljivec, vendar se na njem izvajajo območni kontrolni ukrepi, kot je uvajanje zaščite, nadzora in vmesnih območij, ki bodo omejili ali zatrli določeno bolezen ali škodljivca.

7. *Območje, kjer škodljivci ali bolezni niso močno razširjeni* – območje bodisi celotne države, dela države ali vseh ali določenih delov več držav, kot so jih določile pristojne oblasti, kjer se je določena bolezen ali škodljivec pojavila na nizki stopnji ter se na njem izvajajo učinkoviti ukrepi nadzora, kontrole ali zatiranja.

PRILOGA B

PREGLEDNOST SANITARNIH IN FITOSANITARNIH PREDPISOV

Objava predpisov

1. Članice zagotovijo, da se vsi sanitarni in fitosanitarni predpisi[5], ki so bili sprejeti, takoj objavijo, tako da omogočijo zainteresiranim članicam, da se seznanijo z njimi.

2. Razen v nujnih primerih članice dopuščajo razumno časovno obdobje med objavo sanitarnega ali fitosanitarnega predpisa in njegovim začetkom veljavnosti, zato da proizvajalci v članicah izvoznicah ter še posebej v članicah državah v razvoju prilagodijo svoje proizvode in načine proizvodnje zahtevam članice uvoznice.

Informacijske točke

3. Vsaka članica zagotovi obstoj ene informacijske točke, katere naloga je odgovoriti na vsa ustrezna vprašanja zainteresiranih članic kakor tudi priskrbeti ustrezne dokumente o:

(a) kateremkoli sanitarnem ali fitosanitarnem predpisu, sprejetem ali predlaganem na njenem ozemlju;

(b) kateremkoli kontrolnem ali nadzornem postopku, proizvodnem ali karantenskem postopku, postopku določanja tolerance pesticidov in dodatkov v hrani, ki se izvajajo na njenem ozemlju;

(c) postopkih presoje tveganj, dejavnikih, ki se upoštevajo, kakor tudi o določitvi ustrezne ravni sanitarne ali fitosanitarne zaščite;

(d) članstvu in sodelovanju članice ali ustreznih teles na svojem ozemlju, v mednarodnih in regionalnih sanitarnih in fitosanitarnih organizacijah in sistemih kakor tudi v dvostranskih in mnogostranskih sporazumih v mejah tega sporazuma ter besedilih teh sporazumov in dogovorov.

4. Članice zagotovijo, da zainteresirane članice, ki zahtevajo kopije dokumentov, le-te dobijo po isti ceni (če obstaja), v katero niso vključeni stroški pošiljanja, kot državljani.[6]

Postopki notifikacije

5. Če neki mednarodni standard, smernica ali priporočilo ne obstaja ali pa vsebina predlaganega sanitarnega ali fitosanitarnega predpisa v pretežni meri ni enaka mednarodnemu standardu, smernici ali priporočilu, lahko pa pomembno vpliva na trgovino drugih članic, članice:

(a) objavijo obvestilo na začetni stopnji, tako da omogočijo zainteresiranim članicam, da se seznanijo s predlogom za sprejem določenega predpisa;

(b) prek Sekretariata obvestijo druge članice o proizvodih, ki jih predpis vključuje, skupaj s kratko navedbo namena in razlogov za predlagani predpis. Take notifikacije morajo biti opravljene na začetni stopnji, ko je še možno predlagati amandmaje in dajati pripombe;

(c) na zahtevo drugih članic priskrbijo kopije predlaganih predpisov, če pa je možno, določijo dele, ki se po vsebini razlikujejo od mednarodnih standardov, smernic ali priporočil;

(d) brez diskriminacije dopustijo drugim članicam razumno časovno obdobje za pisne pripombe, za razpravo o teh

[5] Sanitarni in fitosanitarni ukrepi v obliki zakonov, uredb ali pravilnikov, ki imajo splošno veljavo.

[6] Če se ta sporazum sklicuje na "državljane", ta izraz v primeru ločenega carinskega ozemlja članice WTO pomeni osebe, fizične ali pravne, s sedežem ali z dejansko in dejavno industrijsko ali trgovinsko enoto na tem carinskem ozemlju.

pripombah na njihovo zahtevo ter upoštevajo pripombe in izide razprav.

6. Če za neko članico nastanejo ali pa utegnejo nastati nujni problemi v zvezi z varstvom zdravja, lahko ta članica po potrebi izpusti vse tiste stopnje, naštete v petem odstavku te priloge, če:

(a) takoj prek Sekretariata obvesti druge članice o posebnem predpisu in proizvodih, ki jih vključuje, s kratko navedbo namena in razlogov za predpis, vključno z navedbo narave problema (-ov);

(b) na zahtevo zagotovi kopije predpisov drugim članicam;

(c) dovoli drugim članicam, da dajo pisne pripombe, razpravlja o teh pripombah na njihovo zahtevo ter upošteva pripombe in izide razprav.

7. Notifikacije Sektretariatu so v angleškem, francoskem ali španskem jeziku.

8. Razvite države članice na zahtevo drugih članic priskrbijo kopije dokumentov, če so le-ti obsežni, pa povzetke dokumentov, ki jih vključuje posebna notifikacija v angleškem, francoskem ali španskem jeziku.

9. Sekretariat takoj pošlje kopije notifikacij vsem članicam in zainteresiranim mednarodnim organizacijam ter opozori članice države v razvoju o kakršnihkoli notifikacijah, ki se nanašajo na proizvode, ki so zanje še posebej zanimivi.

10. Članice določijo osrednji organ, ki je na državni ravni odgovoren za izvajanje določb v zvezi s postopki notifikacij v skladu s petim, šestim, sedmim in osmim odstavkom te priloge.

Splošni pridržki

11. V tem sporazumu nič ni možno razlagati kot zahtevo:

(a) da se zagotavljajo podrobnosti ali kopije osnutkov ali objava besedil v kakšnem drugem jeziku, kot je jezik članice, razen kot je določeno v osmem odstavku te priloge; ali

(b) da članice razkrijejo zaupne informacije, ki bi ovirale uveljavljanje sanitarne ali fitosanitarne zakonodaje ali ki bi posegale v zakonite trgovinske interese določenih podjetij.

PRILOGA C

POSTOPKI KONTROLE, PREGLEDA IN ODOBRITVE[7]

1. Članice glede kateregakoli postopka, s katerim preverjajo in zagotavljajo izvajanje sanitarnih in fitosanitarnih ukrepov, zagotavljajo, da:

(a) se ti postopki izvedejo in končajo brez nepotrebnih zamud in na način, ki ni manj ugoden za uvožene proizvode kot za enake domače proizvode;

(b) je običajno trajanje vsakega postopka objavljeno ali da se pričakovano trajanje postopka sporoči prosilcu na njegovo zahtevo; ko prejme neko vlogo, pristojni organ takoj pregleda, ali je dokumentacija popolna, in prosilca natančno in v celoti obvesti o vseh pomanjkljivostih; pristojni organ, takoj ko je mogoče, natančno in v celoti obvesti prosilca o odločitvi v postopku, tako da ta po potrebi lahko ustrezno ukrepa; četudi ima vloga pomanjkljivosti, pristojni organ v možnem obsegu nadaljuje s postopkom, če prosilec to zahteva, ter na zahtevo prosilca obvesti, na kateri stopnji je postopek, vsako zamudo pa pojasni;

(c) so zahteve po informacijah omejene na potrebno za ustrezne postopke kontrole, pregleda in odobritve, vključno z odobritvijo uporabe dodatkov ali z določitvijo meja toleranc za kontaminante v hrani, pijači ali krmi;

(d) se spoštuje zaupnost informacij o uvoženih proizvodih, ki izhajajo ali pa so dane v zvezi s kontrolo, pregledom ali odobritvijo na način, ki ni nič manj ugoden kot za domače proizvode in ki spoštuje zakonite trgovinske interese;

(e) so vse zahteve za kontrolo, pregled in odobritev posameznih vzorcev ali proizvodov omejene na to, kar je razumno in potrebno;

(f) so vse pristojbine za postopke za uvožene proizvode enake v primerjavi s pristojbinami, ki se zaračunavajo za enake domače proizvode ali za proizvode s poreklom v neki drugi članici, ter ne smejo biti višje, kot so dejanski stroški storitve;

(g) bi se pri določanju kraja zmogljivosti, ki se uporabljajo za postopke, ter pri izbiri vzorcev uvoženih proizvodov uporabila enaka merila kot za domače proizvode, da bi zmanjšali težave prosilcev, uvoznikov, izvoznikov ali njihovih zastopnikov na najmanjšo možno mero;

(h) kadarkoli se spremenijo specifikacije proizvoda po kontroli in pregledu v luči veljavnih predpisov, se postopek za spremenjeni proizvod omeji na potrebno za določitev, ali obstaja primerno zaupanje, da proizvod še vedno ustreza določenim predpisom; in

(i) obstaja postopek za obravnavo pritožb v zvezi z uporabo teh postopkov ter za ustrezno ukrepanje, če je pritožba upravičena.

Če ima članica uvoznica sistem za odobravanje uporabe dodatkov v hrani ali določitev meja toleranc za kontaminante v hrani, pijači ali krmi, ki prepoveduje ali omejuje proizvodom, ki take odobritve nimajo, dostop na njen domači trg, mora članica uvoznica proučiti možnost uporabe ustreznega mednarodnega standarda kot podlage za dostop do sprejema končne odločitve.

2. Če sanitarni ali fitosanitarni ukrep določa kontrolo na ravni proizvodnje, članica, na katere ozemlju se proizvodnja odvija, zagotovi potrebno pomoč, da omogoči kontrolo in delo nadzornih organov.

3. V tem sporazumu nič ne preprečuje članicam, da na svojem ozemlju opravljajo razumen pregled.

S P O R A Z U M O TEKSTILU IN OBLAČILIH

Članice se

sklicujejo na to, da so se ministri v Punti del Este sporazumeli, da "bo cilj pogajanj na področju tekstila in oblačil oblikovanje možnosti, ki bi dopuščale končno integracijo tega področja v GATT na osnovi poostrenih pravil in disciplin GATT, kar bi prispevalo k nadaljnji liberalizaciji trgovine",

sklicujejo tudi na to, da je bilo z Odločitvijo Odbora za trgovinska pogajanja iz aprila 1989 dogovorjeno, da se mora proces integracije začeti po sklenitvi Urugvajskega kroga mnogostranskih trgovinskih pogajanj in da mora biti po naravi progresiven,

nadalje sklicujejo, da je bilo dogovorjeno, da bodo najmanj razvite države članice deležne posebne obravnave, ter se

sporazumejo, kot sledi:

1. člen

1. Ta sporazum vsebuje določbe, ki jih morajo članice uporabljati v prehodnem obdobju z namenom integracije področja tekstila in oblačil v GATT 1994.

[7] Postopki kontrole, pregleda in odobritve med drugim vključujejo tudi postopke vzorčenja, testiranja in izdaje potrdil.

2. Članice se sporazumejo, da bodo uporabljale določbe osemnajstega odstavka 2. člena in šestega (b) odstavka 6. člena tako, da se majhnim dobaviteljem bistveno poveča možnost dostopa in da se razvijejo gospodarsko pomembne trgovinske možnosti za nove dobavitelje v trgovini s tekstilom in oblačili.[1]

3. Članice upoštevajo razmere tistih članic, ki od leta 1986 niso sprejele Protokolov o podaljšanju Sporazuma o mednarodni trgovini s tekstilom (v nadaljnjem besedilu MFA) in jim morajo v največji možni meri omogočiti posebno obravnavo pri uporabi določb tega sporazuma.

4. Članice se sporazumejo, da se posebni interesi članic, ki pridelujejo in izvažajo bombaž, ob posvetovanju z njimi izražajo pri izvajanju določb tega sporazuma.

5. Z namenom integracije področja tekstila in oblačil v GATT 1994 bi morale članice omogočiti neprekinjeno samostojno prilagajanje industrije in večjo konkurenco na svojih trgih.

6. Če v tem sporazumu ni drugače določeno, določbe tega sporazuma ne vplivajo na pravice in obveznosti članic na podlagi določb Sporazuma o WTO in mnogostranskih trgovinskih sporazumov.

7. Tekstilni proizvodi in oblačila, za katere velja ta sporazum, so določeni v prilogi.

2. člen

1. Vse količinske omejitve po dvostranskih sporazumih, ki se ohranjajo po 4. členu ali pa so sporočene po 7. ali 8. členu MFA, v veljavi na dan pred začetkom veljavnosti Sporazuma o WTO morajo članice, ki ohranjajo take omejitve, v 60 dneh, potem ko sporazum začne veljati, natančno sporočiti Organu za spremljanje trgovine s tekstilom (Textiles Monitoring Body, v nadaljnjem besedilu TMB), ki ga določa 8. člen, vključno z ravnmi omejitev, stopnjami rasti in določbami o prožnosti. Članice se sporazumejo, da vse take omejitve, ki jih ohranjajo pogodbenice GATT 1947 in so v veljavi na dan pred začetkom veljavnosti Sporazuma v WTO, urejajo od dneva začetka njegove veljavnosti določbe tega sporazuma.

2. TMB te notifikacije pošlje vsem članicam. Vsaka članica lahko v 60 dneh po prejemu notifikacije sporoči TMB svoje pripombe, ki se ji zdijo primerne v zvezi s temi notifikacijami. O takih pripombah je treba obvestiti tudi druge članice. TMB lahko določenim članicam tudi daje priporočila, če se mu zdi primerno.

3. Če se 12-mesečno obdobje omejitev, ki so sporočene po prvem odstavku, ne ujema z 12-mesečnim obdobjem neposredno pred začetkom veljavnosti Sporazuma o WTO, bi se morale določene članice medsebojno dogovoriti o potrebnih postopkih, da se obdobje omejitev uskladi z letom tega sporazuma,[2] ter določiti osnovne nacionalne ravni takih omejitev, da lahko izvajajo določbe tega člena. Določene članice se sporazumejo, da se na zahtevo takoj posvetujejo, z namenom doseči tak medsebojni sporazum. Katerikoli taki dogovori morajo med drugim upoštevati sezonske razporeditve dobav v zadnjih letih. Rezultati teh posvetovanj se sporočijo TMB, ki da taka priporočila, kot se mu zdijo primerna za določeno članico.

4. Za omejitve, sporočene po prvem odstavku, se domneva, da sestavljajo celoto tistih omejitev, ki jih uporabljajo določene članice na dan pred začetkom veljavnosti Sporazuma o WTO. Nobena nova omejitev se ne sme uvajati, razen na podlagi določb tega sporazuma ali ustreznih določb GATT 1994.[3] Omejitve, ki se ne sporočijo v 60 dneh od dneva začetka veljavnosti Sporazuma o WTO, se takoj ukinejo.

5. Vsak enostranski ukrep, ki se sprejme na podlagi 3. člena MFA pred dnem začetka veljavnosti Sporazuma o WTO, lahko velja tako dolgo, kot je v njem določeno – a ne več kot 12 mesecev – če ga je proučil Organ za nadzor nad trgovino s tekstilom (Textiles Surveillance Body, v nadaljnjem besedilu TSB), ki je bil ustanovljen na podlagi MFA. Če TSB ne bi imel možnosti proučiti takega enostranskega ukrepa, ga mora proučiti TMB v skladu s pravili in postopki v zvezi z ukrepi 3. člena MFA. Vsak ukrep, ki se uporablja na podlagi sporazuma, ki temelji na 4. členu MFA, pred dnem začetka veljavnosti Sporazuma o WTO in je predmet spora in ga TSB še ni imel možnosti proučiti, mora proučiti še TMB v skladu s pravili in postopki MFA, kot se uporabljajo za tako proučitev.

6. Z dnem, ko začne veljati Sporazum o WTO, mora vsaka članica integrirati v GATT 1994 proizvode iz priloge na ravni tarifnih postavk HS, ki predstavljajo vsaj 16 odstotkov celotnega uvoza proizvodov neke članice v letu 1990. Proizvodi, ki jih je treba integrirati, vključujejo proizvode iz vseh teh štirih skupin: česanka in preja, tkanine, končni tekstilni proizvodi in oblačila.

7. Vse podrobnosti o ukrepih v skladu s šestim odstavkom članice sporočijo, kot sledi:

(a) Članice, ki ohranjajo omejitve iz prvega odstavka, obvestijo o tem Sekretariat GATT ne glede na dan začetka veljavnosti Sporazuma o WTO najkasneje do dneva, ki ga je določila Ministrska odločitev z dne 15. aprila 1994. Sekretariat GATT pravočasno pošlje te notifikacije drugim udeleženkam v vednost. Te notifikacije morajo biti dostopne TMB, ko se ustanovi, za namene enaindvajsetega odstavka;

(b) Članice, ki so si na podlagi prvega odstavka 6. člena pridržale pravico do uporabe določb 6. člena, te podatke najkasneje v 60 dneh od dneva začetka veljavnosti Sporazuma o WTO sporočijo TMB ali v primeru tistih članic, na katere se nanaša tretji odstavek 1. člena, najkasneje do konca 12. meseca od dneva začetka veljavnosti Sporazuma o WTO. TMB te notifikacije pošlje še drugim članicam v vednost in jih prouči, kot to določa enaindvajseti odstavek.

8. Drugi proizvodi, t.j. proizvodi, ki niso integrirani v GATT 1994 na podlagi šestega odstavka, se integrirajo v smislu postavk ali kategorij HS v treh fazah, in sicer:

(a) prvega dne 37. meseca od začetka veljavnosti Sporazuma o WTO tisti proizvodi iz priloge, ki predstavljajo najmanj 17 odstotkov celotnega uvoza neke članice v letu 1990. Proizvodi, ki jih članice integrirajo, vključujejo proizvode iz vseh teh štirih skupin: česanka in preja, tkanine, končni tekstilni proizvodi in oblačila;

(b) prvega dne 85. meseca od začetka veljavnosti Sporazuma o WTO proizvodi iz priloge, ki predstavljajo najmanj 18 odstotkov celotnega uvoza neke članice v letu 1990. Proizvodi, ki jih članice integrirajo, vključujejo proizvode iz vseh teh štirih skupin: česanka in preja, tkanine, končni tekstilni proizvodi in oblačila;

(c) prvega dne 121. meseca od začetka veljavnosti Sporazuma o WTO je področje tekstila in oblačil integrirano v GATT 1994 in so vse omejitve po tem sporazumu odpravljene.

9. Za članice, ki so v skladu s prvim odstavkom 6. člena sporočile svoj namen, da si ne bodo pridržale pravice do uporabe določb 6. člena po tem sporazumu, se šteje, da so integrirale svoje tekstilne proizvode in oblačila v GATT 1994. Zato so take članice oproščene izvajanja določb od šestega do osmega odstavka in enajstega odstavka.

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[1] Izvoz iz najmanj razvitih držav članic ima lahko v največji možni meri koristi od te določbe.

[2] Leto sporazuma je 12-mesečno obdobje, ki se začne z dnem, ko začne veljati Sporazum o WTO, in vsako nadaljnje 12- mesečno obdobje.

[3] Ustrezne določbe GATT 1994 ne vključujejo XIX. člena glede proizvodov, ki še niso integrirani v GATT 1994, razen če ni posebej določeno v tretjem odstavku priloge.

10. V tem sporazumu nič ne preprečuje članici, ki je predložila program integracije na podlagi šestega ali osmega odstavka, da integracije proizvodov v GATT 1994 opravi prej, kot je določeno v programu. Vendar pa vsaka taka integracija proizvodov začne veljati na začetku leta, ki ga določa sporazum, podatke o tem pa je treba sporočiti TMB vsaj tri mesece pred tem datumom, da lahko obvesti vse druge članice.

11. Posamezne programe integracije je treba na podlagi osmega odstavka natančno sporočiti TMB vsaj 12 mesecev prej, preden začnejo veljati, in TMB o tem obvesti vse druge članice.

12. Osnovne ravni omejitev drugih proizvodov, omenjenih v osmem odstavku, so ravni omejitev iz prvega odstavka.

13. Med prvo fazo tega sporazuma (od dneva začetka veljavnosti Sporazuma o WTO do vključno 36. meseca njegove veljavnosti) se raven vsake omejitve na podlagi dvostranskih sporazumov MFA, ki veljajo 12 mesecev pred začetkom veljavnosti Sporazuma o WTO, vsako leto poveča vsaj za stopnjo rasti, ki je določena za posamezne omejitve, povečane za 16 odstotkov.

14. Razen če v skladu z dvanajstim odstavkom 8. člena Svet za trgovino z blagom ali Organ za reševanje sporov drugače odločita, se raven vsake preostale omejitve letno poveča v zaporednih fazah najmanj:

(a) v drugi fazi (od 37. do vključno 84. meseca od dneva začetka veljavnosti Sporazuma o WTO) se stopnja rasti za posamezne omejitve med prvo fazo poveča za 25 odstotkov;

(b) v tretji fazi (od 85. do vključno 120. meseca od dneva začetka veljavnosti Sporazuma o WTO) se stopnja rasti za posamezne omejitve med drugo fazo poveča za 27 odstotkov.

15. V tem sporazumu nič ne preprečuje članici, da odpravi kakršnokoli omejitev, ki jo ohranja na podlagi tega člena, ki začne veljati na začetku kateregakoli leta, ki ga določa sporazum v prehodnem obdobju, pod pogojem, da sta določena članica izvoznica in TMB o tem obveščena vsaj tri mesece pred začetkom veljavnosti odprave omejitve. Rok predhodne notifikacije je lahko skrajšan na 30 dni v soglasju z določeno članico, ki je pri izvozu omejena. TMB o tem obvesti vse članice. Pri obravnavi možnosti odprave omejitev, kot je predvidena v tem odstavku, ustrezne članice upoštevajo obravnavo podobnega izvoza iz drugih članic.

16. Določbe o prožnosti, t.j. zamenjava, podaljšanje in prenos, ki se uporabljajo pri vseh omejitvah, ki se ohranjajo na podlagi tega člena, so enake kot tiste, ki jih vsebujejo dvostranski sporazumi MFA za 12 mesecev pred začetkom veljavnosti Sporazuma o WTO. Za kombinirano uporabo zamenjav, podaljšanj in prenosov se ne uporabljajo nobene količinske omejitve.

17. Upravni dogovori, potrebni za izvajanje katerekoli določbe tega člena, so predmet sporazuma določenih članic. Vsak tak dogovor je treba sporočiti TMB.

18. Za tiste članice, za katere veljajo omejitve izvoza na dan pred začetkom veljavnosti Sporazuma o WTO in za katere omejitve pomenijo 1,2 odstotka ali manj od celotnega obsega omejitev, ki jih je uporabljala članica uvoznica od 31. decembra 1991 in so sporočene na podlagi tega člena, je treba ob začetku veljavnosti Sporazuma o WTO in za ves čas veljavnosti tega sporazuma zagotoviti bistveno izboljšanje dostopa za njihov izvoz, in sicer z napredovanjem za eno fazo rasti, kot je določena v trinajstem in štirinajstem odstavku, ali vsaj z enakovrednimi spremembami, za katere se lahko sporazumejo glede na različne kombinacije osnovnih ravni, rasti in določb o prožnosti. Taka izboljšanja je treba sporočiti TMB.

19. V vsakem primeru, če med veljavnostjo tega sporazuma članica uporabi poseben zaščitni ukrep za določen proizvod na podlagi XIX. člena GATT 1994 za obdobje enega leta po integraciji tega proizvoda v GATT 1994 v skladu z določbami tega člena, veljajo določbe XIX. člena, kot jih razlaga Sporazum o posebnih zaščitnih ukrepih, z izjemo določbe v dvajsetem odstavku.

20. Če se uporablja tak ukrep z uporabo necarinskih ukrepov, določena članica uvoznica na zahtevo katerekoli članice izvoznice, katere izvoz takih proizvodov je bil omejen, kot določa ta sporazum ob kateremkoli času v dobi enega leta pred uvedbo zaščitnega ukrepa, uporablja ta ukrep tako, kot to določa drugi (d) odstavek XIII. člena GATT 1994. Članica izvoznica tak ukrep spremlja. Uporabljena raven zaščite ne sme vplivati na zmanjšanje ustreznega izvoza pod raven zadnjega reprezentativnega obdobja, ki je običajno povprečje izvoza določene članice v zadnjem triletnem reprezentativnem obdobju, za katero so na voljo statistični podatki. Kadar se uporabljajo posebni zaščitni ukrepi dlje kot eno leto, je treba uporabljeno raven na progresiven način liberalizirati v rednih časovnih presledkih v obdobju uporabe. V takih primerih določena članica izvoznica ne sme uporabiti pravice do bistvenega odloga enakovrednih koncesij ali drugih obveznosti na podlagi tretjega (a) odstavka XIX. člena GATT 1994.

21. TMB stalno proučuje izvajanje tega člena. Na zahtevo katerekoli članice prouči katerokoli posamezno vprašanje, ki se nanaša na izvajanje določb tega člena. V 30 dneh določeni članici ali članicam sporoči ustrezna priporočila ali ugotovitve, potem ko jih je povabil k sodelovanju.

3. člen

1. V 60 dneh od začetka veljavnosti Sporazuma o WTO članice, ki ohranjajo omejitve[4] za tekstilne proizvode in oblačila (razen omejitev iz MFA, ki jih pokrivajo določbe 2. člena), skladne z GATT 1994 ali ne, (a) to podrobno sporočijo TMB ali (b) priskrbijo TMB notifikacije v zvezi s tistim, kar je bilo predloženo kateremukoli drugemu organu WTO. Notifikacije bi morale, če je primerno, zagotoviti informacije v zvezi s katerokoli utemeljitvijo GATT 1994 za omejitve, vključno z določbami GATT 1994, na katerih temeljijo.

2. Članice, ki ohranjajo omejitve na podlagi prvega odstavka, z izjemo tistih, ki so utemeljene na podlagi določb GATT 1994, jih ali:

(a) v enem letu po začetku veljavnosti Sporazuma o WTO uskladijo z GATT 1994 in o tem obvestijo TMB ali

(b) postopoma odpravijo v skladu s programom, ki ga mora članica najkasneje v šestih mesecih po začetku veljavnosti Sporazuma o WTO predložiti TMB. Ta program poskrbi, da se vse omejitve postopoma odpravijo v obdobju, ki ni daljše od veljavnosti tega sporazuma. TMB lahko sprejme določena priporočila za določeno članico v zvezi s takim programom.

3. Med veljavnostjo tega sporazuma članice v 60 dneh, potem ko so omejitve začele veljati, obvestijo TMB o vseh notifikacijah, ki so bile predane kateremukoli organu WTO v zvezi s kakršnokoli novo omejitvijo ali spremembo v obstoječih omejitvah za tekstil in oblačila v skladu z določbami GATT 1994.

4. Vsaka članica ima možnost, da da TMB povratno notifikacijo v njegovo informacijo v zvezi z utemeljitvami na podlagi GATT 1994 ali v zvezi s kakršnokoli omejitvijo, ki morda ni bila sporočena na podlagi določb tega člena. Katerakoli članica lahko pri ustreznem organu WTO na podlagi

[4] Omejitve pomenijo vse enostranske količinske omejitve, dvostranske dogovore in druge ukrepe, ki imajo podoben učinek.

ustreznih določb ali postopkov GATT 1994 sproži kakršnokoli dejavnost v zvezi s takimi notifikacijami.

5. TMB pošlje notifikacije na podlagi tega člena vsem članicam v njihovo informacijo.

4. člen

1. Omejitve iz 2. člena in tiste, ki se uporabljajo na podlagi 6. člena, morajo spremljati članice izvoznice. Članice uvoznice niso dolžne sprejeti pošiljk, ki presegajo omejitve, sporočene na podlagi 2. člena, ali tiste, ki se uporabljajo na podlagi 6. člena.

2. Članice se sporazumejo, da uvajanje sprememb, kot so spremembe v praksi, pravilih, postopkih in razvrščanju tekstila in oblačil, vključno s spremembami, ki se nanašajo na harmonizirani sistem, pri izvajanju ali upravljanju teh omejitev, ki so sporočene ali se uporabljajo na podlagi tega sporazuma, ne bi smelo porušiti ravnotežja med pravicami in obveznostmi med določenimi članicami na podlagi tega sporazuma; škodljivo vplivati na dostop, ki je članici omogočen; omejevati polno izrabo takega dostopa; ali motiti trgovino na podlagi tega sporazuma.

3. Če se proizvod, ki predstavlja samo del omejitev, sporoči kot proizvod, ki se bo integriral na podlagi določb 2. člena, se članice sporazumejo, da nobena sprememba v ravni te omejitve ne sme porušiti ravnotežja med pravicami in obveznostmi med določenimi članicami tega sporazuma.

4. Kadar pa so spremembe, omenjene v drugem in tretjem odstavku, potrebne, se članice sporazumejo, da članica, ki uvaja take spremembe, pred začetkom izvajanja teh sprememb obvesti in, če je mogoče, predlaga posvetovanje z določeno članico ali članicami z namenom, da dosežeta(jo) medsebojno sprejemljivo rešitev za primerno in enakovredno prilagajanje. Članice se nadalje sporazumejo, če pred začetkom izvajanja sprememb posvetovanje ni mogoče, se članica, ki uvaja take spremembe, na zahtevo določene članice po možnosti v 60 dneh, posvetuje z drugimi članicami z namenom, da dosežejo medsebojno sprejemljivo rešitev za primerno in enakovredno prilagajanje. Če se medsebojno sprejemljiva rešitev ne doseže, lahko vsaka vključena članica sproži zadevo pred TMB z namenom, da TMB da priporočila, kot so določena v 8. členu. Če TSB ne bi imel priložnosti proučiti spora zaradi takih sprememb, ki so bile uvedene pred začetkom veljavnosti Sporazuma o WTO, ga prouči TMB v skladu s pravili in postopki MFA, ki veljajo za tako proučitev.

5. člen

1. Članice se sporazumejo, da izogibanje s pretovarjanjem, preusmerjanjem, napačnim deklariranjem določene države ali kraja porekla in ponarejanjem uradnih dokumentov otežuje izvajanje tega sporazuma v zvezi z integracijo področja tekstila in oblačil v GATT 1994. Članice bi morale temu primerno oblikovati potrebne predpise in/ali upravne postopke in izvajati ukrepe proti takemu izogibanju. Članice se dalje sporazumejo, da bodo v skladu s svojimi domačimi zakoni in postopki v celoti sodelovale pri reševanju problemov, ki nastajajo zaradi izogibanj.

2. Če bi katerakoli članica menila, da se temu sporazumu izogiba s pretovarjanjem, preusmerjanjem, napačnim deklariranjem države ali kraja porekla ali s ponarejanjem uradnih dokumentov in da se ne uporabljajo nobeni ukrepi ali pa se uporabljajo neustrezni ukrepi z namenom obravnave in/ali ukrepanja proti takemu izogibanju, se mora ta članica posvetovati z določeno članico ali članicami z namenom, da dosežejo zadovoljivo skupno rešitev. Taka posvetovanja bi morala biti takoj in v 30 dneh, če je možno. Če se ne doseže medsebojna zadovoljiva rešitev, lahko katerakoli članica zadevo predloži TMB, zato da ta oblikuje priporočila.

3. Članice se sporazumejo, da sprožijo potrebne akcije v skladu s svojimi zakoni in postopki, da bi preprečile, raziskale in, če je ustrezno, sprejele zakonske in/ali upravne ukrepe proti praksi izogibanja na svojem ozemlju. Članice se sporazumejo, da bodo v primerih izogibanja ali domnevnega izogibanja temu sporazumu tesno sodelovale v skladu s svojimi zakoni in postopki, da ugotovijo ustrezna dejstva na krajih uvoza, izvoza in, kjer pride v poštev, pretovarjanja. Dogovorjeno je, da tako sodelovanje v skladu z njihovimi zakoni in postopki vključuje: preiskavo načina izogibanja, ki povečuje omejeni izvoz v članico, ki ohranja omejitve; izmenjavo dokumentov, korespondenco, poročila in druge ustrezne podatke v možnem obsegu; in na zahtevo od primera do primera omogoča stike in obiske v proizvodnji. Članice bi si morale prizadevati, da razjasnijo okoliščine takih primerov izogibanj ali domnevnih izogibanj, vključno z vlogo ustreznih izvoznikov in uvoznikov.

4. Če je na podlagi rezultatov preiskave dovolj dokazov, da je prišlo do izogibanja (npr. če je na voljo dokaz o državi ali kraju resničnega porekla in okoliščinah takega izogibanja), se članice sporazumejo za ustrezen ukrep v obsegu, kot je potreben za rešitev tega vprašanja. Tak ukrep lahko vključuje odklonitev takega blaga ali, če je blago že uvoženo, z upoštevanjem dejanskih okoliščin in vpletenosti države ali kraja resničnega porekla prilagoditev dajatev ravnem omejitev z namenom, da te dajatve izražajo državo ali kraj dejanskega porekla. Prav tako, če obstaja dokaz, da so pri tem vključena posamezna območja neke članice, na katerih se je blago pretovarjalo, lahko ukrep vključuje uvedbo omejitev za te članice. Katerikoli taki ukrepi, vključno s časovno naravnanostjo in obsegom, se lahko uvedejo po posvetovanju, ki ima namen najti medsebojno zadovoljivo rešitev med določenimi članicami. O ukrepih je treba obvestiti TMB z zadovoljivo utemeljitvijo. Določene članice se lahko s posvetom dogovorijo o drugih ukrepih. Vsak tak sporazum se sporoči TMB in TMB lahko sprejme priporočila za določene članice, kot se mu zdi primerno. Če se ne doseže zadovoljiva rešitev, lahko katerakoli članica sproži zadevo pred TMB zaradi takojšnje proučitve in priporočil.

5. Članice ugotavljajo, da gre lahko v nekaterih primerih izogibanja za tranzitne pošiljke skozi države ali kraje brez sprememb na blagu, ki sestavlja pošiljko v krajih tranzita. Zato ugotavljajo, da na splošno ni izvedljivo, da se v teh krajih tranzita nadzorujejo take pošiljke.

6. Članice se sporazumejo, da napačna deklaracija o sestavi vlaken, količini, opisu ali razvrstitvi blaga prav tako otežuje cilje tega sporazuma. Če obstaja dokaz, da so imele napačne deklaracije namen izogibanja, se članice sporazumejo, da je treba proti udeleženim izvoznikom ali uvoznikom sprožiti ustrezne ukrepe, ki bodo v skladu z njihovimi domačimi zakoni in postopki. Če katerakoli članica meni, da se s tako napačno deklaracijo izogiba temu sporazumu in da se ne uporabljajo nobeni ukrepi ali pa se uporabljajo neustrezni upravni ukrepi, da se obravnava in/ali izvaja ukrep proti takemu izogibaju, se mora ta članica nemudoma posvetovati z ustrezno članico z namenom, da dosežeta obojestransko zadovoljivo rešitev. Če take rešitve ne dosežeta, lahko katerakoli udeležena članica zadevo sproži pred TMB zaradi priporočil. Ta določba nima namena članicam preprečevati tehničnih popravkov ob morebitnih napakah v deklaracijah.

6. člen

1. Članice spoznavajo, da bo v prehodnem obdobju verjetno treba uporabljati poseben prehodni zaščitni mehanizem (v nadaljevanju prehodna zaščita). Prehodno zaščito lahko uporablja katerakoli članica za proizvode iz priloge, razen za tiste, ki so integrirani v GATT 1994 v skladu z določbami

2. člena. Članice, ki ne ohranjajo omejitev na podlagi 2. člena, morajo v 60 dneh po začetku veljavnosti Sporazuma o WTO obvestiti TMB o tem, ali si želijo pridržati pravico do uporabe določb tega člena. Članice, ki niso sprejele Protokolov o podaljšanju MFA od leta 1986, morajo to sporočiti v 6 mesecih po začetku veljavnosti Sporazuma o WTO. Prehodno zaščito je treba uporabljati čim bolj zmerno v skladu z določbami tega člena in učinkovitim izvajanjem integracijskega procesa na podlagi tega sporazuma.

2. Zaščitni ukrep iz tega člena se lahko sproži, kadar je na osnovi ugotovitve članice[5] dokazano, da se določen proizvod uvaža na njeno ozemlje v tako povečanih količinah, da ta povzroča resno škodo ali dejansko grožnjo škode domači industriji, ki proizvaja enak in/ali neposredno konkurenčen proizvod. Resna škoda ali dejanska grožnja škode mora biti dokazana kot posledica tako povečane količine uvoženega proizvoda in ne s takimi drugimi dejavniki, kot so tehnološke spremembe ali spremembe okusa potrošnikov.

3. Pri ugotavljanju resne škode ali dejanske grožnje lete iz drugega odstavka mora članica preveriti vpliv takega uvoza na stanje določene industrije, kar se kaže v ustreznih ekonomskih spremenljivkah, kot so obseg proizvodnje, storilnost, izkoriščenost zmogljivosti, zaloge, tržni delež, izvoz, plače, zaposlenost, domače cene, dobički in vlaganja. Nobeden od teh dejavnikov sam ali v povezavi z drugimi dejavniki ni nujno odločilen.

4. Katerikoli ukrep, ki se uporablja na podlagi določb tega člena, se uporablja za vsako posamezno članico posebej. Članico ali članice, ki se jim pripisuje resna škoda ali dejanska grožnja škode v skladu z drugim in tretjim odstavkom, se ugotavlja na osnovi nenadnega in bistvenega povečanja uvoza – dejanskega ali pričakovanega[6] – iz posamezne članice ali članic in na osnovi ravni uvoza v primerjavi z uvozom iz drugih virov, tržnega deleža in uvoznih in domačih cen na primerljivi ravni trgovinske transakcije; nobeden od teh dejavnikov sam ali skupaj z drugimi dejavniki ni nujno odločilen. Tak zaščitni ukrep ne velja za izvoz članice, katere izvoz določenega proizvoda je že omejen s tem sporazumom.

5. Obdobje veljavnosti ugotavljanja resne škode ali dejanske grožnje škode iz tega člena za namen uvajanja zaščitnih ukrepov ne sme presegati 90 dni od dneva prve notifikacije, ki je določena v sedmem odstavku.

6. Pri uporabi prehodne zaščite je treba posebno pozornost posvetiti interesom članic izvoznic, kot sledi:

(a) najmanj razvite države članice se bistveno ugodneje obravnavajo v primerjavi z drugimi skupinami držav članic iz tega odstavka po možnosti v vseh elementih, a vsaj pri splošnih pogojih;

(b) članice, katerih celoten obseg izvoza tekstila in oblačil je majhen v primerjavi s celotnim obsegom izvoza drugih članic in ki predstavljajo le majhen odstotek celotnega uvoza tega proizvoda v članice uvoznice, se pristransko in ugodneje obravnavajo pri določanju gospodarskih pogojev, ki jih določajo osmi, trinajsti in štirinajsti odstavek. Za te dobavitelje se na podlagi drugega in tretjega odstavka 1. člena upoštevajo prihodnje možnosti za razvoj njihove trgovine in potreba, da se zanje odobrijo komercialne uvozne količine;

(c) glede volnenih priozvodov iz članic držav v razvoju, ki proizvajajo volno, in katerih gospodarstvo in trgovina s tekstilom in oblačili je odvisna od volne in katerih celoten izvoz tekstila in oblačil sestoji skoraj izključno iz volnenih proizvodov in katerih obseg izvoza tekstila in oblačil je sorazmerno majhen na trgu članic uvoznic, se posebej upoštevajo izvozne potrebe takih članic, kadar se določajo ravni kvot, stopenj rasti in prožnost;

(d) ponovni uvoz tekstila in oblačil, ki ga je neka članica izvozila v drugo članico v dodelavo in z namenom ponovnega uvoza, kot to določajo zakoni in običajni postopki uvoznice, mora biti deležen ugodnejše obravnave pod pogojem zadovoljivega nadzora in postopkov izdajanja potrdil, kadar se ti proizvodi uvažajo iz države članice, za katero predstavlja ta vrsta trgovine znaten del celotnega izvoza tekstila in oblačil.

7. Članica, ki predlaga zaščitne ukrepe, se mora poskušati posvetovati s članico ali članicami, ki bi jih tak ukrep prizadel. Zahtevo po posvetovanju morajo spremljati specifični in ustrezni najnovejši podatki, zlasti o: (a) dejavnikih, na katere se nanaša tretji odstavek, na katerih članica, ki uporablja ukrep, utemeljuje svojo ugotovitev o obstoju resne škode ali dejanske grožnje škode; in (b) dejavnikih, na katere se nanaša četrti odstavek, na osnovi katerih predlaga uvedbo zaščitnega ukrepa za določeno članico ali članice. Kar se tiče zahtev na podlagi tega odstavka, morajo biti informacije čim bolj povezane z določljivimi deli proizvodnje in obdobjem, na katero se sklicuje, ki je določeno v osmem odstavku. Članica, ki uvaja ukrep, mora tudi določiti raven, pri kateri predlaga omejitev uvoza določenega proizvoda iz določene članice ali članic; ta raven ne sme biti nižja od ravni, ki jo določa osmi odstavek. Članica, ki se želi posvetovati, hkrati sporoči predsedujočemu TMB zahtevo po posvetovanjih vključno z ustreznimi dejanskimi podatki, ki so določeni v 3. in 4. členu, skupaj s predlagano ravnijo omejitve. Predsedujoči obvesti člane TMB o zahtevi za posvetovanja z navedbo članice, ki je poslala zahtevo, določenega proizvoda in članice, ki je prejela zahtevo. Članica ali članice morajo nemudoma odgovoriti na to zahtevo in brez odlašanja se skliče posvet, ki mora biti običajno končan v 60 dneh od prejema zahteve.

8. Če se med posvetovanjem vse članice strinjajo, da situacija zahteva omejitev izvoza določenega proizvoda iz določene članice ali članic, je treba določiti raven teh omejitev, ki ne sme biti nižja od dejanske ravni izvoza ali uvoza iz te članice v obdobju 12 mesecev, ki se konča dva meseca pred mesecem, ko je bila vložena zahteva za posvetovanje.

9. Podrobnosti o dogovorjenem ukrepu omejitve je treba v 60 dneh po sklenitvi sporazuma sporočiti TMB. TMB mora ugotoviti, ali je sporazum utemeljen v skladu z določbami tega člena. Da bi lahko TMB sprejel tako ugotovitev, mu je treba predložiti vse dejanske podatke, ki so bili dani predsedujočemu TMB, kot je določeno v sedmem odstavku, kakor tudi vse druge ustrezne informacije, ki jih predložijo določene članice. TMB lahko sprejme priporočila, kot se mu zdijo ustrezna za določene članice.

10. Če pa v 60 dneh po prejemu zahteve za posvetovanje ni bil dosežen sporazum med članicami, lahko članica, ki je predlagala zaščitni ukrep, v 30 dneh po preteku 60-dnevnega roka za posvetovanje določi omejitev ali od dneva uvoza ali od dneva izvoza v skladu z določbami tega člena in zadevo predloži TMB. Vsaki članici je dana možnost, da zadevo predloži TMB pred potekom 60-dnevnega roka. V obeh primerih TMB nemudoma sproži preverjanje zadeve, vključno z ugotovitvijo resnosti škode ali dejanske grožnje le-te in njenih vzrokih ter v 30 dneh da ustrezna priporočila

[5] Carinska unija lahko uporabi zaščitni ukrep enotno ali v korist neke države članice. Kadar carinska unija sproži zaščitni ukrep enotno, morajo vse zahteve po določanju resne škode ali dejanske grožnje škode v skladu s tem sporazumom temeljiti na pogojih, ki veljajo v carinski uniji kot celoti. Kadar se sproži zaščitni ukrep v korist neke države članice, morajo vse zahteve pri določanju škode ali dejanske grožnje škode temeljiti na pogojih, ki obstajajo v tej državi članici in mora biti omejen na to državo članico.

[6] Tako pričakovano povečanje mora biti merljivo in se ne sme ugotavljati le na osnovi suma, trditev ali gole možnosti, da nastane na primer že iz obstoja določene proizvodne zmogljivosti v državi izvoznici.

določenim članicam. Da bi lahko vodil tako preiskavo, mora TMB od določenih članic prejeti vse dejanske podatke, ki so bili dani predsedujočemu TMB v skladu s sedmim odstavkom, kakor tudi vse druge ustrezne informacije, ki so jih dale določene članice.

11. V skrajno nenavadnih in kritičnih okoliščinah, če bi zamuda povzročila težko popravljivo škodo, se lahko ukrep iz desetega odstavka uvede začasno pod pogojem, da bo zahteva za posvetovanje in notifikacija TMB dana najpozneje v 5 delovnih dneh po uvedbi ukrepa. Če se s posvetovanji ne doseže sporazum, je treba obvestiti TMB na koncu posvetovanja, a v nobenem primeru ne pozneje kot v 60 dneh od uvedbe ukrepa. TMB nemudoma prouči zadevo in v 30 dneh da ustrezna priporočila določenim članicam. Če se posvetovanje konča s sporazumom, članice na koncu obvestijo TMB, a v vsakem primeru najkasneje v 90 dneh od dneva uvedbe ukrepa. TMB lahko sprejme taka priporočila, kot se mu zdijo primerna za določene članice.

12. Članica lahko ohranja ukrepe, ki jih uporablja na podlagi določb tega člena: (a) do treh let brez podaljšanja ali (b) dokler proizvod ni integriran v GATT 1994, kar je prej.

13. Če omejitveni ukrep velja več kot eno leto, mora biti raven za naslednja leta raven, ki je določena za prvo leto, povečana najmanj za 6-odstotno letno stopnjo rasti, če ni drugače utemeljeno TMB. Raven omejitve za določen proizvod se lahko preseže v enem ali drugem letu dveletnega obdobja za 10 odstotkov s prenosom in/ali podaljšanjem, s tem da prenos ne sme predstavljati več kot 5 odstotkov. Pri kombinirani uporabi podaljšanja prenosa in določbe štirinajstega odstavka ne sme biti nobenih količinskih omejitev.

14. Kadar se sprejme omejitev za več kot en proizvod iz druge članice v smislu tega člena, lahko dogovorjena raven omejitve v skladu z določbami tega člena preseže 7 odstotkov za vsak proizvod, če celoten omejeni izvoz ne presega celote ravni za vse proizvode, omejene s tem členom na osnovi dogovorjenih skupnih enot. Če se obdobja izvajanja omejitev za te proizvode ne ujemajo, velja ta določba za vsako podaljšano obdobje na osnovi pro rata.

15. Če se uporablja zaščitni ukrep iz tega člena za proizvod, za katerega je do zdaj veljala omejitev, ki jo je določal MFA v obdobju 12 mesecev pred začetkom veljavnosti Sporazuma o WTO, ali v skladu z določbami 2. ali 6. člena, mora biti raven nove omejitve raven, ki jo določa osmi odstavek, razen če začne nova omejitev veljati v enem letu od:

(a) dneva notifikacije iz petnajstega odstavka 2. člena v zvezi z odpravo prejšnje omejitve, ali

(b) dneva odprave prejšnje omejitve, ki je bila določena v skladu z določbami tega člena ali MFA,

in v tem primeru raven ne sme biti manj kakor višja od (i) ravni omejitve za zadnje 12-mesečno obdobje, v katerem je bil proizvod omejen, ali (ii) ravni omejitve, kot je določena v osmem odstavku.

16. Če članica ne ohranja omejitve iz 2. člena in se odloči uporabiti omejitev na podlagi določb tega člena, poskrbi da: (a) v celoti upošteva take dejavnike, kot so veljavna carinska razvrstitev in količinske enote, ki temeljijo na normalni trgovinski praksi pri izvoznih in uvoznih transakcijah, tako glede sestave vlaken kot pogojev konkurence za isti del domačega trga, in da se (b) izogiba pretirani kategorizaciji. Zahteva za posvetovanje iz sedmega ali enajstega odstavka mora zajemati vse informacije o taki ureditvi.

7. člen

1. Kot del integracijskega procesa in v zvezi s posebnimi obveznostmi, ki so jih prevzele članice kot rezultat Urugvajskega kroga, vse članice ukrepajo, kot je potrebno za uskladitev s pravili in disciplinami GATT 1994 zato, da bi:

(a) dosegle izboljšani dostop na trg za tekstil in oblačila z ukrepi, kot so znižanje in vezava carin, znižanje ali odprava necarinskih omejitev in poenostavitev carinskih in upravnih postopkov in postopkov za izdajanje dovoljenj,

(b) zagotovile izvajanje politike, ki se nanaša na pravične in enakovredne pogoje glede tekstila in oblačil na področjih dumpinga in protidumpinških pravil in postopkov, subvencij in izravnalnih ukrepov ter zaščite pravic intelektualne lastnine, in

(c) se izognile diskriminaciji uvoza na področju tekstila in oblačil pri uveljavljanju ukrepov iz razlogov splošne trgovinske politike.

Taki ukrepi ne posegajo v pravice in obveznosti članic na podlagi GATT 1994.

2. Članice sporočijo TMB vse ukrepe iz prvega odstavka, ki vplivajo na izvajanje tega sporazuma. Do mere, kot je bilo to sporočeno drugim organom WTO, povzetek, ki se sklicuje na izvirne notifikacije, zadostuje, da bi lahko izpolnili zahteve tega odstavka. Vsaka članica ima možnost dati povratne notifikacije TMB.

3. Če katerakoli članica meni, da druga članica ni upoštevala ukrepov, na katere se nanaša prvi odstavek, in da je bilo porušeno ravnotežje med pravicami in obveznostmi iz tega sporazuma, lahko sproži postopek pri ustreznem organu WTO in o tem obvesti TMB. Vsaka kasnejša ugotovitev ali sklepi ustreznih organov WTO sestavljajo del celovitega poročila TMB.

8. člen

1. Z namenom nadzora nad izvajanjem tega sporazuma, preverjanja vseh ukrepov, ki se uporabljajo na podlagi tega sporazuma in njihove skladnosti z njim, ter z namenom ukrepanja, če to posebej določa ta sporazum, se ustanovi Organ za spremljanje trgovine s tekstilom (TMB). TMB sestavljajo predsedujoči in 10 članov. Članstvo TMB mora biti uravnoteženo in mora dovolj široko predstavljati članice. Zagotavljati mora izmenjavo njegovih članov v ustreznih časovnih presledkih. Člane imenujejo članice, ki jih določil Svet za trgovino z blagom, za opravljanje nalog v TMB. Člani pa svoje naloge opravljajo na osebni podlagi.

2. TMB sam razvija lastne delovne postopke. Razume se, da konsenz v TMB ne pomeni, da morajo članice, ki so imenovale člane TMB dati pristanek ali soglašati z nerešenim vprašanjem, ki ga proučuje TMB.

3. TMB je stalen organ in se sestaja po potrebi za opravljanje nalog, ki so zanj določene v tem sporazumu. Zanaša se na notifikacije in informacije, ki mu jih dajejo članice v skladu z ustreznimi členi tega sporazuma, ter na dodatne informacije ali potrebne podrobnosti, ki jih predložijo članice ali pa se TMB odloči, da jih od njih zahteva. Zanašati se sme tudi na notifikcije drugih organov WTO ter na take vire, kot se mu zdijo primerni.

4. Članice medsebojno omogočajo ustrezna posvetovanja o vseh zadevah, ki vplivajo na izvajanje tega sporazuma.

5. Če ni možno doseči medsebojno zadovoljive rešitve pri dvostranskih posvetovanjih, kot jih predvideva ta sporazum, da TMB na zahtevo ene ali druge članice ob temeljiti in takojšnji proučitvi zadeve priporočila neposredno prizadetim članicam.

6. Na zahtevo katerekoli članice TMB nemudoma prouči vsako posamezno zadevo, za katero se članici zdi, da škoduje njenim interesom v smislu tega sporazuma in če posvetovanja med njo in določeno drugo članico ali članicami niso dala medsebojne zadovoljive rešitve. V takih primerih lahko TMB oblikuje mnenja, kot se mu zdijo primerna za določene članice in za namene proučitve, kot jo določa enajsti odstavek.

7. Pred oblikovanjem svojih priporočil ali opažanj TMB povabi k sodelovanju tiste članice, ki so neposredno prizadete v sporni zadevi.

8. Kadarkoli se od TBM zahteva, da sprejme priporočila ali ugotovitve, to stori po možnosti v 30 dneh, razen če v tem sporazumu ni določen drugačen rok. Vsa taka priporočila ali ugotovitve je treba sporočiti članicam, ki so neposredno prizadete. Priporočila in ugotovitve je treba prav tako sporočiti Svetu za trgovino z blagom.

9. Članice si prizadevajo v celoti sprejeti priporočila TMB, ki poskrbi za primeren nadzor nad izvajanjem takih priporočil.

10. Če članica meni, da se ni sposobna ravnati v skladu z priporočili TMB, najkasneje v enem mesecu po sprejetju takih priporočil navede razloge za to in jih pošlje TMB. Po temeljiti obravnavi navedenih razlogov TMB izda dodatna priporočila, kot se mu zdijo primerna. Če ostane zadeva nerešena tudi po teh dodatnih priporočilih, lahko katerakoli članica sproži zadevo pred Organom za reševanje sporov in se pri tem sklicuje na drugi odstavek XXIII. člena GATT 1994 in ustrezne določbe Dogovora o reševanju sporov.

11. Zaradi nadzora nad izvajanjem tega sporazuma Svet za trgovino z blagom sproži pred koncem vsake faze integracijskega procesa širšo proučitev tega procesa. Kot pomoč v tem postopku TMB najkasneje v petih mesecih pred koncem vsake faze pošlje Svetu za trgovino z blagom celovito poročilo o izvajanju tega sporazuma med fazo, ki se proučuje – posebej v zadevah, ki se nanašajo na integracijo, uporabo prehodnih zaščitnih mehanizmov in v zvezi z upoštevanjem pravil in disciplin GATT 1994, kot je določeno v 2.,3.,6. in 7. členu. Celovito poročilo TMB lahko vključuje katerokoli priporočilo, ki se zdi TMB primerno za Svet za trgovino z blagom.

12. V luči proučevanj Svet za trgovino z blagom s konsenzom sprejema odločitve, ki se mu zdijo primerne, da se ravnotežje med pravicami in obveznostmi, ki so vsebovane v tem sporazumu, ne poruši. Za reševanje kateregakoli spora, ki bi nastal zaradi zadev, omenjenih v 7. členu, lahko Organ za reševanje sporov pooblasti brez vpliva na končni rok, ki je določen v 9. členu, prilagoditev štirinajstemu odstavku 2. člena za fazo, ki sledi proučitvi za katerokoli članico, za katero se ugotovi, da ne ravna v skladu s svojimi obveznostmi na podlagi tega sporazuma.

9. člen

Ta sporazum in vse omejitve, ki izhajajo iz njega, prenehajo veljati prvi dan 121. meseca od začetka veljavnosti Sporazuma o WTO, ko se področje tekstila in oblačil v celoti integrira v GATT 1994. Ta sporazum se ne bo podaljševal.

PRILOGA

SEZNAM PROIZVODOV, NA KATERE SE NANAŠA TA SPORAZUM

1. Ta priloga našteva tekstilne proizvode in oblačila, ki so določena na šestmestnem nivoju Harmoniziranega sistema opisa in šifriranja blaga (HS).

2. Ukrepi na podlagi določb 6. člena o posebnih zaščitnih ukrepih se uporabijo za posamezne tekstilne proizvode in oblačila in ne na osnovi postavk HS kot takih.

3. Ukrepi na podlagi določb 6. člena tega sporazuma o posebnih zaščitnih ukrepih se ne uporabljajo za:

(a) izvoz ročno tkanega blaga domače obrti članic držav v razvoju ali ročno izdelanih proizvodov domače obrti iz takega blaga ali tradicionalno folklorno ročno izdelani tekstilni proizvodi in oblačila pod pogojem, da so ti proizvodi pravilno potrjeni v skladu z dogovori med določenimi članicami;

(b) zgodovinsko trgovino s tekstilnimi proizvodi, s katerimi se je trgovalo v komercialno pomembnih količinah pred letom 1982, kot so torbe, vreče, potovalne torbe iz preprog, vrvi, kovčki , talna pregrinjala in preproge, izdelane iz vlaken, kot so juta, kokosova vlakna, sisal, abaka, mageja in heneken;

(c) proizvode iz čiste svile.

Za take proizvode veljajo določbe XIX. člena GATT 1994, kot jih razlaga Sporazum o posebnih zaščitnih ukrepih.

Proizvodi XI. oddelka (Tekstil in tekstilni izdelki) Harmoniziranega sistema opisa in šifriranja blaga (HS-nomenklatura)

HS št.	Opis proizvoda
50. pog.	Svila
5004.00	Svilena preja (razen preje iz svilenih odpadkov), ni za prodajo na drobno
5005.00	Preja iz svilenih odpadkov, ni za prodajo na drobno
5006.00	Svilena preja in preja iz svilenih odpadkov, za prodajo na drobno; svileni katgut
5007.10	Tkanine iz buretne svile
5007.20	Tkanine iz svile/svilenih odpadkov, razen buretne svile, 85%/več takih vlaken
5007.90	Druge tkanine iz svile
51. pog.	Volna, fina/groba živalska dlaka, preja in tkanine iz konjske žime
5105.10	Mikana volna
5105.21	Česana volna, v razsutem stanju v pramenih
5105.29	Volneni česanec in druga česana volna, razen v razsutem stanju v pramenih
5105.30	Fina živalska dlaka, mikana ali česana
5106.10	Preja iz mikane volne, >/=85% volne po teži, ni za prodajo na drobno
5106.20	Preja iz mikane volne, <85% volne po teži, ni za prodajo na drobno
5107.10	Preja iz česane volne, >/=85% volne po teži, ni za prodajo na drobno
5107.20	Preja iz česane volne, <85% volne po teži, ni za prodajo na drobno
5108.10	Preja iz fine živalske dlake, mikane, ni za prodajo na drobno
5108.20	Preja iz fine živalske dlake, česane, ni za prodajo na drobno
5109.10	Preja iz volne/fine živalske dlake, >/=85% takih vlaken po teži, za prodajo na drobno
5109.90	Preja iz volne/fine živalske dlake, <85% takih vlaken po teži, za prodajo na drobno
5110.00	Preja iz grobe živalske dlake ali konjske žime
5111.11	Tkanine iz mikane volne/fine živalske dlake, >/=85% po teži, </= 300 g/m^2
5111.19	Tkanine iz mikane volne/fine živalske dlake, >/=85% po teži, >300 g/m^2
5111.20	Tkanine iz mikane volne/fine živalske dlake, <85% po teži, mešane z umetnimi ali sintetičnimi filamenti
5111.30	Tkanine iz mikane volne/fine živalske dlake, <85% po teži, mešane z umetnimi ali sintetičnimi vlakni
5111.90	Druge tkanine iz mikane volne/fine živalske dlake, <85% po teži
5112.11	Tkanine iz česane volne/fine živalske dlake, >/=85% po teži, </= 200 g/m^2

HS št.	Opis proizvoda
5112.19	Tkanine iz česane volne/fine živalske dlake, >/=85% po teži, >200 g/m^2
5112.20	Tkanine iz česane volne/fine živalske dlake, <85% po teži, mešane z umetnimi ali sintetičnimi filamenti
5112.30	Tkanine iz česane volne/fine živalske dlake, <85% po teži, mešane z umetnimi ali sintetičnimi vlakni
5112.90	Druge tkanine iz česane volne/fine živalske dlake, <85% po teži
5113.00	Tkanine iz grobe živalske dlake ali konjske žime
52. pog.	Bombaž
5204.11	Bombažni sukanec za šivanje, >/=85% bombaža po teži, ni za prodajo na drobno
5204.19	Bombažni sukanec za šivanje, <85% bombaža po teži, ni za prodajo na drobno
5204.20	Bombažni sukanec za šivanje, za prodajo na drobno
5205.11	Bombažna preja, >/=85% bombaža po teži, enojna, iz nečesanih vlaken, >/=714.29 dtex, ni za prodajo na drobno
5205.12	Bombažna preja, >/=85% bombaža po teži, enojna, iz nečesanih vlaken, 714.29 >dtex>/= 232.56, ni za prodajo na drobno
5205.13	Bombažna preja, >/=85% bombaža po teži, enojna, iz nečesanih vlaken, 232.56 >dtex>/= 192,31, ni za prodajo na drobno
5205.14	Bombažna preja, >/=85% bombaža po teži, enojna, iz nečesanih vlaken, 192.31 >dtex>/= 125, ni za prodajo na drobno
5205.15	Bombažna preja, >/=85% bombaža po teži, enojna, iz nečesanih vlaken, <125 dtex, ni za prodajo na drobno
5205.21	Bombažna preja, >/=85% bombaža po teži, enojna, iz česanih vlaken, >/=714.29, ni za prodajo na drobno
5205.22	Bombažna preja, >/=85% bombaža po teži, enojna, iz česanih vlaken, 714.29 >dtex>/= 232.56, ni za prodajo na drobno
5205.23	Bombažna preja, >/=85% bombaža po teži, enojna, iz česanih vlaken, 232.56 >dtex>/= 192,31, ni za prodajo na drobno
5205.24	Bombažna preja, >/=85% bombaža po teži, enojna, iz česanih vlaken, 192.31 >dtex>/= 125, ni za prodajo na drobno
5205.25	Bombažna preja, >/=85% bombaža po teži, enojna, iz česanih vlaken, <125 dtex, ni za prodajo na drobno
5205.31	Bombažna preja, >/=85% bombaža po teži, večnitna, iz nečesanih vlaken, >/=714.29 dtex, ni za prodajo na drobno
5205.32	Bombažna preja, >/=85% bombaža po teži, večnitna, iz nečesanih vlaken, 714.29 >dtex>/ = 232.56, ni za prodajo na drobno
5205.33	Bombažna preja, >/=85% bombaža po teži, večnitna, iz nečesanih vlaken, 232.56 >dtex>/ = 192,31, ni za prodajo na drobno
5205.34	Bombažna preja, >/=85% bombaža po teži, večnitna, iz nečesanih vlaken, 192.31 >dtex>/ = 125, ni za prodajo na drobno
5205.35	Bombažna preja, >/=85% bombaža po teži, večnitna, iz nečesanih vlaken, <125 dtex, ni za prodajo na drobno
5205.41	Bombažna preja, >/=85% bombaža po teži, večnitna, iz česanih vlaken, >/=714.29 dtex, ni za prodajo na drobno
5205.42	Bombažna preja, >/=85% bombaža po teži, večnitna, iz česanih vlaken, 714.29 >dtex>/= 232.56, ni za prodajo na drobno
5205.43	Bombažna preja, >/=85% bombaža po teži, večnitna, iz česanih vlaken, 232.56 >dtex>/= 192,31, ni za prodajo na drobno
5205.44	Bombažna preja, >/=85% bombaža po teži, večnitna, iz česanih vlaken, 192.31 >dtex>/= 125, ni za prodajo na drobno
5205.45	Bombažna preja, >/=85% bombaža po teži, večnitna, iz česanih vlaken, <125 dtex, ni za prodajo na drobno
5206.11	Bombažna preja, <85% bombaža po teži, enojna, iz nečesanih vlaken, >/=714.29 dtex, ni za prodajo na drobno
5206.12	Bombažna preja, <85% bombaža po teži, enojna, iz nečesanih vlaken, 714.29 >dtex>/= 232.56, ni za prodajo na drobno
5206.13	Bombažna preja, <85% bombaža po teži, enojna, iz nečesanih vlaken, 232.56 >dtex>/= 192,31, ni za prodajo na drobno
5206.14	Bombažna preja, <85% bombaža po teži, enojna, iz nečesanih vlaken, 192.31 >dtex>/= 125, ni za prodajo na drobno
5206.15	Bombažna preja, <85% bombaža po teži, enojna, iz nečesanih vlaken, <125 dtex, ni za prodajo na drobno
5206.21	Bombažna preja, <85% bombaža po teži, enojna, iz česanih vlaken, >/=714.29, ni za prodajo na drobno
5206.22	Bombažna preja, <85% bombaža po teži, enojna, iz česanih vlaken, 714.29 >dtex>/= 232.56, ni za prodajo na drobno
5206.23	Bombažna preja, <85% bombaža po teži, enojna, iz česanih vlaken, 232.56 >dtex>/= 192,31, ni za prodajo na drobno
5206.24	Bombažna preja, <85% bombaža po teži, enojna, iz česanih vlaken, 192.31 >dtex>/= 125, ni za prodajo na drobno
5206.25	Bombažna preja, <85% bombaža po teži, enojna, iz česanih vlaken, <125 dtex, ni za prodajo na drobno
5206.31	Bombažna preja, <85% bombaža po teži, večnitna, iz nečesanih vlaken, >/=714.29 dtex, ni za prodajo na drobno
5206.32	Bombažna preja, <85% bombaža po teži, večnitna, iz nečesanih vlaken, 714.29 >dtex>/= 232.56, ni za prodajo na drobno
5206.33	Bombažna preja, <85% bombaža po teži, večnitna, iz nečesanih vlaken, 232.56 >dtex>/= 192,31, ni za prodajo na drobno
5206.34	Bombažna preja, <85% bombaža po teži, večnitna, iz nečesanih vlaken, 192.31 >dtex>/= 125, ni za prodajo na drobno
5206.35	Bombažna preja, <85% bombaža po teži, večnitna, iz nečesanih vlaken, <125 dtex, ni za prodajo na drobno
5206.41	Bombažna preja, <85% bombaža po teži, večnitna, iz česanih vlaken, >/=714.29 dtex, ni za prodajo na drobno
5206.42	Bombažna preja, <85% bombaža po teži, večnitna, iz česanih vlaken, 714.29 >dtex>/= 232.56, ni za prodajo na drobno

HS št.	Opis proizvoda
5206.43	Bombažna preja, <85% bombaža po teži, večnitna, iz česanih vlaken, 232.56 >dtex>/= 192,31, ni za prodajo na drobno
5206.44	Bombažna preja, <85% bombaža po teži, večnitna, iz česanih vlaken, 192.31 >dtex>/= 125, ni za prodajo na drobno
5206.45	Bombažna preja, <85% bombaža po teži, večnitna, iz česanih vlaken, <125 dtex, ni za prodajo na drobno
5207.10	Bombažna preja (razen sukanca za šivanje) >/=85% bombaža po teži, za prodajo na drobno,
5207.90	Bombažna preja (razen sukanca za šivanje) <85% bombaža po teži, za prodajo na drobno
5208.11	Bombažne tkanine platnenega prepleta, >/=85%, manj kot 100 g/m^2, nebeljene
5208.12	Bombažne tkanine platnenega prepleta, >/=85%, >100 g/m^2 do 200 g/m^2, nebeljene
5208.13	Bombažne keper tkanine, >/=85%, manj kot 200 g/m^2, nebeljene
5208.19	Bombažne tkanine, >/=85%, manj kot 200 g/m^2, nebeljene, druge
5208.21	Bombažne tkanine platnenega prepleta, >/=85%, manj kot 100 g/m^2, beljene
5208.22	Bombažne tkanine platnenega prepleta, >/=85%, >100 g/m^2 do 200 g/m^2, beljene
5208.23	Bombažne keper tkanine, >/=85%, manj kot 200 g/m^2, beljene
5208.29	Bombažne tkanine, >/=85%, manj kot 200 g/m^2, beljene, druge
5208.31	Bombažne tkanine platnenega prepleta, >/=85%, manj kot 100 g/m^2, barvane
5208.32	Bombažne tkanine platnenega prepleta, >/=85%, >100 g/m^2 do 200 g/m^2, barvane
5208.33	Bombažne keper tkanine , >/=85%, manj kot 200 g/m^2, barvane
5208.39	Bombažne tkanine, >/=85%, manj kot 200 g/m^2, barvane, druge
5208.41	Bombažne tkanine platnenega prepleta, >/=85%, manj kot 100 g/m^2, iz barvane preje
5208.42	Bombažne tkanine platnenega prepleta, >/=85%, >100 g/m^2 do 200 g/m^2, iz barvane preje
5208.43	Bombažne keper tkanine , >/=85%, manj kot 200 g/m^2, iz barvane preje
5208.49	Bombažne tkanine, >/=85%, manj kot 200 g/m^2, iz barvane preje, druge
5208.51	Bombažne tkanine platnenega prepleta, >/=85%, manj kot 100 g/m^2, tiskane
5208.52	Bombažne tkanine platnenega prepleta, >/=85%, >100 g/m^2 do 200 g/m^2, tiskane
5208.53	Bombažne keper tkanine , >/=85%, manj kot 200 g/m^2, tiskane
5208.59	Bombažne tkanine, >/=85%, manj kot 200 g/m^2, tiskane, druge
5209.11	Bombažne tkanine platnenega prepleta, >/=85%, več kot 200 g/m^2, nebeljene
5209.12	Bombažne keper tkanine , >/=85%, več kot 200 g/m^2, nebeljene
5209.19	Bombažne tkanine, >/=85%, več kot 200 g/m^2, nebeljene, druge
5209.21	Bombažne tkanine platnenega prepleta, >/=85%, več kot 200 g/m^2, beljene
5209.22	Bombažne keper tkanine, >/=85%, več kot 200 g/m^2, beljene
5209.29	Bombažne tkanine, >/=85%, več kot 200 g/m^2, beljene, druge
5209.31	Bombažne tkanine platnenega prepleta, >/=85%, več kot 200 g/m^2, barvane
5209.32	Bombažne keper tkanine, >/=85%, več kot 200 g/m^2, barvane
5209.39	Bombažne tkanine, >/=85%, več kot 200 g/m^2, barvane, druge
5209.41	Bombažne tkanine platnenega prepleta, >/=85%, več kot 200 g/m^2, iz barvane preje
5209.42	Denim bombažne tkanine, >/=85%, več kot 200 g/m^2
5209.43	Bombažne keper tkanine, razen denim tkanine, >/=85%, več kot 200 g/m^2, iz barvane preje
5209.49	Bombažne tkanine, >/=85%, več kot 200 g/m^2, iz barvane preje, druge
5209.51	Bombažne tkanine platnenega prepleta, >/=85%, več kot 200 g/m^2, tiskane
5209.52	Bombažne keper tkanine, >/=85%, več kot 200 g/m^2, tiskane
5209.59	Bombažne tkanine, >/=85%, več kot 200 g/m^2, tiskane, druge
5210.11	Bombažne tkanine platnenega prepleta, <85%, mešane z umetnimi ali sintetičnimi vlakni, manj kot 200 g/m^2, nebeljene
5210.12	Bombažne keper tkanine, <85%, mešane z umetnimi ali sint. vlakni, manj kot 200 g/m^2, nebeljene
5210.19	Bombažne tkanine, <85%, mešane z umetnimi ali sint. vlakni, </= 200 g/m^2, nebeljene, druge
5210.21	Bombažne tkanine platnenega prepleta, <85%, mešane z umetnimi ali sint. vlakni, manj kot 200/m^2, beljene
5210.22	Bombažne keper tkanine, <85%, mešane z umetnimi ali sint. vlakni, manj kot 200 g/m^2, beljene
5210.29	Bombažne tkanine, <85%, mešane z umetnimi ali sint. vlakni, </= 200 g/m^2, beljene, druge
5210.31	Bombažne tkanine platnenega prepleta, <85%, mešane z umetnimi ali sint. vlakni, manj kot 200/m^2, barvane
5210.32	Bombažne keper tkanine, <85%, mešane z umetnimi ali sint. vlakni, manj kot 200 g/m^2, barvane
5210.39	Bombažne tkanine, <85%, mešane z umetnimi ali sint. vlakni, </= 200 g/m^2, barvane, druge
5210.41	Bombažne tkanine platnenega prepleta, <85%, mešane z umetnimi ali sint. vlakni, manj kot 200/m^2, iz barvane preje
5210.42	Bombažne keper tkanine , <85%, mešane z umetnimi ali sint. vlakni, manj kot 200 g/m^2, iz barvane preje
5210.49	Bombažne tkanine, <85%, mešane z umetnimi ali sint. vlakni, </= 200 g/m^2, iz barvane preje, druge
5210.51	Bombažne tkanine platnenega prepleta, <85%, mešane z umetnimi ali sint. vlakni, manj kot 200/m^2, tiskane
5210.52	Bombažne keper tkanine, <85%, mešane z umetnimi ali sint. vlakni, manj kot 200 g/m^2, tiskane
5210.59	Bombažne tkanine, <85%, mešane z umetnimi ali sint. vlakni, </= 200 g/m^2, tiskane, druge

HS št.	Opis proizvoda
5211.11	Bombažne tkanine platnenega prepleta, <85%, mešane z umetnimi ali sint. vlakni, več kot 200 g/m², nebeljene
5211.12	Bombažne keper tkanine, <85%, mešane z umetnimi ali sint. vlakni, več kot 200 g/m², nebeljene
5211.19	Bombažne tkanine, <85%, mešane z umetnimi ali sint. vlakni, več kot 200 g/m², nebeljene, druge
5211.21	Bombažne tkanine platnenega prepleta, <85%, mešane z umetnimi ali sint. vlakni, več kot 200 g/m², beljene
5211.22	Bombažne keper tkanine, <85%, mešane z umetnimi ali sint. vlakni, več kot 200 g/m², beljene
5211.29	Bombažne tkanine, <85%, mešane z umetnimi ali sint. vlakni, več kot 200 g/m², beljene, druge
5211.31	Bombažne tkanine platnenega prepleta, <85%, mešane z umetnimi ali sint. vlakni, več kot 200 g/m², barvane
5211.32	Bombažne keper tkanine, <85%, mešane z umetnimi ali sint. vlakni, več kot 200 g/m², barvane
5211.39	Bombažne tkanine, <85%, mešane z umetnimi ali sint. vlakni, več kot 200 g/m², barvane, druge
5211.41	Bombažne tkanine platnenega prepleta, <85%, mešane z umetnimi ali sint. vlakni, več kot 200 g/m², iz barvane preje
5211.42	Denim bombažne tkanine, <85%, mešane z umetnimi ali sint. vlakni, več kot 200 g/m²
5211.43	Bombažne keper tkanine razen denima, <85%, mešane z umetnimi ali sint. vlakni, >200 g/m², iz barvane preje
5211.49	Bombažne tkanine, <85%, mešane z umetnimi ali sint. vlakni, >200 g/m², iz barvane preje, druge
5211.51	Bombažne tkanine platnenega prepleta, <85%, mešane z umetnimi ali sint. vlakni, več kot 200 g/m², tiskane
5211.52	Bombažne keper tkanine, <85%, mešane z umetnimi ali sint. vlakni, več kot 200 g/m², tiskane
5211.59	Bombažne tkanine, <85%, mešane z umetnimi ali sint. vlakni, več kot 200 g/m², tiskane, druge
5212.11	Druge bombažne tkanine, teže do 200 g/m², nebeljene
5212.12	Druge bombažne tkanine, teže do 200 g/m², beljene
5212.13	Druge bombažne tkanine, teže do 200 g/m², barvane
5212.14	Druge bombažne tkanine, </= 200 g/m², iz barvane preje
5212.15	Druge bombažne tkanine, teže do 200 g/m², tiskane
5212.21	Druge bombažne tkanine, teže nad 200 g/m², nebeljene
5212.22	Druge bombažne tkanine, teže nad 200 g/m², beljene
5212.23	Druge bombažne tkanina, teže nad 200 g/m², barvana
5212.24	Druge bombažne tkanine, >200 g/m², iz barvane preje
5212.25	Druge bombažne tkanine, teže nad 200 g/m², tiskane
53. pog.	Druga rastlinska tekstilna vlakna; papirna preja in tkanine iz papirne preje
5306.10	Lanena preja, enojna
5306.20	Lanena preja, večnitna (dvojna) ali pramenska
5307.10	Preja iz jute ali drugih tekstilnih vlaken iz ličja, enojna
5307.20	Preja iz jute ali drugih tekstilnih vlaken iz ličja, večnitna (dvojna) ali pramenska
5308.20	Preja iz konoplje
5308.90	Preja iz drugih rastlinskih tekstilnih vlaken
5309.11	Lanene tkanine, ki vsebujejo 85% ali več lanu po teži, nebeljene ali beljene
5309.19	Lanene tkanine, ki vsebujejo 85% ali več lanu po teži, razen nebeljene ali beljene
5309.21	Lanene tkanine, ki vsebujejo <85% lanu po teži, nebeljene ali beljene
5309.29	Lanene tkanine, ki vsebujejo <85% lanu po teži, razen nebeljene ali beljene
5310.10	Tkanine iz jute ali drugih tekstilnih vlaken iz ličja, nebeljene
5310.90	Tkanine iz jute ali drugih tekstilnih vlaken iz ličja, razen nebeljene
5311.00	Tkanine iz drugih rastlinskih tekstilnih vlaken; tkanine iz papirne preje
54. pog.	Filamenti iz umetnih ali sintetičnih vlaken
5401.10	Sukanec za šivanje iz sintetičnih filamentov
5401.20	Sukanec za šivanje iz umetnih filamentov
5402.10	Preja velike jakosti (razen sukanca za šivanje) iz najlona/drugih poliamidov, ni za prodajo na drobno
5402.20	Preja velike jakosti iz poliestrov, ni za prodajo na drobno
5402.31	Teksturirana preja, druga, iz najlona/drugih poliamidov, </=50tex na eno nit, ni za prodajo na drobno
5402.32	Teksturirana preja, druga, iz vlaken najlona/ drugih poliamidov, >50tex, ni za prodajo na drobno
5402.33	Teksturirana preja, druga, iz poliestra, ni za prodajo na drobno
5402.39	Teksturirana preja iz sintetičnih filamentov, ni za prodajo na drobno
5402.41	Druga preja iz najlona ali drugih poliamidov, enojna, nesukana, ni za prodajo na drobno
5402.42	Druga preja iz poliestrov, deloma orientiranih, enojna, ni za prodajo na drobno
5402.43	Druga preja iz poliestrov, enojna, nesukana, ni za prodajo na drobno
5402.49	Druga preja iz sintetičnih filamentov, enojna, nesukana, ni za prodajo na drobno
5402.51	Druga preja iz najlona ali drugih poliamidov, enojna, >50 zavojev/m, ni za prodajo na drobno
5402.52	Druga preja iz poliestera, enojna, >50 zavojev/m, ni za prodajo na drobno
5402.59	Druga preja iz sintetičnih filamentov, enojna, >50 navojev/m, ni za prodajo na drobno
5402.61	Druga preja iz najlona ali drugih poliamidov, večnitna, ni za prodajo na drobno

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5402.62	Druga preja iz poliestra, večnitna, ni za prodajo na drobno
5402.69	Druga preja iz sintetičnih filamentov, večnitna, ni za prodajo na drobno
5403.10	Preja visoke jakosti (razen sukanca za šivanje), iz viskoznega rajona, ni za prodajo na drobno
5403.20	Teksturirana preja, druga, iz umetnih filamentov, ni za prodajo na drobno
5403.31	Druga preja iz viskoznega rajona, enojna, nesukana, ni za prodajo na drobno
5403.32	Druga preja iz viskoznega rajona, enojna, >120 zavojev na m, ni za prodajo na drobno
5403.33	Druga preja iz celuloznega acetata, enojna, ni za prodajo na drobno
5403.39	Druga preja iz umetnih filamentov, enojna, ni za prodajo na drobno
5403.41	Druga preja iz viskoznega rajona, večnitna, ni za prodajo na drobno
5403.42	Druga preja iz celuloznega acetata, večnitna, ni za prodajo na drobno
5403.49	Druga preja iz umetnih filamentov, večnitna, ni za prodajo na drobno
5404.10	Sintetični monofilamenti, >/=67dtex, katerih dimenzija prečnega prereza ne presega 1 mm
5404.90	Trakovi in podobno iz sintetičnega tekst. materiala, vidne širine do 5 mm
5405.00	Umetni monofilamenti, 67dtex, katerih dimenzija prečnega prereza ne presega 1 mm; trakovi iz umetnega teks. materiala vidne šir. </= 5mm
5406.10	Preja iz sintetičnih filamentov (razen sukanca za šivanje), za prodajo na drobno
5406.20	Preja iz umetnih filamentov (razen sukanca za šivanje), za prodajo na drobno
5407.10	Tkanine iz preje velike jakosti iz najlona ali drugih poliamidov/poliestra
5407.20	Tkanine dobljene iz trakov/podobnih sintetičnih teks. materialov
5407.30	Tkanine, predvidene v 9. opombi v XI oddelku (plasti paralelne sintetične teks. preje)
5407.41	Druge tkanine, >/=85% iz najlona/drugih poliamidov, nebeljene ali beljene
5407.42	Druge tkanine, >/=85% iz najlona/drugih poliamidov, barvane
5407.43	Druge tkanine, >/=85% iz najlona/drugih poliamidov, iz barvane preje
5407.44	Druge tkanine, >/=85% iz najlona/drugih poliamidov, tiskane
5407.51	Druge tkanine, >/=85% iz teksturiranih poliestrskih filametov, nebeljene ali beljene
5407.52	Druge tkanine, >/=85% iz tekstur. poliestrskih filamentov, barvane
5407.53	Druge tkanine, >/=85% iz tekstur. poliestrskih filamentov, iz barvane preje
5407.54	Druge tkanine, >/=85% iz tekstur. poliestrskih filamentov, tiskane
5407.60	Druge tkanine, >/=85% iz neteksturiranih poliestrskih filametov
5407.71	Druge tkanine, >/=85% iz sintetičnih filamentov, beljene ali nebeljene
5407.72	Druge tkanine, >/=85% iz sintetičnih filamentov, barvane
5407.73	Druge tkanine, >/=85% iz sintetičnih filamentov, iz barvane preje
5407.74	Druge tkanine, >/=85% iz sintetičnih filamentov, tiskane
5407.81	Druge tkanine iz sintetičnih filamentov, <85% mešane z bombažem, nebeljene ali beljene
5407.82	Druge tkanine iz sintetičnih filamentov, <85% mešane z bombažem, barvane
5407.83	Druge tkanine iz sintetičnih filamentov, <85% mešane z bombažem, iz barvane preje
5407.84	Druge tkanine iz sintetičnih filamentov, <85% mešane z bombažem, tiskane
5407.91	Druge tkanine iz sintetičnih filamentov, beljene ali nebeljene
5407.92	Druge tkanine iz sintetičnih filametov, barvane
5407.93	Druge tkanine iz sintetičnih filamentov, iz barvane preje
5407.94	Druge tkanine iz sintetičnih filametov, tiskane
5408.10	Tkanine iz preje visoke jakosti iz viskoznega rajona
5408.21	Druge tkanine, >/=85% umetnih filamentov ali trakov iz umetnega tekst. materiala, nebeljene ali beljene
5408.22	Druge tkanine, >/=85% umetnih filamentov ali trakov iz umetnega tekst. materiala, barvane
5408.23	Druge tkanine, >/=85% umetnih filamentov ali trakov iz umetnega tekst. materiala, iz barvane preje
5408.24	Druge tkanine, >/=85% umetnih filamentov ali trakov iz umetnega tekst. materiala, tiskane
5408.31	Druge tkanine iz umetnih filamentov, nebeljene ali beljene
5408.32	Druge tkanine iz umetnih filamentov, barvane
5408.33	Druge tkanine iz umetnih filamentov, iz barvane preje
5408.34	Druge tkanine iz umetnih filamentov, tiskane
55. pog.	Umetna ali sintetična rezana vlakna
5501.10	Prameni iz sintetičnih filamentov iz najlona ali drugih poliamidov
5501.20	Prameni iz sintetičnih filamentov iz poliestrov
5501.30	Prameni iz sintetičnih filamentov iz akrila ali modakrila
5501.90	Drugi prameni iz sintetičnih filamentov
5502.00	Prameni iz umetnih filamentov
5503.10	Sintetična rezena vlakna iz najlona ali drugih poliamidov, nemikana ali iz nečesana
5503.20	Sintetična rezana vlakna iz poliestrov, nemikana ali nečesana
5503.30	Sintetična rezana vlakna iz akrilov ali modakrilov, nemikana ali nečesana
5503.40	Sintetična rezana vlakna iz polipropilena, nemikana ali nečesana
5503.90	Druga sintetična rezana vlakna, nemikana ali nečesana
5504.10	Umetna rezana vlakna iz viskoze, nemikana ali nečesana
5504.90	Umetna rezana vlakna, razen viskoze, nemikana ali nečesana
5505.10	Odpadki iz sintetičnih vlaken
5505.20	Odpadki iz umetnih vlaken
5506.10	Sintetična rezana vlakna iz najlona ali drugih poliamidov, mikana ali česana

HS št.	Opis proizvoda
5506.20	Sintetična rezana vlakna iz poliestrov, mikana ali česana
5506.30	Sintetična rezana vlakna iz akrilov ali modakrilov, mikana ali česana
5506.90	Druga sintetična rezana vlakna, mikana ali česana
5507.00	Umetna rezana vlakna, mikana ali česana
5508.10	Sukanec za šivanje iz sintetičnih rezanih vlaken
5508.20	Sukanec za šivanje iz umetnih rezanih vlaken
5509.11	Preja, >/=85% najlona ali drugih poliamidnih rezanih vlaken, enojna, ni za prodajo na drobno
5509.12	Preja, >/=85% najlona ali drugih poliamidnih rezanih vlaken, večnitna, ni za prodajo na drobno, druga
5509.21	Preja, >/=85% poliestrskih rezanih vlaken, enojna, ni za prodajo na drobno
5509.22	Preja, >/=85% poliestrskih rezanih vlaken, večnitna, ni za prodajo na drobno
5509.31	Preja, >/=85% akrilnih/modakrilnih rezanih vlaken, enojna, ni za prodajo na drobno
5509.32	Preja, >/=85% akrilnih/modakrilnih rezanih vlaken, večnitna, ni za prodajo na drobno, druga
5509.41	Druga preja, >/=85% drugih sintetičnih rezanih vlaken, enojna, ni za prodajo na drobno
5509.42	Druga preja, >/=85% drugih sintetičnih rezanih vlaken, večnitna, ni za prodajo
5509.51	Druga preja iz poliestrskih rezanih vlaken, mešana z umetnimi rezanimi vlakni, ni za prodajo na drobno
5509.52	Druga preja iz poliestrskih rezanih vlaken, mešana z volno/fino živalsko dlako, ni za prodajo na drobno
5509.53	Druga preja iz poliestrskih rezanih vlaken, mešana z bombažem, ni za prodajo na drobno
5509.59	Druga preja iz poliestrskih rezanih vlaken, ni za prodajo na drobno
5509.61	Druga preja iz akrilnih rezanih vlaken, mešana z volno/fino živalsko dlako, ni za prodajo na drobno
5509.62	Druga preja iz akrilnih rezanih vlaken, mešana z bombažem, ni za prodajo na drobno
5509.69	Druga preja iz akrilnih rezanih vlaken, ni za prodajo na drobno
5509.91	Druga preja iz sintetičnih rezanih vlaken, mešana z volno/fino živalsko dlako, ni za prodajo na drobno
5509.92	Druga preja iz sintetičnih rezanih vlaken, mešana z bombažem, ni za prodajo na drobno
5509.99	Druga preja iz sintetičnih rezanih vlaken, ni za prodajo na drobno
5510.11	Preja, >/=85% umetnih rezanih vlaken, enojna, ni za prodajo na drobno
5510.12	Preja, >/=85% umetnih rezanih vlaken, večnitna, ni za prodajo na drobno
5510.20	Druga preja iz umetnih rezanih vlaken, mešana z volno/fino živalsko dlako, ni za prodajo na drobno
5510.30	Druga preja iz umetnih rezanih vlaken, mešana z bombažem, ni za prodajo na drobno
5510.90	Druga preja iz umetnih rezanih vlaken, ni za prodajo na drobno
5511.10	Preja, >/=85% sintetičnih rezanih vlaken, razen sukanca za šivanje, za prodajo na drobno
5511.20	Preja, <85% sintetičnih rezanih vlaken, za prodajo na drobno
5511.30	Preja iz umetnih rezanih vlaken, razen sukanca za šivanje, za prodajo na drobno,
5512.11	Tkanine, ki vsebujejo >/=85% poliestrskih rezanih vlaken, nebeljene ali beljene
5512.19	Tkanine, ki vsebujejo >/=85% poliestrskih rezanih vlaken, razen nebeljene ali beljene
5512.21	Tkanine, ki vsebujejo >/=85% akrilnih rezanih vlaken, nebeljene ali beljene
5512.29	Tkanine, ki vsebujejo >/=85% akrilnih rezanih vlaken, razen nebeljene ali beljene
5512.91	Tkanine, ki vsebujejo >/=85% sintetičnih rezanih vlaken, nebeljene ali beljene
5512.99	Tkanine, ki vsebujejo >/=85% sintetičnih rezanih vlaken, razen nebeljene ali beljene
5513.11	Tkanine v platnenem prepletu iz poliestrskih rezanih vlaken, <85%, mešane z bombažem, </=170g/m^2, nebeljene ali beljene
5513.12	Keper tkanine iz poliestrskih rezanih vlaken, <85%, mešane z bombažem, </=170g/m^2, nebeljene ali beljene
5513.13	Tkanine iz poliestrskih rezanih vlaken, <85%, mešane z bombažem, </=170g/m^2, nebeljene ali beljene, druge
5513.19	Tkanine iz drugih sint. rezanih vlaken, <85%, mešane z bombažem, </=170g/m^2, nebeljene ali beljene
5513.21	Tkanine v platnenem prepletu iz poliestrskih rezanih vlaken, <85%, mešane z bombažem, </=170g/m^2, barvane
5513.22	Keper tkanine iz poliestrskih rezanih vlaken, <85%, mešane z bombažem, </=170g/m^2, barvane
5513.23	Tkanine iz poliestrskih rezanih vlaken, <85%, mešane z bombažem, </=170g/m^2, barvane, druge
5513.29	Tkanine iz drugih sint. rezanih vlaken, <85%, mešane z bombažem, </=170g/m^2, barvane
5513.31	Tkanine v platnenem prepletu iz poliestrskih rezanih vlaken, <85%, mešane z bombažem, </=170g/m^2, iz barvane preje
5513.32	Keper tkanine iz poliestrskih rezanih vlaken, <85%, mešane z bombažem, </=170g/m^2, iz barvane preje
5513.33	Tkanine iz poliestrskih rezanih vlaken, <85%, mešane z bombažem, </=170g/m^2, iz barvane preje, druge
5513.39	Tkanine iz drugih sint. rezanih vlaken, <85%, mešane z bombažem, </=170g/m^2, iz barvane preje
5513.41	Tkanine v platnenem prepletu iz poliestrskih rezanih vlaken, <85%, mešane z bombažem, </=170g/m^2, tiskane
5513.42	Keper tkanine iz poliestrskih rezanih vlaken, <85%, mešane z bombažem, </=170g/m^2, tiskane
5513.43	Tkanine iz poliestrskih rezanih vlaken, <85%, mešane z bombažem, </=170g/m^2, tiskane, druge
5513.49	Tkanine iz drugih sint. rezanih vlaken, <85%, mešane z bombažem, </=170g/m^2, tiskane
5514.11	Tkanine v platnenem prepletu iz poliestrskih rezanih vlaken, <85%, mešane z bombažem, >170g/m^2, nebeljene ali beljene

HS št.	Opis proizvoda
5514.12	Keper tkanine iz poliestrskih rezanih vlaken, <85%, mešane z bombažem, >170g/m^2, nebeljene ali beljene
5514.13	Tkanine iz poliestrskih rezanih vlaken, <85%, mešane z bombažem, >170g/m^2, nebeljene ali beljene, druge
5514.19	Tkanine iz drugih sint. rezanih vlaken, <85%, mešane z bombažem, >170g/m^2, nebeljene/beljene
5514.21	Tkanine v platnenem prepletu iz poliestrskih rezanih vlaken, <85%, mešane z bombažem, >170g/m^2, barvane
5514.22	Keper tkanine iz poliestrskih rezanih vlaken, <85%, mešane z bombažem, >170g/m^2, barvane
5514.23	Tkanine iz poliestrskih rezanih vlaken, <85%, mešane z bombažem, >170g/m^2, barvane, druge
5514.29	Tkanine iz drugih sint. rezanih vlaken, <85%, mešane z bombažem, >170g/m^2, barvane
5514.31	Tkanine v platnenem prepletu iz poliestrskih rezanih vlaken, <85%, mešane z bombažem, >170g/m^2, iz barvane preje
5514.32	Keper tkanine iz poliestrskih rezanih vlaken, <85%, mešane z bombažem, >170g/m^2, iz barvane preje
5514.33	Tkanine iz poliestrskih rezanih vlaken, <85%, mešane z bombažem, >170g/m^2, iz barvane preje, druge
5514.39	Tkanine iz drugih sint. rezanih vlaken, <85%, mešane z bombažem, >170g/m^2, iz barvane preje
5514.41	Tkanine v platnenem prepletu iz poliestrskih rezanih vlaken, <85%, mešane z bombažem, >170g/m^2, tiskane
5514.42	Keper tkanine iz poliestrskih rezanih vlaken, <85%, mešane z bombažem, >170g/m^2, tiskane
5514.43	Tkanine iz poliestrskih rezanih vlaken, <85%, mešane z bombažem, >170g/m^2, tiskane, druge
5514.49	Tkanine iz drugih sint. rezanih vlaken, <85%, mešane z bombažem, >170g/m^2, tiskane
5515.11	Druge tkanine iz poliestrskih rezanih vlaken, mešane z rezanimi vlakni iz viskoznega rajona
5515.12	Druge tkanine iz poliestrskih rezanih vlaken, mešane z umetnimi vlakni
5515.13	Druge tkanine iz poliestrskih rezanih vlaken, mešane z volno/fino živalsko dlako
5515.19	Druge tkanine iz poliestrskih rezanih vlaken
5515.21	Druge tkanine iz akrilnih rezanih vlaken, mešane z umetnimi filamenti
5515.22	Druge tkanine iz akrilnih rezanih vlaken, mešane z volno/fino živalsko dlako
5515.29	Druge tkanine iz akrilnih ali modakrilnih rezanih filamentov
5515.91	Druge tkanine iz drugih sintetičnih rezanih vlaken, mešane z umetnimi filamenti
5515.92	Druge tkanine iz drugih sintetičnih rezanih vlaken, mešane z volno/fino živalsko dlako
5515.99	Druge tkanine iz drugih sintetičnih rezanih vlaken, druge
5516.11	Tkanine, ki vsebujejo >/=85% umetnih rezanih vlaken, nebeljene/beljene
5516.12	Tkanine, ki vsebujejo >/=85% umetnih rezanih vlaken, barvane
5516.13	Tkanine, ki vsebujejo >/=85% umetnih rezanih vlaken, barvane preje
5516.14	Tkanine, ki vsebujejo >/=85% umetnih rezanih vlaken, tiskane
5516.21	Tkanine iz umetnih rezanih vlaken, <85%, mešane z umetnimi filamenti, nebeljene/beljene
5516.22	Tkanine iz umetnih rezanih vlaken, <85%, mešane z umetnimi filamenti, barvane
5516.23	Tkanine iz umetnih rezanih vlaken, <85%, mešane z umetnimi filamenti, iz barvane preje
5516.24	Tkanine iz umetnih rezanih vlaken, <85%, mešane z umetnimi filamenti, tiskane
5516.31	Tkanine iz umetnih rezanih vlaken, <85%, mešane z volno/fino živalsko dlako, nebeljene/beljene
5516.32	Tkanine iz umetnih rezanih vlaken, <85%, mešane z volno/fino živalsko dlako, barvane
5516.33	Tkanine iz umetnih rezanih vlaken, <85%, mešane z volno/fino živalsko dlako, iz barvane preje
5516.34	Tkanine iz umetnih rezanih vlaken, <85%, mešane z volno/fino živalsko dlako, tiskane
5516.41	Tkanine iz umetnih rezanih vlaken, <85% mešane z bombažem, nebeljene/beljene
5516.42	Tkanine iz umetnih rezanih vlaken, <85% mešane z bombažem, barvane
5516.43	Tkanine iz umetnih rezanih vlaken, <85% mešane z bombažem, iz barvane preje
5516.44	Tkanine iz umetnih rezanih vlaken, <85% mešane z bombažem, tiskane
5516.91	Druge tkanine iz umetnih rezanih vlaken, nebeljene/beljene
5516.92	Druge tkanine iz umetnih rezanih vlaken, barvane
5516.93	Druge tkanine iz umetnih rezanih vlaken, iz barvane preje
5516.94	Druge tkanine iz umetnih rezanih vlaken, tiskane
56. pog.	Vata, klobučevina in netkani materiali; preje, vrvi, motvozi itd.
5601.10	Sanitarni izdelki iz vate iz tekst. materialov, npr. sanitarne brisače in tamponi
5601.21	Vata iz bombaža in izdelki iz vate, razen sanitarnih izdelkov
5601.22	Vata iz umetnih ali sintetičnih vlaken in izdelki iz nje, razen sanitarnih izdelkov
5601.29	Vata iz drugih tekst. materialov in izdelki iz nje, razen sanitarnih izdelkov
5601.30	Tekstilni kosmiči in prah in noppe
5602.10	Iglana klobučevina in tkanine, dobljene s prepletom vlaken iz “stich-bonded” tkanine
5602.21	Klobučevina iz volne ali fine živalske dlake, neimpregnirana, neprevlečena, neprekrita itd, razen iglave klobučevine
5602.29	Klobučevina iz drugih tekstilnih materialov, neimpregnirana, neprevlečena, neprekrita itd, razen iglave klobučevine
5602.90	Klobučevina iz tekstilnih materialov,druga
5603.00	Netkani tekstil, vštevši imregniran, prevlečen, prekrit ali laminiran
5604.10	Niti in kord iz gume, prekriti s tekstilnim materialom

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5604.20	Preja velike jakosti iz poliestra, najlona in drugih poliamidov, viskoznega rajona, prevlečena itd.
5604.90	Tekstilna preja, trakovi ipd. impregnirani, prevlečeni/prekriti z gumo ali plastično maso, druga
5605.00	Metalizirana preja, tekstilna preja, kombinirana s kovino v obliki niti, trakov/prahu
5606.00	Posukana preja, druga; ženiljska preja; efektno vozličasta preja
5607.10	Vrvi, motvozi, konopi in prameni iz jute ali drugih tekstilnih vlaken iz ličja
5607.21	Vrvi za vezanje ali strojno vezanje iz sisala in drugih tekstilnih vlaken iz rodu agave
5607.29	Vrvi druge, motvozi, konopi in prameni iz sisalovih tekst. vlaken
5607.30	Vrvi druge, motvozi, konopi in prameni iz abake ali drugih trdih (listnih) vlaken
5607.41	Vrvi za vezanje ali strojno vezanje iz polietilena ali polipropilena
5607.49	Vrvi, motvozi, konopi in prameni iz polietilena ali polipropilena, drugi
5607.50	Vrvi, motvozi, konopi in prameni iz drugih sintetičnih vlaken
5607.90	Vrvi, motvozi, konopi in prameni iz drugih materialov
5608.11	Zgotovljene ribiške mreže iz umetnih ali sintetičnih tekst. matrialov
5608.19	Vozlani mrežasti izdelki iz motvozov, vrvi ali konopov in druge zgotovljene mreže iz umetnih ali sintetičnih tekst. materialov
5608.90	Vozlani mrežasti izdelki iz motvozov, vrvi ali konopov in druge zgotovljene mreže iz drugih tekstilnih materialov
5609.00	Izdelki iz preje, trakov, vrvi, motvozov, konopov in pramenov, drugi
57. pog.	Preproge in druga tekstilna talna prekrivala
5701.10	Preproge iz volne ali fine živalske dlake, vozlane
5701.90	Preproge iz drugih tekstilnih materialov, vozlane
5702.10	"Kelim", "Šumak", "Karamani" in podobne ročno tkane preproge
5702.20	Talna prekrivala iz kokosovih vlaken
5702.31	Druge preproge iz volne/fine živalske dlake, tkane, s florom, nedokončane
5702.32	Druge preproge iz umetnih ali sintetičnih tekst. materialov, tkane, s florom, nedokončane
5702.39	Druge preproge iz drugih tekstilnih materialov, tkane, s florom, nedokončane
5702.41	Druge preproge iz volne/fine živalske dlake, tkane, s florom, dokončane
5702.42	Druge preproge iz umetnih ali sintetičnih tekst. materialov, tkane, s florom, dokončane
5702.49	Druge preproge iz drugih tekst. materialov, tkane, s florom, dokončane
5702.51	Druge preproge iz volne ali iz fine živalske dlake, brez flora, nedokončane
5702.52	Druge preproge iz umetnih ali sintetičnih tekstilnih materialov, brez flora, nedokončane
5702.59	Druge preproge iz drugih tekstilnih materialov, brez flora, nedokončane
5702.91	Druge preproge iz volne ali fine živalske dlake, brez flora, dokončane
5702.92	Druge preproge iz umetnih ali sintetičnih tekstilnih materialov, brez flora, dokončane
5702.99	Druge preproge iz drugih tekstilnih materialov, brez flora, dokončane
5703.10	Preproge iz volne ali fine živalske dlake, taftirane
5703.20	Preproge iz najlona ali drugih poliamidov, taftirane
5703.30	Preproge iz drugih umetnih ali sintetičnih tekstilnih materialov, taftirane
5703.90	Preproge iz drugih tekstilnih materialov, taftirane
5704.10	Plošče iz klobučevine iz tekstilnih materialov, površine do 0,3 m^2
5704.90	Preproge iz klobučevine iz tekstilnih materialov, druge
5705.00	Druge preproge in druga tekstilna talna pokrivala
58. pog.	Specialne tkanine, taftirane tkanine; čipke; tapiserije itd.
5801.10	Tkanine s florom iz volne/fine živalske dlake, razen frotirja in ozkih tkanin
5801.21	Tkanine z nerazrezanim florom na votku, razen frotirja in ozkih tkanin
5801.22	Rebrast žamet iz bombaža, razen ozkih tkanin
5801.23	Druge tkanine z nerazrezanim florom na votku iz bombaža
5801.24	Tkanine z nerazrezanim florom na osnovi, iz bombaža, razen frotirja in ozkih tkanin
5801.25	Tkanine z razrezanim florom na osnovi, iz bombaža, razen frotirja in ozkih tkanin
5801.26	Ženiljske bombažne tkanine, razen ozkih tkanin
5801.31	Tkanine z nerazrezanim florom na votku, iz umetnih ali sintetičnih vlaken, razen frotirja in ozkih tkanin
5801.32	Rebrasti žamet iz umetnih ali sintetičnih vlaken, razen ozkih tkanin
5801.33	Tkanine z razrezanim florom na votku, iz umetnih ali sintetičnih vlaken, druge
5801.34	Tkanine z nerazrezanim florom na osnovi iz umetnih ali sintetičnih vlaken, razen frotirja in ozkih tkanin
5801.35	Tkanine z razrezanim florom na osnovi iz umetnih ali sintetičnih vlaken, razen frotirja in ozkih tkanin
5801.36	Ženiljska preja iz umetnih ali sintetičnih vlaken, razen ozkih tkanin
5801.90	Tkanine s florom in tkanine iz ženiljske preje iz drugih tekst. materialov, razen frotirja in ozkih tkanin
5802.11	Frotirne tkanine za brisače in podobne frotirne tkanine iz bombaža, razen ozkih tkanin, nebeljene
5802.19	Frotirne tkanine za brisače in podobne frotirne tkanine iz bombaža, razen ozkih tkanin, beljene
5802.20	Frotirne tkanine za brisače in podobne frotirne tkanine iz drugih tekst. materialov, razen ozkih tkanin
5802.30	Tafting tekstilne tkanine, razen proizvodi pod št. 57.03
5803.10	Bombažna gaza, razen ozkih tkanin

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5803.90	Gaza iz drugih tekstilnih materialov, razen ozkih tkanin
5804.10	Til in druge mrežaste tkanine, razen tkane, pletene ali kvačkane tkanine
5804.21	Strojno izdelane čipke iz umetnih ali sintetičnih vlaken v kosu, v trakovih/motivih
5804.29	Strojno izdelane čipke iz drugih tekst. materialov v kosu, v trakovih/motivih
5804.30	Ročno izdelane čipke v kosu, v trakovih/motivih
5805.00	Ročno tkane tapiserije in z iglo izdelane tapiserije, dokončane ali ne
5806.10	Ozke tkanine s florom in ženiljske tkanine
5806.20	Druge ozke tkanine, po teži >/=5% elastomerne preje/gumiranih niti
5806.31	Druge ozke tkanine iz bombaža
5806.32	Druge ozke tkanine iz umetnih ali sintetičnih vlaken
5806.39	Druge ozke tkanine iz drugih tekstilnih materialov
5806.40	Tkanine, sestavljene samo iz osnove, katere niti so med seboj zlepljene
5807.10	Nalepke, značke in podobni tkani izdelki iz tekstilnih materialov
5807.90	Nalepke, značke in podobni netkani izdelki iz tekstilnih materialov, drugi
5808.10	Pletenice v metraži
5808.90	Okrasna pozamenterija v metraži, razen pletena, rese, pomponi in podobno
5809.00	Tkanine iz kovinske niti/ metalizirane preje za oblačila itd, druge
5810.10	Vezenina brez vidne podlage, v metraži, trakovih ali motivih
5810.91	Druga vezenina, bombažna, v metraži, trakovih ali motivih
5810.92	Druga vezenina iz umetnih ali sintetičnih vlaken, v metraži, trakovih ali motivih
5810.99	Druga vezenina iz drugih tekst. materialov, v metraži, trakovih ali motivih
5811.00	Prešiti tekstilni proizvodi v metraži
59. pog.	Impregnirane, prevlečene/prekrite/laminirane tekstilne tkanine itd.
5901.10	Tekstilne tkanine, prevlečene z lepilom, uporabe za zunanjo vezavo knjig
5901.90	Tkanine za kopiranje; kanafas, pripravljen za slikanje; toge tkanine, ki se uporabljajo za klobuke, itd.
5902.10	Kord tkanine za avtomobilske plašče iz preje iz najlona ali drugih poliamidov, velike jakosti
5902.20	Kord tkanine za avtomobilske plašče iz preje iz poliestrov, velike jakosti
5902.90	Kord tkanine za avtomobilske plašče iz preje iz viskoznega rajona, velike jakosti
5903.10	Tekstilne tkanine, impregnirane, prevlečene/prekrite ali laminirane s PVC, druge
5903.20	Tekstilne tkanine, impregnirane, prevlečene/prekrite ali laminirane s poliuretanom, druge
5903.90	Tekstilne tkanine, impregnirane, prevlečene/prekrite ali laminirane s plastično maso, druge
5904.10	Linolej, vštevši rezanega v oblike
5904.91	Talna prekrivala, razen linoleja na podlagi iz iglave klobučevine/netkanega tekstila
5904.92	Talna prekrivala, razen linoleja na podlagi iz drugih tekstilnih materialov
5905.00	Zidne tapete iz tekstila
5906.10	Gumirani tekstilni lepilni trak širine do 20 cm
5906.91	Druge gumirane tekstilne tkanine, pletene ali kvačkane
5906.99	Druge gumirane tekstilne tkanine
5907.00	Impregnirane tekstilne tkanine, prevlečene/prekrite, druge; platna, slikana za odrske kulise
5908.00	Stenj iz tekstila za svetilke, peči itd; rokavci za plinsko razsvetljavo in cevasto pletene tkanine za rokavice
5909.00	Cevi za črpalke in podobne cevi iz tekstilnih materialov
5910.00	Transmisijski ali tekoči trakovi ali jermeni iz tekstilnega materiala
5911.10	Tekstilne tkanine za oblaganje mikalnikov in podobne tkanine za tehnično uporabo
5911.20	Tkanine za sita, vštevši gotove za neposredno uporabo
5911.31	Tekstilne tkanine za uporabo pri strojih za izdelavo papirja itd. < 650 g/m^2
5911.32	Tekstilne tkanine za uporabo pri strojih za izdelavo papirja itd. >/= 650 g/m^2
5911.40	Tkanine za cejenje in stiskanje, za uporabo v stiskalnicah za olje itd., vštevši tkanine, izdelane iz človeških las
5911.90	Drugi tekstilni proizvodi in artikli za tehnično uporabo
60. pog.	Pleteni ali kvačkani materiali
6001.10	Materiali z visokim florom, pleteni ali kvačkani
6001.21	Vozličasti materiali, pleteni ali kvačkani, iz bombaža
6001.22	Vozličasti materiali, pleteni ali kvačkani, iz umetnih ali sintetičnih vlaken
6001.29	Vozličasti materiali, pleteni ali kvačkani, iz drugih tekst. materialov
6001.91	Drug žamet, pliš in material s florom, pleteni ali kvačkani, iz bombaža
6001.92	Drug žamet, pliš in material s florom, pleteni ali kvačkani, iz umetnih ali sintetičnih vlaken
6001.99	Drug žamet, pliš in material s florom, pleteni ali kvačkani, iz drugih tekstilnih materialov
6002.10	Drugi materiali, pleteni ali kvačkani, širina </=30cm, >/=5% elastomerne preje/gumijastih niti
6002.20	Drugi materiali, pleteni ali kvačkani, širina manj kot 30 cm
6002.30	Drugi materiali, pleteni ali kvačkani, širina >30 cm, >/=5% elastomerne preje/gumijastih niti
6002.41	Drugi materiali, pleteni po osnovi iz volne ali fine živalske dlake
6002.42	Drugi materiali, pleteni po osnovi iz bombaža
6002.43	Drugi materiali, pleteni po osnovi iz umetnih ali sintetičnih vlaken
6002.49	Drugi materiali, pleteni po osnovi iz drugih materialov
6002.91	Drugi materiali, pleteni ali kvačkani, iz volne ali fine živalske dlake
6002.92	Drugi materiali, pleteni ali kvačkani, iz bombaža

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6002.93	Drugi materiali, pleteni ali kvačkani, iz umetnih vlaken
6002.99	Drugi materiali, pleteni ali kvačkani, iz drugih materialov
61. pog.	Oblačila in pribor za oblačila, pleteni ali kvačkani
6101.10	Moški/deški plašči, anoraki itd, iz volne ali fine živalske dlake, pleteni
6101.20	Moški/deški plašči, anoraki itd, iz bombaža, pleteni
6101.30	Moški/deški plašči, anoraki itd, iz umetnih vlaken ali sintetičnih vlaken, pleteni
6101.90	Moški/deški plašči, anoraki itd, iz drugih tekstilnih materialov, pleteni
6102.10	Ženski/dekliški plašči, anoraki itd, iz volne ali fine živalske dlake, pleteni
6102.20	Ženski/dekliški plašči, anoraki itd, iz bombaža, pleteni
6102.30	Ženski/dekliški plašči, anoraki itd, iz umetnih ali sintetičnih vlaken, pleteni
6102.90	Ženski/dekliški plašči, anoraki itd, iz drugih tekstilnih materialov, pleteni
6103.11	Moške/deške obleke, iz volne ali fine živalske dlake, pletene
6103.12	Moške/deške obleke, iz sintetičnih vlaken, pletene
6103.19	Moške/deške obleke, iz drugih tekstilnih materialov, pletene
6103.21	Moški/deški kompleti, iz volne ali fine živalske dlake, pleteni
6103.22	Moški/deški kompleti, iz bombaža, pleteni
6103.23	Moški/deški kompleti, iz sintetičnih vlaken, pleteni
6103.29	Moški/deški kompleti, iz drugih tekstilnih materialov, pleteni
6103.31	Moške/deške jakne in jopiči, iz volne ali fine živalske dlake, pleteni
6103.32	Moške/deške jakne in jopiči, iz bombaža, pleteni
6103.33	Moške/deške jakne in jopiči, iz sintetičnih vlaken, pleteni
6103.39	Moške/deške jakne in jopiči, iz drugih tekstilnih materialov, pleteni
6103.41	Moške/deške dolge in kratke hlače, iz volne ali fine živalske dlake, pletene
6103.42	Moške/deške dolge in kratke hlače, iz bombaža, pletene
6103.43	Moške/deške dolge in kratke hlače, iz sintetičnih vlaken, pletene
6103.49	Moške/deške dolge in kratke hlače, iz drugih tekstilnih materialov, pletene
6104.11	Ženski/dekliški kostimi, iz volne ali fine živalske dlake, pleteni
6104.12	Ženski/dekliški kostimi, iz bombaža, pleteni
6104.13	Ženski/dekliški kostimi, iz sintetičnih vlaken, pleteni
6104.19	Ženski/dekliški kostimi, iz drugih tekstilnih materialov, pleteni
6104.21	Ženski/dekliški kompleti, iz volne ali fine živalske dlake, pleteni
6104.22	Ženski/dekliški kompleti, iz bombaža, pleteni
6104.23	Ženski/dekliški kompleti, iz sintetičnih vlaken, pleteni
6104.29	Ženski/dekliški kompleti, iz drugih tekstilnih materialov, pleteni
6104.31	Ženske/dekliške jakne, iz volne ali fine živalske dlake, pleteni
6104.32	Ženske/dekliške jakne, iz bombaža, pleteni
6104.33	Ženske/dekliške jakne, iz sintetičnih vlaken, pleteni
6104.39	Ženske/dekliške jakne, iz drugih tekstilnih materialov, pleteni
6104.41	Ženske/dekliške obleke, iz volne ali fine živalske dlake, pletene
6104.42	Ženske/dekliške obleke, iz bombaža, pletene
6104.43	Ženske/dekliške obleke, iz sintetičnih vlaken, pletene
6104.44	Ženske/dekliške obleke, iz umetnih vlaken, pletene
6104.49	Ženske/dekliške obleke, iz drugih tekstilnih materialov, pletene
6104.51	Ženska/dekliška krila, iz volne ali fine živalske dlake, pletena
6104.52	Ženska/dekliška krila, iz bombaža, pletena
6104.53	Ženska/dekliška krila, iz sintetičnih vlaken, pletena
6104.59	Ženska/dekliška krila, iz drugih tekstilnih materialov, pletena
6104.61	Ženske/dekliške dolge in kratke hlače, iz volne ali fine živalske dlake, pletene
6104.62	Ženske/dekliške dolge in kratke hlače, iz bombaža, pletene
6104.63	Ženske/dekliške dolge in kratke hlače, iz sintetičnih vlaken, pletene
6104.69	Ženske/dekliške dolge in kratke hlače, iz drugih tekstilnih materialov, pletene
6105.10	Moške/deške srajce, iz bombaža, pletene
6105.20	Moške/deške srajce, iz umetnih ali sintetičnih vlaken, pletene
6105.90	Moške/deške srajce, iz drugih tekstilnih materialov, pletene
6106.10	Ženske/dekliške bluze in srajce, iz bombaža, pletene
6106.20	Ženske/dekliške bluze in srajce, iz umetnih ali sintetičnih vlaken, pletene
6106.90	Ženske/dekliške bluze in srajce, iz drugih tekstilnih materialov, pletene
6107.11	Moške/deške dolge in kratke spodnje hlače, iz bombaža, pletene
6107.12	Moške/deške dolge in kratke spodnje hlače, iz umetnih ali sintetičnih vlaken, pletene
6107.19	Moške/deške dolge in kratke spodnje hlače, iz drugih tekstilnih materialov, pletene
6107.21	Moške/deške spalne srajce in pižame, iz bombaža, pletene
6107.22	Moške/deške spalne srajce in pižame, iz umetnih ali sintetičnih vlaken, pletene
6107.29	Moške/deške spalne srajce in pižame, iz drugih tekstilnih materialov, pletene
6107.91	Moški/deški kopalni plašči, domače halje itd, iz bombaža, pleteni
6107.92	Moški/deški kopalni plašči, domače halje itd, iz umetnih vlaken, pleteni
6107.99	Moški/deški kopalni plašči in domače halje itd, iz drugih tekstilnih materialov, pletena
6108.11	Ženske/dekliške spodnje hlače in spodnja krila, iz umetnih ali sintetičnih vlaken, pletene
6108.19	Ženske/dekliške spodnje hlače in spodnja krila, iz drugih tekstilnih materialov, pletene

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6108.21	Ženske/dekliške spodnje hlače, iz bombaža, pletene
6108.22	Ženske/dekliške spodnje hlače, iz umetnih ali sintetičnih vlaken, pletene
6108.29	Ženske/dekliške spodnje hlače, iz drugih tekstilnih materialov, pletene
6108.31	Ženske/dekliške spalne srajce in pižame, iz bombaža, pletene
6108.32	Ženske/dekliške spalne srajce in pižame, iz umetnih ali sintetičnih vlaken, pletene
6108.39	Ženske/dekliške spalne srajce in pižame, iz drugih tekstilnih materialov, pletene
6108.91	Ženski/dekliški kopalni plašči, domače halje itd, iz bombaža, pleteni
6108.92	Ženski/dekliški kopalni plašči, domače halje itd, iz umetnih vlaken, pleteni
6108.99	Ženski/dekliški kopalni plašči in domače halje itd, iz drugih tekstilnih materialov, pleteni
6109.10	Majice s kratkimi rokavi, majice in druge spodnje majice, iz bombaža, pletene
6109.90	Majice s kratkimi rokavi, majice in druge spodnje majice, iz drugih tekstilnih materialov, pletene
6110.10	Puloverji, jope in podobni proizvodi iz volne ali fine živalske dlake, pleteni
6110.20	Puloverji, jope in podobni proizvodi iz bombaža, pleteni
6110.30	Puloverji, jope in podobni proizvodi iz umetnih ali sintetičnih vlaken, pleteni
6110.90	Puloverji, jope in podobni proizvodi iz drugih tekstilnih materialov, pleteni
6111.10	Oblačila in pribor za oblačila, za dojenčke, iz volne ali fine živalske dlake, pletena
6111.20	Oblačila in pribor za oblačila, za dojenčke, iz bombaža, pletena
6111.30	Oblačila in pribor za oblačila, za dojenčke, iz sintetičnih vlaken, pletena
6111.90	Oblačila in pribor za oblačila, za dojenčke, iz drugih tekstilnih materialov, pletena
6112.11	Trenirke iz bombaža, pletene
6112.12	Trenirke iz sintetičnih vlaken, pletene
6112.19	Trenirke iz drugih tekstilnih materialov, pletene
6112.20	Smučarske obleke, iz tekstilnih materialov, pletene
6112.31	Moške/deške kopalne hlačke, iz sintetičnih vlaken, pletene
6112.39	Moške/deške kopalne hlačke, iz drugih tekstilnih materialov, pletene
6112.41	Ženske/dekliške kopalne hlačke in obleke, iz sintetičnih vlaken, pletene
6112.49	Ženske/dekliške kopalne hlačke in obleke, iz drugih tekstilnih materialov, pletene
6113.00	Oblačila iz impregniranega, prevlečenega, prekritega ali laminatnega pletenega materiala
6114.10	Druga oblačila iz volne ali fine živalske dlake, pletena
6114.20	Druga oblačila iz bombaža, pletena
6114.30	Druga oblačila iz umetnih ali sintetičnih vlaken, pletena
6114.90	Druga oblačila iz drugih tekstilnih materialov, pletena
6115.11	Hlačne nogavice iz sintetičnih prej <67dtex/enojna preja, pletene
6115.12	Hlačne nogavice iz sintetičnih prej >/=67dtex/enojna preja, pletene
6115.19	Hlačne nogavice iz drugih tekstilnih materialov, pletene
6115.20	Ženske dolge nogavice in dokolenke, iz tekstilne preje <67dtex/enojna preja, pletene
6115.91	Druge nogavice, iz volne ali fine živalske dlake, pletene
6115.92	Druge nogavice, iz bombaža, pletene
6115.93	Druge nogavice iz sintetičnih vlaken, pletene
6115.99	Druge nogavice iz drugih tekstilnih materialov, pletene
6116.10	Rokavice impregnirane, prevlečene ali prekrite s plastično maso ali gumo, pletene
6116.91	Rokavice, druge, palčniki in polrokavice, iz volne ali fine živalske dlake, pletene
6116.92	Rokavice, druge, palčniki in polrokavice, iz bombaža, pletene
6116.93	Rokavice, druge, palčniki in polrokavice, iz sintetičnih vlaken, pletene
6116.99	Rokavice, druge, palčniki in polrokavice, iz drugih tekstilnih materialov, pletene
6117.10	Šali, rute, tančice in podobno, iz tekstilnih materialov, pleteni
6117.20	Kravate in metuljčki, iz tekstilnih materialov, pleteni
6117.80	Pribor za oblačila, drug, iz tekstilnih materialov, pleteni
6117.90	Deli za pribor za oblačila iz tekst. materialov, pleteni
62. pog.	Oblačila in pribor za oblačila, nepleteni ali kvačkani
6201.11	Moški/deški plašči in podobni proizvodi, iz volne ali fine živalske dlake, nepleteni
6201.12	Moški/deški plašči in podobni proizvodi, iz bombaža, nepleteni
6201.13	Moški/deški plašči in podobni proizvodi, iz umetnih ali sintetičnih vlaken, nepleteni
6201.19	Moški/deški anoraki in podobni proizvodi, iz drugih tekstilnih materialov, nepleteni
6201.91	Moški/deški anoraki in podobni proizvodi, iz volne ali fine živalske dlake, nepleteni
6201.92	Moški/deški anoraki in podobni proizvodi, iz bombaža, nepleteni
6201.93	Moški/deški anoraki in podobni proizvodi, iz umetnih ali sintetičnih vlaken, nepleteni
6201.99	Moški/deški plašči in podobni proizvodi, iz drugih tekstilnih materialov, nepleteni
6202.11	Ženski/dekliški plašči in podobni proizvodi, iz volne ali fine živalske dlake, nepleteni
6202.12	Ženski/dekliški plašči in podobni proizvodi, iz bombaža, nepleteni
6202.13	Ženski/dekliški plašči in podobni proizvodi, iz umetnih ali sintetičnih vlaken, nepleteni
6202.19	Ženski/dekliški plašči in podobni proizvodi, iz drugih tekstilnih materialov, nepleteni
6202.91	Ženski/dekliški anoraki in podobni proizvodi, iz volne ali fine živalske dlake, nepleteni
6202.92	Ženski/dekliški anoraki in podobni proizvodi, iz bombaža, nepleteni
6202.93	Ženski/dekliški anoraki in podobni proizvodi, iz umetnih ali sintetičnih vlaken, nepleteni
6202.99	Ženski/dekliški anoraki in podobni proizvodi, iz drugih tekstilnih materialov, nepleteni
6203.11	Moške/deške obleke, iz volne ali fine živalske dlake, nepletene

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6203.12	Moške/deške obleke, iz sintetičnih vlaken, nepletene
6203.19	Moške/deške obleke, iz drugih tekstilnih materialov, nepletene
6203.21	Moški/deški kompleti, iz volne ali fine živalske dlake, nepleteni
6203.22	Moški/deški kompleti, iz bombaža, nepleteni
6203.23	Moški/deški kompleti, iz sintetičnih vlaken, nepleteni
6203.29	Moški/deški kompleti, iz drugih tekstilnih materialov, nepleteni
6203.31	Moške/deške jakne in jopiči, iz volne ali fine živalske dlake, nepleteni
6203.32	Moške/deške jakne in jopiči, iz bombaža, nepleteni
6203.33	Moške/deške jakne in jopiči, iz sintetičnih vlaken, nepleteni
6203.39	Moški/deški suknjiči in blazerji, iz drugih tekstilnih materialov, nepleteni
6203.41	Moške/deške dolge in kratke hlače, iz volne ali fine živalske dlake, nepletene
6203.42	Moške/deške dolge in kratke hlače, iz bombaža, nepletene
6203.43	Moške/deške dolge in kratke hlače, iz sintetičnih vlaken, nepletene
6203.49	Moške/deške dolge in kratke hlače, iz drugih tekstilnih materialov, nepletene
6204.11	Ženski/dekliški kostimi, iz volne ali fine živalske dlake, nepleteni
6204.12	Ženski/dekliški kostimi, iz bombaža, nepleteni
6204.13	Ženski/dekliški kostimi, iz sintetičnih vlaken, nepleteni
6204.19	Ženski/dekliški kostimi, iz drugih tekstilnih materialov, nepleteni
6204.21	Ženski/dekliški kompleti, iz volne ali fine živalske dlake, nepleteni
6204.22	Ženski/dekliški kompleti, iz bombaža, nepleteni
6204.23	Ženski/dekliški kompleti, iz sintetičnih vlaken, nepleteni
6204.29	Ženski/dekliški kompleti, iz drugih tekstilnih materialov, nepleteni
6204.31	Ženske/dekliške jakne, iz volne ali fine živalske dlake, nepletene
6204.32	Ženske/dekliške jakne, iz bombaža, nepletene
6204.33	Ženske/dekliške jakne, iz sintetičnih vlaken, nepletene
6204.39	Ženske/dekliške jakne, iz drugih tekstilnih materialov, nepletene
6204.41	Ženske/dekliške obleke, iz volne ali fine živalske dlake, nepletene
6204.42	Ženske/dekliške obleke, iz bombaža, nepletene
6204.43	Ženske/dekliške obleke, iz sintetičnih vlaken, nepletene
6204.44	Ženske/dekliške obleke iz umetnih vlaken, nepletene
6204.49	Ženske/dekliške obleke, iz drugih tekstilnih materialov, nepletene
6204.51	Ženska/dekliška krila, iz volne ali fine živalske dlake, nepletena
6204.52	Ženska/dekliška krila, iz bombaža, nepletena
6204.53	Ženska/dekliška krila, iz sintetičnih vlaken, nepletena
6204.59	Ženska/dekliška krila, iz drugih tekstilnih materialov, nepletena
6204.61	Ženske/dekliške dolge in kratke hlače, iz volne ali fine živalske dlake, nepletene
6204.62	Ženske/dekliške dolge in kratke hlače, iz bombaža, nepletene
6204.63	Ženske/dekliške dolge in kratke hlače, iz sintetičnih vlaken, nepletene
6204.69	Ženske/dekliške dolge in kratke hlače, iz drugih tekstilnih materialov, nepletene
6205.10	Moške/deške srajce, iz volne ali fine živalske dlake, nepletene
6205.20	Moške/deške srajce, iz bombaža, nepletene
6205.30	Moške/deške srajce, iz umetnih ali sintetičnih vlaken, nepletene
6205.90	Moške/deške srajce, iz drugih tekstilnih materialov, nepletene
6206.10	Ženske/dekliške bluze in srajce, iz svile ali svilenih odpadkov, nepletene
6206.20	Ženske/dekliške bluze in srajce, iz volne ali fine živalske dlake, nepletene
6206.30	Ženske/dekliške bluze in srajce, iz bombaža, nepletene
6206.40	Ženske/dekliške bluze in srajce, iz umetnih ali sintetičnih vlaken, nepletene
6206.90	Ženske/dekliške bluze in srajce, iz drugih tekstilnih materialov, nepletene
6207.11	Moške/deške dolge in kratke spodnje hlače, iz bombaža, nepletene
6207.19	Moške/deške dolge in kratke spodnje hlače, iz drugih tekstilnih materialov, nepletene
6207.21	Moške/deške spalne srajce in pižame, iz bombaža, nepletene
6207.22	Moške/deške spalne srajce in pižame, iz umetnih vlaken, nepletene
6207.29	Moške/deške spalne srajce in pižame, iz drugih tekstilnih materialov, nepletene
6207.91	Moški/deški kopalni plašči, domače halje itd, iz bombaža, nepleteni
6207.92	Moški/deški kopalni plašči, domače halje itd, iz umetnih vlaken, nepleteni
6207.99	Moški/deški kopalni plašči, domače halje itd, iz drugih tekstilnih materialov, nepleteni
6208.11	Ženske/dekliške spodnje hlačke in spodnja krila, iz umetnih ali sintetičnih vlaken, nepletene
6208.19	Ženske/dekliške spodnje hlačke in spodnja krila, iz drugih tekstilnih materialov, nepletene
6208.21	Ženske/dekliške spalne srajce in pižame, iz bombaža, nepletene
6208.22	Ženske/dekliške spalne srajce in pižame, iz umetnih vlaken, nepletene
6208.29	Ženske/dekliške spalne srajce in pižame, iz drugih tekstilnih materialov, nepletene
6208.91	Ženske/dekliške hlačke, domače halje, itd. iz bombaža, nepletene
6208.92	Ženske/dekliške hlačke, domače halje, itd. iz umetnih vlaken, nepletene
6208.99	Ženske/dekliške hlačke, domače halje, itd. iz drugih tekstilnih materialov, nepletene
6209.10	Oblačila in pribor za oblačila za dojenčke, iz volne ali fine živalske dlake, nepletena
6209.20	Oblačila in pribor za oblačila za dojenčke, iz bombaža, nepletena
6209.30	Oblačila in pribor za oblačila za dojenčke, iz sintetičnih vlaken, nepletena

HS št.	Opis proizvoda
6209.90	Oblačila in pribor za oblačila za dojenčke iz drugih tekstilnih materialov, nepletena
6210.10	Oblačila izdelana iz tekstilne klobučevine in netkanega tekstila
6210.20	Moški/deški plašči in podobni izdelki iz impregniranega, prevlečenega, prekritega, itd. tkanega tekstila
6210.30	Ženski/dekliški plašči in podobni izdelki iz impregniranega, prevlečenega, prekritega, itd. tkanega tekstila
6210.40	Druga moška/deška oblačila, iz impregniranega, prevlečenega, prekritega, itd. tkanega tekstila
6210.50	Druga ženska/dekliška oblačila iz impregniranega, prevlečenega, prekritega, itd. tkanega tekstila
6211.11	Moške/deške kopalne hlačke, iz tekstilnega materiala, nepletene
6211.12	Ženske/dekliške kopalne hlačke in obleke, iz tekstilnega materiala, nepletene
6211.20	Smučarske obleke, iz tekstilnega materiala, nepletene
6211.31	Druga moška/deška oblačila, iz volne ali fine živalske dlake, nepletena
6211.32	Druga moška/deška oblačila, iz bombaža, nepletena
6211.33	Druga moška/deška oblačila, iz umetnih ali sintetičnih vlaken, nepletena
6211.39	Druga moška/deška oblačila, iz drugih tekstilnih materialov, nepletena
6211.41	Druga ženska/dekliška oblačila, iz volne ali fine živalske dlake, nepletena
6211.42	Druga ženska/dekliška oblačila, iz bombaža, nepletena
6211.43	Druga ženska/dekliška oblačila, iz umetnih ali sintetičnih vlaken, nepletena
6211.49	Druga ženska/dekliška oblačila, iz drugih tekstilnih materialov, nepletena
6212.10	Modrčki in njihovi deli, iz tekstilnih materialov
6212.20	Pasovi za nogavice, hlačni pasovi in njihovi deli, iz tekstilnih materialov
6212.30	Polstezniki in njihovi deli, iz tekstilnih materialov
6212.90	Stezniki, trakovi in podobni proizvodi in njihovi deli, iz tekstilnih materialov
6213.10	Robčki, iz svile ali svilenih odpadkov, nepleteni
6213.20	Robčki, iz bombaža, nepleteni
6213.90	Robčki, iz drugih tekstilnih materialov, nepleteni
6214.10	Šali, rute, tančice in podobno, iz svile ali svilenih ostankov, nepleteni
6214.20	Šali, rute, tančice in podobno, iz volne ali fine živalske dlake, nepleteni
6214.30	Šali, rute, tančice in podobno, iz sintetičnih vlaken, nepleteni
6214.40	Šali, rute, tančice in podobno, iz umetnih vlaken, nepleteni
6214.90	Šali, rute, tančice in podobno, iz drugih tekstilnih materialov, nepleteni
6215.10	Metuljčki in kravate, iz svile ali svilenih odpadkov, nepleteni
6215.20	Metuljčki in kravate, iz umetnih ali sintetičnih vlaken, nepleteni
6215.90	Metuljčki in kravate, iz drugih tekstilnih materialov, nepleteni
6216.00	Rokavice vseh vrst, iz tekstilnih materialov, nepletene
6217.10	Drug pribor za oblačila, iz tekstilnih materialov, nepleteni
6217.90	Drugi deli oblačil ali pribora za oblačila, iz tekst. materialov, nepleteni
63. pog.	Drugi gotovi tekstilni izdelki; kompleti; ponošena oblačila itd.
6301.10	Električne odeje, iz tekstilnih materialov
6301.20	Odeje (razen električnih) in potovalne odeje, iz volne ali fine živalske dlake
6301.30	Odeje (razen električnih) in potovalne odeje, iz bombaža
6301.40	Odeje (razen električnih) in potovalne odeje, iz sintetičnih vlaken
6301.90	Odeje (razen električnih) in potovalne odeje, iz drugih tekstilnih materialov
6302.10	Posteljno perilo, pleteno ali kvačkano
6302.21	Posteljno perilo, iz bombaža, tiskano, nepleteno
6302.22	Posteljno perilo, iz umetnih ali sintetičnih vlaken, tiskano, nepleteno
6302.29	Posteljno perilo, iz drugih tekstilnih materialov, tiskano, nepleteno
6302.31	Drugo posteljno perilo, iz bombaža
6302.32	Drugo posteljno perilo, iz umetnih ali sintetičnih vlaken
6302.39	Drugo posteljno perilo, iz drugih tekstilnih materialov
6302.40	Namizno perilo, pleteno ali kvačkano
6302.51	Namizno perilo, iz bombaža, nepleteno
6302.52	Namizno perilo, iz lanu, nepleteno
6302.53	Namizno perilo, iz umetnih ali sintetičnih vlaken, nepleteno
6302.59	Namizno perilo, iz drugih tekstilnih materialov, nepleteno
6302.60	Toaletno in kuhinjsko perilo, iz frotirja ali podobne tkanine, iz bombaža
6302.91	Toaletno in kuhinjsko perilo, iz bombaža, drugo
6302.92	Toaletno in kuhinjsko perilo, iz lanu
6302.93	Toaletno in kuhinjsko perilo, iz umetnih ali sintetičnih vlaken
6302.99	Toaletno in kuhinjsko perilo, iz drugih tekstilnih materialov
6303.11	Zavese, draperije, notranje platnene rolete in kratke okrasne draperije za postelje, iz bombaža, pletene
6303.12	Zavese, draperije, notranje platnene rolete in kratke okrasne draperije za postelje, iz sintetičnih vlaken, pletene
6303.19	Zavese, draperije, notranje platnene rolete in kratke okrasne draperije za postelje, iz drugih tekstilnih materialov, pletene
6303.91	Zavese, draperije, notranje platnene rolete in kratke okrasne draperije za postelje, iz bombaža, nepletene
6303.92	Zavese, draperije, notranje platnene rolete in kratke okrasne draperije za postelje, iz sintetičnih vlaken, nepletene

HS št.	Opis proizvoda
6303.99	Zavese, draperije, notranje platnene rolete in kratke okrasne draperije za postelje, iz drugih tekstilnih materialov, nepletene
6304.11	Posteljna pregrinjala iz tekstilnih materialov, pletena ali kvačkana
6304.19	Posteljna pregrinjala iz tekstilnih materialov, druga, razen pletenih ali kvačkanih
6304.91	Drugi izdelki za notranjo premo iz tekstilnih materialov, pleteni ali kvačkani
6304.92	Drugi izdelki za notranjo premo iz bombaža, razen pletenih ali kvačkanih
6304.93	Drugi izdelki za notranjo premo iz sintetičnih vlaken, razen pletenih ali kvačkanih
6304.99	Drugi izdelki za notranjo premo iz drugih tekstilnih materialov, razen pletenih ali kvačkanih
6305.10	Vreče in vrečke za pakiranje blaga, iz jute ali drugih tekstilnih vlaken iz ličja
6305.20	Vreče in vrečke za pakiranje blaga, iz bombaža
6305.31	Vreče in vrečke za pakiranje blaga, iz polietilenskih ali polipropilenskih trakov
6305.39	Vreče in vrečke za pakiranje blaga, iz drugih umetnih ali sintetičnih tekstilnih materialov
6305.90	Vreče in vrečke, za pakiranje blaga, iz drugih tekstilnih proizvodov
6306.11	Cerade, platnene strehe in zunanje platnene rolete, iz bombaža
6306.12	Cerade, platnene strehe in zunanje platnene rolete, iz sintetičnih vlaken
6306.19	Cerade, platnene strehe in zunanje platnene rolete, iz drugih tekstilnih materialov
6306.21	Šotori, iz bombaža
6306.22	Šotori, iz sintetičnih vlaken
6306.29	Šotori, iz drugih tekstilnih vlaken
6306.31	Jadra, iz sintetičnih vlaken
6306.39	Jadra, iz drugih tekstilnih materialov
6306.41	Zračne blazine, iz bombaža
6306.49	Zračne blazine, iz drugih tekstilnih materialov
6306.91	Druga oprema za taborjenje, iz bombaža
6306.99	Druga oprema za taborjenje, iz drugih tekstilnih materialov
6307.10	Krpe za tla, posodo, prah in podobne krpe za čiščenje, iz tekstilnih materialov
6307.20	Reševalni jopiči in reševalni pasovi, iz tekstilnih materialov
6307.90	Drugi gotovi izdelki, iz tekstilnih materialov, vštevši modne kroje za oblačila
6308.00	Garniture, ki so sestavljene iz tkanin in preje, za izdelavo odej, tapiserij, itd.
6309.00	Ponošena obleka in drugi rabljeni izdelki

Tekstilni proizvodi in oblačila v poglavjih 30-49, 64-96

HS št.	Opis proizvoda
3005.90	Vata, gaza, obveze in podobno
ex 3921.12 ex 3921.13 ex 3921.90	Tkanine, pletene ali netkane tkanine, prevlečene, prekrite ali laminirane s plastično maso
ex 4202.12 ex 4202.22 ex 4202.32 ex 4202.92	Prtljaga, ročne torbe in škatle z zunanjo površino pretežno iz tekstilnih materialov
ex 6405.20	Obutev s podplati in zgornjim delom iz volnene klobučevine
ex 6406.10	Vrhnji deli (oglav), pri katerih je 50% ali več zunanje površine iz tekstilnih materialov
ex 6406.99	Grelniki za noge in gamaše iz tekstilnih materialov
6501.00	Tulci, stožci in podobni izdelki iz klobučevine; ploščati klobuki in cilindri iz klobučevine
6502.00	Neoblikovani tulci, pleteni ali izdelani s sestavljanjem trakov iz kateregakoli materiala
6503.00	Klobuki in druga pokrivala iz klobučevine
6504.00	Klobuki in druga pokrivala, pletena ali izdelana s sestavljanjem trakov iz kateregakoli materiala
6505.90	Klobuki in druga pokrivala, pletena ali izdelana iz čipk ali drugega tekstilnega materiala
6601.10	Dežniki in sončniki, vrtni
6601.91	Drugi dežniki, teleskopski
6601.99	Drugi dežniki
ex 7019.10	Preja iz steklenih vlaken
ex 7019.20	Tkanine iz steklenih vlaken
8708.21	Varnostni pasovi za motorna vozila
8804.00	Padala; njihovi deli in pribor
9113.90	Pasovi za ure, trakovi in zapestnice iz tekstilnih materialov
ex 9404.90	Vzglavniki in blazine iz bombaža; prešite odeje; pernice; prešite odeje in podobni proizvodi iz tekstilnih materialov
9502.91	Oblačila za punčke (igrače)
ex 9612.10	Tkani trakovi, iz umetnih ali sintetičnih vlaken, razen tistih, ki so ožji kot 30 mm in so stalno v kasetah

S P O R A Z U M
O TEHNIČNIH OVIRAH V TRGOVINI

Članice se

ob upoštevanju Urugvajskega kroga mnogostranskih trgovinskih pogajanj,

z željo, da pospešujejo cilje GATT 1994,

ob spoznanju, da lahko mednarodni standardi in sistemi za presojo skladnosti pomembno prispevajo k izboljšanju učinkovitosti proizvodnje in olajšajo mednarodno trgovino,

z željo, da bi spodbudile razvoj teh mednarodnih standardov in sistemov za presojo skladnosti,

toda z željo zagotoviti, da tehnični predpisi in standardi, vključno z zahtevami v zvezi s pakiranjem, označevanjem in etiketiranjem ter postopki za presojo skladnosti s tehničnimi predpisi in standardi, ne bi povzročali nepotrebnih ovir v mednarodni trgovini,

ob spoznanju, da nobeni državi ne bi smeli preprečevati, da sprejema ukrepe, ki so potrebni za zagotavljanje kakovosti njihovega izvoza ali zaradi zaščite življenja in zdravja ljudi in živali ter rastlin, varstva okolja ali preprečevanja zlorab v praksi, na ustreznih ravneh, ki se ji zdijo primerne, vendar pod pogojem, da se ti ukrepi ne uporabljajo na način, ki bi pomenil samovoljno in neutemeljeno diskriminacijo med državami, v katerih prevladujejo enake razmere, ali kot prikrito

omejevanje mednarodne trgovine, čeprav so v skladu z določbami tega sporazuma,

ob spoznanju, da nobeni državi ne bi smeli preprečevati, da sprejema ukrepe, ki so potrebni za zaščito njenih temeljnih varnostnih interesov,

ob priznanju prispevka mednarodne standardizacije k prenosu tehnologije iz razvitih držav v države v razvoju,

ob spoznanju, da se države v razvoju utegnejo srečati s posebnimi težavami pri oblikovanju in uporabi tehničnih predpisov in standardov ter postopkov za presojo skladnosti s tehničnimi predpisi in standardi in z željo, da se jim pri tem pomaga,

sporazumejo, kot sledi:

1. člen

Splošne določbe

1.1 Splošni pojmi za standardizacijo in postopki za presojo skladnosti imajo običajno pomen, kot ga določajo definicije, sprejete v okviru sistema Združenih narodov in v mednarodnih organizacijah za standardizacijo, glede na njihovo naravo in v luči cilja in namena tega sporazuma.

1.2 Za namene tega sporazuma pa se uporablja pomen posameznih pojmov, ki je določen v Prilogi 1.

1.3 Določbe tega sporazuma veljajo za vse proizvode, vključno z industrijskimi in kmetijskimi proizvodi.

1.4 Za specifikacije nabav, ki jih pripravljajo vladni organi za potrebe svoje proizvodnje ali porabe, niso predmet določb tega sporazuma, pač pa se v ustreznem obsegu nanje nanaša Sporazum o vladnih nabavah.

1.5 Določbe tega sporazuma se ne nanašajo na sanitarne in fitosanitarne ukrepe, ki so določeni v Prilogi A k Sporazumu o uporabi sanitarnih in fitosanitarnih ukrepov.

1.6 Vse, kar se v tem sporazumu nanaša na tehnične predpise, standarde in postopke za presojo skladnosti, velja tudi za vse njihove spremembe in za katerekoli dopolnitve k pravilom ali k obsegu proizvodov, na katere se nanašajo, razen nepomembnih sprememb in dopolnitev.

TEHNIČNI PREDPISI IN STANDARDI

2. člen

Tehnični predpisi, ki jih pripravljajo, sprejemajo in uporabljajo centralni vladni organi

V zvezi s svojimi centralnimi vladnimi organi:

2.1 Članice zagotavljajo, da na podlagi tehničnih predpisov s proizvodi, ki se uvažajo z ozemlja katerekoli druge članice, ravnajo na enak način kot z enakimi domačimi proizvodi in z enakimi proizvodi, ki izvirajo iz katerekoli druge države.

2.2 Članice zagotavljajo, da se tehnični predpisi ne pripravljajo, sprejemajo ali uporabljajo z namenom ali z učinkom nepotrebnega oviranja mednarodne trgovine. Zato smejo biti tehnični predpisi glede trgovine le toliko omejevalni, kot je to potrebno za izpolnitev legitimnih ciljev, pri čemer je treba upoštevati tveganja, ki bi nastala zaradi neizpolnitve leteh. Taki legitimni cilji so med drugim: potrebe državne varnosti, preprečevanje zlorab, zaščita človekovega zdravja ali varnosti, zaščita življenja in zdravja živali ali rastlin ali okolja. Pri presoji takih tveganj je med drugim treba upoštevati te ustrezne elemente: razpoložljive znanstvene in tehnične informacije, ustrezno predelovalno tehnologijo ali predvidene končne uporabe proizvodov.

2.3 Tehnični predpisi se ne ohranjajo, če okoliščine ali cilji, zaradi katerih so bili le-ti sprejeti, ne obstajajo več, ali če za spremenjene okoliščine ali cilje zadoščajo trgovinsko manj omejevalni ukrepi.

2.4 Če so potrebni tehnični predpisi, obstajajo pa že ustrezni mednarodni standardi ali pa je njihova izdelava v zadnji fazi, jih članice uporabljajo v celoti ali delno kot podlago za svoje tehnične predpise, razen kadar taki mednarodni standardi ali njihovi posamezni deli članicam ne ustrezajo ali niso učinkoviti pri izpolnjevanju njihovih legitimnih ciljev, npr. zaradi osnovnih podnebnih ali geografskih razmer ali osnovnih tehnoloških problemov.

2.5 Članica, ki pripravlja, sprejema ali uporablja tehnični predpis, ki bi lahko bistveno vplival na trgovino drugih članic, na zahtevo druge članice obrazloži upravičenost tega tehničnega predpisa v skladu z določbami iz drugega do četrtega odstavka. Kadarkoli se neki tehnični predpis pripravlja, sprejema ali se uporablja za enega od legitimnih ciljev, ki so izrecno omenjeni v drugem odstavku, in je v skladu z ustreznimi mednarodnimi standardi, se domneva, da ne ustvarja nepotrebnih ovir v mednarodni trgovini, razen če se ne ugotovi drugače.

2.6 Z namenom čim širše harmonizacije tehničnih predpisov članice v okviru svojih možnosti v polni meri sodelujejo pri oblikovanju mednarodnih standardov, ki jih pripravljajo ustrezni mednarodni organi za standardizacijo, za proizvode, za katere so sprejele ali bodo v kratkem sprejele tehnične predpise.

2.7 Članice pozitivno presojajo možnost sprejemanja tehničnih predpisov drugih članic kot enakovredne svojim, četudi se ti predpisi razlikujejo od njihovih lastnih, pod pogojem, da ti predpisi po njihovem mnenju ustrezno izpolnjujejo cilje njihovih lastnih predpisov.

2.8 Kadarkoli ustreza, članice določijo tehnične predpise, ki temeljijo na zahtevah proizvoda, upoštevajoč njegovo funkcionalnost, ne pa obliko ali opisne značilnosti.

2.9 Če ni ustreznega mednarodnega standarda ali če tehnična vsebina predlaganega tehničnega predpisa ne ustreza tehnični vsebini ustreznih mednarodnih standardov, utegne pa tehnični predpis v večji meri vplivati na trgovino drugih članic, članice:

2.9.1 v ustrezni zgodnji fazi objavijo obvestilo v publikaciji, tako da se lahko zainteresirani v drugih članicah seznanijo, da nameravajo uvesti poseben tehničen predpis;

2.9.2 po sekretariatu obvestijo druge članice, kateri proizvodi so zajeti v predlaganem tehničnem predpisu, in na kratko opišejo cilje in razloge za ta predpis. Take notifikacije se pošljejo v ustrezni zgodnji fazi, tako da je še vedno možno predlagati spremembe in upoštevati pripombe;

2.9.3 na zahtevo dostavijo drugim članicam podrobno vsebino ali izvode predlaganega tehničnega predpisa in po možnosti označijo dele, kjer se le-ta bistveno razlikuje od ustreznih mednarodnih standardov;

2.9.4 brez diskriminacije omogočijo drugim članicam dovolj časa za njihove pisne pripombe, jih na zahtevo obravnavajo in te pisne pripombe ter rezultate obravnave upoštevajo.

2.10 Kadar pod pogoji določb v uvodu devetega odstavka pri članici nastanejo ali bi utegnili nastati nujni problemi na področju varnosti, zdravja, varstva okolja ali državne varnosti, lahko ta članica po potrebi opusti take postopke, ki so našteti v devetem odstavku, vendar po sprejetju tehničnega predpisa:

2.10.1 po sekretariatu takoj obvesti druge članice o posebnem tehničnem predpisu in o proizvodih, ki jih ta vključuje, na kratko navede cilj in razloge tehničnega predpisa ter naravo nujnih problemov;

2.10.2 na zahtevo pošlje drugim članicam izvod tehničnega predpisa;

2.10.3 brez diskriminacije omogoči drugim članicam, da dajo pisne pripombe, jih na zahtevo obravnava in te pisne pripombe ter rezultate obravnave upošteva.

2.11 Članice zagotavljajo, da se takoj objavijo sprejeti tehnični predpisi ali pa postanejo dostopni na tak način, da se z njimi seznanijo zainteresirani v drugih članicah.

2.12 Razen v nujnih primerih, omenjenih v desetem odstavku, članice dopuščajo razumen časovni presledek med objavo tehničnih predpisov in njihovim začetkom veljavnosti, da bi imeli proizvajalci v članicah izvoznicah, zlasti pa v članicah državah v razvoju, dovolj časa, da prilagodijo svoje proizvode ali proizvodne metode zahtevam članice uvoznice.

3. člen

Tehnični predpisi, ki jih pripravljajo, sprejemajo in uporabljajo lokalni vladni in nevladni organi

V zvezi z lokalnimi vladnimi in nevladnimi organi na njihovih ozemljih:

3.1 Članice z razumnimi ukrepi, ki so jim na voljo, zagotavljajo, da ti organi ravnajo v skladu z določbami 2. člena, razen obveznosti sporočanja, ki je navedena v odstavkih 9.2 in 10.1 2. člena.

3.2 Članice zagotavljajo, da so tehnični predpisi lokalnih vlad, ki so neposredno pod centralno vlado v članicah, sporočeni v skladu z določbami odstavkov 9.2 in 10.1 2. člena, pri čemer pa se ne zahteva notifikacija za tehnične predpise, katerih tehnična vsebina je v glavnem enaka vsebini tehničnih predpisov, ki so jih že sporočili centralni vladni organi te članice.

3.3 Članice lahko zahtevajo, da preko centralne vlade vzpostavijo stik z drugimi članicami, vključno z notifikacijami, dajanjem informacij, pripombami in razpravami, ki so omenjene v devetem in desetem odstavku 2. člena.

3.4 Članice ne smejo sprejeti nobenih ukrepov, s katerimi bi zahtevale od lokalnih vladnih ali nevladnih organov ali pa bi jih spodbujale, da lahko na svojih območjih delujejo na način, ki bi bil v nasprotju z določbami 2. člena.

3.5 Članice so po tem sporazumu v celoti odgovorne za spoštovanje vseh določb 2. člena. Članice sprejmejo in izvajajo pozitivne ukrepe in mehanizme, ki prispevajo k temu, da določbe 2. člena poleg centralnih vladnih organov upoštevajo tudi drugi.

4. člen

Priprava, sprejetje in uporaba standardov

4.1 Članice zagotavljajo, da njihovi centralni vladni organi za standardizacijo sprejmejo in spoštujejo Kodeks dobrih navad za pripravo, sprejetje in uporabo standardov iz Priloge 3 k temu sporazumu (v nadaljnjem besedilu Kodeks dobrih navad). S primernimi ukrepi, ki so jim na voljo, zagotavljajo, da tako lokalni vladni in nevladni organi za standardizacijo na svojem ozemlju kot tudi regionalni organi za standardizacijo, članice katerih so te države ali organi na njenem ozemlju, sprejmejo in spoštujejo Kodeks dobrih navad. Poleg tega članice ne bodo sprejemale ukrepov, s katerimi bi neposredno ali posredno zahtevale ali spodbujale take organe za standardizacijo, da ravnajo na način, ki ni v skladu s Kodeksom dobrih navad. Obveznosti članic glede usklajenosti organov za standardizacijo z določbami Kodeksa dobrih navad veljajo ne glede na to, ali je organ za standardizacijo sprejel ta kodeks ali ne.

4.2 Organe za standardizacijo, ki so sprejeli ta kodeks in ga upoštevajo, članice priznajo za organe, ki ravnajo v skladu z načeli tega sporazuma.

SKLADNOST S TEHNIČNIMI PREDPISI IN STANDARDI

5. člen

Postopki za presojo skladnosti pri centralnih vladnih organih

5.1 Če se zahteva pozitivna potrditev skladnosti s tehničnimi predpisi ali standardi, članice zagotavljajo, da njihovi centralni vladni organi za proizvode, ki izvirajo z ozemlja drugih članic, uporabljajo te določbe:

5.1.1 postopki za presojo skladnosti se pripravljajo, sprejemajo in uporabljajo tako, da omogočajo dobaviteljem enakih proizvodov, ki izvirajo iz ozemlja drugih članic, dostop na trg pod pogoji, ki niso manj ugodni od tistih, ki veljajo v podobnih okoliščinah za dobavitelje enakih proizvodov domačega porekla ali porekla v katerikoli drugi državi; dostop vključuje pravico dobavitelja do presoje skladnosti v skladu s pravili postopka, ki - če ta postopek to predvideva - vključuje možnost, da dejavnosti v zvezi s presojo skladnosti potekajo v obratih, in možnost, da prejme ustrezen znak;

5.1.2 postopki za presojo skladnosti ne smejo biti pripravljeni, sprejeti ali uporabljeni z namenom, da bi povzročali nepotrebne ovire v mednarodni trgovini. To med drugim pomeni, da postopki za presojo skladnosti ne smejo biti strožji ali pa se uporabljati strožje kot je potrebno, da članica uvoznica pridobi ustrezno zaupanje, da so proizvodi v skladu z veljavnimi tehničnimi predpisi ali standardi, pri čemer je treba upoštevati tveganja, ki bi nastala zaradi neskladnosti.

5.2 Pri izvajanju določb prvega odstavka članice zagotavljajo:

5.2.1 da se postopki za presojo skladnosti izvajajo in končajo čim hitreje in po nič manj ugodnem vrstnem redu za proizvode, ki izhajajo z ozemlja drugih članic, kot za enake domače proizvode;

5.2.2 da se objavi običajno trajanje vsakega postopka za presojo skladnosti ali pa se pričakovani čas trajanja postopka sporoči na zahtevo predlagatelja; po prejemu vloge mora pristojni organ takoj pregledati, ali je dokumentacija popolna, in natančno in v celoti sporočiti vse pomanjkljivosti; pristojni organ mora čim prej, in to natančno in v celoti, predložiti rezultate presoje predlagatelju, tako da lahko po potrebi sprejme ustrezne ukrepe, da se pomanjkljivosti odpravijo; četudi je vloga pomanjkljiva, mora pristojni organ na zahtevo predlagatelja, če je to mogoče, začeti s postopkom; predlagatelj pa mora biti, če to zahteva, obveščen, v kateri fazi je postopek, ter o vzrokih za morebitno zamudo;

5.2.3 da so podatki, ki jih je treba dati, omejeni na podatke, potrebne za presojo skladnosti in določitev pristojbin;

5.2.4 da je treba tajnost podatkov o proizvodih, ki izvirajo z ozemelj drugih članic in so dani v zvezi s postopkom presoje skladnosti, spoštovati enako kot tajnost podatkov o domačih proizvodih ter tako, da so zaščiteni legitimni trgovinski interesi;

5.2.5 da so vse pristojbine za presojo skladnosti proizvodov, ki izhajajo z ozemlja drugih članic, enake pristojbinam, ki se zaračunavajo za presojo skladnosti enakih domačih proizvodov ali proizvodov, ki izvirajo iz katerekoli druge države, pri čemer je treba upoštevati zveze, prevoz in druge stroške, ki nastanejo zaradi različne lokacije obratov predlagatelja in organa za presojo skladnosti;

5.2.6 da izbira kraja za izvajanje postopkov za presojo skladnosti in izbira vzorcev ne bi smeli povzročati nepotrebnih težav predlagateljem ali njihovim predstavnikom;

5.2.7 da se ob spremembi specifikacije proizvoda, potem ko je bila ugotovljena skladnost z veljavnimi tehničnimi predpisi ali standardi, v postopku za presojo skladnosti za

spremenjeni proizvod samo presodi, ali je možno zaupati, da je proizvod še vedno v skladu z ustreznimi tehničnimi predpisi in zahtevami;

5.2.8 da obstaja postopek za obravnavo pritožb v zvezi z izvedbo postopka o presoji skladnosti in da se uvedejo ukrepi za odpravo pomanjkljivosti, če je pritožba utemeljena.

5.3 V prvem in drugem odstavku nič ne preprečuje članicam, da ne bi izvajale razumne kontrole na kraju samem na njihovem ozemlju.

5.4 Če je potrebno zagotovilo, da so proizvodi v skladu s tehničnimi predpisi ali standardi in ko obstajajo ustrezne smernice ali priporočila, ki so jih izdali mednarodni organi za standardizacijo, ali pa so le-ta v sklepni fazi, članice zagotavljajo, da jih centralni vladni organi v celoti ali pa samo v ustreznih delih uporabljajo kot podlago za svoje postopke za presojo skladnosti, razen če so take smernice in priporočila ali njihovi deli neustrezni za te članice ob ustrezni obrazložitvi, med drugim iz razlogov, kot so: zahteve državne varnosti, preprečevanje zlorab, zaščita človekovega zdravja ali varnosti, zaščita življenja in zdravja živali ali rastlin ali okolja, osnovni podnebni ali drugi geografski dejavniki, osnovni tehnološki ali infrastrukturni problemi.

5.5. Z namenom, da bi v čim večjem obsegu harmonizirale postopke za presojo skladnosti, članice v okviru svojih možnosti v polni meri sodelujejo pri pripravi smernic in priporočil za te postopke pri ustreznih mednarodnih organih za standardizacijo.

5.6 Če ni ustrezne smernice ali priporočila, ki bi ga izdal mednarodni organ za standardizacijo, ali če tehnična vsebina predlaganega postopka za presojo skladnosti ni v skladu z ustreznimi smernicami in priporočili, ki so jih izdali mednarodni organi za standardizacijo, utegne pa tehnični predpis v večji meri vplivati na trgovino drugih članic, članice:

5.6.1 pravočasno objavijo v publikaciji sporočilo, da nameravajo uvesti posebni postopek za presojo skladnosti na tak način, da se zainteresirani v drugih članicah s tem seznanijo;

5.6.2 po Sekretariatu obvestijo druge članice, kateri proizvodi so zajeti v predlaganem postopku za presojo skladnosti in na kratko opiše cilje in razloge za to. Take notifikacije se pošljejo v ustrezni zgodnji fazi, tako da je še vedno možno predlagati spremembe in upoštevati pripombe;

5.6.3 na zahtevo dostavijo drugim članicam podrobno vsebino ali izvode predlaganega postopka in po možnosti označijo dele, kjer se le-ta bistveno razlikuje od ustreznih mednarodnih smernic in priporočil, ki so jih izdali mednarodni organi za standardizacijo;

5.6.4 brez diskriminacije omogočijo drugim članicam dovolj časa za njihove pisne pripombe, jih na zahtevo obravnavajo in upoštevajo te pisne pripombe ter rezultate obravnave.

5.7 Kadar v zvezi z določbami v uvodu šestega odstavka pri članici nastanejo ali utegnejo nastati nujni problemi pri varnosti, zdravju, varstvu okolja ali državni varnosti, lahko ta članica po potrebi opusti postopke iz šestega odstavka, vendar po sprejetju postopka:

5.7.1 po Sekretariatu takoj obvesti druge članice o posebnem postopku in o proizvodih, ki jih ta zajema, na kratko navede cilj in razloge tega postopka ter naravo nujnih problemov;

5.7.2 na zahtevo pošlje drugim članicam izvod pravil o postopku;

5.7.3 brez diskriminacije omogoči drugim članicam, da dajo pisne pripombe, jih na zahtevo obravnava in upošteva te pisne pripombe ter rezultate obravnave;

5.8 Članice zagotavljajo, da se takoj objavijo sprejeti postopki za presojo skladnosti ali pa postanejo razpoložljivi na tak način, da se z njimi seznanijo zainteresirani predlagatelji v drugih članicah.

5.9 Razen v nujnih primerih, omenjenih v sedmem odstavku, članice dopuščajo primeren časovni presledek med objavo zahtev v zvezi s postopki za oceno skladnosti in njihovim začetkom veljavnosti, da bi imeli proizvajalci v članicah izvoznicah, zlasti pa v članicah državah v razvoju, dovolj časa, da prilagodijo svoje proizvode oziroma proizvodne metode zahtevam države uvoznice.

6. člen

Priznanje presoje skladnosti pri centralnih vladnih organih

V zvezi s centralnimi vladnimi organi:

6.1 Članice po možnosti brez poseganja v določbe tretjega in četrtega odstavka zagotavljajo, da se sprejmejo rezultati postopkov za presojo skladnosti v drugih članicah, in četudi se ti postopki razlikujejo od njihovih lastnih, pod pogojem, da ti postopki po njihovem mnenju zagotavljajo enako skladnost z veljavnimi tehničnimi predpisi ali standardi kot njihovi lastni postopki. Upoštevati je treba, da utegnejo biti potrebna predhodna posvetovanja, da bi se vzajemno ustrezno dogovorili, predvsem glede:

6.1.1 zadostne in trajne tehnične pristojnosti ustreznih organov za presojo skladnosti v članici izvoznici, tako da se je mogoče trajno zanesti na njihove rezultate pri presoji skladnosti; pri tem se potrjena skladnost z ustreznimi smernicami in priporočili, ki so jih izdali mednarodni organi za standardizadijo, kot npr. z akreditacijo, se upošteva kot dokaz zadostne tehnične usposobljenosti;

6.1.2 omejitev na sprejem tistih rezultatov presoje skladnosti, ki so jih izdali pristojni organi v članici izvoznici.

6.2 Članice zagotavljajo, da njihovi postopki za presojo skladnosti omogočajo izvajanje določbe prvega odstavka, kolikor je možno.

6.3 Članice se spodbujajo, da na zahtevo drugih članic začnejo pogajanja za sklenitev sporazumov za medsebojno priznanje rezultatov postopkov presoje skladnosti v eni in drugi članici. Članice lahko zahtevajo, da ti sporazumi izpolnjujejo merila iz prvega odstavka in si skupaj prizadevajo za olajšanje trgovine s temi proizvodi.

6.4 Članice se spodbujajo, da dovolijo sodelovanje organov za presojo skladnosti, ki imajo sedež na ozemlju drugih članic, pri njihovih postopkih za presojo skladnosti pod pogoji, ki niso nič manj ugodni od pogojev, ki veljajo za organe s sedežem na njihovem ozemlju ali na ozemlju katerekoli druge države.

7. člen

Postopki za presojo skladnosti pri lokalnih vladnih organih

V zvezi z lokalnimi vladnimi organi na njihovih ozemljih:

7.1 Članice z razumnimi ukrepi, ki so jim na voljo, zagotavljajo, da ti organi ravnajo v skladu z določbami 5. in 6. člena, razen obveznosti notifikacije, ki je navedena v odstavkih 6.2 in 7.1 5. člena.

7.2 Članice zagotavljajo, da so postopki za presojo skladnosti lokalnih vlad, ki so neposredno pod centralno vlado v članicah, sporočeni v skladu z določbami odstavkov 6.2 in 7.1 5. člena, pri čemer pa se ne zahtevajo notifikacije o postopkih za presojo skladnosti, katerih tehnična vsebina je v glavnem enaka vsebini postopkov, ki so jih že sporočili centralni vladni organi te članice.

7.3 Članice lahko zahtevajo, da po centralni vladi vzpostavijo stik z drugimi članicami, vključno z notifikacijami, dajanjem informacij, pripombami in razpravami, ki so omenjene v šestem in sedmem odstavku 5. člena.

7.4 Članice ne sprejemajo takih ukrepov, s katerimi bi zahtevale od lokalnih vladnih organov, ali jih spodbujale, da na svojih ozemljih ravnajo na način, ki bi bil v nasprotju z določbami 5. in 6. člena.

7.5 Članice so po tem sporazumu v celoti odgovorne za spoštovanje vseh določb 5. in 6. člena. Članice sprejmejo in izvajajo pozitivne ukrepe in mehanizme, ki prispevajo k temu, da določbe 5. in 6. člena poleg centralnih vladnih organov upoštevajo tudi drugi.

8. člen

Postopki za presojo skladnosti pri nevladnih organih

8.1 Članice z razumnimi ukrepi, ki so jim na voljo, zagotavljajo, da nevladni organi na njihovih ozemljih, ki izvajajo postopke za presojo skladnosti, ravnajo v skladu z določbami 5. in 6. člena, razen obveznosti notifikacije o predlaganih postopkih za presojo skladnosti. Poleg tega članice ne sprejemajo ukrepov, s katerimi bi neposredno ali posredno zahtevale od organov ali jih spodbujale k temu, da ravnajo na način, ki bi bil v nasprotju z določbami iz 5. in 6. člena.

8.2 Članice zagotavljajo, da njihovi centralni vladni organi upoštevajo postopke za presojo skladnosti, ki jih izvajajo nevladni organi, samo če bodo ti organi spoštovali določbe 5. in 6. člena, z izjemo obveznosti notifikacije predlaganih postopkih za presojo skladnosti.

9. člen

Mednarodni in regionalni sistemi

9.1 Ko je treba zagotavljati skladnost s tehničnim predpisom ali standardom, članice, kadarkoli je to mogoče, oblikujejo in sprejemajo mednarodne sisteme za presojo skladnosti in pristopijo k takim sistemom ali pri njih sodelujejo.

9.2 Države članice z razumnimi ukrepi, ki so jim na voljo, zagotavljajo, da so mednarodni in regionalni sistemi za presojo skladnosti, katerih člani ali udeleženci so pristojni organi z njihovih ozemelj, usklajeni z določbami 5. in 6. člena. Poleg tega članice ne sprejemajo ukrepov, s katerimi bi od takšnih sistemov posredno ali neposredno zahtevale ali jih spodbujale, da ravnajo na način, ki bi bil v nasprotju z določbami 5. oz. 6. člena.

9.3 Članice zagotavljajo, da njihovi centralni vladni organi upoštevajo mednarodne ali regionalne sisteme za presojo skladnosti, če so ti sistemi v skladu z določbami iz 5. oz. 6. člena.

INFORMACIJE IN POMOČ

10. člen

Informacije o tehničnih predpisih, standardih in postopkih za presojo skladnosti

10.1 Vsaka članica zagotavlja, da obstaja informacijski center, ki je sposoben odgovarjati na vsa razumna vprašanja drugih članic in zainteresiranih z ozemlja drugih članic ter priskrbeti ustrezne dokumente:

10.1.1 v zvezi s katerimikoli tehničnimi predpisi, ki so jih na njenem ozemlju sprejeli ali predlagali centralni ali lokalni vladni organi, nevladni organi, ki so po zakonu pristojni za izvajanje tehničnih predpisov, ali regionalni organi za standardizacijo, katerih člani ali udeleženci so ti organi;

10.1.2 v zvezi s katerimikoli standardi, ki so jih na njenem ozemlju sprejeli ali predlagali centralni ali lokalni organi ali regionalni organi za standardizacijo, katerih člani ali udeleženci so ti organi;

10.1.3 v zvezi s katerimikoli postopki za presojo skladnosti ali predlaganimi postopki za presojo skladnosti, ki jih na njenem ozemlju uporabljajo centralni ali lokalni vladni organi ali nevladni organi, ki so po zakonu pristojni za izvajanje tehničnih predpisov, ali regionalni organi za standardizacijo, katerih člani ali udeleženci so ti organi;

10.1.4 v zvezi s članstvom ali sodelovanjem članice ali pristojnega centralnega ali lokalnega vladnega organa na njenem ozemlju v mednarodnih in regionalnih organih za standardizacijo in v sistemih za presojo skladnosti kakor tudi v dvostranskih in mnogostranskih dogovorih po tem sporazumu; priskrbeti mora tudi ustrezne informacije v zvezi z določbami teh sistemov in dogovorov;

10.1.5 v zvezi s krajem v katerem so na voljo obvestila objavljena v skladu s tem sporazumom, oziroma kjer je možno dobiti podatke o tem, in

10.1.6 v zvezi s sedežem centrov za obveščanje iz tretjega odstavka.

10.2 Če pa iz pravnih ali administrativnih razlogov članica ustanovi več informacijskih centrov, daje drugim članicam popolne in nedvoumne informacije o obsegu odgovornosti vsakega od teh centrov. Poleg tega članica zagotavlja, da so vsa vprašanja, naslovljena na nepravi center, takoj poslana pravemu centru za obveščanje.

10.3 Vsaka članica z razumnimi ukrepi, ki so ji na voljo, zagotavlja, da se ustanovi en ali več informacijskih centrov, ki lahko odgovarjajo na vsa ustrezna vprašanja drugih članic in zainteresiranih iz drugih članic ter priskrbijo ustrezne dokumente ali informacije o tem, kje jih je možno dobiti, in sicer:

10.3.1 v zvezi s katerimikoli standardi, ki so jih na njenem ozemlju sprejeli ali predlagali nevladni organi za standardizacijo ali regionalni organi za standardizacijo, katerih člani ali udeleženci so ti organi, in

10.3.2 v zvezi s katerimikoli postopki za presojo skladnosti ali predlaganimi postopki za presojo skladnosti, ki jih na njenem ozemlju uporabljajo nevladni ali regionalni organi, katerih člani ali udeleženci so ti organi;

10.3.3 v zvezi s članstvom ali sodelovanjem pristojnih nevladnih organov na njenem ozemlju v mednarodnih in regionalnih organih za standardizacijo in v sistemih za presojo skladnosti kakor tudi v dvostranskih in mnogostranskih dogovorih po tem sporazumu; priskrbi tudi ustrezne informacije v zvezi z določbami teh sistemov in dogovorov.

10.4 Članice z razumnimi ukrepi, ki so jim na voljo, zagotavljajo, da druge članice ali zainteresirani iz drugih članic, ki zahtevajo izvode dokumentov v skladu z določbami tega sporazuma, te izvode dobijo po isti ceni (če jih je treba plačati) kot državljani[1] te članice ali kake druge članice brez dejanskih stroškov dostave.

10.5 Na zahtevo drugih članic razvite države članice poskrbijo za prevod dokumentov, ki vsebujejo posebno notifikacijo, v angleškem, francoskem ali španskem jeziku, če pa bi bili ti dokumenti preobsežni, pa za prevod povzetkov teh dokumentov.

10.6 Ko Sekretariat prejme notifikacije, pošlje v skladu z določbami tega sporazuma izvode teh notifikacij vsem članicam in zainteresiranim mednarodnim organom za standardizacijo in presojo skladnosti ter opozori članice države v razvoju na vse notifikacije, ki se nanašajo na proizvode, ki so zanje posebnega pomena.

[1] V primeru ločenega carinskega ozemlja članice WTO so"državljani" vse fizične ali pravne osebe, ki imajo prebivališče ali dejansko delujočo proizvodnjo ali trgovsko podjetje na tem carinskem ozemlju.

10.7 Kadarkoli je članica dosegla sporazum s kako drugo državo ali državami o zadevah v zvezi s tehničnimi predpisi, standardi ali postopki za presojo skladnosti, ki bi lahko bistveno vplivali na trgovino, vsaj ena članica, ki je pristopila k sporazumu, po Sekretariatu sporoči drugim članicam proizvode, ki jih vključuje ta sporazum, skupaj s kratkim opisom sporazuma. Te članice se lahko na zahtevo posvetujejo z drugimi članicami zaradi sklenitve podobnih sporazumov ali zaradi ureditve njihovega sodelovanja v zvezi s tem sporazumom.

10.8 V tem sporazumu nič ni možno razlagati kot zahtevo:

10.8.1 da se besedila objavijo v jeziku, ki ni jezik članice,

10.8.2 da so podrobni podatki ali izvodi osnutkov, ki jih dajejo članice, v jeziku, ki ni jezik članice, razen kot je določeno v petem odstavku, ali

10.8.3 da članice pošiljajo informacije, katerih razširjanje bi bilo po njihovem mnenju v nasprotju s temeljnjimi interesi njihove varnosti.

10.9 Notifikacije Sekretariatu so v angleškem, francoskem ali španskem jeziku.

10.10 Članice določijo samo en centralni vladni organ, ki je na državni ravni pristojen za izvajanje določb v zvezi s postopki notifikacije po tem sporazumu z izjemo notifikacij iz Priloge 3.

10.11 Če pa bi bila iz pravnih ali administrativnih razlogov pristojnost za postopke notifikacije porazdeljena med dva ali več centralnih vladnih organov, ta članica daje drugim članicam popolne in nedvoumne informacije o obsegu pristojnosti vsakega od teh organov.

11. člen

Tehnična pomoč drugim članicam

11.1 Članice drugim članicam, zlasti pa članicam državam v razvoju, na zahtevo svetujejo glede priprave tehničnih predpisov.

11.2 Članice drugim članicam, zlasti pa članicam državam v razvoju, na zahtevo svetujejo in jim na podlagi medsebojno dogovorjenih pogojev dajejo tehnično pomoč v zvezi z ustanovitvijo državnih organov za standardizacijo in njihovim sodelovanjem v mednarodnih organih za standardizacijo ter spodbujajo svoje državne organe za standardizacijo, da enako ukrepajo.

11.3 Članice na zahtevo z razumnimi ukrepi, ki so jim na voljo, ustanovijo upravne organe na svojih ozemljih, ki svetujejo drugim članicam, zlasti članicam državam v razvoju, in jim na podlagi medsebojno dogovorjenih pogojev dajejo tehnično pomoč:

11.3.1 v zvezi z ustanovitvijo izvršnih organov ali organov za presojo skladnosti s tehničnimi predpisi, in

11.3.2 v zvezi z metodami, po katerih se njihovi tehnični predpisi lahko najučinkoviteje izvajajo.

11.4 Članice na zahtevo z razumnimi ukrepi, ki so jim na voljo, omogočijo svetovalno pomoč drugim članicam, zlasti članicam državam v razvoju, in jim na podlagi medsebojno dogovorjenih pogojev dajejo tehnično pomoč glede ustanovitve organov za presojo skladnosti s standardi, ki so bili sprejeti na ozemlju članice, ki zahteva to pomoč.

11.5 Članice na zahtevo svetujejo drugim članicam, zlasti članicam državam v razvoju, in jim na podlagi medsebojno dogovorjenih pogojev dajejo tehnično pomoč glede ukrepov, ki naj bi jih sprejeli njihovi proizvajalci, če želijo imeti dostop do sistemov za presojo skladnosti, ki jih vodijo vladni ali nevladni organi na ozemlju članice, ki je prejela to zahtevo.

11.6 Članice, ki so članice ali udeleženke mednarodnih ali regionalnih sistemov za presojo skladnosti, na zahtevo svetujejo drugim članicam, zlasti članicam državam v razvoju, in jim na podlagi medsebojno dogovorjenih pogojev dajejo tehnično pomoč glede ustanovitve zavodov in določitve pravne podlage, ki jim omogoča izpolnjevanje obveznosti v zvezi s članstvom ali sodelovanjem v teh sistemih.

11.7 Članice na zahtevo spodbujajo organe na svojem ozemlju, ki so člani mednarodnih ali regionalnih sistemov za presojo skladnosti ali pa sodelujejo pri teh sistemih, da svetujejo drugim članicam, zlasti pa članicam državam v razvoju, in upoštevajo njihove prošnje za tehnično pomoč pri ustanovitvi zavodov, ki bi omogočili ustreznim organom na njihovem ozemlju, da izpolnjujejo obveznosti v zvezi s članstvom ali sodelovanjem.

11.8 Pri svetovanju in tehnični pomoči drugim članicam v skladu s prvim do sedmim odstavkom članice dajejo prednost potrebam najmanj razvitih držav članic.

12. člen

Posebna in pristranska obravnava članic držav v razvoju

12.1 Članice zagotavljajo pristransko in ugodnejšo obravnavo članic držav v razvoju, in sicer na podlagi naslednjih določb in ustreznih določb drugih členov tega sporazuma.

12.2 Pri izvajanju tega sporazuma članice posvetijo posebno pozornost tistim njegovim določbam, ki se nanašajo na pravice in obveznosti članic držav v razvoju, in upoštevajo posebne razvojne, finančne in trgovinske potrebe držav članic v razvoju, tako na državni ravni kot pri delovanju zavodov v skladu s tem sporazumom.

12.3 Članice pri pripravi in izvajanju tehničnih predpisov, standardov in postopkov za presojo skladnosti upoštevajo posebne razvojne, finančne in trgovinske potrebe članic držav v razvoju, da bi zagotovile, da ti tehnični predpisi, standardi in postopki za presojo skladnosti po nepotrebnem ne ovirajo izvoza iz članic držav v razvoju.

12.4 Članice priznavajo, da članice države v razvoju kljub obstoječim mednarodnim standardom, smernicam ali priporočilom v svojih posebnih tehnoloških in družbenoekonomskih razmerah sprejemajo določene tehnične predpise, standarde ali postopke za presojo skladnosti, s katerimi želijo zavarovati domačo tehnologijo ter proizvodne metode in postopke, ki ustrezajo njihovim razvojnim potrebam. Zato se članice zavedajo, da od članic držav v razvoju ni mogoče pričakovati, da kot podlago za svoje tehnične predpise ali standarde, vključno z metodami preskušanja, uporabljajo mednarodne standarde, ki ne ustrezajo njihovim razvojnim, finančnim in trgovinskim potrebam.

12.5 Članice z razumnimi ukrepi, ki so jim na voljo, zagotavljajo, da so mednarodni organi za standardizacijo in mednarodni sistemi za presojo skladnosti organizirani in da delujejo na tak način, da olajšajo dejavno in reprezentativno sodelovanje pristojnih organov vseh članic ob upoštevanju posebnih problemov držav članic v razvoju.

12.6 Članice z razumnimi ukrepi, ki so jim na voljo, zagotavljajo, da mednarodni organi za standardizacijo na zahtevo članic držav v razvoju proučijo možnost in, če je mogoče, pripravijo mednarodne standarde za proizvode, ki so posebnega pomena za članice države v razvoju.

12.7 Članice v skladu z določbami 11. člena dajejo državam članicam v razvoju tehnično pomoč in s tem zagotavljajo, da priprava in uporaba tehničnih predpisov, standardov in postopkov za presojo skladnosti po nepotrebnem ne ovirajo razširitve in razdelitve izvoza članic držav v razvoju. Pri določanju pogojev za tehnično pomoč je treba upoštevati stopnjo razvoja članice prosilke, zlasti najmanj razvitih držav članic.

12.8 Priznava se, da utegnejo imeti članice države v razvoju posebne probleme, vključno z institucionalnimi in

infrastrukturnimi problemi, pri pripravi in uporabi tehničnih predpisov, standardov in postopkov za presojo skladnosti. Nadalje se priznava, da utegnejo posebne razvojne in trgovinske potrebe članic držav v razvoju ter stopnja njihove tehnološke razvitosti zmanjšati njihovo sposobnost, da v celoti izpolnjujejo svoje obveznosti po tem sporazumu. Zato članice v polni meri to upoštevajo. Da bi torej zagotovili, da članice države v razvoju upoštevajo ta sporazum, ima Odbor za tehnične ovire v trgovini, določen v 13. členu (v nadaljnjem besedilu Odbor), možnost, da na zahtevo odobri določene časovno omejene celotne ali delne oprostitve obveznosti po tem sporazumu. Pri obravnavi takih zahtev Odbor upošteva posebne probleme pri pripravi in uporabi tehničnih predpisov, standardov in postopkov za presojo skladnosti ter posebne razvojne in trgovinske potrebe članice države v razvoju kakor tudi stopnjo njene tehnološke razvitosti, ki ji morda preprečuje, da v celoti izpolnjuje obveznosti po tem sporazumu. Odbor zlasti upošteva posebne probleme najmanj razvitih držav članic.

12.9 Med posvetovanji razvite države članice upoštevajo posebne težave, ki jih imajo članice države v razvoju pri pripravi in izvajanju standardov in tehničnih predpisov ter postopkov za presojo skladnosti, in z željo pomagati članicam državamv razvoju pri njihovih tovrstnih prizadevanjih, upoštevajo posebne potrebe teh držav v razvoju po financiranju, trgovini in razvoju.

12.10 Odbor občasno pregleda to posebno in pristransko obravnavo, določeno v tem sporazumu in odobreno državam članicam v razvoju na državni in mednarodni ravni.

ORGANI, POSVETOVANJA IN REŠEVANJE SPOROV

13. člen

Odbor za tehnične ovire v trgovini

13.1 Ustanovi se Odbor za tehnične ovire v trgovini, ki ga sestavljajo predstavniki vsake članice. Odbor izvoli svojega predsednika, sestaja pa se po potrebi, vendar pa najmanj enkrat letno, s čimer omogoča članicam, da se posvetujejo o vseh zadevah v zvezi z izvajanjem tega sporazuma ali z uresničevanjem njegovih ciljev in opravlja vse naloge, za katere je pooblaščen po tem sporazumu ali s strani članic.

13.2 Odbor ustanovi delovne skupine ali po potrebi druge organe, ki opravljajo naloge, za katere jih bo pooblastil Odbor v skladu z ustreznimi določbami tega sporazuma.

13.3 Razume se, da se je treba izogibati nepotrebnemu podvajanju dela, ki izhaja iz tega sporazuma, in tistega, ki ga opravljajo vlade v drugih tehničnih organih. Odbor obravnava to vprašanje in poskuša čim bolj omejiti podvajanje.

14. člen

Posvetovanja in reševanje sporov

14.1 Posvetovanja in reševanje sporov, ki se nanašajo na kakršnokoli zadevo v zvezi z izvajanjem tega sporazuma, potekajo pod pokroviteljstvom Organa za reševanje sporov, in sicer ob smiselni uporabi določb XXII. in XXIII. člena GATT 1994, kot jih razlaga in uporablja Dogovor o reševanju sporov.

14.2 Na zahtevo ene od strani v sporu ali na svojo pobudo lahko ugotovitveni svet oblikuje skupino tehničnih izvedencev za pomoč pri tistih tehničnih vprašanjih, ki zahtevajo da jih natančno obravnavajo strokovnjaki.

14.3 Skupine tehničnih izvedencev delujejo na podlagi postopkov iz Priloge 2.

14.4 Članica uporablja zgoraj navedene določbe o reševanju sporov, če druga članica ni dosegla zadovoljivih rezultatov po 3., 4., 7., 8. in 9. členu in so s tem močno ogroženi njeni trgovinski interesi. V tem pogledu so rezultati enaki tistim, kot da bi bila članica določeni organ.

KONČNE DOLOČBE

15. člen

Končne določbe

Pridržki

15.1 Glede določb tega sporazuma ni možno dati pridržka brez soglasja drugih članic.

Pregled

15.2 Vsaka članica neposredno po začetku veljavnosti Sporazuma o WTO obvesti Odbor o obstoječih ali na novo sprejetih ukrepih, s katerimi zagotavlja izvajanje in uporabo tega sporazuma. Pav tako obvesti Odbor o vseh poznejših spremembah teh ukrepov.

15.3 Odbor enkrat letno pregleda izvajanje in uporabo tega sporazuma glede na njegove cilje.

15.4 Ne pozneje kot na koncu tretjega leta od začetka veljavnosti Sporazuma o WTO in potem na koncu vsakega nadljnjega triletnega obdobja Odbor pregleda uporabo in izvajanje tega sporazuma, vključno z določbami o preglednosti, z namenom prilagajanja pravic in obveznosti tega sporazuma in po potrebi zagotovi vzajemne ekonomske prednosti in ravnotežje pravic in obveznosti brez poseganja v določbe 12. člena. Odbor med drugim na podlagi izkušenj, pridobljenih pri izvajanju tega sporazuma, predlaga Svetu za trgovino z blagom amandmaje k temu sporazumu.

Priloge

15.5 Priloge so sestavni del tega sporazuma.

PRILOGA 1

POJMI IN DEFINICIJE V TEM SPORAZUMU

Pojmi, ki so predstavljeni v šesti izdaji Navodil 2 ISO/IEC:1991, Splošni pojmi in definicije za standardizacijo in sorodne dejavnosti, imajo v tem sporazumu enak pomen kot v omenjenih navodilih, pri čemer je treba upoštevati, da so storitve izključene iz tega sporazuma.

Toda za namene tega sporazuma se uporabljajo te definicije:

1. *Tehnični predpis*

Dokument, ki določa značilnosti proizvoda ali povezanega postopka in načina proizvodnje, vključno z veljavnimi administrativnimi določbami, ki jih je treba obvezno upoštevati. Lahko vključuje ali izključno obravnava tudi izrazoslovje, simbole, pakirane, označevanje ali etiketiranje, ki se nanašajo na proizvod, postopek ali način proizvodnje.

Pojasnilo

Definicija v Navodilih 2 ISO/IEC ni samostojna, pač pa temelji na tako imenovanem sistemu “zidanja”.

2. *Standardi*

Dokument, ki ga je odobril pristojni organ, v katerem so za splošno in večkratno uporabo določena pravila, smernice ali značilnosti proizvodov ali posameznih postopkov ali načinov proizvodnje, ki jih ni treba nujno spoštovati. Vključuje ali izključno obravnava tudi izrazoslovje, simbole, pakiranje, označevanje ali etiketiranje, ki se nanašajo na proizvod, postopek ali način proizvodnje.

Pojasnilo

Pojmi, določeni v Navodilih 2 ISO/IEC se nanašajo na proizvode, postopke in storitve. Ta sporazum obravnava samo tehnične predpise, standarde in postopke za presojo skladnosti v zvezi s proizvodi ali postopki in načini proizvodnje.

Standardi, določeni v Navodilih 2 ISO/IEC, so lahko obvezni ali neobvezni. V tem sporazumu so standardi določeni kot neobvezni, tehnični predpisi pa kot obvezni dokumenti. Standardi, ki jih je pripravila mednarodna skupnost za standardizacijo, temeljijo na konsenzu. Ta sporazum vključuje tudi dokumente, ki ne temeljijo na konsenzu.

3. *Postopki za presojo skladnosti*

Vsak postopek, ki se posredno ali neposredno uporablja za ugotovitev, ali so izpolnjene ustrezne zahteve iz tehničnih predpisov in standardov.

Pojasnilo

Postopki za presojo skladnosti med drugim vključujejo postopke vzorčenja, testiranja in kontrole, ovrednotenje, potrjevanje in potrdilo o skladnosti, registracijo, akreditacijo in odobritev ter ustrezne kombinacije.

4. *Mednarodni organ ali sistem*

Organ ali sistem, v katerega se lahko včlanijo ustrezni organi vsaj vseh članic.

5. *Regionalni organ ali sistem*

Organ ali sistem, v katerega se lahko včlanijo ustrezni organi le nekaterih članic.

6. *Centralni vladni organ*

Centralna vlada, njena ministrstva in oddelki ali katerikoli organ, ki je pod nadzorom centralne vlade v zvezi z določeno dejavnostjo.

Pojasnilo

Tudi za Evropske skupnosti veljajo določbe, ki se nanašajo na centralne vladne organe. Vendar pa se v okviru Evropskih skupnosti lahko ustanovijo regionalni organi ali sistemi za presojo skladnosti in veljajo določbe tega sporazuma za regionalne organe ali sisteme za presojo skladnosti.

7. *Lokalni vladni organ*

Vlada, z izjemo centralne (npr. države, province, dežele, kantoni, občine itd.), njena ministrstva ali oddelki ali katerikoli organi, ki so pod nadzorom vlade v zvezi z določeno dejavnostjo.

8. *Nevladni organ*

Organ, ki ni centralni vladni organ ali lokalni vladni organ, vključno z nevladnim organom, ki je po zakonu pristojen izvajati tehnične predpise.

PRILOGA 2

SKUPINE TEHNIČNIH IZVEDENCEV

Za skupine tehničnih izvedencev, ustanovljene v skladu z določbami 14. člena, veljajo ti postopki:

1. Skupine tehničnih izvedencev so podrejene ugotovitvenemu svetu. O njihovih pogojih in podrobnostih delovnih postopkov odloča organ, ki mu odgovarjajo.

2. Sodelovanje v skupini tehničnih izvedencev je omejeno na osebe, ki imajo določeno strokovno veljavo in izkušnje na določenem področju.

3. Državljani strani v sporu ne smejo biti člani skupine tehničnih izvedencev brez soglasja strani v sporu, razen v izjemnih primerih, ko ugotovitveni svet meni, da drugače ni mogoče izpolniti potrebe po posebnem izvedenskem mnenju. Vladni uslužbenci strani v sporu ne smejo biti člani skupin tehničnih izvedencev. Člani skupin tehničnih izvedencev sodelujejo v lastnem imenu, ne pa kot vladni predstavniki ali kot predstavniki kake organizacije. Zato jim vlade ali organizacije ne smejo dajati navodil v zvezi z zadevami, ki jih obravnava ta skupina.

4. Skupine tehničnih izvedencev se lahko posvetujejo ter dobijo informacije in tehnični nasvet iz katerihkoli virov, ki se jim zdijo primerni. Preden skupina tehničnih izvedencev poišče te informacije ali nasvet iz vira, ki je pod pravno pristojnostjo članice, o tem obvesti vlado te članice. Vsaka članica mora nemudoma in v celoti odgovoriti na kakršenkoli zahtevek skupine tehničnih izvedencev za informacije, ki se tej skupini zdijo potrebne in primerne.

5. Strani v sporu imajo dostop do vseh ustreznih informacij, ki jih dobi skupina tehničnih izvedencev, razen če te informacije niso zaupne. Zaupnih informacij, ki jih dobi skupina tehničnih izvedencev, ni dovoljeno objaviti brez uradnega dovoljenja vlade, organizacije ali osebe, ki jih je dala. Če se od skupine tehničnih izvedencev zahtevajo te informacije, ta pa nima dovoljenja za njihovo objavo, predloži vlada, organizacija ali oseba, ki informacije daje, povzetek informacij, ki ni zaupen.

6. Skupina tehničnih izvedencev predloži prizadetim članicam osnutek poročila in jih prosi za pripombe, ki jih po potrebi upošteva v sklepnem poročilu. Ko skupina predloži ugotovitvenemu svetu sklepno poročilo, ga pošlje tudi prizadetim članicam.

PRILOGA 3

KODEKS DOBRIH NAVAD ZA PRIPRAVO, SPREJEM IN UPORABO STANDARDOV

Splošne določbe

A. Za namen tega kodeksa se uporabljajo definicije iz Priloge 1 k temu sporazumu.

B. Ta kodeks lahko sprejme katerikoli organ za standardizacijo na ozemlju članice WTO, ne glede na to ali je to centralni vladni organ, lokalni vladni organ ali nevladni organ ali pa katerikoli vladni regionalni organ za standardizacijo, katerega eden ali več članov so članice WTO in katerikoli nevladni regionalni organ za standardizacijo, katerega eden ali več članov je na ozemlju članice WTO (ki se v tem kodeksu skupaj imenujejo organi za standardizacijo, posamezno pa organ za standardizacijo).

C. Organi za standardizacijo, ki so sprejeli ta kodeks ali odstopili od njega, o tem obvestijo Informacijski center ISO/IEC v Ženevi. V notifikaciji je treba navesti ime in naslov organa in obseg njegovih tekočih in pričakovanih dejavnosti na področju standardizacije. Notifikacija se lahko pošlje Informacijskemu centru ISO/IEC, po nacionalnem članu ISO/IEC ali pa, kar je najbolj zaželeno, po pristojnem nacionalnem članu ali mednarodni podružnici združenja ISONET.

BISTVENE DOLOČBE

D. Glede standardov organ za standardizacijo ravna s proizvodi, ki izvirajo z ozemlja katerekoli druge članice WTO, enako kot z enakimi domačimi proizvodi in z enakimi proizvodi, ki izvirajo iz katerekoli druge države.

E. Organ za standardizacijo zagotavlja, da se standardi ne pripravljajo, sprejemajo ali uporabljajo zato, da bi po nepotrebnem ovirali mednarodno trgovino.

F. Če že obstajajo mednarodni standardi ali pa je njihova priprava v sklepni fazi, jih organ za standardizacijo uporablja v celoti ali deloma kot podlago za standarde, ki jih sam pripravlja, razen v tistih delih, ki so neučinkoviti ali neprimerni, na primer zaradi nezadostne ravni zaščite ali osnovnih podnebnih ali geografskih dejavnikov ali osnovnih tehnoloških problemov.

G. Da bi bili standardi harmonizirani na čim širši podlagi, organ za standardizacijo na ustrezen način v polni meri,

vendar v okviru svojih možnosti, sodeluje s pristojnimi mednarodnimi organi za standardizacijo pri pripravi mednarodnih standardov na področjih, na katerih je že sprejel standarde ali pa jih bo v kratkem sprejel. Če je to možno, organi za standardizacijo na ozemlju članice sodelujejo v posamezni dejavnosti v okviru mednarodne standardizacije po delegaciji, ki zastopa vse organe standardizacije na ozemlju, ki so sprejeli ali bodo sprejeli standarde na področju, na katero se nanaša določena dejavnost mednarodne standardizacije.

H. Organ za standardizacijo na ozemlju članice se po svojih najboljših močeh izogiba podvajanju ali prekrivanju z delom drugih organov za standardizacijo na nacionalnem ozemlju ali z delom pristojnih mednarodnih ali regionalnih organov za standardizacijo. Prav tako si bo po najboljših močeh prizadeval doseči nacionalni konsenz glede standardov, ki jih pripravlja. Podobno si regionalni organi za standardizacijo prizadevajo, da se izognejo podvajanju ali prekrivanju z delom pristojnih mednarodnih organov za standardizacijo.

I. Organ za standardizacijo, če je to možno, določi standarde, ki temeljijo na značilnostih proizvoda, ob upoštevanju njegove funkcionalnosti, ne pa oblike ali opisnih značilnosti.

J. Organ za standardizacijo vsaj enkrat vsakih šest mesecev objavi delovni program, v katerem navede svoje ime in naslov, standarde, ki jih trenutno pripravlja, in standarde, ki jih je sprejel v prejšnjem obdobju. Standard je v pripravi od takrat, ko je sprejeta odločitev za pripravo standarda, do trenutka, ko je sprejet. Naslovi posameznih osnutkov standardov so na zahtevo na voljo v angleškem, francoskem ali španskem jeziku. Obvestilo o delovnem programu je objavljeno v nacionalni oz. v regionalni publikaciji o dejavnostih standardizacije.

V delovnem programu je v skladu s pravili združenja ISONET za vsak standard navedena razvrstitev tega predmeta, v kateri fazi je priprava standarda in vsi mednarodni standardi, ki so bili uporabljeni kot podlaga. Organ za standardizacijo obvesti Informacijski center ISO/IEC v Ženevi o svojem delovnem programu najpozneje do objave tega delovnega programa.

Notifikacija vsebuje ime in naslov organa za standardizacijo, ime in izdajo publikacije, v kateri je objavljen delovni program, obdobje, na katero se nanaša delovni program, njeno morebitno ceno in kako ter kje jo je mogoče dobiti. Notifikacija se lahko pošlje neposredno Informacijskemu centru ISO/IEC ali pa, kar je še bolj zaželeno, po pristojnem nacionalnem članu oz. mednarodni podružnici združenja ISONET.

K. Nacionalni član ISO/IEC si po svojih najboljših močeh prizadeva, da postane član združenja ISONET ali da imenuje drugi organ za člana ter da pridobi najvišjo možno obliko članstva v združenju ISONET. Drugi organi za standardizacijo si po svojih najboljših močeh prizadevajo, da se sami pridružijo članu združenja ISONET.

L. Organ za standardizacijo pred sprejetjem standarda odobri zainteresiranim na ozemlju članice WTO najmanj 60-dnevni rok za predložitev pripomb k osnutku standarda. Vendar pa se ta rok lahko skrajša, če bi nastali ali bi utegnili nastati resni problemi v zvezi z varnostjo, zdravjem ali okoljem. Organ za standardizacijo mora najkasneje na začetku roka za pripombe objaviti obvestilo o roku za pripombe v publikaciji, ki je navedena v odstavku J. Taka notifikacija po možnosti navede, ali se osnutek sporazuma razlikuje od ustreznih mednarodnih standardov.

M. Na zahtevo kateregakoli zainteresiranega z ozemlja članice WTO organ za standardizacijo nemudoma dostavi ali poskrbi za dostavo izvoda osnutka standarda, ki je bil poslan v pripombe. Katerekoli pristojbine, ki se zaračunavajo za to storitev, so enake za domače in tuje stranke, razen dejanskih stroškov dostave.

N. Organ za standardizacijo pri nadaljnji obravnavi standarda upošteva pripombe, ki so prispele v roku za predložitev pripomb. Na pripombe, poslane po organih za standardizacijo, ki so sprejeli ta kodeks, je treba na zahtevo čim prej odgovoriti. V odgovoru se navede, zakaj je potrebno odstopanje od ustreznih mednarodnih standardov.

O. Potem ko je standard sprejet, ga je treba takoj objaviti.

P. Organ za standardizacijo na zahtevo kateregakoli zainteresiranega na ozemlju članice WTO nemudoma dostavi ali poskrbi za dostavo izvoda svojega najnovejšega delovnega programa ali standarda, ki ga je pripravil. Katerekoli pristojbine, ki se zaračunavajo za to storitev, so enake tako za domače kot za tuje stranke, razen dejanskih stroškov dostave.

Q. Organ za standardizacijo upošteva in da ustrezno priložnost za posvetovanja glede ugovorov v zvezi z izvajanjem tega kodeksa, ki jih dajo organi za standardizacijo, ki so sprejeli Kodeks dobrih navad. Nepristransko si prizadeva rešiti morebitne pritožbe.

S P O R A Z U M
O UKREPIH NA PODROČJU VLAGANJ, KI VPLIVAJO NA TRGOVINO

Članice se

ob upoštevanju, da so se ministri v Deklaraciji iz Punte del Este sporazumeli, da "morajo pogajanja po opravljeni proučitvi delovanja členov GATT, ki se nanašajo na trgovinske omejevalne in škodljive posledice ukrepov na področju vlaganj, ustrezno razčleniti nadaljnje določbe, ki bi bile potrebne, zato da bi se izognili takim škodljivim učinkom na trgovino",

z željo, da se pospešuje ta razvoj in progresivna liberalizacija svetovne trgovine in da se omogočijo vlaganja čez mednarodne meje, da bi se na ta način povečala gospodarska rast vseh trgovinskih partneric, zlasti pa članic držav v razvoju, medtem ko se hkrati zagotavlja svobodna konkurenca,

ob upoštevanju posebnih trgovinskih, razvojnih in finančnih potreb članic držav v razvoju, zlasti najmanj razvitih držav članic,

ob spoznanju, da določeni ukrepi na področju vlaganj lahko povzročajo trgovinske omejevalne in škodljive učinke,

sporazumejo, kot sledi:

1. člen

Obseg

Ta sporazum se nanaša na ukrepe na področju vlaganj samo v zvezi s trgovino z blagom (v nadaljnjem besedilu ukrep TRIM).

2. člen

Nacionalna obravnava in količinske omejitve

1. Brez vpliva na druge pravice in obveznosti na podlagi GATT 1994 nobena članica ne uporablja kakršnegakoli ukrepa TRIM, ki bi bil v nasprotju z določbami III. člena ali XI. člena GATT 1994.

2. Ponazoritveni seznam ukrepov TRIM, ki so v nasprotju z obveznostmi nacionalne obravnave, ki so določene v četrtem odstavku III. člena GATT 1994, in obveznostmi splošne odprave količinskih omejitev, ki so določene v prvem odstavku XI. člena GATT 1994, je vsebovan v prilogi k temu sporazumu.

3. člen

Izjeme

Vse izjeme na podlagi GATT 1994 se ustrezno uporabljajo tudi v zvezi z določbami tega sporazuma.

4. člen

Članice države v razvoju

Članice država v razvoju sme svobodno začasno odstopati od določb 2. člena do te meje in na tak način, kot je določeno z XVIII. členom GATT 1994, Dogovorom o plačilnobilančnih določbah GATT 1994, Deklaracijo o trgovinskih ukrepih, ki se uporabljajo iz plačilnobilančnih razlogov, sprejeto 28. novembra 1979 (BSD 26S/205-209), in ki dovoljuje članicam, da odstopajo od določb III. in XI. člena GATT 1994.

5. člen

Notifikacija in prehodne ureditve

1. Članice v 90 dneh od dneva začetka veljavnosti Sporazuma o WTO sporočijo Svetu za trgovino z blagom vse ukrepe TRIM, ki jih uporabljajo in niso v skladu z določbami tega sporazuma. Taki ukrepi TRIM splošne ali posebne narave se sporočijo skupaj s svojimi poglavitnimi značilnostmi.[1]

2. Vsaka članica odpravi vse ukrepe TRIM, ki jih je sporočila v skladu s prvim odstavkom, in sicer razvita država članica v dveh letih od začetka veljavnosti Sporazuma o WTO, manj razvita država članica v petih letih in v sedmih letih v primeru najmanj razvite države članice.

3. Na zahtevo lahko Svet za trgovino z blagom podaljša prehodno obdobje za odpravo ukrepov TRIM, ki so sporočeni po prvem odstavku, v korist članice države v razvoju, vključno z najmanj razvito državo članico, ki ima posebne težave pri izvajanju določb tega sporazuma. Pri obravnavi take zahteve Svet za trgovino z blagom upošteva posamezne razvojne, finančne in trgovinske potrebe določene članice.

4. V prehodnem obdobju članica ne sme spreminjati pogojev kateregakoli ukrepa TRIM, ki ga je sporočila po prvem odstavku, v primerjavi s tistimi, ki so prevladovali na dan začetka veljavnosti Sporazuma o WTO, na ta način, da bi se povečala stopnja neskladnosti z določbami 2. člena. Ukrepi TRIM, ki so bili sprejeti v manj kot 180 dneh pred dnevom začetka veljavnosti Sporazuma o WTO, ne morejo biti predmet ugodnosti prehodne ureditve, ki je določena v drugem odstavku.

5. Ne glede na določbe 2. člena sme članica z namenom, da ne poslabšuje pogojev za obstoječa podjetja, ki so predmet ukrepa TRIM, ki je sporočen po prvem odstavku, uporabljati v prehodnem obdobju isti ukrep TRIM v zvezi z novim vlaganjem, (i) če so proizvodi v zvezi s takim vlaganjem enaki kot proizvodi obstoječih podjetij in (ii) če obstaja potreba, da se prepreči škoda konkurenčnim pogojem med novim vlaganjem in obstoječimi podjetji. Vsak ukrep TRIM, ki se uporabi v zvezi z novim vlaganjem, se mora sporočiti Svetu za trgovino z blagom. Pogoji takega ukrepa TRIM morajo biti enaki konkurenčnim učinkom tistih, ki se uporabljajo za obstoječa podjetja in se morajo sočasno odpraviti.

6. člen

Preglednost

1. Članice v zvezi z ukrepi TRIM ponovno potrjujejo svojo privrženost obveznostim v zvezi s preglednostjo in notifikacijo, ki je določena v X. členu GATT 1994 in vsebovana v pojmu "notifikacija" v Dogovoru o notifikaciji, posvetovanju, reševanju sporov in o nadzoru, sprejetem 28. novembra 1979, in v Ministrski odločitvi o postopkih notifikacije, sprejeti 15. aprila 1994.

2. Vsaka članica obvesti Sekretariat o publikacijah, v katerih je možno izvedeti o ukrepih TRIM, vključno o tistih, ki jih uporabljajo regionalne ali lokalne oblasti na svojem območju.

3. Vsaka članica zagotovi ugodno obravnavo zahtev v zvezi informacijami in zadovoljive možnosti za posvetovanja v zvezi s katerokoli zadevo, ki izhaja iz tega sporazuma, ki jo sproži druga članica. V skladu z X. členom GATT 1994 nobena članica ni dolžna razkriti informacij, katerih razkrivanje bi oviralo izvajanje zakonov ali pa bi sicer bilo v nasprotju z javnim interesom ali pa bi vplivalo na legitimne trgovinske interese določenih podjetij, javnih ali zasebnih.

7. člen

Odbor za ukrepe na področju vlaganj, ki vplivajo na trgovino

1. Ustanovi se Odbor za ukrepe na področju vlaganj, ki vplivajo na trgovino (v nadaljnjem besedilu Odbor), ki je odprt za vse članice. Odbor izvoli predsedujočega in namestnika predsedujočega iz lastnih vrst in se sestaja najmanj enkrat letno in drugače na zahtevo katerekoli članice.

2. Odbor ima odgovornosti, ki mu jih naloži Svet za trgovino z blagom, ter zagotavlja članicam možnosti, da se posvetujejo o katerokoli zadevi, ki se nanaša na uporabo in izvajanje tega sporazuma.

3. Odbor spremlja uporabo in izvajanje tega sporazuma in letno poroča Svetu za trgovino z blagom.

8. člen

Posvetovanje in reševanje sporov

Določbe XXII. in XXIII. člena GATT 1994, kot jih razlaga in uporablja Dogovor o reševanju sporov, se uporabljajo za posvetovanja in reševanje sporov po tem sporazumu.

9. člen

Pregled v Svetu za trgovino z blagom

Najpozneje v petih letih od dneva začetka veljavnosti Sporazuma o WTO Svet za trgovino z blagom pregleda uporabo tega sporazuma in ustrezno predlaga Ministrski konferenci dopolnitve besedila. Ob tem pregledu Svet za trgovino z blagom prouči, ali je treba sporazum dopolniti z določbami o investicijski in konkurenčni politiki.

PRILOGA

PONAZORITVENI SEZNAM

1. Ukrepi TRIM, ki so v nasprotju z obveznostjo nacionalne obravnave, določene v četrtem odstavku III. člena GATT 1994, vključujejo tiste, ki so obvezni ali se izvajajo po domači zakonodaji ali na podlagi upravnih odločitev ali katerih izvajanje je potrebno, da se pridobi določena prednost, in zahtevajo:

(a) nakup ali uporabo s strani določenega podjetja proizvodov domačega porekla ali kateregakoli drugega domačega vira, bodisi da je določen v smislu posameznega proizvoda, v smislu obsega ali vrednosti proizvodov ali v smislu sorazmernega obsega ali vrednosti lokalne proizvodnje, ali

(b) omejitev nakupov podjetja ali uporabo uvoženih proizvodov v obsegu, določenem v višini, ki se nanaša na obseg ali vrednost domače proizvodnje, ki jo izvaža.

2. Ukrepi TRIM, ki niso v skladu z obveznostjo splošne odprave količinskih omejitev, določene v prvem odstavku

[1] Kadar se ukrepi TRIM uporabljajo na podlagi upravne presoje, se sporoči vsak primer uporabe. Informacij, ki bi vplivale na legitimne trgovinske interese posameznih podjetij, ni treba sporočati.

XI. člena GATT 1994, vsebujejo ukrepe, ki so obvezni ali se izvajajo po domači zakonodaji ali upravnih odločitvah ali katerih izvajanje je potrebno, da se pridobi določena prednost, in ki omejujejo:

(a) uvoz s strani določenega podjetja proizvodov, ki se uporabljajo ali so v zvezi z domačo proizvodnjo, na splošno ali v višini, ki se nanaša na obseg ali vrednost domače proizvodnje, ki jo izvaža;

(b) uvoz s strani določenega podjetja proizvodov, ki se uporabljajo ali so v zvezi z domačo proizvodnjo, na ta način, da se omejuje dostop do tujih plačilnih sredstev v višini, ki se nanaša na prilive tujih plačilnih sredstev, ki jih je možno pripisovati določenemu podjetju, ali

(c) izvoz ali prodajo z namenom izvoza s strani določenega podjetja proizvodov, ki so določeni v smislu posameznega proizvoda, obsega ali vrednosti proizvodov ali sorazmernega obsega ali vrednosti domače proizvodnje.

S P O R A Z U M
O IZVAJANJU VI. ČLENA SPLOŠNEGA SPORAZUMA O CARINAH IN TRGOVINI 1994

Članice se sporazumejo, kot sledi:

I. DEL

1. člen
Načela

Protidumpinški ukrep se uporabi samo v okoliščinah, ki so predvidene v VI. členu GATT 1994 in po uvedenih[1] preiskavah, ki se izvajajo v skladu z določbami tega sporazuma. Določbe, ki sledijo, urejajo uporabo VI. člena GATT 1994 glede postopkov protidumpinške zakonodaje ali predpisov.

2. člen
Ugotavljanje dumpinga

2.1 Za namene tega sporazuma velja, da je proizvod predmet dumpinga, t.j., da se vnaša v gospodarstvo druge države po nižji vrednosti, kot je normalna, če je izvozna cena proizvoda pri izvozu iz ene v drugo državo nižja od primerljive cene v redni trgovini za enak proizvod, ki je namenjen porabi v državi izvoza.

2.2 Če prodaje enakega proizvoda ni v redni trgovini na domačem trgu države izvoznice ali če zaradi določenih tržnih razmer ali nizke prodaje na domačem trgu države izvoza[2] taka prodaja ne dopušča prave primerjave, se stopnja dumpinga ugotavlja s primerjavo s primerljivo ceno enakega proizvoda ob izvozu v ustrezno tretjo državo pod pogojem, da je ta cena značilna, ali s stroški proizvodnje v državi porekla ob dodanem razumnem znesku administrativnih, prodajnih in splošnih stroškov in dobička.

2.2.1 Prodaja enakega proizvoda na domačem trgu države izvoza ali prodaja tretji državi po cenah na enoto, ki so pod (fiksnimi in variabilnimi) stroški proizvodnje, z dodanimi administrativnimi, prodajnimi in splošnimi stroški se lahko obravnava kot prodaja zunaj redne trgovine zaradi cene in se lahko zanemari pri ugotavljanju normalne vrednosti, le če oblasti[3] ugotovijo, da se prodaja odvija v daljšem obdobju[4] v znatnih količinah[5] po cenah, ki ne omogočajo nadomestitve vseh stroškov v določenem razumnem času. Če so cene, ki so pod ravnijo stroškov na enoto proizvoda med prodajo, nad ponderiranim povprečjem stroškov na enoto med preiskavo, tedaj te cene veljajo kot take, ki omogočajo nadomestitev stroškov v določenem razumnem obdobju.

2.2.1.1 Za namene drugega odstavka se stroški običajno računajo na osnovi knjigovodstva, ki ga vodi izvoznik ali proizvajalec, ki je v preiskavi, pod pogojem, da je to knjigovodstvo v skladu s splošno veljavnimi knjigovodskimi načeli v državi izvoza in na razumen način izraža stroške, ki so v zvezi s proizvodnjo in prodajo proizvoda, ki je predmet obravnave. Oblasti upoštevajo vse razpoložljive dokaze v zvezi s pravilno razdelitvijo stroškov, vključno s tistimi, ki jih med preiskavo zagotovita izvoznik ali proizvajalec, pod pogojem, da imajo take razdelitve zgodovinsko uporabo uvoznika ali proizvajalca, zlasti v zvezi z določitvijo ustrezne amortizacije in amortizacijskih obdobij ter deležev kapitalnih vlaganj in drugih razvojnih stroškov. Če že ni upoštevano pri razdelitvi stroškov v okviru tega pododstavka, je treba stroške ustrezno prilagoditi stroškovnim postavkam, ki se ne ponavljajo in so korist za tekočo in/ali bodočo proizvodnjo, ali razmeram, v katerih so stroški v obdobju preiskave pod vplivom zagonskih dejavnosti.[6]

2.2.2 Za namene drugega odstavka zneski za administrativne, prodajne in splošne stroške ter dobičke temeljijo na dejanskih podatkih, ki se nanašajo na proizvodnjo in prodajo v običajni trgovini enakega proizvoda izvoznika ali proizvajalca, ki je v preiskavi. Če taki zneski niso določljivi na taki osnovi, se lahko zneski določijo na osnovi:

(i) dejanskih zneskov, ki so nastali in jih realizira določen izvoznik ali proizvajalec v zvezi s proizvodnjo in prodajo na domačem trgu države porekla enake splošne kategorije proizvodov;

(ii) ponderiranega povprečja dejansko nastalih in od drugih izvoznikov ali proizvajalcev realiziranih zneskov, ki so v preiskavi, v zvezi s proizvodnjo in prodajo enakega proizvoda na domačem trgu države porekla;

(iii) katerekoli druge razumne metode pod pogojem, da določen znesek za dobiček ne presega dobička, ki ga normalno realizirajo drugi izvozniki ali proizvajalci pri prodaji blaga enake splošne kategorije na domačem trgu države porekla.

2.3 Kadar ni izvozne cene ali pa se določenim oblastem zdi, da izvozna cena ni zanesljiva zaradi povezave ali kompenzacijskega dogovora med izvoznikom in uvoznikom ali tretjim udeležencem, je možno izvozno ceno sestaviti na podlagi cene, po kateri se uvoženi proizvodi najprej preprodajo neodvisnemu kupcu, ali če se proizvodi ne prodajo naprej neodvisnemu kupcu ali pa se ne preprodajo v enakem

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[1] Izraz "uveden", ki se uporablja v tem sporazumu, pomeni dejanje, s katerim članica formalno sproži preiskavo, kot je določeno v 5. členu.

[2] Za prodajo enakega proizvoda, ki je namenjen porabi na domačem trgu države izvoznice, običajno velja, da je v zadostni količini za ugotavljanje normalne vrednosti, če taka prodaja pomeni 5 odstotkov ali več od prodaje določenega proizvoda v članici uvoznici, pod pogojem, da je nižji delež sprejemljiv, če dokazi kažejo, da je domača prodaja v takem nižjem deležu v zadostnem obsegu, da zagotavlja pravo primerjavo.

[3] Uporaba izraza "oblasti" se v tem sporazumu razlaga, da pomeni oblasti na primerni višji ravni.

[4] Podaljšani čas bi moral biti običajno eno leto, v nobenem primeru pa ne sme biti krajši od 6 mesecev.

[5] Prodaja pod ravnijo stroškov na enoto se odvija v znatnih količinah, če oblasti ugotovijo, da je ponderirana povprečna prodajna cena v transakcijah, ki se obravnavajo zaradi ugotavljanja normalne vrednosti, pod ravnijo ponderiranega povprečja stroškov na enoto ali da obseg prodaje pod ravnijo stroškov na enoto pomeni manj kot 20 odstotkov prodanega obsega v transakcijah, ki se obravnavajo zaradi ugotavljanja normalne vrednosti.

[6] Prilagoditve, ki so namenjene zagonskim dejavnostim, morajo izražati stroške na koncu zagonskega obdobja ali, če je to obdobje daljše od trajanja preiskave, zadnje stroške, ki jih lahko oblasti na razumen način upoštevajo med preiskavo.

stanju, kot so bili uvoženi, na taki razumni osnovi, kot jo oblasti same določijo.

2.4 Treba je opraviti pravično primerjavo med izvozno ceno in normalno vrednostjo. Ta primerjava se mora opraviti na enaki trgovinski ravni, običajno na ravni franko tovarna, in v zvezi s prodajo, do katere je prišlo ob kolikor možno približno istem času. V vsakem primeru je treba ustrezno upoštevati, odvisno od pomena, razlike, ki vplivajo na primerljivost cen, vključno z razlikami v okoliščinah in prodajnih pogojih, davkih, ravneh trgovine, količinah, fizičnih značilnostih in katerihkoli razlikah, za katere se izkaže, da vplivajo na primerljivost cen.[7] V primerih iz tretjega odstavka je treba upoštevati stroške, vključno s carinami in dajatvami, ki so nastali med uvozom in prodajo, ter pripadajoči dobiček. Če je v teh primerih prizadeta primerljivost cen, tedaj oblasti ugotovijo normalno vrednost na ravni trgovine, ki je enaka ravni trgovine sestavljene izvozne cene, ali pa upoštevajo tisto, kar je predvideno v tem odstavku. Oblasti sporočijo določenim udeležencem, kateri podatki so potrebni, da se zagotovi pravična primerjava, in ne smejo povzročati nerazumnega dokaznega bremena za te udeležence.

2.4.1 Če primerjava na podlagi četrtega odstavka zahteva preračun valut, se tak preračun opravi z uporabo tečaja na dan prodaje,[8] vendar pod pogojem, če je prodaja valute na prostem trgu neposredno v zvezi z določenim izvozom, da se uporabi tečaj te prodaje. Nihanja tečajev se ne upoštevajo v preiskavi, pri čemer dajo oblasti v preiskavi izvoznikom na razpolago vsaj 60 dni, da prilagodijo svoje izvozne cene tako, da izražajo povprečno gibanje tečaja med preiskavo.

2.4.2 Pod pogoji določb, ki urejajo pravično primerjavo v četrtem odstavku, se obstoj dumpinga v fazi preiskave običajno ugotovi na podlagi primerjave ponderiranega povprečja normalne vrednosti s ponderiranim povprečjem cen vseh primerljivih izvoznih transakcij ali s primerjavo normalne vrednosti in izvoznih cen od primera do primera. Normalna vrednost, ki se ugotovi na podlagi ponderiranega povprečja, se lahko primerja s cenami posameznih izvoznih transakcij, če oblasti ugotovijo določen vzorec izvoznih cen, ki se znatno razlikujejo od kupca do kupca, po območjih ali glede na različen čas in če obstaja razlaga za to, zakaj takih razlik ni možno ustrezno upoštevati z uporabo ponderiranega povprečja ali primerjav od primera do primera.

2.5 V primerih, v katerih se proizvodi ne uvažajo neposredno iz države porekla, temveč se izvažajo v državo članico uvoznico skozi posredniško državo, tedaj se cena, po kateri se proizvod prodaja iz države izvoza v članico uvoznico, običajno primerja s primerljivo ceno v državi izvoza. Možna je primerjava s ceno v državi porekla, če so na primer proizvodi v tranzitu v državi izvoza ali če se taki proizvodi ne proizvajajo v državi izvoza ali pa ne obstaja primerljiva cena za te proizvode v državi izvoza.

2.6 V sporazumu se pojem enak proizvod ("produit similaire") razlaga tako, da pomeni proizvod, ki je identičen, t.j. v vseh pogledih enak proizvodu, ki se obravnava, ali če takega proizvoda ni, tedaj drugi proizvod, ki, četudi ni enak v vseh pogledih, ima značilnosti zelo podobne tistim, ki jih ima proizvod, ki se obravnava.

2.7 Ta člen ne posega v drugo Dopolnilno določbo k prvemu odstavku VI. člena v Prilogi I h GATT 1994.

3. člen

Ugotavljanje škode[9]

3.1 Za namene VI. člena GATT 1994 ugotavljanje škode temelji na pozitivnih dokazih in pomeni objektivno proučitev obojega, t.j. (a) obsega dumpinškega uvoza in učinka tega uvoza na cene na domačem trgu za enake proizvode in (b) posledičnega vpliva tega uvoza na domače proizvajalce teh proizvodov.

3.2 Glede obsega dumpinškega uvoza preiskovalne oblasti presodijo, ali se je znatno povečal dumpinški uvoz bodisi v absolutnem ali v relativnem smislu glede na proizvodnjo in porabo v članici uvoznici. Glede učinkov dumpinškega uvoza na cene preiskovalne oblasti presodijo, ali je prišlo do znatnega izpodbijanja cen zaradi dumpinškega uvoza v primerjavi s ceno enakega proizvoda članice uvoznice, ali pa je učinek takega uvoza v tem, da znatno pritiska cene ali da preprečuje znatno povečanje cen, do katerega bi sicer prišlo. Noben ali več dejavnikov skupaj nujno ne pomeni, da ima oziroma imajo odločilen pomen.

3.3 Če je uvoz določenega proizvoda iz več držav sočasno predmet protidumpinških preiskav, smejo preiskovalne oblasti kumulativno presojati učinke takih uvozov, samo če ugotovijo, da je (a) stopnja dumpinga, ki se ugotovi v zvezi z uvozi iz vsake posamezne države, več kot *de minimis,* ki je definiran v osmem odstavku 5. člena oziroma da obseg uvoza ni zanemarljiv in (b) da je kumulativna ocena učinkov uvoza ustrezna konkurenčnim pogojem med uvoženimi proizvodi in konkurenčnim pogojem med uvoženimi proizvodi in enakim domačim proizvodom.

3.4 Proučitev učinkovanja dumpinškega uvoza na določeno domačo industrijo vključuje ovrednotenje vseh ustreznih gospodarskih dejavnikov in pokazateljev, ki vplivajo na stanje industrije, vključno z dejanskim in potencialnim padanjem prodaje, dobička, proizvodnje, tržnega deleža, produktivnosti, povračil na vlaganje ali izrabe zmogljivosti; dejavnikov, ki vplivajo na domače cene; pomembnosti stopnje dumpinga; dejanskih ali potencialnih negativnih učinkov na likvidnost, zaloge, zaposlovanje, plače, rast, sposobnost pridobivanja kapitala ali novih vlaganj. Ta seznam ni izčrpen, niti en ali več teh dejavnikov skupaj ne morejo imeti prevladujočega vpliva.

3.5 Dokazano mora biti, da dumpinški uvoz z učinki dumpinga, kot so predvideni v drugem in četrtem odstavku, povzroča škodo v smislu tega sporazuma. Dokaz vzročne zveze med dumpinškim uvozom in škodo domači industriji mora temeljiti na proučitvi vseh ustreznih dokazov, s katerimi oblasti razpolagajo. Oblasti morajo prav tako proučiti katerekoli znane dejavnike poleg dumpinškega uvoza, ki sočasno povzročajo škodo domači industriji, pri čemer škoda, ki jo povzročajo ti drugi dejavniki, ne sme biti pripisana dumpinškemu uvozu. Dejavniki, ki utegnejo biti ustrezni v tem smislu, so med drugim obseg in cene uvoza, ki se ne prodaja po dumpinških cenah, zmanjševanje povpraševanja ali spremembe v potrošniških navadah, trgovinsko omejitvena praksa in konkurenca med tujimi in domačimi proizvajalci, razvoj tehnologije ter izvozna učinkovitost in produktivnost domače industrije.

3.6 Učinki dumpinškega uvoza se presojajo po domači proizvodnji enakega proizvoda, če razpoložljivi podatki dovoljujejo ločeno obravnavo te proizvodnje na podlagi takih meril, kot so proizvodni postopek, proizvajalčeva prodaja in dobiček. Če taka izločena obravnava te proizvodnje ni možna, se učinki dumpinškega uvoza presojajo s proučitvijo proizvodnje najožje skupine ali vrste proizvodov, ki vključuje

[7] Razume se, da se posamezni od zgoraj omenjenih dejavnikov lahko prekrivajo in oblasti zagotavljajo, da se ne podvajajo tiste prilagoditve, ki so že upoštevane na podlagi te določbe.

[8] Običajno je datum prodaje datum pogodbe, naročilnice, potrditve naročila ali fakture, kar vsebuje materialne prodajne pogoje.

[9] V tem sporazumu se z izrazom "škoda", če ni drugače določeno, razume materialna škoda domači industriji, grožnja materialne škode domači industriji ali materialno omejevanje ustanovitve take industrije in se razlaga v skladu z določbami tega člena.

tudi enak proizvod, za katero je možno pridobiti potrebne informacije.

3.7 Ugotavljanje grožnje materialne škode temelji na dejstvih in ne zgolj na sumih, domnevah ali oddaljenih možnostih. Sprememba okoliščin, ki utegne ustvariti razmere, v katerih bi dumping lahko povzročal škodo, mora biti jasno predvidena in imeti nujne posledice.[10] Pri nastajanju ugotovitve v zvezi z obstojem grožnje materialne škode oblasti med drugim upoštevajo dejavnike:

(i) znatno povečanje dumpinškega uvoza na domačem trgu, kar kaže na verjetnost splošnega povečanja uvoza;

(ii) zadostne razpoložljive oziroma znatno povečane zmogljivosti izvoznika, kar kaže na verjetnost znatno povečanega dumpinškega izvoza na trg članice uvoznice, pri čemer je treba upoštevati tudi možnosti izvoza na tretje trge oziroma njihovo sposobnost, da sprejmejo dodaten izvoz;

(iii) ali uvoz prihaja čez mejo po cenah, ki pomembno zniževalno ali zadrževalno vplivajo na domače cene ter bi po vsej verjetnosti povzročile povečanje povpraševanja po dodatnem uvozu; in

(iv) zaloge proizvoda, ki se obravnava.

Nobeden od teh dejavnikov sam po sebi ne more imeti odločilnega vpliva, toda celota upoštevanih dejavnikov mora voditi k sklepu, da je nadaljnji dumpinški izvoz nujen in, če se ne uvedejo zaščitni ukrepi, da bi nastala materialna škoda.

3.8 V zvezi s primeri, ko obstaja grožnja škode zaradi dumpinškega uvoza, se mora s posebno pozornostjo proučiti in sprejeti odločitev o uporabi protidumpinških ukrepov.

4. člen

Opredelitev domače industrije

4.1 Za namene tega sporazuma se izraz "domača industrija" razlaga, kot da se nanaša na domače proizvajalce enakega proizvoda kot celoto ali na tisti del proizvajalcev, katerih skupen obseg proizvodov pomeni glavni delež domače proizvodnje teh proizvodov, razen :

(i) če so proizvajalci v razmerju[11] z izvozniki ali uvozniki ali so sami uvozniki domnevno dumpinškega proizvoda, se izraz "domača industrija" razlaga, kot da se nanaša na preostale proizvajalce;

(ii) v izjemnih razmerah se lahko ozemlje članice za določeno proizvodnjo deli na dva ali več konkurenčnih trgov, proizvajalci na vsakem od teh pa se lahko obravnavajo kot posebna industrija, če (a) proizvajalci na takem trgu prodajo vso ali skoraj vso svojo proizvodnjo določenega proizvoda, in (b) proizvajalci določenega proizvoda, ki so na drugih delih ozemlja, povpraševanja na takem trgu ne zadovoljujejo v znatnem delu. V takih okoliščinah je možno ugotoviti, da škoda obstaja, četudi večji del celotne domače proizvodnje ni oškodovan, pod pogojem, da obstaja koncentracija dumpinškega uvoza na takem izoliranem trgu in pod nadaljnjim pogojem, da dumpinški uvoz povzroča škodo proizvajalcem vsej ali skoraj vsej proizvodnji na tem trgu.

4.2 Če se domača industrija razlaga, kot da se nanaša na proizvajalce določenega območja, t.j. trga, kot je definiran v prvem (ii) odstavku, tedaj se odmerijo protidumpinške carine[12] samo za določene proizvode, ki so namenjeni končni porabi na tem območju. Če ustavno pravo članice uvoznice ne dopušča uvedbe protidumpinških carin na taki podlagi, sme članica uvoznica uvajati protidumpinške carine brez omejitev samo, če (a) je bila izvoznikom dana možnost, da prenehajo izvažati po dumpinških cenah na določeno območje ali da dajo zagotovila v skladu z 8. členom, vendar pa ta zagotovila niso bila pravočasno dana, in (b) take carine ni mogoče uvajati za proizvode določenih proizvajalcev, ki preskrbujejo določeno območje.

4.3 Če sta dve ali če je več držav doseglo v skladu z določbami osmega (a) odstavka XXIV. člena GATT 1994 tako stopnjo združitve, da imajo značilnosti enotnega trga, se obravnava industrija celotnega združenega območja kot domača industrija, na katero se nanaša prvi odstavek.

4.4 Določbe šestega odstavka 3. člena se uporabljajo v zvezi s tem členom.

5. člen

Uvedba postopka in preiskava

5.1 Z izjemo določbe šestega odstavka se preiskava z namenom ugotavljanja obstoja, stopnje in učinkov domnevanega dumpingasproži na podlagi pisne vloge domače industrije ali vloge v njenem imenu.

5.2 Vloga iz prvega odstavka vključuje dokaze o (a) dumpingu, (b) škodi v smislu VI. člena GATT 1994, kot ga razlaga ta sporazum, in (c) vzročni zvezi med dumpinškim uvozom in domnevno škodo. Navadna trditev, ki ni podprta z ustreznimi dokazi, ne zadošča zahtevam tega odstavka. Vloga mora vsebovati take podatke, ki so razumno dosegljivi vlagatelju v zvezi z naslednjim:

(i) opredelitev vlagatelja, opis vlagateljevega obsega in vrednosti domače proizvodnje enakega proizvoda. Če je pisna vloga vložena v imenu domače industrije, mora vlagatelj opredeliti industrijo, v katere imenu je vloga vložena, s seznamom vseh znanih domačih proizvajalcev enakega proizvoda (ali združenj domačih proizvajalcev enakega proizvoda) in v okviru možnosti opis obsega in vrednosti domače proizvodnje enakega proizvoda, ki odpade na te proizvajalce;

(ii) popoln opis domnevanega dumpinškega proizvoda, imena države oziroma držav porekla ali določenega izvoza, istovetnost vsakega znanega izvoznika ali tujega proizvajalca in seznam znanih oseb, ki uvažajo določen proizvod;

(iii) podatke o cenah, po katerih se določen proizvod prodaja, če je namenjen porabi na domačem trgu države ali držav porekla ali izvoza (ali če je to primerno, podatke o cenah, po katerih se proizvod prodaja iz države ali držav porekla ali izvoza tretji državi ali državam, ali v zvezi s sestavljeno vrednostjo proizvoda) , in podatke o izvoznih cenah ali, če je primerno, o cenah, po katerih se proizvod prvič preproda neodvisnemu kupcu na območju Članice uvoznice;

(iv) podatke o razvoju obsega domnevnega dumpinškega uvoza, učinkih tega uvoza na cene enakega proizvoda na domačem trgu in posledičnih vplivih uvoza na domačo industrijo, ki se kažejo v ustreznih dejavnikih in pokazateljih, ki se nanašajo na stanje domače industrije, kot so tisti, ki so našteti v drugem in četrtem odstavku 3. člena.

5.3 Oblasti preverijo točnost in ustreznost danih dokazov v vlogi z namenom, da se ugotovi, ali je dovolj dokazov za to, da se utemelji uvedba preiskave.

5.4 Preiskava se ne sme sprožiti na podlagi prvega odstavka, razen če oblasti na podlagi proučitve stopnje podpore

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[10] Primer tega, četudi ne edini, je obstoj prepričljivega razloga, da se verjame, da se bo v bližnji prihodnosti znatno povečal uvoz proizvodov po dumpinških cenah.

[11] Za namen tega odstavka se šteje, da so proizvajalci v razmerju z izvozniki ali uvozniki samo, če (a) ima eden izmed njih neposredno ali posredno kontrolo nad drugim; ali (b) sta oba neposredno ali posredno pod kontrolo tretje osebe; ali (c) skupaj, neposredno ali posredno kontrolirajo tretjo osebo, pod pogojem, da obstajajo osnove za prepričanje, da je učinek tega razmerja tak, da vpliva na to, da se določen proizvajalec drugače ravna kot proizvajalci, ki niso v razmerju. Za namene tega odstavka velja, da eden kontrolira drugega, če je prejšnji pravno ali operativno v položaju, da lahko uveljavlja omejitve ali daje navodila drugemu.

[12] V tem sporazumu "odmerjen" pomeni dokončno ali končno pravno določitev ali izterjavo carine ali takse.

ali nasprotovanja vlogi, ki jo/ga izražajo[13] domači proizvajalci enakega proizvoda, ugotovijo, da je vlogo vložila domača industrija oziroma da je vložena v njenem imenu.[14] Šteje se, da je vlogo "vložila domača industrija oziroma da je vložena v njenem imenu", če jo podpirajo tisti domači proizvajalci, katerih skupen obseg proizvodnje pomeni več kot 50 odstotkov celotne proizvodnje enakega proizvoda, ki ga proizvede ta del domače industrije, ki izraža podporo ali nasprotovanje vlogi. Toda preiskava se ne sme uvesti, če domači proizvajalci, ki izrecno podpirajo vlogo, pomenijo manj kakor 25 odstotkov celotne proizvodnje enakega proizvoda domače industrije.

5.5 Oblasti se izogibajo, razen če je sprejeta odločitev, da se uvede preiskava, vsakršnega objavljanja vloge za uvedbo preiskave. Potem ko je ustrezno dokumentirana vloga sprejeta, toda pred samo uvedbo postopka, oblasti obvestijo vlado prizadete članice izvoznice.

5.6 Če zaradi posebnih okoliščin pristojne oblasti sprejmejo odločitev, da se sproži preiskava brez tega, da prejmejo vlogo za uvedbo take preiskave od ali v imenu domače industrije, tedaj pričnejo s preiskavo samo, če imajo dovolj dokazov o obstoju dumpinga, o škodi in o vzročni zvezi, kakor je določena v drugem odstavku, da bi lahko bila uvedba preiskave utemeljena.

5.7 Dokazi o dumpingu in škodi se obravnavajo sočasno (a) pri sprejemanju odločitve, ali se oziroma ali naj se ne uvede preiskava, in (b) med preiskavo z začetkom tistega dne, ki ni poznejši od najzgodnejšega datuma, ko se v skladu z določbami tega sporazuma smejo uporabljati začasni ukrepi.

5.8 Vloga na podlagi prvega odstavka se zavrže, preiskava pa se ustavi takoj, ko se pristojne oblasti prepričajo, da ni dovolj dokazov o dumpingu ali škodi, da bi bilo primer upravičeno nadaljevati. Postopek se ustavi takoj, ko oblasti ugotovijo, da obstaja de minimis stopnja dumpinga ali da je obseg dejanskega ali potencialnega dumpinškega uvoza ali škode zanemarljiv. Stopnja dumpinga se šteje kot de minimis, če je nižja od 2 odstotkov, kar izraža odstotek izvozne cene. Obseg dumpinškega uvoza običajno velja kot zanemarljiv, če se ugotovi, da obseg dumpinškega uvoza iz določene države pomeni manj kot 3 odstotke uvoza enakega proizvoda v članici uvoznici, razen če države, ki vsaka zase pomenijo manj kot 3 odstotke uvoza enakega proizvoda v članici uvoznici, skupaj pomenijo več kakor 7 odstotkov uvoza enakega proizvoda v članici uvoznici.

5.9 Protidumpinški postopek ne ovira carinskega postopka.

5.10 Z izjemo posebnih okoliščin morajo biti preiskave končane v enem letu, v nobenem primeru pa v več kot osemnajstih mesecih od dneva uvedbe.

6. člen

Dokazi

6.1 Vse zainteresirane strani v protidumpinški preiskavi dobijo obvestilo o podatkih, ki jih oblasti potrebujejo, in dovolj možnosti, da pisno predložijo vse dokaze, za katere menijo, da so ustrezni glede na določeno preiskavo.

6.1.1 Izvozniki ali tuji proizvajalci, ki prejmejo vprašalnike, ki se uporabljajo v protidumpinški preiskavi, morajo imeti vsaj 30 dni za odgovor.[15] Ustrezno je treba obravnavati vsako zahtevo za podaljšanje 30-dnevnega roka in na podlagi utemeljenih razlogov tako podaljšanje odobriti, kadarkoli je to izvedljivo.

6.1.2 Ob upoštevanju potreb po varovanju zaupnih podatkov se dokazi, ki jih zainteresirane strani dajejo v pisni obliki, takoj dajo na razpolago drugim zainteresiranim udeležencem preiskave.

6.1.3 Takoj, ko se preiskava uvede, oblasti dostavijo celotno besedilo pisne vloge, ki so jo prejeli v smislu prvega odstavka 5. člena, znanim izvoznikom[16] in oblastem članice izvoznice, na zahtevo pa tudi drugim zainteresiranim stranem, ki so vpletene v postopek. Ustrezno se pazi na potrebe varovanja zaupnih podatkov, kakor je določeno v petem odstavku.

6.2 Med protidumpinško preiskavo imajo vse strani polno možnost, da branijo svoje interese. S tem namenom oblasti na zahtevo vsem stranem dajo možnost, da se soočijo s tistimi udeleženci, ki imajo nasprotne interese, da se predstavijo nasprotna stališča in ponudijo nasprotni argumenti. Zagotavljanje takih možnosti upošteva potrebo po varovanju zaupnosti in po ustrežljivosti udeležencem. Ne sme biti nobene obveznosti udeležbe na sestanku za katerokoli stran ter odsotnost ne sme imeti škodljivih posledic za primer določene strani. Zainteresirani udeleženci imajo iz utemeljenih razlogov prav tako pravico, da podatke povedo ustno.

6.3 Ustne podatke na podlagi drugega odstavka oblasti upoštevajo samo, če so ti podatki pozneje predloženi v pisni obliki in dostavljeni drugim zainteresiranim udeležencem, kakor je predvideno v pododstavku 1.2.

6.4 Oblasti, kadarkoli je to možno, zagotavljajo pravočasno možnost, da vsi zainteresirani udeleženci vidijo vse podatke, ki se nanašajo na predstavitev njihovega primera, če niso zaupni v smislu petega odstavka in če jih oblasti uporabljajo v protidumpinški preiskavi, tako da lahko pripravijo predstavitev na podlagi teh podatkov.

6.5 Vsak zaupen podatek (na primer, če bi razkritje tega podatka pomenilo znatno konkurenčno prednost za konkurenta ali če bi razkritje podatka imelo znatne škodljive posledice za osebo, ki je podatek dala, ali za osebo, od katere je ta oseba podatek dobila) ali ki so ga udeleženci preiskave dali na zaupni podlagi, morajo oblasti na podlagi utemeljitve obravnavati kot zaupnega. Taki podatki se ne smejo razkrivati brez izrecnega dovoljenja tiste strani, ki je tak podatek dala.[17]

6.5.1 Oblasti od zainteresiranih strani, ki so dale zaupne podatke, zahtevajo, da zagotovijo povzetke, ki niso zaupni. Ti povzetki morajo biti dovolj natančni, da omogočajo razumen vpogled v vsebino zaupno danih podatkov. V izjemnih okoliščinah te strani lahko sporočijo, da takih podatkov ni možno pripraviti v obliki povzetka. V takih izjemnih okoliščinah je treba zagotoviti izjavo o razlogih, zakaj priprava povzetka ni možna.

6.5.2 Če oblasti ugotovijo, da zahteva po zaupnosti ni utemeljena, in če tisti, ki je podatek dal, ni pripravljen objaviti podatkov ali pa dati pooblastila za objavo teh podatkov v splošni ali povzeti obliki, lahko oblasti take podatke zanemarijo, razen če je možno oblastem na zadovoljiv način dokazati iz ustreznih virov, da so podatki točni.[18]

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[13] Če je industrija razdrobljena in obsega izjemno veliko število proizvajalcev, smejo oblasti ugotoviti podporo in nasprotovanje z uporabo veljavnih metod statističnega vzorčenja.

[14] Članice se zavedajo, da na ozemlju določenih članic delojemalci domačih proizvajalcev enakega proizvoda ali predstavniki teh delojemalcev lahko vložijo ali podprejo vlogo za preiskavo na podlagi prvega odstavka.

[15] Kot splošno pravilo se omejitev časa za izvoznika računa od dneva, ko ta prejme vprašalnik, za katerega se za te namene domneva, da je prejet v enem tednu od dneva, ko je poslan tistemu, ki mora nanj odgovoriti, ali je poslan ustreznemu diplomatskemu predstavniku članice izvoznice, ali v primeru ločenega carinskega ozemlja članice WTO uradnemu predstavniku tega izvoznega ozemlja.

[16] Razume se, da kadar gre za posebej veliko število določenih izvoznikov, se celotno besedilo pisne vloge da samo oblastem članice izvoznice ali ustreznemu trgovinskemu združenju.

[17] Članice se zavedajo, da je na ozemlju določenih članic razkritje možno v skladu z ozko opredeljenim varovalnim ukazom.

[18] Članice soglašajo, da zahtev za varovanje zaupnosti ne bi smeli arbitrarno zavračati.

6.6 Z izjemo okoliščin, ki so določene v osmem odstavku, se oblasti prepričajo o točnosti podatkov, ki so jih dali zainteresirani udeleženci, na katerih temeljijo njihove ugotovitve.

6.7 Z namenom, da preverijo podatke ali pridobijo nadaljnje podrobnosti, smejo oblasti po potrebi opraviti preiskavo na ozemlju druge članice pod pogojem, da dobijo soglasje določenih podjetij in obvestijo predstavnike vlade prizadete članice ter če ta članica tej preiskavi ne nasprotuje. Postopki, ki so opisani v Prilogi I, se uporabljajo v preiskavah, ki se izvajajo na ozemlju druge članice. Pod pogojem varovanja zaupnih podatkov morajo oblasti rezultate vsake take preiskave dajati na razpolago ali pa jih razkriti na podlagi devetega odstavka podjetjem, na katera se nanašajo, ter lahko te rezultate dajo na razpolago tudi vlagateljem.

6.8 Kadar katerakoli zainteresirana stran odkloni dostop do ali sicer ne zagotovi potrebnih podatkov v določenem razumnem času, ali znatno ovira preiskavo, je dovoljeno, da se sprejmejo predhodne in dokončne ugotovitve, pritrdilne ali odklonilne, na podlagi razpoložljivih podatkov. Določbe Priloge II se upoštevajo pri uporabi tega odstavka.

6.9 Pred dokončno ugotovitvijo oblasti obvestijo vse zainteresirane strani o bistvenih dejstvih v obravnavi, ki pomenijo podlago za odločitev o tem, ali naj se uporabijo dokončni ukrepi. Tako obvestilo je treba opraviti v ustreznem času, da lahko udeleženci branijo svoje interese.

6.10 Praviloma oblasti ugotovijo posamezno stopnjo dumpinga za vsakega znanega uvoznika ali prizadetega proizvajalca proizvoda, ki je v preiskavi. Kadar je izvoznikov, proizvajalcev, uvoznikov ali vrst proizvodov v preiskavi toliko, da je taka ugotovitev praktično neizvedljiva, se smejo oblasti pri njihovih proučevanjih omejiti na razumno število zainteresiranih strani ali proizvodov z uporabo statistično veljavnih vzorcev na podlagi podatkov, ki so oblastem v določenem času na razpolago, ali z uporabo najvišjega odstotka obsega izvoza iz določene države, ki ga je možno na razumen način preiskovati.

6.10.1 Za vsako izbiro izvoznikov, proizvajalcev, uvoznikov ali proizvodov, ki se opravi na podlagi tega odstavka, je priporočljivo, da se opravi na podlagi posvetovanja ali soglasja izvoznikov, proizvajalcev ali prizadetih uvoznikov.

6.10.2 Kadar oblasti omejijo svoje proučevanje, kakor je določeno v tem odstavku, ne glede na to ugotovijo posamezno stopnjo dumpinga za vsakega izvoznika ali proizvajalca, ki prvotno ni izbran in v preiskavi pravočasno predloži potrebne podatke, tako da jih je možno upoštevati v preiskavi, razen če je izvoznikov ali proizvajalcev toliko, da bi proučitev neprimerno obremenjevala oblasti in bi onemogočala pravočasen sklep preiskave. Prostovoljni odzivi se ne smejo zavračati.

6.11 V tem sporazumu izraz "zainteresirane strani" pomeni:

(i) izvoznik ali tuj proizvajalec ali uvoznik proizvoda, ki je v preiskavi, ali trgovinsko ali poslovno združenje, katerega večina članov so proizvajalci, izvozniki ali uvozniki takega proizvoda;

(ii) vlada članice izvoznice, in

(iii) proizvajalec enakega proizvoda članice uvoznice ali trgovinsko oziroma poslovno združenje, katerega večina članov proizvaja enak proizvod na ozemlju članice uvoznice.

Ta seznam članicam ne preprečuje, da dovolijo domačim ali tujim stranem poleg tistih, ki so omenjene zgoraj, da se obravnavajo kot udeleženci.

6.12 Oblasti zagotavljajo možnosti industrijskim uporabnikom proizvoda v preiskavi in predstavnikom organizacij potrošnikov, kadar gre za proizvod, ki je v široki prodaji na drobnoprodajni ravni, da dajejo podatke, ki so pomembni za preiskavo v zvezi z dumpingom, škodo in vzročno zvezo.

6.13 Oblasti na primeren način upoštevajo kakršnekoli težave, ki jih imajo zainteresirani udeleženci, zlasti majhna podjetja, v zvezi z zagotavljanjem zahtevanih podatkov, in zagotavljajo vsako pomoč, ki je izvedljiva.

6.14 Postopki, ki so določeni zgoraj, niso namenjeni, da se z njimi preprečuje oblastem članice, da učinkovito ravnajo v zvezi z uvedbo preiskave, oblikovanjem predhodne ali dokončne ugotovitve, bodisi pritrdilne ali zavrnilne, ali da uporabijo začasne ali dokončne ukrepe v skladu z ustreznimi določbami tega sporazuma.

7. člen

Začasni ukrepi

7.1 Začasne ukrepe je možno uporabljati le, če:

(i) je preiskava sprožena v skladu z določbami 5. člena, dana javna objava v zvezi s tem in če je zainteresiranim stranem danih dovolj priložnosti, da predložijo podatke in dajo pripombe;

(ii) je sprejeta začasna pritrdilna ugotovitev o obstoju dumpinga in posledični škodi za domačo industrijo; in

(iii) pristojne oblasti menijo, da so taki ukrepi potrebni, da bi se preprečila škoda med trajanjem preiskave.

7.2 Začasni ukrepi so lahko v obliki začasnih carin ali priporočljivo, v obliki varščine v gotovini ali s kavcijo, ki je enaka znesku protidumpinške carine, ki se okvirno določi, ne sme pa biti višja od začasno ugotovljene stopnje dumpinga. Zadrževanje cenitve je ustrezen začasen ukrep pod pogojem, da se izrazi normalna carina in da je ocenjen znesek protidumpinške carine, ter pod pogojem, da je zadrževanje te cenitve pogojeno z enakimi pogoji kakor drugi začasni ukrepi.

7.3 Začasni ukrepi se ne uporabljajo prej kakor v 60 dneh od dneva uvedbe preiskave.

7.4 Uporaba začasnih ukrepov je omejena na čim krajši možen čas, ki ne sme presegati 4 mesecev ali na podlagi odločitve pristojnih oblasti na zahtevo izvoznikov, ki pomenijo znaten odstotek določene trgovine, na obdobje, ki ne presega 6 mesecev. Ko oblasti v preiskavi proučujejo, ali bi carina, ki je nižja od stopnje dumpinga, zadostovala za to, da se odpravi škoda, so lahko ti roki 6 oziroma 9 mesecev.

7.5 Pri uporabi začasnih ukrepov je treba ravnati na podlagi ustreznih določb 9. člena.

8. člen

Cenovne zaveze

8.1 Postopki se lahko[19] ustavijo ali končajo brez uvedbe začasnih ukrepov ali protidumpinških carin na podlagi prejema zadovoljivih prostovoljnih zavez od kateregakoli izvoznika v zvezi s spremembo cen ali prenehanjem izvoza na določeno območje po dumpinških cenah, tako da so oblasti prepričane, da je s tem odpravljen škodljiv učinek dumpinga. Dvigi cen v okviru takih zavez ne smejo biti večji, kot je potrebno, da se izravna stopnja dumpinga. Zaželeno je, da bi bili dvigi cen nižji od stopnje dumpinga, če bi taki dvigi zadostovali za odpravo škode domači industriji.

8.2 Cenovne zaveze se ne smejo zahtevati ali sprejeti od izvoznikov, razen če so oblasti članice uvoznice že prej pritrdilno ugotovile obstoj dumpinga in škode, ki jo je povzročil tak dumping.

8.3 Ni nujno, da oblasti sprejmejo cenovne zaveze, če menijo, da tak sprejem ni izvedljiv, na primer, če je število

[19] Beseda "lahko" se ne sme razlagati tako, da je dovoljeno sočasno nadaljevanje postopkov z uporabo cenovnih zavez, z izjemo določbe četrtega odstavka.

dejanskih ali potencialnih izvoznikov preveliko ali iz drugih razlogov, vključno z razlogi splošnega interesa. V takem primeru, če je izvedljivo, oblasti izvozniku sporočijo razloge za to, da sprejem cenovne zaveze ni umesten in morajo do tiste mere, kolikor je možno, dati izvozniku možnost, da na omenjeni podlagi da pripombe.

8.4 Če se zaveza sprejme, se ne glede na to konča preiskava v zvezi z ugotavljanjem dumpinga in škode, če izvoznik tako želi oziroma če oblasti sprejmejo tako odločitev. Če je ugotovitev dumpinga in škode negativna, tedaj zaveza sama po sebi izgubi veljavo, z izjemo tistih primerov, v katerih je taka ugotovitev rezultat v pretežni meri obstoja cenovnih zavez. V takih primerih lahko oblasti zahtevajo, da se zaveza ohrani v določenem razumnem obdobju v skladu z določbami tega sporazuma. Ob potrdilni ugotovitvi dumpinga in škode se zaveza nadaljuje v skladu s sprejetimi pogoji in določbami tega sporazuma.

8.5 Cenovne zaveze lahko predlagajo tudi oblasti članice uvoznice, toda noben izvoznik ne sme biti prisiljen v to, da take zaveza sprejme. Dejstvo, da izvozniki sami ne ponujajo takih zavez ali da jih ne sprejmejo, ne sme na noben način vplivati na presojo primera. Toda oblasti lahko svobodno ugotovijo, da ima grožnja škode večjo možnost uresničitve, če se dumpinški uvoz nadaljuje.

8.6 Oblasti članice uvoznice lahko zahtevajo od kateregakoli izvoznika, katerega zaveza je sprejeta, da občasno poroča o tej zavezi in dovoli preverjanje ustreznih podatkov. Ob kršitvi zaveze smejo oblasti članice uvoznice na osnovi tega sporazuma v skladu z njegovimi določbami izvajati hitre postopke, katerih vsebina je takojšnja uporaba začasnih ukrepov na podlagi razpoložljivih informacij. V takih primerih se lahko zaračunavajo končno določene carine v skladu s tem sporazumom v zvezi s proizvodi, ki so prišli v porabo najpozneje v 90 dneh pred uporabo takih začasnih ukrepov, ne glede na to pa tak ukrep ne velja za uvoz, ki je uresničen pred kršitvijo zaveze.

9. člen

Uvedba in pobiranje protidumpinških carin

9.1 Odločitev, ali se oziroma se ne uvede protidumpinška carina, če so izpolnjene vse zahteve za uvedbe take carine, ter odločitev, ali naj bo višina protidumpinške carine v polnem ali manjšem znesku od stopnje dumpinga, sta odločitvi, ki ju sprejmejo oblasti članice uvoznice. Zaželeno je, da je uvedba dovoljena na ozemlju vseh članic ter da bi bila carina nižja, kot je stopnja dumpinga, če bi taka nižja carina zadostovala za odpravo škode domači industriji.

9.2 Če se uvede protidumpinška carina v zvezi z določenim proizvodom, se taka carina pobira v ustrezni višini v vsakem primeru na nediskriminacijski podlagi za uvoz takega proizvoda iz vseh virov, za katere se ugotovi, da gre za dumping in da povzročajo škodo, z izjemo uvoza iz tistih virov, za katere so sprejete cenovne zaveze v okviru pogojev tega sporazuma. Oblasti imenujejo prizadetega dobavitelja oziroma prizadete dobavitelje določenega proizvoda. Če gre za več dobaviteljev iz ene države in je neizvedljivo imenovati vse te dobavitelje, smejo oblasti imenovati le določeno državo dobaviteljico. Če gre za več dobaviteljev iz več kot ene države, smejo oblasti imenovati vse prizadete dobavitelje, ali če to ni izvedljivo, vse prizadete države dobaviteljice.

9.3 Znesek protidumpinške carine ne sme preseči stopnje dumpinga, kakor je določena z 2. členom.

9.3.1 Če se znesek protidumpinške carine določi za nazaj, je treba čim prej določiti končno obvezo plačila protidumpinške carine, običajno pa v 12 mesecih, v nobenem primeru pa ne pozneje kot v 18 mesecih od dneva, ko je vložena zahteva, da se določi dokončen znesek protidumpinške carine.[20] Kakršnokoli povračilo je potrebno opraviti takoj in običajno najpozneje v 90 dneh po tem, ko je ugotovljena končna obveza na podlagi tega pododstavka. V vsakem primeru, če se povračilo ne opravi v 90 dneh, morajo oblasti dati ustrezno razlago, če se ta zahteva.

9.3.2 Če se določi znesek protidumpinške carine vnaprej, je treba na zahtevo upoštevati možnost takojšnjega povračila vsakršne carine, ki se plača več, kot znaša stopnja dumpinga. Povračilo vsakršne carine, ki je plačana več, kot znaša dejanska stopnja dumpinga, se običajno opravi v 12 mesecih, v nobenem primeru pa ne v daljšem času kakor 18 mesecev od dneva, ko je uvoznik proizvoda, ki je bil predmet protidumpinške carine, vložil zahtevo za povračilo, ustrezno opremljeno z dokazi. Odobreno povračilo je treba običajno izvesti v 90 dneh od dneva zgoraj omenjene odločitve.

9.3.3 Pri ugotavljanju, ali in v kakšni meri je treba dati povračilo, kadar je izvozna cena sestavljena v skladu s tretjim odstavkom 2. člena, oblasti upoštevajo vsakršno spremembo normalne vrednosti v stroških, nastalih med uvozom in preprodajo, ter gibanje preprodajne cene, ki je ustrezno izražena v naslednjih prodajnih cenah, in morajo izračunati izvozno ceno brez odbitkov za plačane protidumpinške carine, ko se pridobijo neizpodbitni dokazi v zvezi z zgornjimi spremembami.

9.4 Če oblasti omejijo svoje proučevanje v skladu z drugim stavkom desetega odstavka 6. člena, tedaj vsaka protidumpinška carina, ki se uporabi za uvoz od izvoznikov ali proizvajalcev, ki niso vključeni v to proučitev, ne sme presegati:

(i) ponderiranega povprečja stopnje dumpinga, ki je ugotovljeno v zvezi z izbranimi izvozniki ali proizvajalci,ali

(ii) razlike med ponderiranim povprečjem normalne vrednosti izbranih izvoznikov ali proizvajalcev in izvozne cene izvoznikov in proizvajalcev, ki se posamezno ne proučujejo, če se obveznost plačila protidumpinških carin računa na podlagi predvidene normalne vrednosti,

pod pogojem, da oblasti zanemarijo za namene tega odstavka kakršnekoli ničelne ali de minimis stopnje in stopnje, ki so ugotovljene pod pogoji, na katere se nanaša osmi odstavek 6. člena. Oblasti uporabijo posamezne carine ali normalne vrednosti za uvoz od kateregakoli izvoznika ali proizvajalca, ki ni vključen v proučevanje, ki je zagotovil potrebne informacije med preiskavo, kakor je določeno v odstavku 10.2 6. člena.

9.5 Če je določen proizvod predmet protidumpinške carine v članici uvoznici, morajo oblasti pravočasno opraviti pregled z namenom, da se določijo posamezne stopnje dumpinga za vsakega izvoznika ali proizvajalca v državi izvoznici, ki ni izvažala proizvoda v članico uvoznico med preiskavo, pod pogojem, da ti izvozniki ali proizvajalci lahko dokažejo, da niso v razmerju z izvozniki oziroma proizvajalci v državi izvoznici, ki so predmet protidumpinških carin za njihov proizvod. Tak pregled se opravi in izvede pospešeno v primerjavi z določanjem normalne carine in pregledom postopkov v članici uvoznici. Med pregledom se ne smejo zaračunavati protidumpinške carine za uvoz od takih izvoznikov in proizvajalcev. Toda oblasti smejo zadrževati ugotavljanje in/ali zahtevati jamstva, da si zagotovijo, če je rezultat takega pregleda ugotovitev dumpinga v zvezi s takimi izvozniki in proizvajalci, da bodo protidumpinške carine plačane za nazaj od dneva uvedbe pregleda.

[20] Razume se, da se lahko zgodi, da spoštovanje rokov, ki so omenjeni v tem pododstavku in pododstavku 3.2, ne bi bilo možno, če je določen proizvod predmet postopka sodne revizije.

10. člen

Veljavnost za nazaj

10.1 Začasni ukrepi in protidumpinške carine se uporabljajo za proizvode, ki preidejo v porabo potem, ko odločitev v okviru prvega odstavka 7. člena in prvega odstavka 9. člena postane pravnomočna, pod pogoji izjem, ki so določene v tem členu.

10.2 Če se sprejme dokončna ugotovitev škode (vendar ne grožnje ali materialnega omejevanja razvoja določene industrije) ali končna ugotovitev grožnje škode in bi bili učinki dumpinškega uvoza brez začasnih ukrepov podlaga za ugotovitev škode, se smejo protidumpinške carine zaračunavati za nazaj za čas, ko so se, če so se, uporabljali začasni ukrepi.

10.3 Če je dokončna protidumpinška carina višja od začasne carine, ki je plačana ali je plačljiva, ali od zneska, ki je določen kot varščina, se razlika ne sme pobirati. Če je dokončna carina nižja od začasne carine, ki je plačana ali plačljiva, ali od zneska, ki je določen kot varščina, se razlika vrne ali pa se carina preračuna, odvisno od konkretnega primera.

10.4 Z izjemo določbe drugega odstavka, ko se ugotovi grožnja škode ali materialnega omejevanja (vendar nobena škoda še ni nastala) , tedaj je dovoljena uvedba protidumpinške carine od dneva, ko je ugotovljena grožnja škode oziroma materialno omejevanje, ter se vsi gotovinski pologi, ki so dani med uporabo začasnih ukrepov, vrnejo ter se vse kavcije sprostijo na učinkovit način.

10.5 Če je dokončna ugotovitev negativna, se vsi gotovinski pologi, ki so dani med uporabo začasnih ukrepov, vrnejo, ter se vse kavcije sprostijo na učinkovit način.

10.6 Dokončna protidumpinška carina se sme zaračunati za proizvode, ki so prišli v porabo najpozneje v 90 dneh od dneva uporabe začasnih ukrepov, če oblasti glede proizvoda, ki je predmet dumpinga, ugotovijo, da:

(i) obstajajo prejšnji primeri dumpinga, ki so povzročali škodo, ali da se je uvoznik zavedal ali pa bi se moral zavedati, da izvoznik izvaja dumping in da tak dumping lahko povzroči škodo, in

(ii) je škoda povzročena zaradi množičnega dumpinškega uvoza določenega proizvoda v relativno kratkem času, ki ima v trenutku določenega dumpinškega uvoza in drugih okoliščin (kot na primer hitro povečevanje zalog uvoženega proizvoda) možnosti, da resno ogrozi učinke dokončne protidumpinške carine, ki naj bi se uporabila pod pogojem, da je prizadetim uvoznikom dana možnost, da dajo pripombe.

10.7 Oblasti lahko po uvedbi preiskave uporabijo take ukrepe, kot so zadrževanje ovrednotenja oziroma ocenitve zaradi plačila protidumpinške carine za nazaj, kot je določeno v šestem odstavku, kadar imajo dovolj dokazov za to, da so izpolnjeni pogoji, ki so v tem odstavku določeni.

10.8 Nobena carina se ne sme na podlagi šestega odstavka zaračunavati za nazaj za proizvode, ki so prišli v porabo pred uvedbo preiskave.

11. člen

Trajanje in proučitev protidumpinških carin in cenovne zaveze

11.1 Protidumpinška carina ostane v veljavi toliko časa in do te mere, kolikor je potrebno, da se izravna dumping, ki povzroča škodo.

11.2 Oblasti proučijo potrebe po nadaljnji uporabi carine, kadar je to primerno, po lastni presoji ali pod pogojem, da je preteklo neko razumno obdobje od dneva uvedbe dokončne protidumpinške carine na zahtevo katerekoli zainteresirane strani, ki predloži pritrdilne informacije, ki utemeljujejo potrebo po taki proučitvi.[21] Zainteresirane strani imajo pravico od oblasti zahtevati, da proučijo, ali je nadaljnja uporaba carine potrebna za izravnavo dumpinga, ali je verjetno, da bi škoda še naprej nastajala ali se ponavljala, če bi bila carina odpravljena ali spremenjena ali oboje. Če oblasti kot rezultat proučitve na podlagi tega odstavka ugotovijo, da protidumpinška carina ni več upravičena, jo je treba takoj ukiniti.

11.3 Ne glede na določbe prvega in drugega odstavka mora biti katerakoli dokončna protidumpinška carina odpravljena na dan, ko poteče pet let od uvedbe (ali od dneva zadnje proučitve v okviru drugega odstavka, če se je ta nanašala na dumping in škodo, ali na podlagi tega odstavka) , razen če oblasti ugotovijo v proučitvi, za katero je pobuda dana pred datumom, ko so oblasti same sprejele pobudo zanj ali na podlagi utemeljene zahteve domače industrije oziroma zahteve v njenem imenu, ki je dana v razumnem roku pred omenjenim datumom, da bi ukinitev carine verjetno povzročila nadaljevanje oziroma ponavljanje dumpinga in škode.[22] Carina lahko ostane veljavna do izida take proučitve.

11.4 Določbe 6. člena se v zvezi z dokazi in postopki uporabljajo za kakršnokoli proučitev na podlagi tega člena. Vsaka taka proučitev mora biti učinkovita in po normalni poti končana v 12 mesecih od dneva uvedbe proučitve.

11.5 Določbe tega člena se smiselno uporabljajo za cenovne zaveze, sprejete na podlagi 8. člena.

12. člen

Razglas in razlaga ugotovitev

12.1 Ko oblasti menijo, da je dovolj dokazov, ki utemeljujejo uvedbo protidumpinške preiskave v skladu s 5. členom, tedaj mora biti članica oziroma članice, katerih proizvodi so predmet take preiskave, in druge zainteresirane strani, za katere preiskovalne oblasti vedo, da imajo interes, obveščene ter se s tem namenom objavi razglas.

12.1.1 Razglas o uvedbi preiskave mora vsebovati ali na drug način zagotoviti v obliki ločenega poročila[23] dovolj informacij o:

(i) imenu države ali držav izvoznic in določenega proizvoda;

(ii) datumu uvedbe preiskave;

(iii) podlagi v vlogi, na kateri temelji domneva, da gre za dumping;

(iv) povzetku dejavnikov, na katerih temelji domnevna škoda;

(v) naslovu, kamor naj zainteresirani pošiljajo svoje pisne izjave;

(vi) časovnih rokih, ki se dopuščajo zainteresiranim, da sporočajo svoja mnenja.

12.2 Razglas se da za vsako začasno ali končno ugotovitev, bodisi pritrdilno ali zavrnilno, ter za vsako odločitev o sprejemanju zaveze na podlagi 8. člena, o koncu take zaveze in o določitvi dokončne protidumpinške carine. Vsak tak razglas mora vsebovati ali na drugačen način zagotoviti v obliki ločenega poročila dovolj podrobnosti o ugotovitvah in sprejetih sklepih v zvezi z vsemi dejanskimi in pravnimi vprašanji, za katere preiskovalne oblasti menijo, da so materialne narave. Vsi taki razglasi in poročila se morajo poslati članici ali članicam, katerih proizvodi so predmet takih ugo-

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[21] Določitev končne obveznosti plačila protidumpinške carine, kot je določeno v tretjem odstavku 9. člena, sama po sebi ni proučitev v smislu tega člena.

[22] Če se znesek protidumpinške carine določa za nazaj, ugotovitev v zadnjem ugotovitvenem postopku na podlagi pododstvka 3.1 9. člena, da se ne terja carina, sama po sebi ne nalaga oblastem, da odpravijo dokončno določeno carino.

[23] Tam, kjer oblasti zagotavljajo informacije in razlage v okviru določb tega člena v obliki ločenega poročila, morajo poskrbeti, da je tako poročilo dejansko na voljo širši javnosti.

tovitev oziroma dejanj, in drugim zainteresiranim stranem, za katere je znano, da imajo interes.

12.2.1 Razglas o uvedbi začasnih ukrepov mora vsebovati ali drugače zagotavljati v obliki ločenega poročila dovolj podrobne razlage v zvezi s predhodnimi ugotovitvami o obstoju dumpinga in škode in se morajo nanašati na dejanska in pravna vprašanja, ki so bila podlaga za to, da se argumenti sprejmejo ali zavrnejo. Tak razglas ali poročilo mora ob ustreznem upoštevanju zahteve za varovanje zaupnih informacij vsebovati zlasti:

(i) imena dobaviteljev, ali če to ni izvedljivo, ime države dobaviteljice;

(ii) opis proizvoda, ki ustreza potrebam carine;

(iii) ugotovljeno stopnjo dumpinga in celovito razlago razlogov za uporabljeno metodologijo pri ugotavljanju in primerjanju izvozne cene in normalne vrednosti na osnovi 2. člena;

(iv) okoliščine, ki se nanašajo na škodo, kot so določene v 3. členu;

(v) poglavitne razloge, ki so podlaga za določene ugotovitve.

12.2.2 Razglas o končani ali prekinjeni preiskavi ob pritrdilni ugotovitvi, ki je podlaga za uvedbo dokončne carine ali za sprejem cenovne zaveze, mora vsebovati ali drugače zagotoviti v obliki ločenega poročila vse ustrezne informacije o dejanskih in pravnih zadevah in razlogih, ki so bili podlaga za uvedbo končnega ukrepa ali za sprejem cenovne zaveze ob ustreznem upoštevanju zahteve po varovanju zaupnih informacij. Razglas ali poročilo mora vsebovati zlasti informacije, ki so opisane v pododstavku 2.1, kakor tudi razloge za sprejem ali zavrnitev relevantnih argumentov ali trditev izvoznikov ali uvoznikov ter osnovo za katerokoli odločitev na podlagi pododstavka 10.2 6. člena.

12.2.3 Razglas o končani ali prekinjeni preiskavi, ki sledi sprejeti zavezi na podlagi 8. člena, mora vključevati ali drugače zagotavljati v obliki ločenega poročila tudi tisti del zaveze, ki ni zaupen.

12.3 Določbe tega člena se smiselno nanašajo na uvedbo in konec proučitev na podlagi 11. člena in na odločitve na podlagi 10. člena v zvezi z uporabo carin za nazaj.

13. člen

Sodna revizija

Vsaka članica, katere nacionalna zakonodaja vsebuje določbe o protidumpinških ukrepih, mora imeti sodne, arbitražne ali upravne svete ali postopke, med drugim z namenom takojšnje proučitve upravnih ukrepov, ki se nanašajo na dokončne ugotovitve in proučitve ugotovitev v smislu 11. člena. Taki sveti ali postopki morajo biti neodvisni od oblasti, ki so odgovorne za omenjene ugotovitve ali proučitve.

14. člen

Protidumpinški postopek v korist tretje države

14.1 Vlogo za uvedbo protidumpinškega postopka v korist tretje države vložijo oblasti tretje države, ki zahteva tak postopek.

14.2 Taki vlogi morajo biti priložene informacije o cenah, ki kažejo na to, da obstaja dumpinški uvoz, in podrobne informacije, ki kažejo, da domnevni dumping povzroča škodo določeni domači industriji v tretji državi. Vlada tretje države mora zagotoviti vso pomoč oblastem države uvoznice, da bi dobili vse nadaljnje informacije, ki jih slednja utegne potrebovati.

14.3 Pri obravnavi take vloge morajo oblasti države uvoznice upoštevati učinke domnevnega dumpinga na določeno industrijo kot celoto v tretji državi; drugače rečeno, škoda se ne določa zgolj po učinkih domnevnega dumpinga na izvoz te industrije v državo uvoznico ali celo na celoten izvoz te industrije.

14.4 Odločitev o tem, ali voditi postopek v določenem primeru, ostaja pri državi uvoznici. Če se država uvoznica odloči, da je pripravljena na določeno dejavnost, je stvar države, da pristopi k Svetu za trgovino in blago zaradi pridobitve soglasja za tako dejavnost.

15. člen

Članice države v razvoju

Splošno je znano, da morajo razvite države članice posebej upoštevati posebne okoliščine članic držav v razvoju pri obravnavi vloge za uvedbo protidumpinških ukrepov na podlagi tega sporazuma. Možnosti konstruktivnih ukrepov, ki jih določa ta sporazum, morajo biti raziskane pred uporabo protidumpinških carin, če bi te prizadele temeljne interese članic držav v razvoju.

II. DEL

16. člen

Odbor za protidumping

16.1 Ustanovi se Odbor za protidumping (v nadaljnjem besedilu Odbor) , ki ga sestavljajo predstavniki vsake članice. Odbor izvoli svojega predsedujočega in se sestaja najmanj dvakrat na leto in drugače, če je predvideno z ustreznimi določbami tega sporazuma na zahtevo vsake članice. Odbor ima odgovornosti, določene s tem sporazumom ali ki jih določijo članice, ter mora dati članicam možnosti, da se posvetujejo o vseh zadevah, ki se nanašajo na izvajanje tega sporazuma ali na uveljavljanje njegovih ciljev. Sekretariat WTO opravlja naloge Sekretariata Odbora.

16.2 Odbor lahko po potrebi ustanavlja pomožna telesa.

16.3 Pri opravljanju svojih nalog se lahko Odbor in katerakoli pomožna telesa posvetujejo in zahtevajo informacije pri kateremkoli viru, za katerega menijo, da je primeren. Toda preden Odbor ali pomožno telo zahteva informacije iz vira, ki je v pravni pristojnosti določene članice, mora o tem obvestiti to članico. Pridobiti mora soglasje članice in kateregakoli podjetja, s katerim se želijo posvetovati.

16.4 Članice brez odlašanja Odboru poročajo o vseh sprejetih predhodnih ali končnih protidumpinških ukrepih. Taka poročila morajo biti na voljo v Sekretariatu zaradi vpogleda drugim članicam. Članice prav tako predložijo polletna poročila v zvezi s kakršnokoli protidumpinško dejavnostjo, ki so jo začele v zadnjem 6-mesečnem obdobju. Polletna poročila se predložijo v dogovorjeni običajni obliki.

16.5 Vsaka članica sporoči Odboru, (a) katere od njenih oblasti so pristojne za to, da sprožijo in vodijo preiskave, na katere se nanaša 5. člen, in (b) domače postopke, ki urejajo uvedbo in vodenje takih preiskav.

17. člen

Posvetovanje in reševanje sporov

17.1 Razen če ni drugače določeno, se uporablja Dogovor o reševanju sporov v zvezi s posvetovanji in reševanjem sporov na podlagi tega sporazuma.

17.2 Vsaka članica z razumevanjem obravnava in dopušča dovolj možnosti za posvetovanje v zvezi s stališči druge članice do katerekoli zadeve, ki vpliva na izvajanje tega sporazuma.

17.3 Če določena članica meni, da je kakršnakoli korist, ki ji neposredno ali posredno pripada na podlagi tega sporazuma, izničena ali omejena, ali da je doseganje kateregakoli cilja ovirano zaradi druge ali drugih članic, tedaj sme z namenom, da se doseže obojestransko zadovoljiva rešitev,

pisno zahtevati posvetovanje z določeno članico ali članicami. Vsaka članica z razumevanjem obravnava vsako zahtevo druge članice za posvetovanje.

17.4 Če članica, ki je zahtevala posvetovanje, meni, da se s posvetovanjem v skladu s tretjim odstavkom ni uspelo doseči obojestransko dogovorjene rešitve, in če so upravna telesa članice uvoznice opravila neko končno dejanje z namenom določitve dokončne protidumpinške carine ali z namenom sprejetja cenovne zaveze, tedaj sme zadevo posredovati Organu za reševanje sporov (Dispute Settlement Body, DSB) . Če ima začasen ukrep znaten učinek in članica, ki je posvetovanje zahtevala, meni, da je bil ukrep sprejet v nasprotju z določbami prvega odstavka 7. člena, sme ta članica tako zadevo prav tako poslati DSB.

17.5 DSB na zahtevo pritožbene strani ustanovi ugotovitveni svet, da prouči zadevo na podlagi:

(i) pisne izjave članice, ki je zahtevo dala, ki pove, na kakšen način je korist, ki ji pripada neposredno ali posredno na podlagi tega sporazuma, izničena ali omejena ali na kakšen način je ovirano doseganje ciljev tega sporazuma, in

(ii) dejstev, ki so dostopna oblastem članice uvoznice v skladu z ustreznimi domačimi postopki.

17.6 Pri proučevanju zadeve, na katero se nanaša peti odstavek:

(i) ugotovitveni svet pri presoji dejstev v zadevi določi, ali so oblasti na pravilen način ugotovile dejstva in ali je bilo njihovo ovrednotenje teh dejstev nepristransko in objektivno. Če je bila ugotovitev dejstev pravilna ter je bilo ovrednotenje nepristransko in objektivno, četudi bi ugotovitveni svet utegnil sprejeti drugačne sklepe, se tako ovrednotenje ne zavrne;

(ii) ugotovitveni svet razlaga ustrezne določbe tega sporazuma v skladu z običajnimi pravili razlage mednarodnega javnega prava. Če svet ugotovi, da sporazum dopušča več kot eno možno razlago, tedaj svet ugotovi, da je ukrep oblasti usklajen s sporazumom, če temelji na eni od možnih razlag.

17.7 Zaupne informacije, ki so dane ugotovitvenemu svetu, se ne smejo razkrivati brez formalnega pooblastila osebe, organa ali oblasti, ki je te informacije dala. Če se take informacije zahtevajo od ugotovitvenega sveta, toda svet nima pooblastila take informacije razkriti, tedaj se zagotovi povzetek, ki ni zaupen in ga odobri oseba, organ ali oblast, ki je dala informacije.

III. DEL

18. člen

Končne določbe

18.1 Opraviti se ne sme nobeno konkretno dejanje proti dumpinškemu izvozu iz druge članice, razen v skladu z določbami GATT 1994, kakor jih razlaga ta sporazum.[24]

18.2 Ni možen noben pridržek glede katerekoli določbe tega sporazuma brez soglasja drugih članic.

18.3 Pod pogoji pododstavkov 3.1 in 3.2 se določbe tega sporazuma uporabljajo za preiskave in proučitve obstoječih ukrepov, ki so sprožene na podlagi vlog, vloženih na dan ali po datumu začetka veljavnosti Sporazuma o WTO za določeno članico.

18.3.1 V zvezi z izračunom stopnje dumpinga in postopki povračil v tretjem odstavku 9. člena se uporabljajo pravila, ki so se uporabljala v zadnjem postopku ugotavljanja obstoja dumpinga oziroma proučitve.

18.3.2 Za namene tretjega odstavka 11. člena se domneva, da so obstoječi protidumpinški ukrepi uvedeni na dan, ki ni poznejši od dneva začetka veljavnosti Sporazum o WTO za določeno članico, z izjemo tistih primerov, v katerih je v veljavni domači zakonodaji članice že vključena določba enake vrste kakor tista v omenjenem odstavku.

18.4 Vsaka članica naredi vse potrebno, splošno ali posebno, da najpozneje do dneva začetka veljavnosti Sporazuma o WTO zanjo zagotovi skladnost svojih zakonov, predpisov in upravnih postopkov z določbami tega sporazuma, kakor se te uporabljajo za določeno članico.

18.5 Vsaka članica obvesti Odbor o katerikoli spremembi v svojih zakonih in predpisih, ki so pomembni za ta sporazum, kakor tudi pri izvajanju takih zakonov in predpisov.

18.6 Odbor letno prouči izvajanje tega sporazuma ob upoštevanju njegovih ciljev. Vsako leto obvešča Svet za trgovino z blagom o razvoju v obdobju, na katero se nanaša določena proučitev.

18.7 Priloge k temu sporazumu so njegov sestavni del.

PRILOGA I

POSTOPKI ZA PREISKAVE NA KRAJU SAMEM NA PODLAGI SEDMEGA ODSTAVKA 6. ČLENA

1. Ob uvedbi preiskave morajo biti oblasti članice izvoznice in podjetja, za katera je znano, da so prizadeta, obveščeni o namenu izvedbe preiskave na kraju samem.

2. Če je namen, da se v izjemnih primerih v preiskovalno skupino vključijo tudi nevladni strokovnjaki, morajo biti o tem obveščene oblasti in podjetja članice izvoznice. Za take nevladne strokovnjake morajo veljati učinkovite sankcije za kršitev zaupnosti.

3. Pridobivanje izrecnega privoljenja prizadetih podjetij članice izvoznice pred dokončnim dogovorom o obisku bi moralo biti običajna praksa.

4. Takoj ko je prejeto soglasje določenih podjetij, morajo preiskovalne oblasti obvestiti oblasti članice izvoznice o imenih in naslovih podjetij, ki naj bi jih obiskali, in o dogovorjenih datumih.

5. Pred obiskom je treba prizadeta podjetja obvestiti dovolj vnaprej.

6. Obiske z namenom razlage vprašalnika je treba opraviti le na zahtevo izvoznega podjetja. Tak obisk se sme opraviti le, če (a) oblasti članice uvoznice o tem obvestijo predstavnike določene članice, in (b) slednja ne nasprotuje obisku.

7. Ker je poglavitni namen preiskave na kraju samem preveriti dane informacije ali pridobiti nadaljnje podrobnosti, jo je treba opraviti, potem ko je prejet odgovor na vprašalnik, razen če podjetje soglaša z nasprotnim ter vlado članice izvoznice preiskovalne oblasti obvestijo o predvidenem obisku in ta temu ne nasprotuje; običajna praksa pa bi morala biti, da se določena podjetja pred obiskom obvestijo o splošni naravi informacij, ki naj bi bile preverjene, in o tem, katere nadaljnje informacije je treba zagotoviti, vendar to ne izključuje zahtev na kraju samem, da se zagotovijo nadaljnje podrobnosti v luči že pridobljenih informacij.

8. Na poizvedovanja ali vprašanja, ki jih postavljajo oblasti ali podjetja članice izvoznice in so bistvena za uspešno preiskavo na kraju samem, je treba odgovoriti, kadar je možno, pred obiskom.

[24] Ni namen tega, da so izključene dejavnosti v skladu z ustreznimi določbami GATT 1994.

PRILOGA II

NAJBOLJŠE DOSTOPNE INFORMACIJE V SMISLU OSMEGA ODSTAVKA 6. ČLENA

1. Kakor hitro je možno, morajo po uvedbi preiskave preiskovalne oblasti natančno določiti informacije, ki jih zahtevajo od katerekoli zainteresirane strani, in način, na katerega mora zainteresirana stran te informacije pripraviti v svojem odgovoru. Oblasti morajo prav tako zagotoviti, da je določena stran seznanjena, če informacij ne zagotovi v razumnem času, da bodo oblasti prosto sprejemale ugotovitve na podlagi podatkov, ki so na voljo, vključno s tistimi, ki so vsebovani v vlogi za uvedbo preiskave, ki jo je vložila domača industrija.

2. Oblasti lahko tudi zahtevajo, da zainteresirana stran da svoj odgovor v obliki določenega sredstva (npr. računalniški trak) ali v računalniškem jeziku. Če je taka zahteva dana, tedaj morajo oblasti upoštevati razumno sposobnost zainteresirane strani, da odgovori v obliki zaželenega sredstva ali računalniškega jezika, in ne smejo zahtevati od zainteresirane strani, da v svojem odgovoru uporablja računalniški sistem, ki je drugačen od tistega, ki ga ta stran sama uporablja. Oblasti ne smejo vztrajati pri zahtevi, da se odgovor da kot računalniški zapis, če zainteresirana stran nima računalniške obdelave knjigovodskih podatkov in če bi zagotovitev zahtevanega odgovora imela za posledico neprimerno breme za zainteresirano stran, npr. povzročilo bi nerazumne dodatne stroške in težave. Oblasti ne bi smele vztrajati pri odgovoru v obliki določenega sredstva ali računalniškega jezika, če zainteresirana stran nima računalniško obdelanih knjigovodskih podatkov v takem sredstvu ali računalniškem jeziku in če bi priprava odgovora v skladu s tako zahtevo imela za posledico nerazumno dodatno breme za zainteresirano stran, npr. povzročilo bi nerazumne dodatne stroške in težave.

3. Vse informacije, ki jih je možno preverjati in so ustrezno predložene, tako da jih je možno uporabljati v preiskavi brez neprimernih težav, ki so dostavljene pravočasno, in če so temu ustrezno dane v sredstvu ali računalniškem jeziku, kar so oblasti zahtevale, je treba upoštevati pri oblikovanju ugotovitev. Če določena stran ne odgovori v obliki zaželenega sredstva ali računalniškega jezika, oblasti pa ugotovijo, da so dane okoliščine določene v drugem odstavku, tedaj odgovora, ki ni pripravljen v zaželenem sredstvu ali računalniškem jeziku, ne bi smeli šteti kot znatno oviro za preiskavo.

4. Če oblasti nimajo možnosti, da obdelujejo podatke, če so ti dani v določenem sredstvu (npr. računalniški trak) , tedaj je treba podatke zagotoviti v obliki pisnega gradiva ali katerikoli drugi obliki, ki je za oblasti sprejemljiva.

5. Četudi dane informacije niso idealne v vseh pogledih, to ne opravičuje oblasti, da jih ne upoštevajo, pod pogojem, da je zainteresirana stran ravnala v skladu s svojimi najboljšimi možnostmi.

6. Če dokazi ali informacije niso sprejeti, je treba o razlogih za to nemudoma obvestiti zainteresirano stran, ta pa mora imeti možnost, da zagotovi nadaljnja pojasnila v razumnem roku ob upoštevanju časovnih omejitev preiskave. Če oblasti menijo, da pojasnila niso zadovoljiva, je treba navesti razloge za zavrnitev takih dokazov ali informacij v katerikoli objavljeni ugotovitvi.

7. Če oblasti utemeljujejo svoje ugotovitve, vključno s tistimi, ki se nanašajo na normalno vrednost, na informacijah iz sekundarnega vira, vključno z informacijami, ki so vsebovane v vlogi za uvedbo preiskave, tedaj morajo biti posebej previdne. V takih primerih morajo oblasti, če je to izvedljivo, preveriti informacije iz drugih neodvisnih virov, ki so jim na razpolago, kot so objavljeni ceniki, uradna uvozna statistika in carinska poročila, in iz informacij drugih zainteresiranih strani med preiskavo. Toda jasno je, če neka zainteresirana stran ne sodeluje in se na ta način zadržujejo ustrezne informacije pred oblastmi, lahko taka situacija vodi k manj ugodnemu izidu za tako stran, kakor če bi ta stran sodelovala.

S P O R A Z U M
O IZVAJANJU VII. ČLENA SPLOŠNEGA SPORAZUMA O CARINAH IN TRGOVINI 1994

SPLOŠNE UVODNE OPOMBE

1. Primarna osnova za carinsko vrednost v smislu tega sporazuma je "transakcijska vrednost", kot jo določa 1. člen. 1. člen je treba brati skupaj z 8. členom, ki med drugim predvideva prilagajanje ceni, ki je dejansko plačana, ali ceni, ki jo je treba plačati, v primerih, ko so na kupčevi strani nastali določeni elementi, za katere se šteje, da sestavljajo del carinske vrednosti, niso pa upoštevani v dejansko plačani ceni ali v ceni, ki jo je treba plačati za uvoženo blago. 8. člen prav tako predvideva upoštevanje določenih ugodnosti v okviru transakcijske vrednosti, ki se utegnejo prenašati od kupca na prodajalca v obliki določenega blaga ali storitev kot nadomestilo za denar. Od 2. do 7. člena so določene metode ugotavljanja carinske vrednosti, kadar te ni možno določiti na podlagi 1. člena.

2. Kadar carinske vrednosti ni mogoče določiti na podlagi 1. člena, bi normalno moralo priti do posveta med carinsko upravo in uvoznikom z namenom, da se ugotovi osnova vrednosti v skladu z 2. in 3. členom. Možno je na primer, da ima uvoznik podatke o carinski vrednosti za enako ali podobno uvoženo blago, ki pa niso takoj na razpolago carinski upravi v pristanišču uvoza. Po drugi strani pa utegne carinska uprava imeti podatke o carinski vrednosti enakega ali podobnega uvoženega blaga, ki pa niso enostavno dostopni uvozniku. Posvetovalni postopek med obema stranema omogoča izmenjavo podatkov ob trgovinski zaupnosti z namenom, da se ugotovi prava osnova vrednosti za potrebe carinjenja.

3. 5. in 6. člen določata osnovi za carinsko vrednost, če te ni mogoče določiti na podlagi transakcijske vrednosti uvoženega blaga ali enakega ali podobnega uvoženega blaga. Z uporabo prvega odstavka 5. člena se določa carinska vrednost na podlagi cene, po kateri se blago prodaja v taki obliki, kot je uvoženo, neodvisnemu kupcu v državi uvoza. Uvoznik ima pravico, če tako zahteva, da se blago, ki se po uvozu predeluje naprej, ovrednoti v skladu s 5. členom. Z uporabo 6. člena se carinska vrednost ugotavlja na podlagi izračuna vrednosti. Metodi pomenita določene težave, zaradi česar ima uvoznik v skladu s 4. členom pravico izbirati vrstni red uporabe ene ali druge metode.

4. 7. člen določa način ugotavljanja carinske vrednosti, če te ni možno ugotavljati na podlagi kateregakoli od prejšnjih členov.

Članice se

v zvezi z mnogostranskimi trgovinskimi pogajanji,

z željo uveljavljanja ciljev GATT 1994 in zagotavljanja dodatnih koristi v mednarodni trgovini za države v razvoju,

ob spoznanju pomena določb VII. člena GATT 1994, z željo razčlenjevati pravila zaradi njihove uporabe in z namenom zagotavljati večjo enotnost in zanesljivost pri njihovem izvajanju,

ob spoznanju potrebe po pravičnem, poenotenem in nevtralnem sistemu vrednotenja blaga za potrebe carinjenja, ki izključujejo uporabo arbitrarnih ali fiktivnih carinskih vrednosti,

ob spoznanju, da bi morala biti v največji možni meri podlaga za vrednotenje blaga za potrebe carinjenja transakcijska vrednost blaga, ki je predmet vrednotenja,

ob spoznanju, da bi carinsko vrednotenje moralo temeljiti na enostavnih in enakovrednih merilih, ki so skladna s trgovinsko prakso, ter da morajo biti postopki vrednotenja splošno uporabni brez diskriminacije glede na vir dobavljenega blaga,

ob spoznanju, da se postopki vrednotenja ne bi smeli uporabljati v boju proti dumpingu,

sporazumejo, kot sledi:

I. DEL

PRAVILA CARINSKEGA VREDNOTENJA

1. člen

1. Carinska vrednost uvoženega blaga je transakcijska vrednost oziroma cena, ki je dejansko plačana ali ki naj bi bila plačana za blago, ki se proda kot izvoz v državo uvoza, ki pa se prilagaja na podlagi določb 8. člena, pod pogoji:

(a) da za kupca ni omejitev v zvezi z razpolaganjem ali uporabo blaga z izjemo omejitev, ki:

(i) so določene z zakonom ali pa jih postavljajo oblasti države uvoza;

(ii) omejujejo zemljepisno območje, na katerem je možno blago preprodajati; ali

(iii) bistveno ne vplivajo na vrednost blaga;

(b) da je prodaja ali cena na določen način pogojena ali zahteva določeno povratno korist, katere vrednosti pa ni možno določiti v zvezi z blagom, ki se vrednoti;

(c) da noben del prihodka iz katerekoli kupčeve nadaljnje prodaje, razpolaganja ali uporabe blaga ne pripada neposredno ali posredno prodajalcu, razen če je možna ustrezna prilagoditev glede na določbe 8. člena; in

(d) da kupec in prodajalec nista v razmerju ali če sta v razmerju, da je transakcijska vrednost sprejemljiva za carinjenje v skladu z določbami drugega odstavka.

2. (a) Pri odločanju, ali je transakcijska vrednost sprejemljiva za namene prvega odstavka, dejstvo, da sta kupec in prodajalec v razmerju v smislu 15. člena, samo po sebi ne zadostuje za to, da se transakcijska vrednost ugotovi kot nesprejemljiva. V takih primerih je treba proučiti okoliščine v zvezi s prodajo in sprejeti transakcijsko vrednost, če razmerje ni vplivalo na ceno. Če carina glede na informacije uvoznika ali informacije, ki so drugače pridobljene, meni, da obstaja podlaga za oceno, da je razmerje vplivalo na ceno, mora podlago za tako mnenje sporočiti uvozniku, uvoznik pa mora imeti razumne možnosti za ugovor. Na zahtevo uvoznika mora biti tako sporočilo v pisni obliki.

(b) Pri prodaji med osebami, med katerimi obstaja razmerje, se transakcijska vrednost sprejme in se blago vrednoti v skladu z določbami prvega odstavka, kadarkoli uvoznik prikaže, da je taka vrednost približno enaka eni od vrednosti, ki je ugotovljena sočasno ali pa v približno istem času:

(i) transakcijski vrednosti pri prodaji enakega ali podobnega blaga za izvoz v isto državo uvoza kupcem, ki niso v razmerju ;

(ii) carinski vrednosti enakega ali podobnega blaga, ki je ugotovljena v skladu z določbami 5. člena;

(iii) carinski vrednost enakega ali podobnega blaga, ki je ugotovljena v skladu z določbami 6. člena.

Pri uporabi zgoraj določenih preizkusov je treba upoštevati ugotovljene razlike v ravneh trgovine, v količinah, elemente 8. člena in stroške, ki nastanejo pri prodajalcu pri prodaji, pri kateri pa prodajalec in kupec nista v razmerju, ki pa niso nastali pri prodajalcu pri prodaji, v kateri sta prodajalec in kupec v razmerju.

(c) Preizkusi, ki so določeni v drugem (b) odstavku, se uporabijo na predlog uvoznika, vendar vselej le zaradi primerjave. Nadomestne vrednosti se ne smejo določati na podlagi drugega (b) odstavka.

2. člen

1. (a) Če carinske vrednosti ni mogoče ugotoviti na podlagi določb 1. člena, tedaj je carinska vrednost enaka transakcijski vrednosti enakega pri izvozu v isto državo prodanega blaga, katerega izvoz je opravljen v istem ali v približno istem času kot blago, ki se vrednoti.

(b) Pri uporabi tega člena se transakcijska vrednost enakega blaga pri prodaji na enaki trgovinski ravni in v približno enakih količinah kot blago, ki se vrednoti, uporabi za ugotavljanje carinske vrednosti. Če taka prodaja ne obstaja, se uporabi enako blago, ki je prodano na drugačni trgovinski ravni in/ali v drugačnih količinah, s prilagoditvami, ki morajo upoštevati razlike v zvezi z različno trgovinsko ravnijo prodaje in/ali količino, pod pogojem, da se take prilagoditve lahko utemeljujejo z dokazili, ki jasno kažejo na razumno in točno prilagoditev, ne glede na to, ali je rezultat tega povišanje ali znižanje vrednosti.

2. Če so stroški in dajatve, na katere se nanaša drugi odstavek 8. člena, vključeni v transakcijsko vrednost, so potrebne prilagoditve, ki nujno upoštevajo pomembnejše razlike v teh stroških in dajatvah med uvoženim blagom in enakim blagom, ki pa izhajajo iz razlik v zvezi z razdaljami in načinom prevoza.

3. Če pri uporabi tega člena pride do več kot ene transakcijske vrednosti za enako blago, se upošteva najnižja vrednost, na podlagi katere se določi carinska vrednost za uvoženo blago.

3. člen

1. (a) Če carinske vrednosti uvoženega blaga ni mogoče ugotoviti na podlagi določb 1. in 2. člena, tedaj velja kot carinska vrednost transakcijska vrednost podobnega blaga, prodanega v izvozu isti državi uvoza, ki je izvoženo sočasno ali skoraj sočasno kot blago, ki se vrednoti.

(b) Pri uporabi tega člena se za ugotavljanje carinske vrednosti uporabi transakcijska vrednost podobnega blaga pri prodaji na enaki trgovinski ravni in v bistveno enakih količinah kakor blago, ki se vrednoti. Če ni mogoče ugotoviti nobene take prodaje, se uporabi transakcijska vrednost za podobno blago, ki je prodano na drugačni trgovinski ravni in/ali v drugačnih količinah ob upoštevanju razlik, ki jih je možno pripisovati trgovinski ravni in/ali količini pod pogojem, da je možno take prilagoditve utemeljiti s predloženimi dokazili, ki jasno kažejo na razumnost in točnost takih prilagoditev, ne glede na to ali take prilagoditve pomenijo povečanje ali zmanjšanje vrednosti.

2. Če se stroški in dajatve, na katere se nanaša drugi odstavek 8. člena, vključeni v transakcijsko vrednost, se opravi prilagoditev z namenom upoštevanja znatnih razlik v stroških in dajatvah med uvoženim in določenim podobnim blagom, ki izvirajo iz razlik v razdalji in načinu prevoza.

3. Če se pri uporabi tega člena ugotovi več kot ena transakcijska vrednost za podobno blago, se uporabi najnižja vrednost za ugotovitev carinske vrednosti uvoženega blaga.

4. člen

Če carinske vrednosti ni mogoče določiti na podlagi 1., 2. in 3. člena, se carinska vrednost ugotavlja v skladu z določbami 5. člena, ali če se carinska vrednost ne more ugotoviti na podlagi tega člena, tedaj se ugotavlja na podlagi 6. člena, razen če se na zahtevo uvoznika zamenja vrstni red med 5. in 6. členom.

5. člen

1. (a) Če se uvoženo blago ali enako ali podobno uvoženo blago v državi uvoza prodaja v enakem stanju, kot je uvoženo, je osnova za carinsko vrednost na ta način uvoženega blaga v smislu tega člena cena na enoto proizvoda, po kateri se uvoženo ali enako oziroma podobno blago prodaja v največji agregirani količini sočasno ali ob približno istem času kot uvoženo blago, ki se vrednoti, osebam, ki niso v razmerju z osebami, od katerih kupujejo tako blago, ob pogoju znižanj za:

(i) provizije, ki se običajno plačujejo ali za katere obstaja dogovor o plačilu, ali običajna povišanja, ki so namenjena kot dobiček, in splošne stroške v zvezi s prodajo blaga v določeni državi uvoza, ki je enakega razreda ali enake vrste;

(ii) običajne prevozne stroške in zavarovanje in druge vezane stroške, ki nastanejo v državi uvoza;

(iii) če je ustrezno, za stroške in dajatve, na katere se nanaša drugi odstavek 8. člena in

(iv) carine in druge notranje dajatve, ki se plačujejo v državi uvoza v zvezi z uvozom ali prodajo blaga.

(b) Če se niti uvoženo blago niti enako ali podobno blago ne prodaja sočasno ali ob približno enakem času kot uvoz blaga, ki se vrednoti, je osnova za carinsko vrednost pod pogoji določb prvega odstavka cena na enoto blaga, po kateri se uvoženo blago, enako ali podobno uvoženo blago prodaja v državi uvoza v enaki obliki, kot je uvoženo, v najhitrejšem času po uvozu blaga, ki se vrednoti, vendar ne pozneje kot v 90 dneh po takem uvozu.

2. Če se v državi uvoza ne prodaja uvoženo blago niti enako ali podobno blago v enaki obliki, kot je uvoženo, tedaj se na zahtevo uvoznika določi carinska vrednost na podlagi cene enote, po kateri se uvoženo blago proda po nadaljnji predelavi v največji možni agregirani količini osebam v državi uvoza, ki niso v razmerju z osebami, od katerih tako blago kupujejo, ob tem da se ustrezno upoštevajo s predelavo dodana vrednost in znižanja, določena v prvem (a) odstavku.

6. člen

1. Carinska vrednost uvoženega blaga mora v smislu določb tega člena temeljiti na izračunu vrednosti. Izračun vrednosti je sestavljen iz naslednjih vsot:

(a) strošek ali vrednost materiala in izdelave ali druge predelave, ki se uporabi pri proizvodnji uvoženega blaga;

(b) znesek, ki je namenjen kot dobiček, in splošni izdatki, enaki tistim, ki se običajno prikazujejo pri prodaji blaga istega razreda ali vrste kakor blago, ki se vrednoti in ga proizvajajo proizvajalci v državi izvoza za izvoz v državo uvoza;

(c) strošek ali vrednost vseh drugih izdatkov, ki so potrebni za to, da se ustrezno izrazi opcija vrednotenja, ki jo je izbrala država članica v skladu z drugim odstavkom 8. člena.

2. Nobena članica ne sme zahtevati ali prisiljevati katerekoli osebe, ki ne prebiva na njenem ozemlju, da predloži v pregled ali da dovoli dostop do kateregakoli računa ali zapisa z namenom, da se določi izračun vrednosti. Toda informacije, ki jih je dal proizvajalec blaga z namenom določanja carinske vrednosti v skladu z določbami tega člena, smejo oblasti države uvoza preverjati v drugi državi v soglasju s proizvajalcem in pod pogojem, da dovolj časa vnaprej o tem obvestijo vlado prizadete države in da ta ne nasprotuje preiskavi.

7. člen

1. Če carinska vrednost uvoženega blaga ni določljiva v skladu z določbami 1. do 6. člena, se carinska vrednost ugotavlja z uporabo razumnih sredstev v skladu z načeli in splošnimi določbami tega sporazuma in VII. člena GATT 1994 in na podlagi podatkov, ki so na razpolago v državi uvoza.

2. Nobena carinska vrednost se ne sme ugotavljati v smislu določb tega člena na podlagi:

(a) prodajne cene v državi uvoza za blago, ki se proizvaja v tej državi;

(b) sistema, ki za potrebe carinjenja predvideva sprejem višje vrednosti od dveh možnih vrednosti;

(c) cene blaga na domačem trgu države izvoza;

(d) stroškov proizvodnje, ki so različni od izračunov vrednosti, določenih za enako ali podobno blago v skladu z določbami 6. člena;

(e) cen blaga, namenjenega izvozu v državo, ki ni država uvoza;

(f) najmanjših carinskih vrednosti ali

(g) arbitrarnih ali fiktivnih vrednosti.

3. Če uvoznik tako zahteva, mora biti pisno obveščen o carinski vrednosti, ki je ugotovljena v skladu z določbami tega člena, in o metodi, s katero se je ugotavljala ta vrednost.

8. člen

1. Pri ugotavljanju carinske vrednosti na podlagi določb 1. člena je k dejansko plačani ceni ali tisti, ki jo je treba plačati za uvoženo blago, treba dodati:

(a) naslednje postavke, ki bremenijo kupca in niso vključene v ceno, ki je dejansko plačana ali pa jo je treba plačati za blago:

(i) provizije in plačilo za posredovanje, razen nakupovalnih provizij;

(ii) cena za zabojnike, ki se pri carinjenju obravnava enotno z določenim blagom;

(iii) stroške pakiranja bodisi za delo ali material;

(b) ustrezno določeno vrednost za naslednje blago in storitve, ki ga oziroma jih kupec dobavi oziroma opravi neposredno ali posredno, brezplačno ali ob znižani ceni, za uporabo v zvezi s proizvodnjo in prodajo za izvoz uvoženega blaga do take mere, do katere taka vrednost ni bila vključena v dejansko plačano ceno oziroma tisto, ki jo je treba plačati za:

(i) material, sestavne dele, dele in podobne predmete, vključene v uvoženem blagu;

(ii) orodje, kalupe in podobne predmete, ki se uporabljajo pri proizvodnji uvoženega blaga;

(iii) material, porabljen pri proizvodnji uvoženega blaga;

(iv) inženiring, razvojno, umetniško, oblikovalsko delo ter načrte in skice, opravljeno drugje kakor v državi uvoza, ki je potrebno za proizvodnjo uvoženega blaga;

(c) licenčnino za blago, ki se vrednoti, mora kupec plačati bodisi neposredno ali posredno kot pogoj za prodajo blaga, ki se vrednoti, do take mere, kolikor te licenčnine niso vključene v dejansko plačano ceno ali ceno, ki jo je treba plačati;

(d) vrednost kateregakoli dela prihodka iz kakršnekoli poznejše preprodaje, razpolaganja ali uporabe uvoženega blaga v neposredno ali posredno korist prodajalca.

2. Pri oblikovanju svoje zakonodaje vsaka članica zagotavlja vključitev ali izključitev naslednjega iz carinske vrednosti:

(a) stroškov prevoza uvoženega blaga do pristanišča ali kraja uvoza;

(b) stroškov nakladanja, razkladanja in manipulacije v povezavi s prevozom uvoženega blaga do pristanišča ali kraja uvoza; in

(c) stroškov zavarovanja.

3. Dodatki k ceni, ki je dejansko plačana ali jo je treba plačati, se dodajajo v okviru tega člena samo na osnovi objektivnih podatkov in takih, ki jih je možno količinsko opredeliti.

4. Nobeni dodatki se ne smejo dodajati k dejansko plačani ceni ali ceni, ki jo je treba plačati, pri določanju carinske vrednosti, razen kot je določeno s tem členom.

9. člen

1. Če je zaradi določitve carinske vrednosti potrebna zamenjava valute, se uporabi tečaj, ki so ga pristojne oblasti države uvoza objavile na ustrezen način, mora pa glede na obdobje, na katero se nanaša vsak dokument, v katerem se tečaj objavi, čim bolj točno izražati tekočo vrednost take valute v trgovinskih poslih, izražene v valuti države uvoza.

2. Uporabi se tisti tečaj, ki velja ob izvozu ali uvozu, kakor določi vsaka članica.

10. člen

Vse informacije, ki so zaupne ali so dane na zaupni podlagi, morajo pristojne oblasti za potrebe carinskega vrednotenja strogo obravnavati kot zaupne in jih ne smejo razkriti brez izrecnega dovoljenja osebe ali vlade, ki je take informacije dala, razen če utegne nastati potreba po razkritju v okviru sodnega postopka.

11. člen

1. Zakonodaja vsake članice mora v zvezi z določanjem carinske vrednosti zagotavljati pravico uvoznika do priziva brez kazni ali katerekoli druge osebe, ki je odgovorna za plačilo carine.

2. Pravica do prvega priziva brez kazni je možna pri oblasti znotraj carinske uprave ali pri samostojnem organu, toda zakonodaja vsake članice mora zagotavljati pravico do priziva brez kazni tudi pri sodnih oblasteh.

3. Sporočilo v zvezi z odločitvijo o prizivu se mora dati vlagatelju priziva z razlogi za določeno odločitev v pisni obliki. Vlagatelja je treba obvestiti tudi o kakršnikoli pravici do nadaljnjega priziva.

12. člen

Zakoni, predpisi, sodne odločbe in upravni sklepi, ki imajo splošno veljavo in dajejo veljavo temu sporazumu, mora določena država uvoza objavljati v skladu z X. členom GATT 1994.

13. člen

Če med ugotavljanjem carinske vrednosti za uvoženo blago nastane potreba po odložitvi dokončne določitve te carinske vrednosti, mora uvoznik blaga ne glede na to imeti možnost blago dvigniti pri carini, če uvoznik, če obstaja zahteva, zagotovi zadostna jamstva v obliki kavcije, pologa ali nekega drugega primernega instrumenta, ki pokriva morebitno plačilo carine, s katero utegne biti blago obremenjeno. Zakonodaja sleherne članice mora upoštevati take okoliščine.

14. člen

Opombe v Prilogi I k temu sporazumu so sestavni del tega sporazuma ter je treba člene tega sporazuma brati in uporabljati v povezavi z ustreznimi opombami. Prilogi II in III sta prav tako sestavni del tega sporazuma.

15. člen

1. V tem sporazumu:

(a) "carinska vrednost uvoženega blaga" pomeni vrednost blaga za namen odmere ad valorem carine za uvoženo blago;

(b) "država uvoza" pomeni državo ali carinsko območje uvoza; in

(c) izraz "proizveden" vključuje pridelavo, predelavo in izkop.

2. V tem sporazumu:

(a) "enako blago" pomeni blago, ki je enako v vseh pogledih, vključno po fizičnih značilnostih, kakovosti in slovesu. Manjše razlike v videzu ne izključujejo blaga, ki se sicer ujema s to definicijo, iz tega, da velja kot enako blago;

(b) "podobno blago" pomeni blago, ki, četudi ni enako v vseh pogledih, ima podobne značilnosti in podobno materialno sestavo, ki mu omogoča opravljanje enakih funkcij in je lahko komercialni nadomestek. Kakovost blaga, njegov sloves in obstoj blagovne znamke so med tistimi dejavniki, ki jih je treba upoštevati pri ugotavljanju, ali je blago podobno;

(c) izraza "enako blago" in "podobno blago" ne vključujeta, odvisno od primera do primera, blaga, ki vsebuje ali izraža inženiring, razvoj, umetniško delo, oblikovanje, in načrte in skice, kar ni upoštevano v okviru prvega (b) (iv) odstavka 8. člena, ker so ti elementi vključeni v državi uvoza;

(d) blaga ni možno imeti za "enako blago" ali "podobno blago", če ni proizvedeno v isti državi kot blago, ki se vrednoti;

(e) blago, ki ga proizvaja druga oseba, se upošteva le tedaj, ko ni enakega blaga ali podobnega blaga, odvisno od primera, ki ga proizvaja ista oseba kot blago, ki se vrednoti.

3. V tem sporazumu "blago istega razreda ali vrste" pomeni blago, ki spada v skupino ali vrsto blaga, ki ga proizvaja določena industrija ali industrijska panoga, ter vključuje enako ali podobno blago.

4. Za namene tega sporazuma velja, da so osebe v razmerju, samo če:

(a) so vodilni uradniki ali direktorji v poslovodstvih ene in druge osebe;

(b) so pravno priznani poslovni družabniki;

(c) so delodajalec in delojemalec;

(d) je katerakoli oseba, ki je neposredni ali posredni lastnik ali nadzoruje ali je imetnik 5 odstotkov ali več navadnih delnic z glasovalno pravico ali deležaali oboje;

(e) ena izmed njih neposredno ali posredno nadzoruje drugo;

(f) sta obe osebi neposredno ali posredno pod nadzorom tretje osebe;

(g) skupaj neposredno ali posredno nadzorujeta tretjo osebo ali

(h) so člani iste družine.

5. Za osebe, ki so z drugo v poslovni zvezi na ta način, da so edine zastopnice, edine distributerke ali edine koncesionarke, kakorkoli že opisane, druge osebe, velja, da so v razmerju za namene tega sporazuma, če ustrezajo merilom četrtega odstavka.

16. člen

Na osnovi pisne zahteve mora imeti uvoznik pravico do pisne obrazložitve carinske uprave države uvoza o tem, na kakšen način je določena carinska vrednost uvoznikovega blaga.

17. člen

V tem sporazumu se ne more nič razumeti kot omejujoče ali kot vprašljivo v zvezi s pravicami carinske uprave, da se zadovolji glede resnice ali točnosti katerekoli izjave ali dokumenta ali deklaracije, ki se predloži z namenom carinskega vrednotenja.

II. DEL

UPRAVLJANJE, POSVETOVANJA IN REŠEVANJE SPOROV

18. člen

Organi

1. Ustanovi se Odbor za carinsko vrednotenje (v nadaljnjem besedilu Odbor) , ki je sestavljen iz predstavnikov vsake članice. Odbor izvoli predsedujočega in se običajno sestaja enkrat letno ali tako, kot je določeno v ustreznih določbah tega sporazuma z namenom, da se članicam da priložnost za posvetovanje v zadevah v zvezi z upravljanjem sistema carinskega vrednotenja v katerikoli članici, ki utegne vplivati na izvajanje tega sporazuma ali na doseganje ciljev tega sporazuma in izvajanja takih drugih odgovornosti, ki mu jih članice utegnejo naložiti. Sekretariat WTO opravlja naloge Sekretariata Odbora.

2. Ustanovi se Tehnični odbor za carinsko vrednotenje (v nadaljnjem besedilu Tehnični odbor) pod pokroviteljstvom Sveta za carinsko sodelovanje (Customs Co-operation Council, v nadaljnjem besedilu CCC) , ki ima odgovornosti, določene v Prilogi II k temu sporazumu in deluje v skladu s pravili o postopkih, ki so tam vsebovana.

19. člen

Posvetovanja in reševanje sporov

1. Če ni drugače določeno, se uporablja Dogovor o reševanju sporov za posvetovanja in reševanje sporov na podlagi tega sporazuma.

2. Če katerakoli članica meni, da je katerakoli korist, ki ji pripada neposredno ali posredno na podlagi tega sporazuma, predmet izničenja ali omejevanja ali da je doseganje kateregakoli cilja tega sporazuma predmet oviranja kot posledica dejavnosti druge članice ali drugih članic, sme z namenom, da doseže obojestransko zadovoljivo rešitev take zadeve, zahtevati posvetovanja z določeno članico ali članicami. Vsaka članica z razumevanjem prouči katerokoli zahtevo za posvetovanje druge članice.

3. Tehnični odbor na zahtevo zagotovi nasvete in pomoč članicam, ki se udeležujejo posvetovanj.

4. Na zahtevo določene strani v sporu ali na podlagi lastne pobude sme ugotovitveni svet, ki je ustanovljen z namenom, da prouči spor v zvezi z določbami tega sporazuma, zahtevati od Tehničnega odbora, da prouči katerokoli vprašanje, ki ga je treba proučiti v tehničnem smislu. Ugotovitveni svet določi mandat Tehničnega odbora v zvezi s konkretnim sporom in določi rok za prejem poročila Tehničnega odbora. Ugotovitveni svet upošteva poročilo Tehničnega odbora. Če Tehnični odbor ne more doseči enotnega mnenja v zadevi, ki je dana v obravnavo v skladu s tem odstavkom, mora ugotovitveni svet dati stranem v sporu možnost, da mu predstavijo svoja stališča do zadeve.

5. Zaupne informacije, ki se dajejo ugotovitvenemu svetu, se ne smejo razkrivati brez formalnega pooblastila osebe, organa ali oblasti, ki je dala take informacije. Če se take informacije zahtevajo od ugotovitvenega sveta, ugotovitveni svet pa nima pooblastila za tako sporočanje, se zagotovi povzetek teh informacij, ki ni zaupne narave in ga odobri oseba, organ ali oblast, ki je informacije dala.

III. DEL

POSEBNA IN PRISTRANSKA OBRAVNAVA

20. člen

1. Članice države v razvoju, ki niso podpisnice Sporazuma o izvajanju VII. člena Splošnega sporazuma o carinah in trgovini z dne 12. aprila 1979, lahko odložijo uporabo določb tega sporazuma za obdobje, ki ni daljše kot 5 let od dneva začetka veljavnosti Sporazuma o WTO za take članice. Članice države v razvoju, ki se odločijo za odložitev uporabe tega sporazuma, o tem ustrezno obvestijo generalnega direktorja WTO.

2. Dodatno k prvemu odstavku članice države v razvoju, ki niso podpisnice Sporazuma o izvajanju VII. člena Splošnega sporazuma o carinah in trgovini z dne 12. aprila 1979, lahko odložijo uporabo drugega (b) (iii) odstavka 1. člena in 6. člena za obdobje, ki ni daljše od treh let od začetka njihove uporabe vseh drugih določb tega sporazuma. Članice države v razvoju, ki se odločijo za odložitev uporabe določb, ki so določene v tem odstavku, o tem ustrezno obvestijo generalnega direktorja WTO.

3. Razvite države članice morajo pod skupno dogovorjenimi pogoji dati tehnično pomoč članicam državam v razvoju, ki jo zahtevajo. Na tej podlagi razvite države članice pripravijo programe tehnične pomoči, ki lahko med drugim vključujejo usposabljanje osebja, pomoč pri pripravljanju izvedbenih ukrepov, dostop do virov informacij v zvezi z metodologijo carinskega vrednotenja in nasvete v zvezi z uporabo določb tega sporazuma.

IV. DEL

KONČNE DOLOČBE

21. člen

Pridržki

Nobenega pridržka ni možno dati glede nobene določbe tega sporazuma brez soglasja drugih članic.

22. člen

Nacionalna zakonodaja

1. Vsaka članica najpozneje od dneva začetka veljavnosti tega sporazuma zanjo poskrbi za skladnost svojih zakonov, predpisov in upravnih postopkov z določbami tega sporazuma.

2. Vsaka članica obvesti Odbor o kakršnikoli spremembi v svojih zakonih in predpisih, ki so v zvezi s tem sporazumom, in pri izvajanju teh zakonov in predpisov.

23. člen

Proučitev

Odbor letno prouči izvajanje in uporabo tega sporazuma ob upoštevanju njegovih ciljev. Odbor letno obvešča Svet za trgovino z blagom o razvoju v obdobju, na katero se proučitev nanaša.

24. člen

Sekretariat

Storitve v zvezi s tem sporazumom opravlja Sekretariat WTO, razen v zvezi s tistimi odgovornostmi, ki so posebej določene za Tehnični odbor, za katerega opravlja storitve Sekretariat CCC.

PRILOGA I

OBRAZLOŽITVENE OPOMBE

Splošna opomba

Zaporedje uporabe metod vrednotenja

1. Členi od 1 do 7 opredeljujejo določanje carinske vrednosti za uvoženo blago na podlagi določb tega sporazuma. Metode vrednotenja so razvrščene v zaporedju glede na njihovo uporabo. Glavna metoda carinskega vrednotenja je opredeljena v 1. členu in se uvoženo blago mora vrednotiti v skladu z določbami tega člena, kadarkoli so izpolnjeni tam predpisani pogoji.

2. Če carinske vrednosti ni možno ugotoviti na podlagi določb 1. člena, se ta ugotavlja z zaporedno uporabo členov, ki so za 1. členom, do prvega naslednjega, na podlagi katerega je možno določiti carinsko vrednost. Z izjemo določbe 4. člena se lahko uporabijo določbe naslednjega člena, ki takemu členu sledijo, samo kadar carinska vrednost ni določljiva na podlagi določbe določenega člena.

3. Če uvoznik ne zahteva, da se vrstni red 5. in 6. člena zamenja, je treba slediti normalnemu zaporedju členov. Če uvoznik vendarle tako zahteva, pa se izkaže, da je nemogoče določiti carinsko vrednost na podlagi določb 6. člena, se carinska vrednost ugotovi na podlagi določb 5. člena, če jo je možno ugotoviti na ta način.

4. Če carinske vrednosti ni mogoče določiti na podlagi določb 1. do 6. člena, se določi na podlagi določb 7. člena.

Uporaba splošno veljavnih računovodskih načel

1. "Splošno veljavna računovodska načela" se nanašajo na spoznano soglasje ali na znatno avtoritativno podporo v neki državi v določenem času v zvezi s tem, katere gospodarske resurse in obligacije je treba zapisati kot aktivo in pasivo oziroma katere spremembe v aktivi ali pasivi je treba zapisati, kako je treba meriti spremembe v aktivi in pasivi, katere informacije je treba objaviti in kako se objavljajo ter katera finančna poročila je treba pripravljati. Ti standardi so lahko širše smernice v splošni uporabi kakor tudi podrobna praksa in postopki.

2. Za namene tega sporazuma carinska uprava vsake članice uporablja informacije, ki so pripravljene na način, ki je v skladu s splošno veljavnim računovodskim načelom v državi ustrezno določenemu členu. Na primer ugotavljanje običajnega dobička in splošnih izdatkov na podlagi 5. člena bi se izvedlo z uporabo informacij, ki so pripravljene na način, ki je v skladu s splošno veljavnim računovodskim načelom države uvoza. Po drugi strani pa bi se ugotavljanje običajnega dobička in splošnih izdatkov na podlagi določb 6. člena izvedlo z uporabo informacij, ki so pripravljene na način, ki je v skladu s splošno veljavnim računovodskim načelom države proizvodnje. Kot nadaljnji primer bi se ugotavljanje elementa, ki je določen v prvem (b) (ii) odstavku, 8. člena, ki obstaja v državi uvoza, izvedlo z uporabo informacij, ki so v skladu s splošno veljavnimi računovodskimi načeli te države.

Opomba k 1. členu

Dejansko plačana cena ali cena, ki jo je treba plačati

1. Dejansko plačana cena ali cena, ki jo je treba plačati, je skupno plačilo kupca ali plačilo, ki ga mora kupec plačati prodajalcu ali v korist prodajalca za uvoženo blago. Ni nujno, da je plačilo v obliki nakazila. Plačilo je lahko v obliki akreditiva ali prenosnih dokumentov. Plačilo je lahko neposredno ali posredno. Primer posrednega plačila bi bila bodisi v celoti ali deloma poravnava dolga kupcu, ki mu ga je dolžan prodajalec.

2. Dejavnosti, ki jih opravi kupec na svoj lasten račun, razen tistih, za katere je treba opraviti določene prilagoditve, določene v 8. členu, ne veljajo kot posredno plačilo prodajalcu, četudi jih je možno šteti kot korist prodajalca. Stroški takih dejavnosti se pri ugotavljanju carinske vrednosti ne smejo dodajati ceni, ki je dejansko plačana ali ki jo je treba plačati.

3. Carinska vrednost ne sme vključevati naslednjih plačil ali stroškov pod pogojem, da so ločena od dejansko plačane cene ali cene, ki jo je treba plačati za uvoženo blago:

(a) plačila za gradnjo, postavitev, sestavo, vzdrževanje ali tehnično pomoč, ki se plačujejo za uvoženo blago po opravljenem uvozu, kot so industrijski obrat, stroji ali oprema;

(b) stroški prevoza po opravljenem uvozu;

(c) carine in dajatve države uvoza.

4. Dejansko plačana cena ali cena, ki jo je treba plačati, se nanaša na ceno uvoženega blaga. Pretok dividend ali drugih plačil od kupca k prodajalcu, ki nimajo zveze z uvoženim blagom, niso del carinske vrednosti.

Prvi (a) (iii) odstavek

Med omejitvami, zaradi katerih dejansko plačana cena ali cena, ki jo je treba plačati, ne bi bila nesprejemljiva, so omejitve, ki bistveno ne učinkujejo na vrednost blaga. Primer takih omejitev bi lahko bil, ko prodajalec od kupca avtomobilov zahteva, da jih ne prodaja ali razstavlja pred točno določenim datumom, ki pomeni začetek določenega letnika.

Prvi (b) odstavek

1. Če je prodaja ali cena odvisna od določenega pogoja ali koristi, za katero pa ni možno določiti vrednosti glede na blago, ki se vrednoti, v tem primeru transakcijska vrednost ni sprejemljiva za potrebe carinjenja. Nekaj takih primerov vključuje:

(a) prodajalec določi ceno za uvoženo blago pod pogojem, da bo kupec prav tako kupil drugo blago v določenih količinah;

(b) cena uvoženega blaga je odvisna od cene ali cen po katerih kupec uvoženega blaga proda drugo blago prodajalcu uvoženega blaga;

(c) cena se določi na podlagi načina plačila neodvisno od uvoženega blaga, če gre npr. za uvoženo blago, ki so polizdelki in jih je dobavil prodajalec pod pogojem, da prodajalec dobi določeno količino dokončanega blaga.

2. Pogoji ali koristi v zvezi s proizvodnjo ali trženjem uvoženega blaga ne smejo imeti za rezultat zavrnitev transakcijske vrednosti. Na primer, če kupec priskrbi prodajalcu inženiring in načrte v državi uvoza, to ne sme imeti za posledico zavrnitev transakcijske vrednosti za namene 1. člena. Podobno, če kupec v dogovoru s prodajalcem prevzame na svoj račun dejavnosti, ki se nanašajo na trženje uvoženega blaga, vrednost teh dejavnosti ni del carinske vrednosti niti ne morejo take dejavnosti imeti za posledico zavrnitev transakcijske vrednosti.

Drugi odstavek

1. Drugi (a) odstavek in drugi (b) odstavek omogočata različne načine ugotavljanja sprejemljivosti transakcijske vrednosti.

2. Drugi (a) odstavek določa, če sta kupec in prodajalec v razmerju, se morajo preveriti okoliščine v zvezi s prodajo, transakcijska vrednost pa se sprejme kot carinska vrednost pod pogojem, da razmerje ni vplivalo na ceno. Ni namenjeno, da se okoliščine preverjajo v vseh primerih, v katerih sta

kupec in prodajalec v razmerju. Taka preverjanja se opravijo zgolj tedaj, kadar obstajajo dvomi o sprejemljivosti cene. Če carinska uprava ne dvomi o sprejemljivosti cene, se ta sprejme brez nadaljnjih zahtev po informacijah od uvoznika. Na primer, carinska uprava je lahko že prej preverjala razmerja ali pa že ima podrobne informacije v zvezi s kupcem in prodajalcem, in se je že na podlagi takih preverjanj ali informacij zadovoljila, da razmerje ni vplivalo na ceno.

3. Če carinska uprava ne more sprejeti transakcijske vrednosti brez nadaljnjih preverjanj, tedaj mora dati uvozniku možnost, da po potrebi zagotovi take nadaljnje informacije, ki ji omogočajo, da preveri okoliščine v zvezi s prodajo. Na tej podlagi mora biti carinska uprava pripravljena preverjati ustrezne vidike transakcije, vključno z načinom, kako kupec in prodajalec organizirata medsebojne trgovinske odnose, in načinom, kako je oblikovana zadevna cena, z namenom, da ugotovi, ali je razmerje vplivalo na ceno. Če je možno prikazati, četudi sta kupec in prodajalec v razmerju na podlagi določb 15. člena, da kupujeta in prodajata drug drugemu, kot da ne bi bila v razmerju, tak primer kaže, da cena ni bila pod vplivom razmerja. Na primer, če je cena dogovorjena v skladu z normalno prakso oblikovanja cen v določeni industriji ali na način, ki ga kupec uporablja za oblikovanje cen pri prodaji kupcem, ki niso v razmerju sprodajalcem, to kaže na to, da cena ni bila pod vplivom razmerja. Kot nadaljnji primer, če se prikaže, da cena zadostuje za nadomestilo vseh stroškov z dodatkom dobička, ki je primerljiv s celotnim dobičkom, ki ga je podjetje ustvarilo v določenem primerljivem obdobju (npr. na letni osnovi) pri prodaji blaga istega razreda ali vrste, bi kazalo, da ni bilo vpliva na ceno.

4. Drugi (b) odstavek omogoča uvozniku, da prikaže da je transakcijska vrednost zelo blizu "preizkusni" vrednosti, ki jo je že prej sprejela carinska uprava, ter je zato sprejemljiva na podlagi določb 1. člena. Če je preizkus v skladu z drugim (b) odstavkom pozitiven, ni treba obravnavati vprašanja vplivov v skladu z drugim (a) odstavkom. Če ima carinska uprava že dovolj informacij, da je lahko brez nadaljnjih podrobnih preverjanj zadovoljna, da je eden od preizkusov, ki so določeni v drugem (b) odstavku pozitiven, tedaj ni razloga, da od uvoznika zahteva, da dokaže izpolnjevanje preizkusnih pogojev. V drugem (b) odstavku se izraz "kupci, ki niso v razmerju" nanaša na kupce, ki niso v nobenem določenem primeru v razmerju s prodajalcem.

Drugi (b) odstavek

Treba je upoštevati določeno število dejavnikov, da bi ugotovili ali je ena vrednost "zelo blizu" drugi vrednosti. Ti dejavniki vključujejo naravo uvoženega blaga, naravo industrije same, sezono, v kateri se blago uvaža, in ali je razlika v vrednosti trgovinsko pomembna. Ker se lahko ti dejavniki razlikujejo od primera do primera, je nemogoče uporabljati enoten standard, kot na primer fiksen odstotek za vsak primer. Na primer, majhna razlika v vrednosti je lahko nesprejemljiva za eno vrsto blaga, medtem ko je lahko velika razlika v primeru drugega blaga sprejemljiva pri določanju, ali je transakcijska vrednost zelo blizu "preizkusni" vrednosti, ki je predvidena v drugem (b) odstavku 1. člena.

Opomba k 2. členu

1. Pri uporabi 2. člena mora carinska uprava, kjerkoli je možno, uporabiti prodajo enakega blaga na enaki trgovinski ravni in v pretežno enakih količinah kot blago, ki se vrednoti. Če taka prodaja ne obstaja, je možno uporabiti prodajo, do katere pride pod enim izmed teh treh pogojev:

(a) prodaja na enaki trgovinski ravni, vendar v drugačnih količinah;

(b) prodaja na drugačni trgovinski ravni, vendar v pretežno enakih količinah;

(c) prodaja na drugačni trgovinski ravni in v drugačnih količinah.

2. Če se ugotovi prodaja na podlagi kateregakoli od teh treh pogojev, se od primera do primera opravijo prilagoditve samo glede:

(a) količinskih dejavnikov;

(b) dejavnikov trgovinske ravni; ali

(c) trgovinske ravni in količinskih dejavnikov.

3. Izraz "in/ali" dopušča prožnost pri uporabi prodaje in pri opravljanju potrebnih prilagoditev pri kateremkoli od treh zgoraj navednih pogojev.

4. Za namene 2. člena pomeni transakcijska vrednost enakega uvoženega blaga carinsko vrednost, ki je usklajena, kot je določeno v prvem (b) in drugem odstavku, ter je že bila sprejeta na podlagi 1. člena.

5. Pogoj za prilagajanje zaradi različnih trgovinskih ravni ali različnih količin, bodisi da vodi k povečanju ali zmanjšanju vrednosti, je, da je tako prilagajanje možno samo na podlagi predloženih dokazil, ki jasno kažejo na upravičenost in točnost prilagoditev, npr. veljavni ceniki, ki vsebujejo cene, ki se nanašajo na različne ravni ali različne količine. Na primer, če je uvoženo blago, ki se vrednoti, sestavljeno iz 10 enot in če je edino enako uvoženo blago, za katero obstaja transakcijska vrednost, prodano v količini 500 enot, če je hkrati ugotovljeno, da prodajalec daje količinske popuste, tedaj je možno doseči potrebno prilagoditev z uporabo prodajalčevega cenika ter z uporabo take cene, ki je uporabna za prodajo 10 enot. To ne pomeni, da je morala biti opravljena prodaja v količini 10 enot, če je ugotovljeno, da je cenik bona fide pri prodajah v drugačnih količinah. Če pa takega objektivnega merila ni, tedaj ugotavljanje carinske vrednosti na podlagi določb 2. člena ni ustrezno.

Opomba k 3. členu

1. Pri uporabi 3. člena mora carinska uprava, kadarkoli je možno, uporabiti prodajo podobnega blaga na enaki trgovinski ravni in v pretežno enakih količinah kot blago, ki se vrednoti. Če taka prodaja ne obstaja, je možno uporabiti prodajo, ki je opravljena v okviru enega izmed teh treh pogojev:

(a) prodaja na enaki trgovinski ravni, vendar v drugačnih količinah;

(b) prodaja na drugačni trgovinski ravni, vendar v pretežno enakih količinah; ali

(c) prodaja na drugačni trgovinski ravni in v drugačnih količinah.

2. Če se ugotovi prodaja na podlagi kateregakoli od teh treh pogojev, se od primera do primera opravijo prilagoditve samo glede:

(a) količinskih dejavnikov;

(b) dejavnikov trgovinske ravni; ali

(c) trgovinske ravni in količinskih dejavnikov.

3. Izraz "in/ali" omogoča prožnost pri uporabi prodaje in pri opravljanju potrebnih prilagoditev pri kateremkoli od treh zgoraj navedenih pogojev.

4. Za namene 3. člena pomeni transakcijska vrednost podobnega uvoženega blaga carinsko vrednost, ki je prilagojena, kot je določeno v prvem (b) in drugem odstavku, ter je že bila sprejeta na podlagi 1. člena.

5. Pogoj za prilagajanje zaradi različnih trgovinskih ravni ali različnih količin, bodisi da vodi k povečanju ali zmanjšanju vrednosti, je, da je tako prilagajanje možno samo na podlagi predloženih dokazil, ki jasno kažejo na upravičenost in točnost prilagoditev, npr. veljavni ceniki, ki vsebujejo

cene, ki se nanašajo na različne ravni ali različne količine. Na primer, če je uvoženo blago, ki se vrednoti, sestavljeno iz 10 enot in če je edino podobno uvoženo blago, za katero obstaja transakcijska vrednost, prodano v količini 500 enot, če je hkrati ugotovljeno, da prodajalec priznava količinske popuste, tedaj je možno doseči potrebno prilagoditev z uporabo prodajalčevega cenika ter z uporabo take cene, ki je uporabna za prodajo 10 enot. To ne pomeni, da je morala bili opravljena prodaja v količini 10 enot, če je ugotovljeno, da je cenik bona fide pri prodajah v drugačnih količinah. Če pa takega objektivnega merila ni, tedaj ugotavljanje carinske vrednosti na podlagi določb 2. člena ni ustrezno.

Opomba k 5. členu

1. Izraz "cena enote, po kateri se ... blago prodaja v največji agregirani količini" pomeni ceno, po kateri je največje število enot prodanih v prodaji osebam, ki niso v razmerju z osebami, od katerih kupujejo tako blago na prvi trgovinski ravni po uvozu, na kateri se taka prodaja opravi.

2. Na primer, blago je prodano na podlagi cenika, ki priznava ugodnejše cene za enoto za nakupe v večjih količinah.

Prodajna količina	Cena za enoto	Število prodajnih transakcij	Celotna količina, prodana po določeni ceni
1-10 enot	100	10 prodaj po 5 enot 5 prodaj po 3 enote	65
11-25 enot	95	5 prodaj po 11 enot	55
nad 25 enot	90	1 prodaja 30 enot 1 prodaja 50 enot	80

Največje število enot, prodanih po določeni ceni, je 80; torej je cena za enoto na podlagi največje agregirane količine 90.

3. Drugi primer tega je, ko nastaneta dve prodaji. V prvi prodaji je prodanih 500 enot po ceni 95 denarnih enot za vsako enoto. V drugi prodaji je prodanih 400 enot po ceni 90 denarnih enot za vsako enoto. V tem primeru je največje število prodanih enot po določeni ceni 500; torej je cena za enoto v največji agregirani količini 95.

4. Tretji primer je naslednji položaj, v katerem so prodane različne količine po različnih cenah.

(a) Prodaja

prodajna količina	cena za enoto
40 enot	100
30 enot	90
15 enot	100
50 enot	95
25 enot	105
35 enot	90
5 enot	100

(b) Vsota

celotne prodane količine	cena za enoto
65	90
50	95
60	100
25	105

V tem primeru je največje število prodanih enot po določeni ceni 65; torej je cena za enoto za največjo agregirano količino 90.

5. Za kakršnokoli prodajo v državi uvoza, kot je opisana v prvem odstavku zgoraj, osebi, ki neposredno ali posredno dobavlja blago brezplačno ali ob znižani ceni za uporabo v proizvodnji in za prodajo za izvoz uvoženega blaga, se pri ugotavljanju cene za enoto za namene 5. člena ne upošteva noben element, ki je določen v prvem (b) odstavku 8.člena

6. Treba se je zavedati, da je treba "dobiček in splošne izdatke", na katere se nanaša prvi odstavek 5. člena, obravnavati kot celoto. Znesek v zvezi s tem odbitkom je treba ugotoviti na podlagi informacij, ki jih da uvoznik ali pa so dane v njegovem imenu, razen če uvoznikovi zneski niso v skladu s tistimi, ki so razvidni iz prodaj v državi uvoza za uvoženo blago enakega razreda ali vrste. Če uvoznikovi zneski niso v skladu s temi zneski, je možno znesek dobička in splošnih izdatkov utemeljevati na ustreznih informacijah, ki ne izvirajo od uvoznika ali so dane v njegovem imenu.

7. "Splošni izdatki" vključujejo neposredne in posredne stroške trženja določenega blaga.

8. Lokalne dajatve, ki se plačujejo v zvezi s prodajo blaga, za katere v smislu določb prvega (a) (iv) odstavka 5. člena ni opravljen odbitek, se odbijejo v okviru določb prvega (a) (i) odstavka 5. člena.

9. Pri ugotavljanju bodisi provizij ali običajnega dobička in splošnih izdatkov v okviru določb prvega odstavka 5. člena se vprašanje, ali je določeno blago "enakega razreda ali vrste" kot drugo blago, rešuje od primera do primera glede na določene okoliščine. V državi uvoza je treba proučiti prodajo najožje skupine ali vrste uvoženega blaga enakega razreda ali vrste, ki vključuje blago, ki se vrednoti, za katero je možno pridobiti potrebne informacije. Za namene 5. člena "blago enakega razreda ali vrste" vključuje uvoženo blago iz iste države kakor blago, ki se vrednoti, kakor tudi blago, ki je uvoženo iz drugih držav.

10. Za namene prvega (b) odstavka 5. člena je "najzgodnejši datum" datum, do katerega se opravi prodaja uvoženega blaga ali enakega ali podobnega blaga v zadostni količini, da je možno ugotoviti ceno za enoto.

11. Če se uporabi metoda drugega odstavka 5. člena, morajo odbitki za dodano vrednost na podlagi nadaljnje predelave temeljiti na objektivnih in količinsko opredeljivih podatkih, ki se nanašajo na stroške takega dela. Osnovo za izračun bi lahko sestavljale v industriji sprejete formule, recepti, načini gradnje in druge industrijske metode.

12. Splošno je sprejeto, da metode vrednotenja, ki je določena v drugem odstavku 5. člena, običajno ne bi bilo možno uporabiti, če bi kot posledica nadaljnje predelave uvoženo blago izgubilo svojo istovetnost. Toda lahko obstajajo primeri, ko je možno natančno ugotoviti dodano vrednost na podlagi predelave brez posebnih težav, četudi bi se istovetnost uvoženega blaga izgubila. Po drugi strani so lahko primeri, ko uvoženo blago ohranja svojo istovetnost, vendar pa pomeni tako majhno sestavino prodanega blaga v državi uvoza, da bi bila uporaba te metode vrednotenja neupravičena. Glede na zgornje je treba vsak položaj take vrste posebej obravnavati.

Opomba k 6. členu

1. Kot splošno pravilo na podlagi tega sporazuma se carinska vrednost ugotavlja po podatkih, ki so enostavno dostopni v državi uvoza. Toda z namenom, da bi določili izračun vrednosti, se lahko zgodi, da je treba proučiti stroške proizvodnje blaga, ki se vrednoti, in druge informacije, ki jih je treba pridobiti zunaj države uvoza. V večini primerov je proizvajalec blaga zunaj pristojnosti oblasti države uvoza. Uporaba metode izračuna vrednosti bo na splošno omejena na tiste primere, v katerih sta kupec in prodajalec v razmerju, proizvajalec pa je pripravljen oblastem države uvoza dati potrebne podatke o stroških in možnosti za poznejša preverjanja, ki utegnejo biti potrebna.

2. Izraz "strošek ali vrednost", na katerega se nanaša prvi (a) odstavek 6. člena, se ugotavlja na podlagi informacij v zvezi s proizvodnjo blaga, ki se vrednoti, ki jih da ali pa so

dane v imenu proizvajalca. Te morajo temeljiti na knjigovodstvu proizvajalca pod pogojem, da je tako knjigovodstvo v skladu s splošno veljavnimi knjigovodskimi načeli, ki se uporabljajo v državi, v kateri je blago proizvedeno.

3. "Stroški ali vrednost" vključujejo stroške elementov, ki so določeni v prvem (a) (ii) in (iii) odstavku 8. člena. Vključevati morajo tudi vrednost, ki je določena kot ustrezna v skladu z določbo ustrezne opombe k 8. členu, kateregakoli elementa prvega (b) odstavka 8. člena, ki ga neposredno ali posredno dobavi kupec zaradi uporabe v zvezi s proizvodnjo uvoženega blaga. Vrednost elementov, ki so določeni v prvem (b) (iv) odstavku 8. člena, ki se izvajajo v državi uvoza, se vključi samo toliko, da gredo ti elementi na račun proizvajalca. Razume se, da se noben strošek ali vrednost elementov iz tega odstavka ne računa dvakrat pri ugotavljanju izračuna vrednosti.

4. "Znesek dobička in splošnih izdatkov", na katerega se nanaša prvi (b) odstavek 6. člena, se ugotavlja na podlagi informacij, ki jih zagotovi proizvajalec, ali pa se zagotavijo v njegovem imenu, razen če proizvajalčevi zneski niso v skladu s tistimi, ki se običajno izražajo pri prodaji blaga enakega razreda ali vrste kot blago, ki se vrednoti in ga proizvedejo proizvajalci v državi izvoza za izvoz v državo uvoza.

5. Upoštevati je treba, da mora biti "znesek dobička in splošnih izdatkov" obravnavan kot celota. Sledi torej, da če je v kateremkoli posameznem primeru znesek proizvajalčevega dobička majhen, proizvajalčevi splošni stroški pa so visoki, da so proizvajalčev dobiček in splošni izdatki skupaj lahko v skladu s tistim, kar se običajno izraža pri prodaji blaga enakega razreda ali vrste. Tak položaj lahko nastane, na primer, ko se proizvod prvič pojavi v državi uvoza, proizvajalec pa je pristal na nič ali malo dobička, da bi s tem zmanjšal visoke splošne stroške v zvezi z uvajanjem proizvoda. Če proizvajalec lahko prikaže majhen dobiček pri prodaji zaradi določenih prodajnih okoliščin, je treba upoštevati dejanske zneske proizvajalčevega dobička pod pogojem, da ima proizvajalec sprejemljive trgovinske razloge, s katerimi jih lahko opravičuje, proizvajalčeva cenovna politika pa izraža običajno cenovno politiko v določeni industrijski panogi. Taka situacija utegne na primer nastati, kadar so proizvajalci prisiljeni, da začasno znižujejo cene zaradi nepredvidenega padca povpraševanja ali če blago prodajajo kot dopolnilno ponudbo vrsti drugega blaga, ki se proizvaja v državi uvoza, in sprejmejo nizek dobiček, da bi ohranili konkurenčnost. Če proizvajalčevi lastni podatki o dobičku in splošnih izdatkih niso v skladu s tistimi, ki so običajni pri prodaji blaga enakega razreda ali enake vrste kot blago, ki se vrednoti in ga proizvajajo proizvajalci v državi izvoza za izvoz v državo uvoza, tedaj lahko znesek dobička in splošnih izdatkov temelji na ustreznih informacijah, ki so drugačne od tistih, ki jih da proizvajalec blaga ali pa so dane v njegovem imenu.

6. Če se uporabijo podatki, ki so drugačni od tistih, ki jih da proizvajalec ali so dani v njegovem imenu z namenom določitve izračuna vrednosti, morajo oblasti države uvoza pod pogoji določb 10. člena obvestiti uvoznika, če ta zahteva, o viru takih podatkov, o uporabljenih podatkih v izračunih, ki temeljijo na teh podatkih.

7. "Splošni izdatki", na katere se nanaša prvi (b) odstavek 6. člena, se nanašajo na neposredne in posredne stroške proizvodnje in prodaje blaga za izvoz, ki niso vključeni na podlagi prvega (a) odstavka 6. člena.

8. Ali je določeno blago "enakega razreda ali enake vrste" kot drugo blago, je treba ugotavljati od primera do primera v zvezi z ustreznimi okoliščinami. Pri ugotavljanju običajnih dobičkov in splošnih izdatkov v skladu z določbami 6. člena je treba proučiti prodajo najožje skupine ali vrste blaga za izvoz državi uvoza, ki pa vključujejo tudi blago, ki se vrednoti, za katere je možno dobiti potrebne podatke. Za namene 6. člena mora biti "blago enakega razreda ali vrste" iz iste države kot blago, ki se vrednoti.

Opomba k 7. členu

1. Carinske vrednosti, določene pod pogoji 7.člena, morajo v največji možni meri temeljiti na prej ugotovljenih carinskih vrednostih.

2. Metode vrednotenja, ki se uporabljajo na podlagi 7. člena, morajo biti tiste, ki so določene od 1. do 6. člena, vendar bi bila razumna prožnost pri uporabi teh metod v skladu s cilji in določbami 7. člena.

3. Nekaj primerov razumne prožnosti je:

(a) Enako blago - zahteva, da mora biti enako blago izvoženo sočasno ali približno sočasno kot blago, ki se vrednoti, se lahko prožno razlaga; enako uvoženo blago, ki je proizvedeno v drugi državi kot državi izvoza blaga, ki se vrednoti, je lahko podlaga za carinsko vrednotenje; možno je uporabiti carinske vrednosti enakega uvoženega blaga, ki so že bile ugotovljene na podlagi določb 5. in 6. člena.

(b) Podobno blago - zahteva, da mora biti podobno blago izvoženo sočasno ali približno sočasno kot blago, ki se vrednoti, se lahko prožno razlaga; podobno uvoženo blago, ki je proizvedeno v drugi državi kot državi izvoza blaga, ki se vrednoti, je lahko podlaga za carinsko vrednotenje; možno je uporabiti carinske vrednosti podobnega uvoženega blaga, ki so že bile ugotovljene na podlagi določb 5. in 6. člena.

(c) Deduktivna metoda - zahteva v prvem (a) odstavku 5. člena, da je bilo blago prodano v "stanju, kot uvoženo" se lahko prožno razlaga; zahtevo "90 dni" je možno upravno obravnavati na prožen način.

Opomba k 8. členu

Prvi (a) (i) odstavek

Izraz "nakupovalna provizija" pomeni plačilo, ki ga plača uvoznik uvoznikovemu zastopniku za storitev v zvezi z zastopanjem uvoznika v tujini pri nakupu blaga, ki se vrednoti.

Prvi (b) (ii) odstavek

1. Dva dejavnika vplivata na porazdelitev elementov, ki so določeni v prvem (b) (ii) odstavku 8. člena, glede na uvoženo blago - vrednost elementa samega in način, na katerega naj bi se ta vrednost porazdelila glede na uvoženo blago. Porazdelitev teh elementov mora biti izvedena na razumen način, ki ustreza okoliščinam in je v skladu s splošno veljavnimi računovodskimi načeli.

2. Če pridobi uvoznik od prodajalca element, ki ni v razmerju z uvoznikom po določeni ceni, je vrednost tega elementa enaka tej ceni. Če je element proizvod uvoznika ali osebe, ki je v razmerju z uvoznikom, je vrednost elementa cena te proizvodnje. Če je uvoznik prej uporabljal element, ne glede na to ali ga je sam pridobil ali proizvedel, je treba izvirno ceno proizvodnje ali pridobitve znižati zaradi prejšnje uporabe tega elementa, da bi prišli do vrednosti tega elementa.

3. Ob ugotovljeni vrednosti elementa je treba dodati to vrednost uvoženemu blagu. Obstajajo različne možnosti. Na primer, vrednost je možno dodati prvi pošiljki, če uvoznik želi plačati carino enkrat za celotno vrednost. Drugi primer, uvoznik lahko zahteva, da se vrednost razporedi na vse enote, ki se proizvedejo do prve pošiljke. Kot nadaljnji primer, uvoznik lahko zahteva, da se vrednost razporedi na celotno pričakovano proizvodnjo, če obstajajo pogodbe ali čvrste obveznosti v zvezi s to proizvodnjo. Način razporeditve, ki se

uporabi, bo odvisen od dokumentacije, ki jo predloži uvoznik.

4. Kot ponazoritev prejšnjega uvoznik priskrbi proizvajalcu kalup, ki naj bi ga ta uporabil pri proizvodnji uvoženega blaga, na osnovi pogodb s proizvajalcem, da bo kupil 10 000 enot. Do dospelosti prve pošiljke 1000 enot je proizvajalec že proizvedel 4000 enot. Uvoznik lahko zahteva, da carinska uprava razporedi vrednost kalupa na 1000, 4000 ali 10 000 enot.

Prvi (b) (iv) odstavek

1. Dodatki k elementom, ki so določeni v prvem (b) (iv) odstavku 8. člena, morajo temeljiti na objektivnih in količinsko opredeljivih podatkih. Z namenom, da se breme za uvoznika in carino čim bolj zmanjša pri določanju vrednosti, ki jo je treba dodati, je treba, kolikor je možno, uporabljati najlažje dostopne podatke iz sistema trgovinskih zapisov kupca.

2. Za elemente, ki jih zagotavlja kupec in jih je kupil ali zakupil, je dodatek znesek kupnine oziroma zakupnine. Nič se ne prišteva za tiste elemente, ki so na razpolago kot javna dobrina, z izjemo stroškov za pridobitev kopij.

3. Kako bo lahko možno izračunati vrednosti, ki jih je treba dodajati, bo odvisno od strukture in prakse vodenja določenega podjetja kakor tudi od knjigovodskih metod.

4. Na primer, možno je, da firma, ki uvaža različne proizvode iz nekaj držav, vodi knjige svojega centra za oblikovanje zunaj države uvoza, da bi na ta način točno prikazovala stroške, ki jih je možno pripisovati določenemu proizvodu. V takih primerih je možna ustrezna neposredna prilagoditev na podlagi določb 8. člena.

5. V drugem primeru podjetje lahko prenaša stroške centra za oblikovanje zunaj države uvoza kot splošno režijo brez pripisovanja teh stroškov konkretnemu proizvodu. V tem primeru je možna ustrezna prilagoditev na podlagi določb 8. člena glede na uvoženo blago, tako da se razporedijo vsi stroški centra za oblikovanje na celotne stroške proizvodnje, ki je imela koristi od centra za oblikovanje, ter z dodajanjem teh stroškov, razporejenih na enoto proizvoda, k uvozu.

6. Različne možnosti navedenih okoliščin bodo seveda zahtevale upoštevanje drugih dejavnikov pri ugotavljanju ustrezne metode za določanje stroškovnih mest.

7. Kadar proizvodnja elementa vključuje več držav v določenem obdobju, mora biti prilagoditev omejena na vrednost, ki je dejansko dodana temu elementu zunaj države uvoza.

Prvi (c) odstavek

1. Licenčnine, na katere se nanaša prvi (c) odstavek 8. člena, lahko med drugim vključujejo tudi plačila za patente, blagovne znamke in avtorske pravice. Toda plačila za reprodukcijo uvoženega blaga v državi uvoza se ne prištevajo k dejansko plačani ceni ali ceni, ki jo je treba plačati za uvoženo blago pri ugotavljanju carinske vrednosti.

2. Plačila kupca se za pravico do distribucije ali preprodaje uvoženega blaga ne dodajajo k dejansko plačani ceni ali ceni, ki jo je treba plačati za uvoženo blago, če taka plačila niso pogoj za prodajo za izvoz uvoženega blaga v državo uvoza.

Tretji odstavek

Če objektivnih ali količinsko določljivih podatkov ni v zvezi z zahtevanimi dodatki na podlagi določb 8. člena, se transakcijska vrednost ne more ugotoviti v skladu s prvim členom. Za ponazoritev se licenčnina plača na podlagi cene pri prodaji v državi uvoza za liter določenega proizvoda, ki je uvožen po kilogramih in predelan v obliki raztopine, po uvozu. Če licenčnina temelji deloma na uvoženem blagu, deloma pa na drugih dejavnikih, ki nimajo nobene zveze z uvoženim blagom (če se uvoženo blago meša z domačimi sestavinami in jih ni več možno ločevati ali če licenčnina ni razvidna iz posebnih finančnih dogovorov med kupcem in prodajalcem) , bi bilo neustrezno poskušati uveljaviti dodatek za licenčnino. Toda če znesek te licenčnine temelji zgolj na uvoženem blagu in jo je možno enostavno ovrednotiti, je možno uveljaviti dodatek k dejansko plačani ali ceni, ki jo je treba plačati.

Opomba k 9. členu

Za namene 9. člena lahko "čas uvoza" vključuje čas vstopanja za potrebe carinjenja.

Opomba k 11. členu

1. 11. člen daje uvozniku pravico do priziva zoper določeno vrednotenje, ki ga je sprejela carinska uprava za blago, ki je bilo vrednoteno. Priziv je možen najprej na višji stopnji v carinski upravi, toda uvoznik mora imeti pravico, da na končni stopnji vloži priziv pred sodnimi oblastmi.

2. "Brez kazni" pomeni, da se zoper uvoznika ne izreče globa ali da se grozi z globo zgolj zaradi tega, ker se je uvoznik odločil vložiti priziv. Plačilo normalnih sodnih stroškov in stroškov odvetnikov ne pomeni, da gre za globo.

3. Nič v 11. členu ne preprečuje članici, da zahteva plačilo določenih carin pred vložitvijo priziva.

Opomba k 15. členu

Četrti odstavek

Za namene 15. člena izraz "osebe" vključuje pravno osebo, kjer je to primerno.

Četrti (e) odstavek

Za namene tega sporazuma se šteje, da ena oseba nadzoruje drugo, če je prejšnja pravno ali poslovno v položaju, da izvaja omejitve ali daje usmeritve slednji.

PRILOGA II

TEHNIČNI ODBOR ZA CARINSKO VREDNOTENJE

1. V skladu z 18. členom tega sporazuma se ustanovi Tehnični odbor pod pokroviteljstvom CCC z namenom da na tehnični ravni zagotavlja poenoteno razlago in uporabo tega sporazuma.

2. Odgovornosti Tehničnega odbora vsebujejo:

(a) proučevanje določenih tehničnih problemov, ki izhajajo iz dnevnega izvajanja sistema carinskega vrednotenja članic in dajanje svetovalnih mnenj o ustreznih rešitvah na podlagi predloženih dejstev;

(b) da na zahtevo proučuje zakone o vrednotenju, postopke in prakso v zvezi s tem sporazumom ter da pripravlja poročila o rezultatih takih proučevanj;

(c) pripravo in razširjanje poročil o tehničnih vidikih izvajanja in statusa tega sporazuma;

(d) zagotavljanje takih informacij in nasvetov o katerikoli zadevi, ki se nanaša na vrednotenje uvoženega blaga za namene carinjenja, ki jih zahtevajo katerekoli članice ali Odbor. Take informacije in nasveti lahko imajo obliko svetovalnih mnenj, komentarjev ali razlag;

(e) dajanje tehnične pomoči članicam na zahtevo z namenom pospeševanja mednarodnega uveljavljanja tega sporazuma;

(f) izvedba preiskave v zadevi, ki jo pošlje ugotovitveni svet na podlagi 19. člena tega sporazuma; in

(g) opravljanje takih drugih dolžnosti, ki jih naloži Odbor.

Splošno

3. Tehnični odbor si prizadeva končati svoje delo v zvezi z določenimi zadevami, zlasti tistimi, ki jih pošljejo članice, Odbor ali ugotovitveni svet v razumno kratkem času. Kot je določeno v četrtem odstavku 19. člena, ugotovitveni svet določi čas, v katerem mora prejeti poročila Tehničnega odbora, Tehnični odbor pa poročilo zagotovi v tem času.

4. Sekretariat CCC ustrezno pomaga Tehničnemu odboru pri njegovi dejavnosti.

Zastopanost

5. Vsaka članica ima pravico biti zastopana v Tehničnem odboru. Vsaka članica lahko imenuje enega delegata in enega ali več namestnikov kot svoje predstavnike v Tehničnem odboru. Taka članica, ki je tako zastopana v Tehničnem odboru, se v tej prilogi imenuje "članica Tehničnega odbora". Predstavnikom članic Tehničnega odbora lahko pomagajo svetovalci. Sekretariat WTO lahko prav tako sodeluje na teh zasedanjih s statusom opazovalca.

6. Članice CCC, ki niso članice WTO, so lahko zastopane na zasedanjih Tehničnega odbora z enim delegatom in z enim ali več namestniki. Taki predstavniki se udeležujejo zasedanj Tehničnega odbora kot opazovalci.

7. Pod pogojem odobritve predsedujočega Tehničnega odbora sme generalni sekretar CCC (v nadaljnjem besedilu generalni sekretar) vabiti predstavnike vlad, ki niso niti članice WTO niti članice CCC, in predstavnike mednarodnih vladnih in trgovinskih organizacij, da se udeležijo zasedanj Tehničnega odbora kot opazovalci.

8. Imenovanja delegatov, namestnikov in svetovalcev za zasedanja Tehničnega odbora se morajo sporočiti generalnemu sekretarju.

Zasedanja Tehničnega odbora

9. Tehnični odbor se sestaja po potrebi, vendar najmanj dvakrat letno. Datum vsakega zasedanja določi Tehnični odbor na svojem prejšnjem zasedanju. Datum zasedanja se lahko spreminja ali na zahtevo katerekoli članice Tehničnega odbora s potrditvijo enostavne večine članic Tehničnega odbora ali v primerih, ki zahtevajo nujno obravnavo, na zahtevo predsedujočega. Ne glede na določbe v prvem stavku se Tehnični odbor sestaja po potrebi v zvezi z obravnavo zadev, ki jih pošilja ugotovitveni svet na podlagi določb 19. člena tega sporazuma.

10. Tehnični odbor zaseda na sedežu CCC, razen če ni drugače odločeno.

11. Generalni sekretar obvesti vse članice Tehničnega odbora in tiste, ki so določeni v 6. in 7. odstavku, vsaj 30 dni vnaprej pred prvim dnem zasedanja Tehničnega odbora, razen v nujnih primerih.

Dnevni red

12. Generalni sekretar pripravi začasni dnevni red za vsako zasedanje Tehničnega odbora, ki se pošlje članicam Tehničnega odbora in tistim, ki so vključeni v 6. in 7. odstavku, vsaj 30 dni pred zasedanjem, razen v nujnih primerih. Ta dnevni red vsebuje vse točke, katerih vključitev je odobril Tehnični odbor na prejšnjem zasedanju, vse točke, ki jih je vključil predsedujoči na lastno pobudo in vse točke, katerih vključitev so zahtevali generalni sekretar, Odbor ali katerakoli članica Tehničnega odbora.

13. Tehnični odbor določi dnevni red na začetku vsakega zasedanja. Kadarkoli med zasedanjem lahko Tehnični odbor spremeni dnevni red.

Funkcionarji in vodenje

14. Tehnični odbor izmed delegatov svojih članic izvoli predsedujočega in enega ali več namestnikov. Predsedujoči in njegov namestnik se izvolita za eno leto. Predsedujoči in njegov namestnik sta lahko ponovno izvoljena. Mandat predsedujočega ali njegovega namestnika, ki ne zastopata več članice Tehničnega odbora, samodejno preneha.

15. V odsotnosti predsedujočega z zasedanja ali dela zasedanja predseduje njegov namestnik, ki ima enake pristojnosti in naloge kot predsedujoči.

16. Predsedujoči zasedanja sodeluje v postopkih Tehničnega odbora kot tak in ne kot predstavnik članice Tehničnega odbora.

17. Poleg uporabe pooblastil, ki jih ima predsedujoči na podlagi teh pravil, predsedujoči odpira in zapira vsako zasedanje, usmerja razpravo, daje besedo in na podlagi teh pravil nadzoruje postopke. Predsedujoči lahko opozori govornika, če njegove pripombe niso primerne.

18. Med razpravo o katerikoli zadevi lahko delegacija sproži vprašanje postopka. V tem primeru predsedujoči takoj odloči o zadevi. Če ta odločitev naleti na nasprotovanje, predsedujoči predlaga zasedanju, da o tem sprejme odločitev, ki velja, če ni zavrnjena.

19. Generalni sekretar ali funkcionarji Sekretariata CCC, ki jih določi generalni sekretar, opravljajo sekretarsko delo za zasedanje Tehničnega odbora.

Sklepčnost in glasovanje

20. Tehnični odbor je sklepčen, če ga sestavlja enostavna večina članic Tehničnega odbora.

21. Vsaka članica Tehničnega odbora ima en glas. Tehnični odbor odloča z večino, ki jo sestavljata vsaj dve tretjini prisotnih članov. Ne glede na izid glasovanja o določeni zadevi lahko Tehnični odbor Odboru ali CCC pripravi celovito poročilo o tej zadevi, v katerem opiše različna mnenja, ki so bila izražena v določenih razpravah. Ne glede na prejšnje določbe tega odstavka o zadevah, ki jih pošlje ugotovitveni svet, odloča Tehnični odbor s konsenzom. Če ni soglasja v Tehničnem odboru o vprašanju, ki ga je poslal ugotovitveni svet, Tehnični odbor priskrbi poročilo, ki navaja podrobnosti o zadevi in vsebuje mnenja članov.

Jeziki in zapisniki

22. Uradni jeziki Tehničnega odbora so angleški, francoski in španski jezik. Govori ali izjave v kateremkoli od teh jezikov se takoj prevedejo v druge uradne jezike, razen če se vse delegacije strinjajo, da se ne prevaja. Govori in izjave v kateremkoli drugem jeziku se prevedejo v angleški, francoski in španski jezik pod enakimi pogoji, vendar mora v tem primeru določena delegacija zagotoviti prevod v angleški, francoski in španski jezik. Za uradne dokumente Tehničnega odbora se uporabljajo samo angleški, francoski in španski jezik. Zapisi in dopisi, ki naj jih obravnava Tehnični odbor morajo biti predloženi v enem od uradnih jezikov.

23. Tehnični odbor pripravi poročilo o vseh svojih zasedanjih in če predsedujoči meni, da je to potrebno, tudi zapisnike ali povzetke zasedanj. Predsedujoči ali tisti, ki ga ta pooblasti, poroča o delu Tehničnega odbora na vsakem zasedanju Odbora in na vsakem zasedanju CCC.

PRILOGA III

1. V praksi utegne biti za določene članice države v razvoju petletna odložitev uporabe sporazuma, ki jo določa prvi odstavek 20. člena, nezadostna. V takih primerih lahko članica država v razvoju zahteva pred koncem obdobja, ki ga določa prvi odstavek 20.člena, podaljšanje tega obdobja, pri čemer se razume, da bodo članice tako zahtevo ugodno obrav-

navale, če lahko določena članica država v razvoju ustrezno utemelji svojo zahtevo.

2. Države v razvoju, ki zdaj vrednotijo blago na podlagi uradno določenih najnižjih vrednosti, utegnejo želeti doseči pridržke, ki bi omogočili, da ohranijo take vrednosti na omejeni in predhodni podlagi pod pogoji, s katerimi se strinjajo članice.

3. Države v razvoju, ki menijo, da jim lahko zamenjava vrstnega reda na zahtevo uvoznika, ki je določena v 4. členu tega sporazuma, povzroči resne težave, utegnejo doseči pridržek glede uporabe 4. člena na podlagi:

"Vlada.....si pridržuje pravico, da ustrezne določbe 4. člena sporazuma uporablja le takrat, kadar se carinski organi strinjajo z zahtevo, da se obrne vrstni red uporabe 5. in 6. člena."

Če države v razvoju dajo tak pridržek, članice soglašajo z njim na podlagi 21. člena sporazuma.

4. Države v razvoju utegnejo dati pridržek glede drugega odstavka 5.člena sporazuma na podlagi:

"Vlada.....si pridržuje pravico, da se drugi odstavek 5.člena sporazuma uporablja v skladu z določbami ustrezne opombe, ne glede na to ali uvoznik tako zahteva."

Če države v razvoju dajo tak pridržek, članice soglašajo z njim na podlagi 21. člena sporazuma.

5. Določene države v razvoju utegnejo imeti težave z izvajanjem 1.člena sporazuma v zvezi z uvozom v njihovo državo po samostojnih zastopnikih, izključnih distributerjih in izključnih koncesionarjih. Če take težave nastanejo v praksi članic držav v razvoju pri izvajanju sporazuma, se pripravi študija v zvezi s tem vprašanjem na zahtevo take članice z namenom, da se poišče ustrezna rešitev.

6. 7.člen upošteva, da carinske uprave pri izvajanju sporazuma utegnejo imeti potrebo, da preverijo resnico ali točnost katerekoli izjave, dokumenta ali deklaracije, ki jim je predložena za namene carinskega vrednotenja. Na ta način ta člen ugotavlja, da utegnejo biti potrebne poizvedbe, ki imajo na primer namen ugotoviti, ali so elementi vrednosti, prijavljeni ali predloženi carini v zvezi z ugotavljanjem carinske vrednosti, popolni in točni. Članice imajo pravico zahtevati celovito sodelovanje uvoznikov pri teh izvedbah na podlagi svojihnacionalnih zakonov in postopkov.

7. Dejansko plačana cena ali cena, ki jo je treba plačati, vključuje vsa dejanska plačila ali plačila, ki jih mora opraviti kot pogoj za prodajo uvoženega blaga kupec prodajalcu ali kupec tretji osebi zaradi izpolnitve obveznosti prodajalcu.

S P O R A Z U M
O PREDODPREMNI KONTROLI

Članice se

ob upoštevanju, da so se ministri 20. septembra 1986 sporazumeli, da bo Urugvajski krog mnogostranskih trgovinskih pogajanj imel za cilj " uresničiti nadaljnjo liberalizacijo in širitev svetovne trgovine", "utrditi vlogo GATT" in "povečati občutljivost sistema GATT za razvijajoče se mednarodno gospodarsko okolje",

ob upoštevanju, da določeno število članic držav v razvoju uporablja predodpremno kontrolo,

ob spoznanju potrebe držav v razvoju, da uporabljajo tak ukrep dotlej in do te mere, kolikor je potrebno, da se preverijo kakovost, količina ali cena uvoženega blaga,

z mislijo, da se morajo taki programi izvajati tako, da ne povzročajo nepotrebnih zastojev ali neenakopravne obravnave,

ob upoštevanju, da se ta kontrola po definiciji izvaja na ozemlju članice izvoznice,

ob spoznanju potrebe po vzpostavitvi sporazumnega mednarodnega okvira pravic in obveznosti članic uporabnic in članic izvoznic,

ob spoznanju, da se načela in obveznosti GATT 1994 uporabljajo glede na tiste dejavnosti subjektov predodpremne kontrole, ki jih predpisujejo vlade, ki so članice WTO,

ob spoznanju, da je zaželeno zagotoviti preglednost dejavnosti subjektov predodpremne kontrole in zakonov in predpisov, ki se nanašajo na predodpremno kontrolo,

z željo, da se zagotovi hitra, učinkovita in pravična razrešitev sporov med izvozniki in subjekti predodpremne kontrole, ki izvirajo iz tega sporazuma,

sporazumejo, kot sledi:

1. člen
Obseg – Definicije

1. Ta sporazum se nanaša na vse dejavnosti v zvezi s predodpremno kontrolo, ki se izvajajo na ozemlju članic, bodisi da so take dejavnosti pogodbene ali po pooblastilu vlade ali kateregakoli vladnega organa članice.

2. Izraz "članica uporabnica" pomeni članico, katere vlada ali katerikoli vladni organ pogodbeno ali drugače pooblasti uporabo predodpremnih kontrolnih dejavnosti.

3. Predodpremne kontrolne dejavnosti so vse dejavnosti, ki se nanašajo na preverjanje kakovosti, količine, cene, vključno s tečaji in plačilnimi pogoji in/ali carinskim opisom blaga, ki se izvaža na območje članice uporabnice.

4. Izraz "subjekt predodpremne kontrole" je kakršenkoli subjekt, ki ga članica pogodbeno ali drugače pooblasti, da izvaja predodpremne kontrolne dejavnosti.[1]

2. člen
Obveznosti članic uporabnic

Nediskriminacija

1. Članice uporabnice zagotavljajo, da se predodpremne kontrolne dejavnosti izvajajo nediskriminacijsko in da so postopki in merila, ki se uporabljajo pri izvajanju teh dejavnosti, objektivni in se uporabljajo na enaki podlagi za vse izvoznike, na katere vplivajo te dejavnosti. Članice zagotavljajo enakomerno izvajanje kontrole vseh inšpektorjev predodpremnih kontrolnih subjektov, ki so jih pogodbeno ali drugače pooblastile.

Vladne zahteve

2. Članice uporabnice zagotavljajo, da pri izvajanju predodpremnih kontrolnih dejavnosti, ki se nanašajo na njihove zakone, predpise in zahteve, upoštevajo določbe četrtega odstavka III.člena GATT 1994 toliko, kolikor je potrebno.

Kraj kontrole

3. Članice uporabnice zagotavljajo, da se vse predodpremne kontrolne dejavnosti, vključno z izdajo ugotovitvenega poročila ali obvestila o njegovi neizdaji, opravljajo na carinskem območju, s katerega se blago izvaža, ali če kontrola ni izvedljiva na tem carinskem območju zaradi zapletenosti določenih proizvodov ali če obe strani soglašata, na carinskem območju, na katerem se blago proizvaja.

Standardi

4. Članice uporabnice zagotavljajo, da se kontrole količin in kakovosti opravljajo v skladu s standardi, ki jih določi-

[1] Razume se, da ta določba ne obvezuje članic, da dovolijo vladnim subjektom drugih članic, da opravljajo dejavnosti predodpremne kontrole na njihovem ozemlju.

ta prodajalec in kupec v kupni pogodbi, in da se, če teh standardov ni, uporabljajo ustrezni mednarodni standardi.[2]

Preglednost

5. Članice uporabnice zagotavljajo, da se dejavnosti predodpremne kontrole pregledno izvajajo.

6. Ob prvem stiku z izvozniki članice uporabnice zagotavljajo, da subjekti, ki opravljajo predodpremno kontrolo, dajo izvoznikom spisek vseh potrebnih informacij, da lahko izvozniki ravnajo v skladu s kontrolnimi zahtevami. Subjekti predodpremne kontrole zagotavljajo dejanske informacije, ko izvozniki te od njih zahtevajo. Te informacije obsegajo tudi navedbe zakonov in predpisov članic uporabnic, ki se nanašajo na dejavnosti predodpremne kontrole in prav tako obsegajo postopke in merila, ki se uporabljajo za kontrolo in tudi za preverjanje cen in tečajev, pravice izvoznikov v razmerju do kontrolnih subjektov in prizivne postopke, ki se vzpostavijo na podlagi enaindvajsetega odstavka. Dodatne zahteve postopka ali spremembe v obstoječih postopkih se ne smejo uporabljati za določeno odpremo, razen če ni bil določen izvoznik o tem obveščen ob dogovoru o dnevu kontrole. V tistih nujnih primerih, ki jih določata XX. in XXI.člen GATT 1994, se smejo take dodatne zahteve in spremembe uporabljati za določeno odpremo, preden je izvoznik o tem obveščen. Ta pomoč nikakor ne odvezuje izvoznikov njihovih obveznosti v zvezi z izpolnjevanjem uvoznih predpisov članice uporabnice.

7. Članice uporabnice zagotavljajo, da so informacije, ki jih omenja šesti odstavek, na voljo izvoznikom na ustrezen način in da uradi predodpremne kontrole, ki jih imajo subjekti predodpremne kontrole, opravljajo funkcijo informacijskih centrov, v katerih bodo te informacije na voljo.

8. Članice uporabnice takoj objavijo vse zakone in predpise, ki se uporabljajo v zvezi s predodpremnimi kontrolnimi dejavnostmi, na tak način, da se lahko druge vlade in trgovci z njimi seznanijo.

Varovanje zaupnih poslovnih informacij

9. Članice uporabnice zagotavljajo, da subjekti predodpremne kontrole obravnavajo vse informacije, ki jih prejmejo v postopku predodpremne kontrole kot poslovno zaupne do te meje, do katere take infomacije niso že bile objavljene ali splošno razpoložljive tretjim ali pa so na drug način že javne. Članice uporabnice zagotavljajo, da subjekti predodpremne kontrole izvajajo postopke s tem namenom.

10. Članice uporabnice zagotavljajo članicam na njihovo zahtevo informacije v zvezi s sprejetimi ukrepi za izvajanje devetega odstavka. Določbe tega odstavka ne pomenijo, da mora katerakoli članica razkriti tiste zaupne informacije, katerih razkritje bi škodilo učinkovitosti predodpremnih kontrolnih programov ali pa bi posegalo v legitimne trgovinske interese določenih podjetij, javnih ali zasebnih.

11. Članice uporabnice zagotavljajo, da subjekti predodpremne kontrole ne izdajajo zaupnih poslovnih informacij katerikoli tretji osebi, razen da smejo subjekti predodpremne kontrole te informacije deliti z vladnimi subjekti, ki so jih pogodbeno ali drugače pooblastili. Članice uporabnice zagotavljajo, da so zaupne poslovne informacije, ki jih dobijo od subjektov predodpremne kontrole, ki so jih pogodbeno ali drugače pooblastile, ustrezno varovane. Subjekti predodpremne kontrole delijo zaupne poslovne informacije z vladami, ki so jih pogodbeno ali drugače pooblastile, samo do mere, ki se običajno zahteva v zvezi z akreditivi ali drugimi oblikami plačil ali za carino, izdajo uvoznih dovoljenj ali za namene devizne kontrole.

12. Članice uporabnice zagotavljajo, da subjekti predodpremne kontrole od izvoznikov ne zahtevajo, da zagotavljajo informacije o:

(a) podatkih o proizvodnji, ki se nanašajo na patentirane, licenčne ali nerazkrite postopke ali na postopke, za katere je prijavljen patent;

(b) neobjavljenih tehničnih podatkih, razen tistih za dokaz skladnosti s tehničnimi predpisi ali standardi;

(c) notranjih cenah, vključno s proizvodnimi stroški;

(d) ravneh dobičkov;

(e) pogodbenih pogojih med izvozniki in njihovimi dobavitelji, razen če je s tem onemogočena subjektom določena kontrola. V takih primerih sme subjekt zahtevati samo informacije, potrebne za ta namen.

13. Informacije, na katere se nanaša dvanajsti odstavek, ki jih subjekti predodpremne kontrole sicer ne smejo zahtevati, lahko da izvoznik na prostovoljni podlagi z namenom, da ponazori določen primer.

Konflikt interesov

14. Članice uporabnice zagotavljajo, da subjekti predodpremne kontrole tudi ob upoštevanju določb o varovanju zaupnih poslovnih informacij in devetega do trinajstega odstavka uporabljajo take postopke, da bi se izognili tem konfliktom interesov:

(a) med subjekti predodpremne kontrole in katerimikoli subjekti, povezanimi z določenimi subjekti predodpremne kontrole, vključno s katerimikoli subjekti, v katerih imajo slednji finančni ali trgovinski interes, ali katerimikoli subjekti, ki imajo finančni interes v določenih subjektih predodpremne kontrole in katerih odpreme naj bi nadzirali subjekti predodpremne kontrole;

(b) med subjekti predodpremne kontrole in drugimi subjekti, vključno s tistimi, ki so predmeti predodpremne kontrole, razen vladnih subjektov, ki so pogodbeno ali drugače dali pooblastilo za izvajanje kontrole;

(c) z oddelki subjektov predodpremne kontrole, ki opravljajo dejavnosti, drugačne od tistih, ki se zahtevajo za izvedbo postopka kontrole.

Zamude

15. Članice uporabnice zagotavljajo, da se subjekti predodpremne kontrole izogibajo nerazumnim zamudam pri odpremni kontroli. Članice uporabnice zagotavljajo, ko se subjekt predodpremne kontrole in izvoznik uskladita o datumu kontrole, da subjekt predodpremne kontrole opravi kontrolo na ta dan, razen če se spremeni po skupnem dogovoru med izvoznikom in subjektom predodpremne kontrole ali če izvoznik prepreči subjektu predodpremne kontrole izvajanje predodpremne kontrole ali zaradi višje sile.[3]

16. Članice uporabnice po prejemu dokončnih dokumentov in po opravljeni kontroli zagotavljajo, da subjekti predodpremne kontrole v petih delovnih dneh izdajo ugotovitveno poročilo ali zagotovijo podrobno pisno razlago, ki navaja razloge za njegovo neizdajo. Članice uporabnice zagotavljajo, da v tem zadnjem primeru subjekti predodpremne kontrole dajo izvoznikom možnost, da pisno predložijo svoje mnenje, in če izvozniki tako zahtevajo, uredijo, da se opravi ponovna kontrola v najkrajšem skupno dogovorjenem času.

17. Članice uporabnice zagotavljajo, kadarkoli od njih izvozniki tako zahtevajo, da subjekti predodpremne kontrole pred datumom fizične kontrole predhodno preverijo ceno in, če je potrebno, tečaj na osnovi pogodbe med izvoznikom in uvoznikom, proforma fakture in, če je potrebno, vlogo za uvozno dovoljenje. Članice uporabnice zagotavljajo, da se cena ali tečaj, ki ga je subjekt predodpremne kontrole sprejel

[2] Mednarodni standard je standard, ki ga sprejme vladna ali nevladna organizacija, v katero se lahko včlanijo vse članice, katerih ena od priznanih dejavnosti je s področja standardizacije.

[3] Razume se, da za namene tega sporazuma "višja sila" pomeni neizogibno silo ali prisilo, nepredvidljiv tok dogodkov, ki opravičuje neizpolnitev pogodbe.

na podlagi takega predhodnega preverjanja, ne spremeni pod pogojem, da blago ustreza uvozni dokumentaciji in/ali uvoznemu dovoljenju. Zagotavljajo tudi, da potem ko je opravljeno predhodno preverjanje, subjekti predodpremne kontrole takoj pisno obvestijo izvoznike o tem, da so sprejeli oziroma o podrobnih razlogih za nesprejem cene in/ali tečaja.

18. Članice uporabnice zagotavljajo, da bi se izognile zamudi pri plačilu, da subjekti predodpremne kontrole pošljejo ugotovitveno poročilo izvoznikom ali pooblaščenim predstavnikom izvoznikov, kakor hitro je mogoče.

19. Članice uporabnice ob morebitni uradniški napaki v ugotovitvenem poročilu zagotavljajo, da subjekti predodpremne kontrole popravijo napako in dostavijo popravljeno informacijo ustreznim strankam, kakor hitro je to mogoče.

Preverjanje cen

20. Članice uporabnice zagotavljajo, da bi preprečile prenizko ali previsoko fakturiranje in prevare, da bodo subjekti predodpremne kontrole preverjali cene[4] v skladu z naslednjimi smernicami:

(a) subjekti predodpremne kontrole lahko zavrnejo pogodbeno ceno, ki je dogovorjena med izvoznikom in uvoznikom samo, če lahko dokažejo, da njihove ugotovitve o neustrezni ceni temeljijo na postopku preverjanja na podlagi meril, določenih v pododstavkih od (b) do (e);

(b) subjekti predodpremne kontrole utemeljujejo svoje primerjave cen zaradi preverjanja izvozne cene na cenah enakih ali podobnih proizvodov, ki se izvažajo v iste države izvoza ob istem ali približno istem času, na osnovi konkurenčnih ali primerljivih pogojev prodaje v skladu z običajno trgovinsko prakso in na neto osnovi brez običajnih popustov. Taka primerjava temelji na:

(i) uporabljajo se zgolj cene, ki zagotavljajo veljavno osnovo primerjave ob upoštevanju ustreznih gospodarskih dejavnikov, ki se nanašajo na državo uvoza in državo ali držav, ki se uporabljajo za cenovne primerjave;

(ii) subjekt predodpremne kontrole se ne zanaša na cene blaga, ki se izvaža v druge države uvoza, da bi tako prosto določil najnižjo ceno za določeno odpremo;

(iii) subjekt predodpremne kontrole upošteva specifične elemente, naštete v pododstavku (c);

(iv) v vsaki fazi postopka, ki je opisan zgoraj, subjekt predodpremne kontrole zagotavlja izvozniku možnost, da ceno obrazloži;

(c) ob preverjanju cene subjekti predodpremne kontrole ustrezno upoštevajo pogodbene prodajne pogoje in splošne prilagoditvene dejavnike, ki se nanašajo na transakcijo. Ti dejavniki vključujejo, niso pa omejeni zgolj na trgovinsko raven in količino prodaje, roke dobav in pogojev, pogodbene določbe, ki se nanašajo na dviganje cen, specifikacijo kakovosti, posebne oblikovne značilnosti, posebne specifikacije v zvezi z odpremo in pakiranjem, velikost naročila, prodaje na kraju samem, sezonske vplive, licenčnine in druga plačila intelektualne lastnine in storitve, ki so del pogodbe, če se te običajno posebej ne fakturirajo; vključujejo tudi določene elemente, ki se nanašajo na izvoznikovo ceno, kot na primer pogodbeno razmerje med izvoznikom in uvoznikom;

(d) preverjane prevoznih stroškov se nanaša zgolj na dogovorjeno ceno določene vrste prevoza v državi izvoza, kakor izhaja iz prodajne pogodbe;

(e) za namene preverjanja cen se ne smejo uporabljati:

(i) prodajna cena v državi uvoza za blago, ki se proizvaja v tej državi;

(ii) cena blaga za izvoz iz države, ki ni država izvoza;

(iii) strošek proizvodnje;

(iv) prosto ali fiktivno določene cene ali vrednosti.

Pritožbeni postopki

21. Članice uporabnice zagotavljajo, da subjekti predodpremne kontrole uveljavijo postopke za sprejem, obravnavo in izdajo odločitev v zvezi s pritožbami izvoznikov in da se informacija, ki se nanaša na take postopke, da na razpolago izvoznikom v skladu z določbami šestega in sedmega odstavka. Članice uporabnice zagotavljajo, da se postopki razvijajo in ohranjajo v skladu s temi smernicami:

(a) subjekti predodpremne kontrole določijo enega ali več uradnikov, ki bodo na razpolago v običajnih delovnih urah v vsakem mestu ali pristanišču, v katerih imajo upravo predodpremne kontrole, z namenom, da sprejema, proučuje in izdaja odločitve v zvezi s pritožbami izvoznikov;

(b) izvozniki pisno predložijo določenim uradnikom dejstva o določeni transakciji in o naravi pritožbe in rešitvi, ki jo predlagajo;

(c) določeni uradniki z razumevanjem obravnavajo pritožbe izvoznikov in izdajo odločitev čim prej, potem ko so prejeli dokumentacijo, na katero se nanaša pododstavek (b).

Odstopanje

22. Z odstopanjem od določb 2. člena članice uporabnice zagotavljajo, razen v primerih delne odpreme, da ne bodo kontrolirale odprem, katerih vrednost je manjša kot določena najnižja vrednost takih odprem, ki jo je določila članica uporabnica, razen izjemoma. Ta najnižja vrednost je del informacije, ki se zagotavlja izvoznikom na podlagi določb šestega odstavka.

3. člen

Obveznosti članic izvoznic

Nediskriminacija

1. Članice izvoznice zagotavljajo, da se njihovi zakoni in predpisi, ki se nanašajo na dejavnosti predodpremne kontrole, uporabljajo nediskriminacijsko.

Preglednost

2. Članice izvoznice takoj objavijo vse veljavne zakone in predpise, ki se nanašajo na dejavnosti predodpremne kontrole, na način, ki omogoča drugim vladam in trgovcem, da se seznanijo z njimi.

Tehnična pomoč

3. Članice izvoznice ponudijo članicam uporabnicam, če zahtevajo, tehnično pomoč, ki je usmerjena k doseganju ciljev tega sporazuma na dvostransko dogovorjenih osnovah.[5]

4. člen

Postopki neodvisne proučitve

Članice spodbujajo subjekte predodpremne kontrole in izvoznike, da rešujejo spore medsebojno. Toda v dveh delovnih dneh po vloženi pritožbi v skladu z določbami enaindvajsetega odstavka 2. člena lahko ena ali druga stran predloži spor v neodvisno proučitev. Članice uporabljajo take razumne ukrepe, ki so jim na razpolago, da zagotovijo, da se uveljavljajo in ohranjajo postopki s temi nameni:

(a) te postopke opravlja neodvisni subjekt, ki ga skupaj ustanovita organizacija, ki zastopa subjekte predodpremne kontrole, in organizacija, ki zastopa izvoznike, za namene tega sporazuma;

(b) neodvisni subjekt, na katerega se nanaša pododstavek (a), mora pripraviti seznam izvedencev, kot sledi:

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[4] Obveznosti članic uporabnic v zvezi s storitvami subjektov predodpremne kontrole v zvezi s carinskim vrednotenjem so obveznosti, ki so jih sprejele v okviru GATT 1994 in v okviru drugih mnogostranskih trgovinskih sporazumov, vsebovanih v Aneksu 1 A Sporazuma o WTO.

[5] Razume se, da je možno tako tehnično pomoč dati na dvo-, več- ali mnogostranski ravni.

(i) del članov, ki jih imenuje organizacija, ki predstavlja subjekte predodpremne kontrole;

(ii) del članov, ki jih imenuje organizacija, ki predstavlja izvoznike;

(iii) del neodvisnih trgovinskih izvedencev, ki jih imenuje neodvisni subjekt, na katerega se nanaša pododstavek (a).

Geografska razporeditev izvedencev na tem seznamu mora biti taka, da omogoča, da se kakršnikoli spori, ki so predmet teh postopkov, obravnavajo hitro. Ta seznam mora biti sestavljen v dveh mesecih od dneva začetka veljavnosti Sporazuma o WTO in mora biti letno dopolnjen. Seznam mora biti javen. Sporočen mora biti Sekretariatu in poslan vsem članicam;

(c) izvoznik ali subjekt predodpremne kontrole, ki želi sprožiti spor, mora vzpostaviti stik z neodvisnim subjektom, na katerega se nanaša pododstavek (a), in zahtevati oblikovanje ugotovitvenega sveta. Neodvisni subjekt je odgovoren za ustanovitev ugotovitvenega sveta. Ta svet sestavljajo trije člani. Izbirajo se tako, da ne nastanejo nepotrebni stroški in zamude. Prvega člana izbere iz točke (i) zgornjega seznama določen subjekt predodpremne kontrole pod pogojem, da ta član ni povezan s tem subjektom. Drugega člana izbere iz točke (ii) zgornjega seznama določen izvoznik pod pogojem, da ta član ni povezan s tem izvoznikom. Tretjega člana izbere iz točke (iii) zgornjega seznama neodvisen subjekt, na katerega se nanaša pododstavek (a). Zoper neodvisnega trgovinskega izvedenca, izbranega iz točke (iii) zgornjega seznama, niso možni ugovori;

(d) neodvisni trgovinski izvedenec, izbran iz točke (iii) zgornjega seznama, opravlja nalogo predsednika ugotovitvenega sveta. Neodvisni trgovinski izvedenec sprejme vse potrebne odločitve, da zagotovi, da svet hitro reši spor ali okoliščine primera zahtevajo, da se člani sveta sestanejo in kje bo kraj takega sestanka ob upoštevanju kraja določene kontrole;

(e) če se stranke v sporu tako dogovorijo, lahko neodvisni subjekt izbere enega trgovinskega izvedenca iz točke (iii) zgornjega seznama, na katerega se nanaša pododstavek (a), z namenom proučitve določenega spora. Ta izvedenec sprejme vse potrebne odločitve za hitro rešitev spora, na primer tako, da upošteva kraj določene kontrole;

(f) namen proučitve je ugotovitev, ali so stranke v sporu ravnale v skladu z določbami tega sporazuma pri opravljanju sporne kontrole. Postopki morajo biti hitri in zagotavljati možnost stranema, da izrazita mnenja osebno ali pisno;

(g) odločitve tričlanskega ugotovitvenega sveta se sprejemajo z večino glasov. Odločitev v zvezi s sporom se sprejme v osmih delovnih dneh od zahteve po neodvisni proučitvi in se sporoči strankam v sporu. Ta rok je možno podaljšati po dogovoru strank v sporu. Ugotovitveni svet ali neodvisni trgovinski izvedenec razporedi stroške glede na okoliščine primera;

(h) odločitev ugotovitvenega sveta je obvezna za subjekt predodpremne kontrole in izvoznika, ki sta v sporu.

5. člen

Notifikacija

Članice predložijo Sekretariatu izvode zakonov in predpisov, s katerimi uveljavljajo ta sporazum, kakor tudi izvode katerihkoli zakonov in predpisov, ki se nanašajo na predodpremno kontrolo v času, ko Sporazum o WTO začne veljati za določeno članico. Ne morejo se uveljaviti nobene spremembe v zakonih in predpisih, ki se nanašajo na predodpremno kontrolo, preden se te spremembe uradno ne objavijo. Te se takoj po objavi sporočijo Sekretariatu. Sekretariat obvesti članice o razpoložljivosti teh informacij.

6. člen

Proučitev

Na koncu drugega leta od datuma začetka veljavnosti Sporazuma o WTO in vsaka nadaljnja tri leta Ministrska konferenca prouči določbe, izvajanje in uporabo tega sporazuma ob upoštevanju ciljev v njem in pridobljenih izkušenj v zvezi z njegovo uporabo. Kot rezultat take proučitve lahko Ministrska konferenca dopolni določbe sporazuma.

7. člen

Posvetovanje

Članice se posvetujejo z drugimi članicami na zahtevo v zvezi s katerokoli zadevo, ki zadeva uporabo tega sporazuma. V takih primerih se za ta sporazum uporabljajo določbe XXII. člena GATT 1994, kot so razčlenjene in jih uporablja Dogovor o reševanju sporov.

8. člen

Reševanje sporov

Katerikoli spori med članicami, ki se nanašajo na ta sporazum, se obravnavajo na podlagi določb XXIII. člena GATT 1994, kot so razčlenjene in jih uporablja Dogovor o reševanju sporov.

9. člen

Končne določbe

1. Članice sprejmejo ukrepe, potrebne za izvajanje tega sporazuma.

2. Članice zagotavljajo, da njihovi zakoni in predpisi niso v nasprotju z določbami tega sporazuma.

S P O R A Z U M
O PRAVILIH O POREKLU BLAGA

Članice se

ob upoštevanju, da so se ministri 20. septembra 1986 sporazumeli, da je namen Urugvajskega kroga mnogostranskih trgovinskih pogajanj "uresničiti nadaljnjo liberalizacijo in širjenje svetovne trgovine", "okrepiti vlogo GATT" in "povečati dovzetnost sistema GATT za razvoj mednarodnega gospodarskega okolja",

z željo, da se pospeši uresničevanje ciljev GATT 1994,

ob spoznanju, da jasna in predvidljiva pravila o poreklu in izvajanje teh pravil pomagajo tokovom mednarodne trgovine,

z željo zagotoviti, da pravila o poreklu sama po sebi ne bi po nepotrebnem ovirala trgovine,

z željo zagotoviti, da pravila o poreklu ne izničujejo ali omejejujejo pravic članic na podlagi GATT 1994,

ob spoznanju, da je zaželeno zagotoviti preglednost zakonov, predpisov in prakse, ki se nanaša na pravila o poreklu;

z željo zagotoviti, da se pravila o poreklu pripravljajo in izvajajo nepristransko, pregledno, predvidljivo, dosledno in nevtralno,

ob spoznanju, da obstajajo mehanizem za posvetovanja in postopki za hitro, učinkovito in enakopravno reševanje sporov, ki utegnejo izhajati iz sporazuma,

z željo harmonizirati in razjasniti pravila o poreklu

sporazumejo, kot sledi:

I. DEL

DEFINICIJE IN OBSEG SPORAZUMA

1. člen

Pravila o poreklu

1. Za namene I. do IV. dela tega sporazuma se kot pravila o poreklu razumejo zakoni, predpisi in upravne ugotovitve splošnega pomena, ki jih uporablja katerakoli članica z namenom, da se ugotovi država porekla blaga, pod pogojem, da taka pravila o poreklu niso v povezavi s pogodbenimi ali avtonomnimi trgovinskimi režimi, ki omogočajo dajanje carinskih preferencialov, ki presegajo uporabo prvega odstavka 1. člena GATT 1994.

2. Pravila o poreklu, na katera se nanaša prvi odstavek, vključujejo vsa pravila o poreklu, ki se uporabljajo kot nepreferencialna sredstva trgovinske politike, kot npr. pri uporabi klavzule največjih ugodnosti na podlagi I.,II., III., XI. in XIII. člena GATT 1994, protidumpinških postopkov in izravnalnih carin na podlagi VI. člena GATT 1994, posebnih zaščitnih ukrepov na podlagi XIX. člena GATT 1994, pravil označevanja porekla na podlagi IX. člena GATT 1994 ter kakršnihkoli diskriminacijskih količinskih omejitev ali carinskih kvot. Pravila o poreklu vključujejo tudi tista, ki se uporabljajo za vladne nabave in za trgovinsko statistiko.[1]

II. DEL

REŽIM, KI UREJA UPORABO PRAVIL O POREKLU

2. člen

Režim v prehodnem obdobju

Dokler delovni program za harmonizacijo pravil o poreklu, predviden v IV. delu, ni končan, članice zagotavljajo, da:

(a) so ob izdaji upravnih ugotovitev za splošno uporabo pogoji, ki morajo biti izpolnjeni, jasno določeni, zlasti:

(i) ob uporabi meril spremenjene carinske razvrstitve mora to pravilo o poreklu ter vsaka izjema od takega pravila jasno izražati podpoglavje ali poglavje v okviru carinske nomenklature, na katero se nanaša pravilo;

(ii) ob uporabi meril vrednosti, izraženih v odstotkih, mora pravilo o poreklu izražati tudi metodo izračunavanja teh odstotkov;

(iii) ob uporabi meril proizvodnega ali predelovalnega postopka mora biti postopek, ki opredeljuje poreklo blaga, jasno določen;

(b) se ne glede na ukrepe ali sredstva trgovinske politike, s katero so povezani, pravila o poreklu ne uporabljajo kot sredstvo za posredno ali neposredno doseganje določenih trgovinskih ciljev,

(c) pravila o poreklu sama po sebi ne smejo imeti omejitvenih, izkrivljajočih ali motečih učinkov na mednarodno trgovino. Ne smejo vsebovati neprimerno strogih zahtev ali zahtevati izpolnitve pogojev, ki niso v povezavi s proizvodnim ali predelovalnim postopkom, kot predpostavko za določitev države porekla. Dopustno je upoštevati stroške, ki niso neposredno povezani s proizvodnimi ali predelovalnimi postopki zaradi uporabe merila vrednosti v odstotkih v skladu s pododstavkom (a);

(d) tista pravila o poreklu, ki se uporabljajo v zvezi z uvozom in izvozom, niso strožja od pravil o poreklu, ki se uporabljajo za določanje, ali je neko blago domačega porekla in ne smejo biti diskriminacijska do drugih članic ne glede na pripadnost proizvajalcev določenega blaga;[2]

(e) se njihova pravila o poreklu uporabljajo dosledno, enotno, nepristransko in razumno;

(f) njihova pravila o poreklu temeljijo na pozitivno opredeljenem standardu. Pravila o poreklu, ki določajo, kaj porekla ne opredeljuje (negativni standard), so dovoljena le z namenom večje jasnosti pozitivno opredeljenega standarda ali v posamičnih primerih, ko pozitivna opredelitev porekla ni potrebna;

(g) se njihovi zakoni, predpisi, sodne in upravne odločitve za splošno uporabo, ki se nanašajo na pravila o poreklu, objavijo, kakor da bi bili predmet določb prvega odstavka X. člena GATT 1994 in v skladu z njimi;

(h) se na zahtevo izvoznika, uvoznika ali katerekoli druge osebe z utemeljenim razlogom izdajo presoje o pravilnosti porekla, ki ga ti navajajo, v najkrajšem možnem času, vendar ne pozneje kot v 150 dneh,[3] potem ko je vložena zahteva, če so dani vsi potrebni elementi. Take zahteve za presojo se sprejmejo pred začetkom trgovinske transakcije in kadarkoli pozneje. Take presoje veljajo tri leta pod pogojem, da dejstva in razmere, vključno z uporabljenimi pravili o poreklu, ostanejo primerljivi. Pod pogojem vnaprejšnjega obvestila zainteresiranih oseb taka presoja ne velja več, če je sprejeta odločitev v nasprotju s presojo med revizijo, na katero se nanaša pododstavek (j). Take presoje so javne na podlagi določb pododstavka (k);

(i) ob uvajanju sprememb v njihova pravila o poreklu ali novih pravil o poreklu takih sprememb ne bodo uporabljale za nazaj, kot je določeno v njihovih zakonih ali predpisih in brez poseganja vanje;

(j) za kakršnokoli upravno dejanje v zvezi z določitvijo porekla obstaja možnost takojšnje revizije po sodni, arbitražni ali upravni poti ali postopkih, neodvisnih od oblasti, ki je določila poreklo, ki lahko povzročijo, da se ta odločitev spremeni ali razveljavi;

(k) vse zaupne podatke ali podatke, ki se dajejo na zaupni podlagi zaradi uporabe pravil o poreklu, pristojne oblasti obravnavajo kot strogo zaupne in jih ne smejo razkrivati brez izrecnega dovoljenja osebe ali vlade, ki je take podatke dala na voljo, razen do meje razkrivanja, ki je potrebna v sodnih postopkih.

3. člen

Režim po prehodnem obdobju

Ob upoštevanju cilja vseh članic, da kot rezultat delovnega programa za harmonizacijo, določenega v IV. delu, dosežejo harmonizacijo pravil o poreklu, članice ob izvajanju dosežkov delovnega programa za harmonizacijo zagotavljajo, da:

(a) uporabljajo pravila o poreklu enako za vse namene, določene v 1. členu;

(b) se v njihovih pravilih o poreklu kot država porekla določenega blaga določi tista država, v kateri je blago v celoti pridobljeno ali, če je več kakor ena država udeležena pri proizvodnji blaga, tista, v kateri je opravljena zadnja bistvena sprememba določenega blaga;

(c) pravila o poreklu, ki jih uporabljajo v zvezi z uvozom in izvozom blaga, niso strožja od pravil o poreklu, ki se uporabljajo za določanje, ali je neko blago domačega porekla in ne smejo biti diskriminacijska do drugih članic ne glede na pripadnost proizvajalcev določenega blaga;

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[1] Razume se, da ta določba ne posega v tiste ugotovitve, ki se nanašajo na opredelitev "domače industrije" in "enakega proizvoda domače industrije" ali na podobne izraze, kjerkoli so v uporabi.

[2] V zvezi s pravili o poreklu, ki se uporabljajo pri vladnih nabavah, ta določba ne pomeni dodatne obveznosti poleg tistih, ki so jih članice že sprejele na podlagi GATT 1994.

[3] V zvezi z zahtevami, ki so dane v prvem letu od začetka veljavnosti Sporazuma o WTO, imajo članice samo obvezo, da dajejo te presoje, čim prej je možno.

(d) se pravila o poreklu uporabljajo dosledno, enotno, nepristransko in razumno;

(e) se njihovi zakoni, predpisi, sodne in upravne odločitve za splošno uporabo, ki se nanašajo na pravila o poreklu, objavijo, kot da bi bili predmet določb prvega odstavka X. člena GATT 1994 in v skladu z njimi;

(f) se na zahtevo izvoznika, uvoznika ali katerekoli druge osebe z utemeljenim razlogom izdajo presoje o pravilnosti porekla, ki ga ti navajajo, v najkrajšem možnem času, vendar ne pozneje kot v 150 dneh potem, ko je vložena zahteva, če so dani vsi potrebni elementi. Take zahteve za presojo se sprejmejo pred začetkom trgovinske transakcije in kadarkoli pozneje. Take presoje veljajo tri leta pod pogojem, da dejstva in razmere, vključno z uporabljenimi pravili o poreklu, ostanejo primerljivi. Pod pogojem vnaprejšnjega obvestila zainteresiranih oseb taka presoja ne velja več, če je sprejeta odločitev v nasprotju s presojo med revizijo, na katero se nanaša pododstavek (h). Take presoje so javne na podlagi določb pododstavka (i);

(g) ob uvajanju sprememb v njihova pravila o poreklu ali novih pravil o poreklu takih sprememb ne bodo uporabljale za nazaj, kot je določeno v njihovih zakonih ali predpisih in brez poseganja vanje;

(h) za kakršnokoli upravno dejanje v zvezi z določitvijo porekla obstaja možnost takojšnje revizije po sodni, arbitražni ali upravni poti ali postopkih, neodvisnih od oblasti, ki je določila poreklo, ki lahko povzročijo, da se ta odločitev spremeni ali razveljavi;

(i) vse zaupne podatke ali podatke, ki se dajejo na zaupni podlagi zaradi uporabe pravil o poreklu, pristojne oblasti obravnavajo kot strogo zaupne in jih ne smejo razkrivati brez izrecnega dovoljenja osebe ali vlade, ki je take podatke dala na voljo, razen do meje razkrivanj, ki je potrebna v sodnih postopkih.

III. DEL

UREDITEV POSTOPKOV NOTIFIKACIJE, PROUČITVE, POSVETOVANJA IN REŠEVANJA SPOROV

4. člen

Organi

1. Ustanovi se Odbor za pravila o poreklu (v nadaljnjem besedilu Odbor), ki ga sestavljajo predstavniki vsake članice. Odbor izvoli predsedujočega in se sestaja po potrebi, toda ne manj kot enkrat letno, z namenom, da se članicam zagotavlja možnost, da se posvetujejo o zadevah, ki se nanašajo na izvajanje I., II., III. in IV. dela ali na uresničevanje ciljev, ki so tam določeni, ter v zvezi z vsemi drugimi odgovornostmi, ki so določene s tem sporazumom, ali ki jih določi Svet za trgovino z blagom. Če je smiselno, Odbor zahteva informacije in nasvet Tehničnega odbora, na katerega se nanaša drugi odstavek, o zadevah, ki jih ureja ta sporazum. Odbor lahko zahteva, da Tehnični odbor opravi tudi drugo delo, potrebno za uresničevanje ciljev tega sporazuma. Sekretariat WTO opravlja naloge Sekretariata Odbora.

2. Ustanovi se Tehnični odbor za pravila o poreklu (v nadaljnjem besedilu Tehnični odbor) pod pokroviteljstvom Sveta za carinsko sodelovanje (Custom Co-operation Council,CCC), kot je določen v Prilogi I. Tehnični odbor opravlja tehnične naloge, ki so določene v IV. delu in predpisane v Prilogi I. Če je smiselno, Tehnični odbor zahteva informacije in nasvete Odbora o zadevah, ki se nanašajo na ta sporazum. Tehnični odbor lahko zahteva, da Odbor opravi tudi drugo delo, če meni, da je potrebno za uresničevanje ciljev sporazuma. Sekretariat CCC opravlja naloge Sekretariata Tehničnega odbora.

5. člen

Informacije in postopki za spremembo in uvedbo novih pravil o poreklu

1. Vsaka članica Sekretariatu v 90 dneh od dneva začetka veljavnosti Sporazuma o WTO zanjo dostavi svoja pravila o poreklu, sodne odločbe in upravne odločbe, ki so širšega pomena, v zvezi spravili o poreklu, ki veljajo na tisti dan. Če se nenamenoma opusti notifikacija o določenem pravilu o poreklu, določena članica to sporoči takoj, ko se ugotovi, da se je to zgodilo. Sezname informacij, ki jih je dobil in z njimi razpolaga Sekretariat, dostavi vsem članicam.

2. V času, ki je določen v 2. členu, članice, ki uvajajo spremembe, razen de minimis sprememb, v svoja pravila o poreklu ali pa uvajajo nova pravila, ki za namen tega člena vključujejo tudi katerokoli pravilo, na katero se nanaša prvi odstavek, ki ni bilo sporočeno Sekretariatu, morajo objaviti sporočilo o tem najmanj 60 dni pred začetkom veljavnosti spremembe ali novega pravila, tako da se zainteresirani seznanijo z nameni v zvezi s spremembo ali uvedbo novega pravila, razen če pri določeni članici nastanejo ali utegnejo nastati izjemne okoliščine. Zaradi teh izjemnih okoliščin mora članica objaviti spremenjeno ali novo pravilo o poreklu takoj, ko je to možno.

6. člen

Proučitev

1. Odbor letno prouči izvajanje in uporabo II. in III. dela tega sporazuma ob upoštevanju njegovih ciljev. Odbor enkrat letno obvesti Svet za trgovino z blagom o razvoju v obdobju, na katero se nanaša taka proučitev.

2. Odbor prouči I., II. in III. del in po potrebi predlaga dopolnitve, ki vsebujejo dosežke delovnega programa harmonizacije.

3. Odbor v sodelovanju s Tehničnim odborom oblikuje mehanizem za proučevanje in predloge dopolnitev k dosežkom delovnega programa harmonizacije ob upoštevanju ciljev in načel 9. člena. Ta lahko vključuje tudi primere, ko je potrebna večja prilagodljivost pravil ali njihova posodobitev, tako da upoštevajo nove proizvodne postopke, ki so posledica tehnoloških sprememb.

7. člen

Posvetovanje

Določbe XXII. člena GATT 1994, kot jih razčlenjuje in uporablja Dogovor o reševanju sporov, veljajo tudi za ta sporazum.

8. člen

Reševanje sporov

Določbe XXIII. člena GATT 1994, kot jih razčlenjuje in uporablja Dogovor o reševanju sporov, veljajo tudi za ta sporazum.

IV. DEL

HARMONIZACIJA PRAVIL O POREKLU

9. člen

Cilji in načela

1. Z namenom harmonizacije pravil o poreklu ter med drugim zaradi zagotavljanja večje zanesljivosti pri opravljanju mednarodne trgovine Ministrska konferenca v sodelova-

nju s CCC prevzame delovni program, ki je določen spodaj, na podlagi teh načel:

(a) pravila o poreklu bi se morala uporabljati enako za vse namene, določene v 1. členu;

(b) pravila o poreklu bi morala določati kot državo porekla blaga tisto državo, v kateri je določeno blago v celoti pridobljeno ali če je v procesu proizvodnje blaga udeleženih več držav, tedaj tisto, v kateri je bila opravljena zadnja bistvena predelava blaga;

(c) pravila o poreklu bi morala biti objektivna, razumljiva in predvidljiva;

(d) ne glede na ukrep ali sredstvo, s katerimi so povezana, se pravila o poreklu ne bi smela neposredno ali posredno uporabljati kot sredstvo za doseganje trgovinskih ciljev. Sama po sebi ne bi smela ustvarjati omejitvenih, izkrivljajočih ali motečih učinkov na mednarodno trgovino. Ne bi smela postavljati nepotrebno strogih pogojev ali zahtevati izpolnitve določenega pogoja, ki ni v zvezi s proizvodnjo ali predelavo, kot predpostavko za določitev države porekla. Toda stroške, ki niso v neposredni zvezi s proizvodnjo ali predelavo, je možno vključevati z namenom uporabe merila vrednosti, izraženega v odstotkih;

(e) pravila o poreklu bi morala biti uporabljena dosledno, enotno, nepristransko in razumno;

(f) pravila o poreklu bi morala biti razumljiva;

(g) pravila o poreklu bi morala temeljiti na pozitivnem opredeljenem standardu. Negativne standarde je možno uporabljati le za pojasnitev pozitivno opredeljenega standarda.

Delovni program

2. (a) Delovni program se začne takoj, ko je možno po začetku veljavnosti Sporazuma o WTO in se konča v treh letih od njegovega začetka.

(b) Odbor in Tehnični odbor, na katera se nanaša 4. člen, sta ustrezna organa za opravljanje tega dela.

(c) Da bi bilo možno zagotavljati natančen prispevek CCC, Odbor od Tehničnega odbora zahteva, da zagotovi svojo razlago in mnenja o delu, ki je opisano spodaj, na podlagi načel, naštetih v prvem odstavku. Da bi bilo možno zagotoviti pravočasni konec delovnega programa harmonizacije, se to delo opravi na osnovi proizvodov po sektorjih, kot so določeni v posameznih poglavjih ali oddelkih Harmoniziranega sistema opisa blaga (HS-nomenklatura).

(i) *Celovita pridobitev in najnujnejše delovne operacije in postopki*

Tehnični odbor razvije poenotene opredelitve:

– proizvodov, za katere velja, da so v celoti pridobljeni v eni državi. To delo mora biti opravljeno čim podrobneje;

– najnujnejših delovnih operacij ali postopkov, ki sami po sebi blagu ne opredeljujejo porekla.

Dosežki tega dela se predložijo Odboru v treh mesecih od dneva, ko je Odbor dal zahtevo.

(ii) *Bistveno predrugačenje – Sprememba v carinski razvrstitvi*

– Tehnični odbor na podlagi uporabe merila bistvenega predrugačenja obravnava in ugotavlja način uporabe spremembe v carinskem podpoglavju ali poglavju v povezavi z razvojem pravil o poreklu za določene proizvode ali skupino proizvodov ter tisto najmanjšo spremembo v nomenklaturi, ki ustreza temu merilu.

– Tehnični odbor razdeli omenjeno delo na podlagi proizvoda ob upoštevanju poglavij ali oddelkov HS-nomenklature, tako da lahko predloži dosežke svojega dela vsaj trimesečno. Tehnični odbor konča delo v enem letu in treh mesecih od dneva, ko je prejel zahtevo Odbora.

(iii) *Bistveno predrugačenje – Pomožna merila*

Ko se konča delo, določeno v pododstavku (ii) za vsako skupino proizvodov ali posamezno kategorijo proizvoda na tistem mestu, kjer izključna uporaba HS-nomenklature ne dopušča izražanja bistvenega predrugačenja, Tehnični odbor:

– pri oblikovanju pravil o poreklu za določene vrste ali skupine blaga na podlagi merila bistvenega predrugačenja obravnava in razlaga dopolnilno ali izključno uporabo drugih zahtev, vključno z odstotki vrednosti[4] in /ali proizvodnimi in predelovalnimi postopki;[5]

– lahko obrazloži svoje predloge;

– razdeli omenjeno delo na podlagi proizvoda ob upoštevanju poglavij ali oddelkov HS-nomenklature, da lahko rezultate svojega dela predloži Odboru vsaj trimesečno. Tehnični odbor konča delo v dveh letih in treh mesecih od prejema zahteve Odbora.

Vloga Odbora

3. Na osnovi načel, naštetih v prvem odstavku:

(a) Odbor občasno obravnava razlage in mnenja Tehničnega odbora v skladu s časovnimi obdobji, določenimi v pododstavkih (i), (ii) in (iii) drugega (c) odstavka, z namenom da podpre take razlage in mnenja. Odbor lahko zahteva, da Tehnični odbor izboljša ali naprej obrazloži svoje delo in/ali razvije nove pristope. Z namenom, da bi pomagal pri delu Tehničnega odbora, Odbor navede razloge za zahtevo po dodatnem delu in, če presodi kot primerno, lahko tudi predlaga drugačne pristope;

(b) po končanem delu, ki je določeno v pododstavkih (i), (ii) in (iii) drugega(c) odstavka, Odbor obravnava dosežke v celoti.

Dosežki delovnega programa harmonizacije in nadaljnje delo

4. Ministrska konferenca ugotovi dosežke Delovnega programa harmonizacije v okviru priloge, ki je sestavni del tega sporazuma.[6] Ministrska konferenca določi čas za začetek veljavnosti te priloge.

PRILOGA I

TEHNIČNI ODBOR ZA PRAVILA O POREKLU

Odgovornosti

1. Trajne odgovornosti Tehničnega odbora vključujejo:

(a) na zahtevo kateregakoli člana Tehničnega odbora obravnava posebne tehnične težave, ki se pojavljajo pri dnevni uporabi pravil o poreklu članic in daje mnenja o ustreznih rešitvah na podlagi danih dejstev;

(b) dajanje informacij in nasvetov o katerikoli zadevi, ki se nanaša na ugotavljanje porekla blaga, na zahtevo katerekoli članice ali Odbora;

(c) pripravljanje in občasno pošiljanje poročila o tehničnih vprašanjih v zvezi z izvajanjem in statusom tega sporazuma in

(d) letno preverjanje tehničnih vprašanj v zvezi z izvajanjem in uporabo II. in III. dela.

2. Tehnični odbor ima tudi take druge odgovornosti, ki mu jih naloži Odbor.

3. Tehnični odbor poskuša končati svoje delo v zvezi z določenimi zadevami, zlasti tistimi, ki mu jih dajejo članice ali Odbor, v razumno kratkem času.

Zastopanje

4. Vsaka članica ima pravico biti zastopana v Tehničnem odboru. Vsaka članica lahko imenuje enega delegata in

[4] Če je predpisano merilo vrednosti, morajo pravila o poreklu navajati tudi metodo izračunavanja vrednosti, izraženo v odstotkih.

[5] Če je predpisano merilo proizvodnega ali predelovalnega postopka, mora biti tisti postopek, ki daje blagu poreklo, natančno določen.

[6] Sočasno je treba upoštevati tudi rešitve v zvezi z reševanjem sporov, ki izhajajo iz uporabe carinske razvrstitve blaga

enega ali več namestnikov, da jo zastopajo v Tehničnem odboru. Članica, ki je tako zastopana v Tehničnem odboru, se imenuje "članica" Tehničnega odbora. Predstavnikom članic Tehničnega odbora lahko na zasedanjih Tehničnega odbora pomagajo svetovalci. Sekretariat WTO lahko sodeluje na teh zasedanjih kot opazovalec.

5. Članice CCC, ki pa niso članice WTO, lahko na zasedanjih Tehničnega odbora zastopa en delegat in en ali več namestnikov. Taki predstavniki se zasedanj Tehničnega odbora udeležujejo kot opazovalci.

6. Če to dovoli predsedujoči Tehničnega odbora, lahko generalni sekretar CCC (v nadaljnjem besedilu generalni sekretar) vabi na zasedanja Tehničnega odbora predstavnike vlad držav, ki niso članice WTO niti članice CCC, in predstavnike mednarodnih vladnih in trgovinskih organizacij kot opazovalce.

7. Imenovanja delegatov, namestnikov in svetovalcev za zasedanja Tehničnega odbora se sporočajo generalnemu sekretarju.

Zasedanja

8. Tehnični odbor se sestaja po potrebi, vendar najmanj enkrat letno.

Postopki

9. Tehnični odbor izvoli predsedujočega iz svojih vrst ter sam določi svoj poslovnik.

PRILOGA II

SKUPNA DEKLARACIJA O PREFERENCIALNIH PRAVILIH O POREKLU

1. Ob spoznanju, da nekatere članice uporabljajo preferencialna pravila o poreklu ločeno od nepreferencialnih pravil o poreklu, se članice sporazumejo, kot sledi.

2. Za namene te skupne deklaracije se kot preferencialna pravila o poreklu razumejo zakoni, predpisi in upravne ugotovitve splošnega pomena, ki jih uporablja katerakoli članica z namenom, da ugotovi, ali blago ustreza pogojem za preferencialno obravnavo v smislu pogodbenih ali avtonomnih trgovinskih režimov, ki so podlaga za carinske preferenciale, ki presegajo uporabo prvega odstavka I. člena GATT 1994.

3. Članice se sporazumejo, da zagotavljajo, da:

(a) so ob izdaji upravnih ugotovitev splošnega pomena pogoji, ki morajo biti izpolnjeni, jasno določeni, zlasti:

(i) ob uporabi meril spremembe carinske razvrstitve mora to preferencialno pravilo o poreklu ter vsaka izjema od pravila jasno določati podpoglavje ali poglavje v okviru carinske nomenklature, na katero se nanaša pravilo;

(ii) ob uporabi meril vrednosti v odstotkih mora preferencialno pravilo o poreklu izražati tudi metodo izračunavanja teh odstotkov;

(iii) ob uporabi meril proizvodnega ali predelovalnega postopka mora biti postopek, ki opredeljuje preferencialno poreklo, natančno določen;

(b) njihova preferencialna pravila o poreklu temeljijo na pozitivnih standardih. Preferencialna pravila o poreklu, ki določajo, kaj ne daje preferencialnega porekla (negativni standard), so dovoljena le kot del razlage pozitivnega standarda ali v posameznih primerih, če pozitivna določitev preferencialnega porekla ni potrebna;

(c) se njihovi zakoni, predpisi, sodne in upravne odločitve splošnega pomena v zvezi s preferencialnimi pravili o poreklu objavijo, kakor da bi bili predmet določb prvega odstavka X. člena GATT 1994 in v skladu z njimi;

(d) se na zahtevo izvoznika, uvoznika ali katerekoli osebe z utemeljenim razlogom izdajo presoje o pravilnosti preferencialnega porekla blaga, ki ga omenjene osebe pripisujejo določenemu blagu, v najkrajšem času, vendar ne pozneje kot v 150 dneh[7] od dneva, ko je zahteva za tako presojo dana, pod pogojem, da so dani vsi potrebni elementi. Zahteve za tako presojo se sprejmejo pred začetkom določene trgovinske transakcije in pa kadarkoli pozneje. Take presoje veljajo tri leta pod pogojem, da dejstva in razmere, vključno z uporabljenimi preferencialnimi pravili o poreklu ostanejo primerljivi. Pod pogojem vnaprejšnjega obvestila zainteresiranih oseb take presoje ne veljajo več, če je sprejeta odločitev v nasprotju s presojo med revizijo, na katero se nanaša pododstavek (f). Take presoje so javne pod pogoji določbe pododstavka (g);

(e) ob uvajanju sprememb v preferencialnih pravilih porekla ali novih pravil o poreklu takih sprememb ne bodo uporabljale za nazaj, kot je določeno v njihovih zakonih ali predpisih in brez poseganja vanje;

(f) za kakršnokoli upravno dejanje v zvezi z določitvijo preferencialnega porekla obstaja možnost takojšnje revizije po sodni, arbitražni ali upravni poti ali postopkih, neodvisnih od oblasti, ki je določila poreklo, ki lahko povzročijo, da se ta odločitev spremeni ali razveljavi;

(g) vse zaupne podatke ali podatke, ki se dajejo na zaupni podlagi zaradi uporabe preferencialnih pravil o poreklu, pristojne oblasti obravnavajo kot strogo zaupne in jih ne smejo razkrivati brez izrecnega dovoljenja osebe ali vlade, ki je take podatke dala na voljo, razen do meje razkrivanj, ki je potrebna v sodnih postopkih.

4. Članice se sporazumejo, da Sekretariatu pravočasno dostavijo svoja preferencialna pravila o poreklu, vključno s seznamom preferencialov, na katera se nanašajo, s sodnimi in upravnimi odločitvami splošnega pomena, ki se nanašajo na njihova preferencialna pravila o poreklu, ki veljajo na dan začetka veljavnosti Sporazuma o WTO za določeno članico. Članice se tudi sporazumejo, da Sekretariatu dostavijo obvestila o spremembah preferencialnih pravil o poreklu ali o novih preferencialnih pravilih o poreklu, čim prej je možno. Seznam prejetih informacij in tistih, ki so Sekretariatu na voljo, Sekretariat pošlje vsem članicam.

S P O R A Z U M
O POSTOPKIH ZA IZDAJANJE UVOZNIH DOVOLJENJ

Članice se

ob upoštevanju mnogostranskih trgovinskih pogajanj,

z željo pospeševanja uresničevanja ciljev GATT 1994,

ob upoštevanju posebnih trgovinskih, razvojnih in finančnih potreb članic držav v razvoju,

ob spoznanju koristnosti postopkov za avtomatično izdajanje uvoznih dovoljenj v določene namene in da se taki postopki ne bi uporabljali za omejevanje trgovine,

ob spoznanju, da se smejo postopki za izdajanje uvoznih dovoljenj uporabljati le zaradi ukrepov, ki so dovoljeni na podlagi določb GATT 1994,

ob upoštevanju določb GATT 1994, ki se nanašajo na postopke za izdajanje uvoznih dovoljenj,

z željo, da se zagotavljajo taki postopki za izdajanje uvoznih dovoljenj, ki niso v nasprotju z načeli in obveznostmi, ki izhajajo iz GATT 1994,

[7] V zvezi z zahtevami, ki so dane v prvem letu od začetka veljavnosti Sporazuma o WTO, imajo članice samo obvezo, da dajejo te presoje, čim prej je možno.

ob spoznanju, da je možno ovirati tokove mednarodne trgovine z neustrezno uporabo postopkov za izdajanje uvoznih dovoljenj,

ob prepričanju, da je zlasti z neavtomatičnim izdajanjem uvoznih dovoljenj treba ravnati pregledno in predvidljivo,

ob upoštevanju, da neavtomatični postopki za izdajanje uvoznih dovoljenj ne smejo pomeniti večjega upravnega bremena, kot je to nujno potrebno za določen ukrep,

z željo poenostaviti in voditi odprte upravne postopke in prakso v mednarodni trgovini ter zagotoviti pravično in nepristransko vodenje takih postopkov in prakse,

z željo zagotoviti posvetovalni mehanizem ter hitro, učinkovito in nepristransko reševanje sporov, ki utegnejo nastati na podlagi tega sporazuma;

sporazumejo, kot sledi:

1. člen

Splošne določbe

1. Za namen tega sporazuma, je izdajanje uvoznih dovoljenj upravni postopek,[1] ki se uporablja na podlagi režima uvoznih dovoljenj, ki zahteva vlaganje prošenj ali drugih dokumentov (razen tistih, ki jih potrebuje carina) pri pristojnem upravnem organu kot predpogoj za uvoz na carinsko območje članice uvoznice.

2. Članice zagotavljajo, da so upravni postopki, ki se uporabljajo z namenom izvajanja režima uvoznih dovoljenj usklajeni z ustreznimi določbami GATT 1994, vključno s prilogami in protokoli, kot jih razlaga ta sporazum, zaradi preprečevanja izkrivljanja trgovine, ki utegne nastati zaradi neustreznega vodenja teh postopkov ob upoštevanju potreb gospodarskega razvoja in finančnih in trgovinskih potreb članic držav v razvoju.[2]

3. Pravila za izdajanje uvoznih dovoljenj se uporabljajo nevtralno in se izvajajo pravično in enakopravno.

4. (a) Pravila in vse informacije, ki se nanašajo na postopke za vlaganje zahtev, vključno z upravičenostjo oseb, družb in ustanov do takih zahtev, pristojnimi upravnimi organi in seznami blaga, za katero so potrebna dovoljenja, morajo biti objavljeni v virih, ki jih je treba sporočiti Odboru za uvozna dovoljenja, ki je določen v 4. členu (v nadaljnjem besedilu Odbor), tako da se lahko vlade[3] in trgovci seznanijo z njimi. Tako objavo je treba zagotoviti vsaj 21 dni, če je možno, pred začetkom veljavnosti pogojev, vendar v vsakem primeru ne pozneje kakor na dan, ko začnejo veljati. Kakršnekoli izjeme, odstopanja ali spremembe v/pri pravilih, ki se nanašajo na postopke za izdajanje uvoznih dovoljenj in na sezname blaga, za katero so potrebna uvozna dovoljenja, je treba objaviti na enak način in v enakih rokih, kot je navedeno zgoraj. Izvodi publikacij se pošljejo tudi Sekretariatu.

(b) Članicam, ki želijo dati pisne pripombe, je treba zagotoviti možnost, da se te pripombe obravnavajo na njihovo zahtevo. Članica, na katero se pripombe nanašajo, mora ustrezno upoštevati te pripombe kakor tudi izide obravnave.

5. Obrazci za vloge oziroma za obnovo dovoljenja morajo biti čim bolj enostavni. Ob vlaganju zahtev se smejo zahtevati tisti dokumenti in podatki, ki so nujno potrebni za pravilno delovanje režima uvoznih dovoljenj.

6. Postopki za vlaganje zahtevkov oziroma za obnovo dovoljenj morajo biti čim bolj enostavni. Vlagatelj mora imeti na razpolago razumen čas za vlaganje zahtevka za dovoljenje. Če je določen končni dan, mora biti rok najmanj 21 dni z možnostjo za podaljšanje, če v tem času ni prispelo dovolj vlog. Vlagatelji naj zahteve vlagajo samo pri enem upravnem organu. Če so nujna opravila pri več kot enem upravnem organu, naj jih vlagatelj opravi pri največ treh.

7. Nobene vloge ni mogoče zavrniti zaradi manjših napak v dumokentaciji, ki same po sebi ne spreminjajo osnovnih podatkov, ki so v njej vsebovani. Ni mogoče določiti nobene kazni, strožje od tiste, ki je potrebna le kot opozorilo v zvezi z neko opustitvijo ali napako, ki je storjena v dokumentaciji ali postopku, za katero je očitno, da ni nastala iz goljufivih pobud ali zaradi velike malomarnosti.

8. Uvoz na podlagi dovoljenja se ne more zavrniti zaradi manjših razlik v vrednosti, količini ali teži glede na vrednosti, določene v dovoljenju, če so nastale med prevozom, ali zaradi natovarjanja razsutega tovora ter zaradi drugih manjših razlik, ki so običajne v trgovinski praksi.

9. Tuja plačilna sredstva za uvoz, ki je na režimu dovoljenj, je treba zagotoviti imetnikom dovoljenj na enaki podlagi kot tistim uvoznikom blaga, ki ne potrebujejo uvoznih dovoljenj.

10. V zvezi z varnostnimi izjemami veljajo določbe XXI. člena GATT 1994.

11. Določbe tega sporazuma ne zahtevajo od katerekoli članice, da razkriva zaupne podatke, če to pomeni oviro za izvajanje pravnega reda, ali bi sicer bilo v nasprotju z javnimi interesi ali bi vplivalo na legitimne trgovinske interese določenih javnih in zasebnih podjetij.

2. člen

Avtomatično izdajanje uvoznih dovoljenj[4]

1. Avtomatično izdajanje uvoznih dovoljenj se definira kot izdajanje uvoznih dovoljenj, če se vsak zahtevek v vseh primerih reši pozitivno v skladu s pogoji, določenimi v drugem (a) odstavku.

2. Naslednje določbe,[5] dodatno k tistim, ki so določene od prvega do enajstega odstavka 1. člena in v prvem odstavku tega člena, se uporabljajo v postopkih avtomatičnega izdajanja uvoznih dovoljenj:

(a) postopki avtomatičnega izdajanja uvoznih dovoljenj se ne smejo voditi na način, ki omejuje uvoz, ki je predmet avtomatičnega uvoznega dovoljenja. Šteje se, da postopek za avtomatično izdajo uvoznega dovoljenja omejuje trgovino, razen če je med drugim:

(i) vsaka oseba, podjetje ali ustanova, ki izpolnjuje zakonite pogoje, ki jih določa članica uvoznica za opravljanje uvoznih poslov v zvezi s proizvodi, ki so predmet avtomatičnih dovoljenj, enako upravičena vložiti zahtevek in dobiti uvozno dovoljenje;

(ii) možno vloge za uvozna dovoljenja vlagati vsak delovni dan pred carinjenjem blaga;

(iii) možno reševati vloge za dovoljenja takoj ob prejemu, če je vloga v ustrezni obliki in je popolna, če je to upravno izvedljivo, vendar najpozneje v 10 delovnih dneh;

(b) članice upoštevajo, da je avtomatično izdajanje uvoznih dovoljenj potrebno takrat, kadar niso na voljo drugi ustrezni postopki. Avtomatično izdajanje uvoznih dovoljenj je možno uporabljati toliko časa, dokler prevladujejo pogoji, ki so narekovali uvedbo takega postopka, in toliko časa, dokler upravnih namenov ni možno doseči ustrezneje.

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[1] Postopki, ki se označujejo kot "postopki za izdajanje dovoljenj", kot tudi drugi podobni upravni postopki.

[2] V tem sporazumu ni nič možno razumeti tako, da je podlaga, obseg ali trajanje ukrepa, ki se izvaja z uporabo postopkov za izdajanje dovoljenj, vprašljiva na podlagi tega sporazuma.

[3] Za namen tega sporazuma se izraz "vlade" uporablja tudi za pristojne oblasti Evropskih skupnosti.

[4] Tisti postopki za izdajo uvoznih dovoljenj, ki zahtevajo varščino, ki pa sama po sebi ne omejuje uvoza, sodijo v prvi in drugi odstavek.

[5] Članica država v razvoju, z izjemo tistih, ki so bile pogodbenice Sporazuma o postopkih za izdajanje uvoznih dovoljenj z dne 12. aprila 1979, ki ima posebne težave z zahtevami pododstavka (a)(ii) in (a)(iii), sme na podlagi notifikacije Odboru odložiti uporabo teh pododstavkov, vendar ne več kakor dve leti od dneva začetka veljavnosti Sporazuma o WTO, ki velja za tako članico.

3. člen

Neavtomatično izdajanje uvoznih dovoljenj

1. Za neavtomatično izdajanje uvoznih dovoljenj veljajo naslednje določbe, poleg tistih, ki so določene od prvega do enajstega odstavka 1. člena. Kot neavtomatično izdajanje uvoznih dovoljenj velja postopek izdajanja uvoznih dovoljenj, ki ni določen v prvem odstavku 2. člena.

2. Neavtomatično izdajanje uvoznih dovoljenj ne sme imeti trgovinsko omejitvenih ali izkrivljajočih učinkov na uvoz, poleg tistih, ki izhajajo iz uvedbe te omejitve. Postopki neavtomatičnega izdajanja uvoznih dovoljenj morajo po obsegu in trajanju ustrezati tistim ukrepom, zaradi katerih se ta dovoljenja izdajajo, ter ne smejo pomeniti večjega upravnega bremena od tega, kar je nujno, da se ukrepi izvajajo.

3. V primerih zahtev za pridobitev dovoljenja za namene, ki so drugačni kot uporaba količinskih omejitev, morajo članice objaviti dovolj informacij, da bi se lahko druge članice in trgovci seznanili s podlago za dajanje in/ali razdelitev dovoljenj.

4. Če članica osebam, podjetjem ali ustanovam omogoča, da zahtevajo izjemo ali odstop od zahteve za pridobitev dovoljenja, mora to možnost vključiti med informacije, ki jih objavlja v skladu s četrtim odstavkom 1. člena, kakor tudi informacijo o tem, kako je treba vložiti tako zahtevo, in če je možno, tudi nakazati pogoje za obravnavo takih zahtev.

5. (a) članice na zahtevo katerekoli druge članice, ki ima določene interese v zvezi s trgovino z določenim blagom, zagotavljajo vse ustrezne informacije o:

(i) upravnem izvajanju omejitev;

(ii) uvoznih dovoljenjih, ki so izdana v zadnjem obdobju;

(iii) razporeditvi takih dovoljenj med države dobaviteljice;

(iv) če je izvedljivo o uvozni statistiki (t.j. vrednosti in/ali količini) za proizvode, ki so predmet uvoznih dovoljenj. Od članic držav v razvoju se ne pričakuje, da v zvezi s tem prevzemajo dodatna upravna ali finančna bremena.

(b) članice, ki upravljajo kvote tako, da izdajajo uvozna dovoljenja, objavijo celotno kvoto, ki jih nameravajo uporabljati, po količini in/ali vrednosti, začetni in končni rok za kvote ter kakršnekoli s tem povezane spremembe, v rokih, ki so določeni v četrtem odstavku 1. člena, tako da se lahko vlade in trgovci seznanijo z njimi;

(c) če so kvote razdeljene med države dobaviteljice, članica, ki uporablja omejitve, takoj obvesti druge članice, ki imajo interese v zvezi z dobavami določenega blaga, o deležih, dodeljenih znotraj določenih kvot po količini ali vrednosti raznim državam dobaviteljicam in objavijo te podatke v rokih, določenih v četrtem odstavku 1. člena ter tako, da se lahko vlade in trgovci seznanijo s tem;

(d) če nastane potreba, da se predčasno odpirajo kvote, se podatki, določeni v četrtem odstavku 1. člena, objavijo v rokih, določenih v četrtem odstavku 1. člena ter tako, da se lahko vlade in trgovci seznanijo s tem;

(e) katerakoli oseba, podjetje ali ustanova, ki izpolnjuje zakonite in upravne pogoje članice uvoznice, ima enako pravico vlagati zahtevke za dovoljenje in pravico, da se zahtevek obravnava. Če zahtevek za dovoljenje ni odobren, ima vlagatelj pravico, da na zahtevo dobi pojasnilo o razlogih za zavrnitev in ima pravico do pritožbe ali revizije v skladu z domačo zakonodajo ali postopki članice uvoznice;

(f) razen iz razlogov, ki niso pod nadzorom članice, se zahtevki obravnavnavajo v roku, ki ni daljši od 30 dni, če gre za primere, da se zahtevki obravnavajo po vrstnem redu taki, kot so prejeti oziroma takrat, ko so prejeti, in v roku, ki ni daljši od 60 dni, če se zahtevki obravnavajo sočasno. V tem zadnjem primeru velja, da rok za obravnavo začne teči naslednji dan po izteku objavljenega roka za vlaganje zahtevkov;

(g) dovoljenje velja za razumno obdobje, ki ne sme biti tako kratko, da dejansko onemogoča uvoz. Veljavnost dovoljenja ne sme onemogočati uvoza iz oddaljenih virov, razen ko je uvoz nujen zaradi nepredvidljivih kratkoročnih potreb;

(h) pri uporabi kvot članice ne smejo ovirati uvoza, ki se izvaja v skladu z izdanimi dovoljenji in delovati zoper popolno izrabo kvot;

(i) pri izdaji dovoljenj članice upoštevajo, da je zaželeno, da se dovoljea njizdajajo za proizvode v ekonomičnih količinah;

(j) pri razdelitvi dovoljenj naj bi članica upoštevala pretekli uvoz vlagatelja zahteve. Upoštevala naj bi tudi, ali so bila dovoljenja, izdana v določenem preteklem obdobju, v celoti izkoriščena. Kadar uvozna dovoljenja niso bila v celoti izkoriščena, mora članica ugotoviti razloge za to in te razloge upoštevati pri razdelitvi novih dovoljenj. Posebej je treba upoštevati tudi potrebo po razumni razporeditvi dovoljenj v korist novih uvoznikov ter hkrati upoštevati zaželenost, da se uvozna dovoljenja izdajajo za proizvode v ekonomičnih količinah. V zvezi s tem je treba posebej upoštevati uvoznike, ki uvažajo proizvode, ki izvirajo iz članic držav v razvoju in zlasti iz članic najmanj razvitih držav;

(k) kadar se kvote delijo z uvoznimi dovoljenji, ki pa niso hkrati razdeljene med posamezne države dobaviteljice, imajo imetniki dovoljenj[6] prosto izbiro uvoznih virov. Kadar se kvote delijo med države dobaviteljice, dovoljenje jasno določa državo ali države, za katere velja.

(l) Pri uporabi osmega odstavka 1. člena je možno pri izdaji novih dovoljenj kompenzirati uvoz, ki je po količini presegel tisto količino, ki je bila določena v prejšnjem dovoljenju.

4. člen

Organi

Ustanovi se Odbor za uvozna dovoljenja, ki ga sestavljajo predstavniki vsake članice. Odbor iz svojih vrst izvoli predsedujočega in namestnika ter se sestaja po potrebi z namenom, da se članicam omogočijo posvetovanja o katerikoli zadevi, ki se nanaša na izvajanje ali na doseganje ciljev tega sporazuma.

5. člen

Notifikacija

1. Članice, ki uvedejo postopke za izdajanje dovoljenj ali spremembe v teh postopkih, v 60 dneh od dneva objave o tem obvestijo Odbor.

2. Notifikacija o uvedbi postopkov za izdajanje dovoljenj vključuje te podatke:

(a) seznam proizvodov, na katere se nanašajo postopki za izdajanje dovoljenj;

(b) kontaktno mesto za informacije o izpolnjevanju pogojev za pridobitev dovoljenja;

(c) pristojne upravne organe za vlaganje zahtevkov;

(d) datum in naslov publikacije, v kateri so objavljeni postopki za izdajanje dovoljenj;

(e) podatek o tem, ali je postopek za izdajo dovoljenja avtomatičen ali neavtomatičen, kot je opisano v 2. in 3. členu;

(f) kadar gre za avtomatični postopek za izdajo dovoljenj, kaj je upravni namen tega postopka;

[6] Občasno se uporablja izraz "imetniki kvot".

(g) kadar gre za neavtomatični postopek za izdajo dovoljenj, podatek o ukrepu, ki se izvaja s pomočjo izdaje dovoljenja in

(h) pričakovano obdobje uporabe postopka za izdajo dovoljenj, če je to možno predvideti z določeno stopnjo verjetnosti, če ne, pa razlog, zakaj tega podatka ni možno dati.

3. Notifikacija sprememb v postopku za izdajanje dovoljenj upošteva navedene elemente, če je sprememba nastala v zvezi z njimi.

4. Članice Odbor obvestijo o publikaciji, v kateri bodo objavljeni podatki iz četrtega odstavka 1. člena.

5. Katerakoli zainteresirana članica, ki meni, da druga članica ni sporočila uvedbe ali spremembe postopka za izdajanje dovoljenj v skladu z določbami od prvega do tretjega odstavka, sme na to opozoriti tako drugo članico. Če notifikacija ni takoj opravljena, sme taka članica sama sporočiti postopek za izdajanje dovoljenj in spremembe v njem, vključno z vsemi ustreznimi in razpoložljivimi podatki.

6. člen

Posvetovanje in reševanje sporov

Posvetovanja in reševanje sporov v zvezi s katerimkoli vprašanjem izvajanja tega sporazuma so predmet določb XXII. in XXIII. člena GATT 1994, kot so razčlenjene in se uporabljajo na podlagi Dogovora o reševanju sporov.

7. člen

Proučitev

1. Odbor po potrebi, najmanj pa enkrat vsaki dve leti, prouči izvajanje tega sporazuma z upoštevanjem njegovih ciljev ter pravic in obveznosti, ki jih vsebuje.

2. Kot podlago za proučitev v Odboru Sekretariat pripravi poročilo, ki temelji na informacijah, ki so določene s 5. členom, ter odgovorih, danih v letnih vprašalnikih o postopkih za izdajanje uvoznih dovoljenj,[7] ter drugih zanesljivih informacijah, s katerimi razpolaga. To poročilo vsebuje povzetek omenjenih informacij, zlasti z opozorilom na spremembe ali razvoj v obdobju, ki je predmet proučitve, ter katerekoli druge podatke v soglasju z Odborom.

3. Članice se zavezujejo, da bodo pravočasno in v celoti izpolnjevale letne vprašalnike o postopkih za izdajanje dovoljenj.

4. Odbor obvesti Svet za trgovino z blagom o razvoju v obdobju, ki je predmet take proučitve.

8. člen

Končne določbe

Pridržki

1. Ni možno dajati pridržkov glede katerekoli določbe tega sporazuma brez soglasja drugih članic.

Domača zakonodaja

2. (a) Vsaka članica najpozneje do začetka veljavnosti Sporazuma o WTO zagotovi skladnost svojih zakonov, predpisov in upravnih postopkov z določbami tega sporazuma.

(b) Vsaka članica obvesti Odbor o vseh spremembah v zakonih in predpisih, pomembnih za ta sporazum, in o izvajanju teh zakonov in predpisov.

[7] V izvirniku dokument GATT 1947, št. L/3515 z dne 23. marec 1971.

S P O R A Z U M
O SUBVENCIJAH IN IZRAVNALNIH UKREPIH

Članice se sporazumejo, kot sledi:

I. DEL: SPLOŠNE DOLOČBE

1. člen

Opredelitev subvencije

1.1 Za namene tega sporazuma velja za subvencijo:

(a) (1) finančni prispevek vlade ali kateregakoli javnega organa na ozemlju članice (v nadaljnjem besedilu vlada), t.j.:

(i) dejavnost vlade, ki pomeni neposreden prenos sredstev (npr. nepovratna dotacija, posojilo, kapitalski vložek), neposredna nakazila, do katerih utegne priti, ali prevzem dolga (npr. v obliki jamstev za posojila);

(ii) odpust ali opustitev izterjave dospelih davčnih obveznosti (npr. fiskalne spodbude, kot so davčne olajšave);[1]

(iii) vladna dobava blaga ali storitve, ki sicer ne sodi v splošno infrastrukturo, ali pa odkup blaga;

(iv) vplačila vlade v določen finančni sklad ali pooblastilo ali navodilo zasebnemu subjektu, da opravi več opravil take vrste, kot so našteta v točkah od (i) do (iii) tega pododstavka, ki bi jih v običajnih okoliščinah opravila vlada in se opravljanje take dejavnosti dejansko in po vsebini ne razlikuje od dejavnosti, ki jo sicer opravlja vlada, ali

(a) (2) kakršnakoli oblika dohodkovne ali cenovne podpore v smislu XVI. člena GATT 1994;

in

(b) pri tem nastane korist.

1.2 Subvencija, kakor je opisana v prvem odstavku, je predmet določb II. ali III. ali V. dela le, če je specifična v smislu določb 2. člena.

2. člen

Specifičnost

2.1 Da lahko subvencija, kakor je opredeljena v prvem odstavku 1. člena, velja kot specifična glede na določeno podjetje ali industrijo ali skupino podjetij ali industrij (v nadaljnjem besedilu določena podjetja), ki so v pristojnosti določene oblasti, ki subvencijo daje, se uporabijo ta načela:

(a) subvencija je specifična, če oblasti ali zakonodaja, ki oblastem omogoča subvencioniranje, izrecno omejuje dostop do subvencije določenim podjetjem;

(b) če oblasti, ki dajejo subvencijo, ter ustrezna zakonodaja, ki omogoča uporabo subvencije, uporabljajo objektivna merila ali pogoje[2] za pridobitev ali določitev višine subvencije, tedaj subvencija ni specifična, če je pravica pridobiti subvencijo avtomatična in če se strogo ravnajo po teh merilih in pogojih. Merila in pogoji morajo biti jasno navedeni v zakonu, predpisu ali drugem uradnem dokumentu, tako da jih je možno preverjati;

(c) četudi bi kazalo, da subvencija ni specifična na podlagi načel v pododstavku (a) in (b), vendar pa obstajajo razlogi za to, da je subvencija dejansko specifična, tedaj je

[1] V skladu z določbami XVI. člena GATT 1994 (opomba k XVI. členu) ter določbami Prilog od I do III tega sporazuma se kot subvencija ne šteje oprostitev plačila carin ali dajatev za proizvod, ki se izvaža, s katerimi so sicer obremenjeni enaki proizvodi, kadar so namenjeni domači porabi, ali odlog takih carin ali dajatev v zneskih, ki niso višji od tistih, ki so že zapadli v plačilo.

[2] Objektivna merila in pogoji, ki se tu uporabljajo, pomenijo merila ali pogoje, ki so nepristranski in ne dajejo prednosti določenim podjetjem pred drugimi, ki so ekonomska po naravi, horizontalna po načinu uporabe, kot npr. število zaposlenih ali velikost podjetja.

treba upoštevati tudi druge dejavnike. Ti so: uporaba programa subvencioniranja v korist omejenega števila določenih podjetij, pretežna uporaba subvencij s strani določenih podjetij, dodelitev nesorazmerno velikih vrednosti subvencij določenim podjetjem ter način presojanja oblasti pri odločanju o dodelitvi subvencije.[3] Pri uporabi tega pododstavka se upošteva tudi raznolikost gospodarskih dejavnosti v pristojnosti določene oblasti kakor tudi dolžina časa uporabe določenega programa subvencioniranja.

2.2 Subvencija, ki je omejena na določeno podjetje na določenem zemljepisnem območju, ki je v pristojnosti oblasti, ki subvencijo daje, velja kot specifična subvencija. Za namene tega sporazuma velja, da določanje višin ali spreminjanje splošno veljavnih davčnih stopenj na vseh ravneh oblasti, ki imajo te pristojnosti, ne pomeni uporabe specifične subvencije.

2.3 Kakršnakoli subvencija, ki ustreza določbam 3. člena, se šteje za specifično.

2.4 Kakršnokoli ugotavljanje specifičnosti v skladu z določbami tega člena je treba jasno utemeljiti s pozitivnimi dokazi.

II. DEL: PREPOVEDANE SUBVENCIJE

3. člen

Prepoved

3.1 Z izjemo določb Sporazuma o kmetijstvu so po 1. členu prepovedane te subvencije:

(a) subvencije, ki so dejansko[4] ali zakonito odvisne od izvoznih rezultatov kot edinega ali enega od več pogojev, vključno s tistimi, ki jih ponazarja Priloga I;[5]

(b) subvencije, ki so odvisne od prednostne uporabe domačega proizvoda namesto uvoženega proizvoda, bodisi da je to edini ali eden izmed več drugih pogojev.

3.2 Članica ne daje niti ne ohranja subvencij, ki jih določa prvi odstavek.

4. člen

Pravna sredstva

4.1 Kadar članica iz določenih razlogov meni, da druga članica daje ali ohranja prepovedano subvencijo, sme taka članica zahtevati posvetovanje s to drugo članico.

4.2 Zahteva za posvetovanje na podlagi prvega odstavka vsebuje izjavo o razpoložljivih dokazih v zvezi z obstojem in naravo sporne subvencije.

4.3 Na podlagi zahteve za posvetovanje v smislu prvega odstavka se mora članica, za katero se domneva, da daje ali ohranja sporno subvencijo, odzvati tej zahtevi v čim krajšem možnem času. Namen posvetovanja je, da se pojasnijo dejstva in poišče soglasna rešitev.

4.4 Če soglasna rešitev ni dosežena v 30 dneh[6] od tedaj, ko je dana zahteva za posvetovanje, lahko vsaka članica, ki je udeležena na posvetovanjih, zadevo pošlje Odboru za reševanje sporov (Dispute Settlement Body, v nadaljnjem besedilu DSB) zaradi takojšnje ustanovitve ugotovitvenega sveta, razen če DSB soglasno odloči, da ne ustanovi takega sveta.

4.5 Ob njegovi ustanovitvi sme ugotovitveni svet zahtevati pomoč Stalne skupine izvedencev (Permanent Group of Experts, v nadaljnjem besedilu PGE)[7] pri ugotavljanju, ali je določen sporen ukrep po naravi prepovedana subvencija. Če se tako zahteva, PGE takoj pregleda dokaze v zvezi z obstojem in naravo spornega ukrepa ter da članici, ki tak ukrep uporablja ali ohranja, možnost, da prikaže, da sporen ukrep ni prepovedana subvencija. PGE sporoči svoje ugotovitve ugotovitvenemu svetu v roku, ki ga ta določi. Ugotovitve PGE o vprašanju, ali je oziroma ni sporen ukrep prepovedana subvencija, ugotovitveni svet sprejme brez sprememb.

4.6 Ugotovitveni svet dostavi svoje končno poročilo strankam v sporu. Poročilo se pošlje vsem članicam v 90 dneh od dneva sestave in določitve mandata ugotovitvenega sveta.

4.7 Če se ugotovi, da je sporen ukrep prepovedana subvencija, ugotovitveni svet priporoči članici, da subvencijo nemudoma umakne. V zvezi s tem svet v svojem priporočilu določi čas, v katerem je treba umakniti subvencijo.

4.8 V 30 dneh od takrat, ko je ugotovitveni svet poslal svoje poročilo vsem članicam, poročilo sprejme DSB, razen če ena od strank v sporu formalno sporoči DSB, da je sprejela odločitev vložiti pritožbo, ali če DSB soglasno sprejme odločitev, da poročila ne sprejme.

4.9 Če je zoper poročilo ugotovitvenega sveta vložena pritožba, Pritožbeni organ sprejme odločitev v 30 dneh od dneva, ko ena stranka v sporu formalno sporoči svoj namen vložiti pritožbo. Če Pritožbeni organ meni, da odločitve ne more sprejeti v 30 dneh, pisno obvesti DSB o razlogih za zamudo s presojo časa, v katerem bo dostavil poročilo. V nobenem primeru ne sme postopek trajati dalj kot 60 dni. Poročilo o pritožbi sprejme DSB in brezpogojno tudi stranke v sporu, razen če DSB v 20 dneh, potem ko je poročilo poslano članicam, soglasno sprejme odločitev, da poročila o pritožbi ne sprejme.[8]

4.10 Če se priporočilo DSB ne upošteva v roku, ki ga je določil ugotovitveni svet, ki pa prične teči od tistega dneva, ko je ugotovitveni svet poročilo sprejel ali od datuma poročila Pritožbenega organa, DSB pooblasti članico, ki se je pritožila, da sprejme ustrezne[9] protiukrepe, razen če DSB soglasno sprejme odločitev, da se taka zahteva zavrne.

4.11 Če ena od strank v sporu zahteva arbitražo v skladu s šestim odstavkom 22. člena Dogovora o reševanju sporov (Dispute Settlement Understanding, v nadaljnjem besedilu DSU), mora razsodnik ugotoviti, ali so protiukrepi ustrezni.[10]

4.12 Za namene reševanja sporov v skladu s tem členom z izjemo tistih rokov, ki so predvideni v tem členu, veljajo za reševanje teh sporov roki, ki jih določa DSU in so polovico krajši od tistih, ki jih določa ta akt.

III. DEL: IZPODBOJNE SUBVENCIJE

5. člen

Škodljivi učinki

Nobena članica ne sme z uporabo kakršnihkoli subvencij, na katere se sklicujeta prvi in drugi odstavek 1. člena, povzročati učinkov, ki škodijo interesom drugih članic, t.j. :

(a) škodo domači industriji druge članice;[11]

(b) izničenje ali omejevanje neposredno ali posredno pridobljenih koristi drugih članic v smislu GATT 1994, zlasti

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[3] V tej zvezi se upoštevajo tudi pogostost zavračanja ali potrjevanja vlog za subvencije in razlogi za take odločitve.

[4] Ta standard je izpolnjen že tedaj, ko dejstva ne glede na pravno povezavo med subvencijo in izvoznimi rezultati kažejo, da dejansko obstaja povezava z realiziranim ali pričakovanim izvozom ali dohodki na podlagi izvoza. Samo dejstvo, da je subvencija dana podjetju, ki izvaža, še ne pomeni, da gre za izvozno subvencijo v smislu te določbe.

[5] Ukrepi, ki jih Priloga I opredeljuje kot ukrepe, ki ne pomenijo izvozne subvencije, ne morejo biti prepovedani na podlagi te ali katerekoli druge določbe tega sporazuma.

[6] Vse roke, ki se omenjajo v tem členu, je možno podaljšati z medsebojnim soglasjem.

[7] Kot je določeno v 24. členu.

[8] Če zasedanje DSB ni predvideno v tem času, se skliče posebno zasedanje za ta namen.

[9] Ta izraz ne pomeni, da so dovoljeni protiukrepi, ki so nesorazmerni, glede na to, da so subvencije, ki jih obravnavajo te določbe, prepovedane.

[10] Ta izraz ne pomeni, da so dovoljeni protiukrepi, ki so nesorazmerni, glede na to, da so subvencije, ki jih obravnavajo te določbe, prepovedane.

[11] Izraz "škoda, povzročena domači industriji" se tu uporablja v enakem smislu kot v V. delu.

koristi, ki temeljijo na koncesijah, ki so vezane na podlagi II. člena GATT 1994;[12]

(c) resno ogrožanje interesov druge članice.[13]

Ta člen se ne uporablja za subvencije za kmetijske proizvode v smislu 13. člena Sporazuma o kmetijstvu.

6. člen

Resno ogrožanje

6.1 Šteje se, da resno ogrožanje v smislu (c) odstavka 5. člena obstaja v teh primerih:

(a) če celotna vrednost subvencioniranja[14] za določen proizvod znaša več kot 5 odstotkov;[15]

(b) subvencije za pokrivanje obratovalnih izgub, ki jih je imela določena industrija;

(c) subvencije za pokrivanje obratovalnih izgub, ki jih je imelo določeno podjetje, z izjemo enkratnih ukrepov, ki se ne ponavljajo in se ne morejo ponoviti v korist tistega podjetja ter se uporabljajo le kot časovna premostitev za razvoj dolgoročnejših rešitev in da bi se izognili resnim socialnim težavam;

(d) neposredna oprostitev dolga, t.j. odpust dolga, ki je terjatev vlade, in dotacije, namenjene odplačilu dolgov.[16]

6.2 Ne glede na določbe prvega odstavka resno ogrožanje ne obstaja, če članica, ki subvencijo uporablja, prikaže, da sporna subvencija nima nobenega izmed učinkov, naštetih v tretjem odstavku.

6.3 Resno ogrožanje v smislu odstavka (c) 5. člena utegne nastati v vsakem primeru, če obstaja ena ali več od teh možnosti:

(a) učinek subvencije je v nadomeščanju ali oviranju uvoza enakega proizvoda druge članice na trg članice, ki subvencijo uporablja;

(b) učinek subvencije je v nadomeščanju ali oviranju uvoza enakega proizvoda druge članice, ki se uvaža iz trga tretje države;

(c) učinek subvencije je znatno izpodbijanje cen pod vplivom proizvoda, ki se subvencionira, v primerjavi s ceno enakega proizvoda druge članice na istem trgu ali znatno omejevanje cen, cenovno nižanje ali izguba prodaje na istem trgu;

(d) učinek subvencije je rast tržnega deleža na svetovnem trgu članice, ki subvencije uporablja, zlasti v zvezi z določenim subvencioniranim osnovnim proizvodom ali surovino,[17] v primerjavi s povprečnim deležem, ki ga je imela v obdobju zadnjih treh let ter se ta rast nadaljuje v neprekinjeni razvojni smeri v obdobju, v katerem so bile dane subvencije.

6.4 Za namene tretjega (b) odstavka nadomestitev ali oviranje izvoza pomeni vsak primer, za katerega se pod pogoji sedmega odstavka ugotovi, da je prišlo do relativne spremembe v tržnih deležih na škodo enakega nesubvencioniranega proizvoda (v ustreznem reprezentativnem časovnem obdobju, ki zadostuje, da se prikaže jasen razvojni trend na trgu za določen proizvod, ki je v normalnih okoliščinah vsaj eno leto). "Relativna sprememba v tržnem deležu" vključuje katerokoli od teh situacij: (a) tržni delež subvencioniranega proizvoda se poveča; (b) tržni delež subvencioniranega proizvoda ostane enak v razmerah, ko bi se ta delež brez subvencije zmanjšal; (c) tržni delež za subvencionirani proizvod se zmanjša, vendar počasneje, kot bi se sicer zmanjševal, če subvencije ne bi bilo.

6.5 Za namene tretjega (c) odstavka izpodbijanje cen pomeni vsak primer, v katerem se tako izpodbijanje prikaže v primerjavi cen subvencioniranega proizvoda in nesubvencioniranega enakega proizvoda, ki se dobavlja na isti trg. Primerjavo je treba opraviti na isti ravni trgovine ter v primerljivih časovnih obdobjih ob upoštevanju katerihkoli drugih dejavnikov, ki vplivajo na primerljivost cen. Toda če tako neposredno primerjanje ni izvedljivo, je možno prikazati obstoj izpodbijanja cen na podlagi primerjav vrednosti določenih izvoznih enot.

6.6 Vsaka članica, ki meni, da na njenem trgu obstaja resno ogrožanje, mora v skladu z določbami tretjega odstavka Priloge V dati na razpolago strankam v sporu, ki izhaja iz 7. člena, ter ugotovitvenemu svetu, ki se ustanovi v skladu s četrtim odstavkom 7. člena, vse ustrezne informacije, ki jih lahko dobi v zvezi s spremembami tržnih deležev strank v sporu, vključno s cenami proizvodov, ki so predmet spora.

6.7 Nadomestitev ali oviranje, ki ima za posledico resno ogrožanje, ne obstaja v smislu tretjega odstavka, če v določenem obdobju obstaja katerakoli od teh okoliščin:[18]

(a) prepoved ali omejitev izvoza enakega proizvoda članice, ki se je pritožila, ali uvoza iz članice, ki se je pritožila, na trg tretje države;

(b) odločitev vlade, ki uvaža, ki opravlja monopolno ali državno trgovino z določenim proizvodom, da iz netrgovinskih razlogov zamenja uvoz iz članice, ki se je pritožila, z uvozom iz druge države ali skupine držav;

(c) naravne nesreče, stavke, prekinitve pri prevozu ali druge okoliščine višje sile, ki znatno učinkujejo na proizvodnjo, kakovost, količino ali ceno proizvoda, namenjenega izvozu članice, ki se je pritožila;

(d) obstoj dogovorov, ki omejujejo izvoz iz članice, ki se je pritožila;

(e) prostovoljno zmanjšanje zalog določenega proizvoda za izvoz iz članice, ki se je pritožila (med drugim vključno s primeri, ko se podjetja članice avtonomno odločijo, da svoj izvoz določenega proizvoda preusmerijo na nove trge);

(f) neizpolnitev standardov in drugih predpisanih pogojev države uvoznice.

6.8 Če okoliščine sedmega odstavka ne obstajajo, je treba obstoj resnega ogrožanja ugotoviti na podlagi podatkov, ki so dostavljeni ali jih je pridobil ugotovitveni svet, vključno s podatki, danimi v skladu z določbami Priloge V.

6.9 Ta člen se ne uporablja za subvencije za kmetijske proizvode, kot so določene v 13. členu Sporazuma o kmetijstvu.

7. člen

Pravna sredstva

7.1 Če članica iz določenih razlogov, z izjemo 13. člena Sporazuma o kmetijstvu, meni, da kakršnakoli subvencija, določena v 1. členu, ki jo druga članica daje ali ohranja, povzroča škodo njeni domači industriji, izničenje ali omejevanje ali resno ogrožanje, sme taka članica zahtevati posvetovanje s tako drugo članico.

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[12] Izraz "izničenje ali omejevanje" se v tem sporazumu uporablja v enakem smislu kot v ustreznih določbah GATT 1994 ter se obstoj izničenja in omejevanja ugotavlja v skladu s prakso v zvezi z izvajanjem teh določb.

[13] Izraz "resno ogrožanje interesov druge članice" se v tem sporazumu uporablja v enakem smislu kot v prvem odstavku XVI. člena GATT 1994 in vključuje tudi nevarnost resnega ogrožanja.

[14] Celotna vrednost subvencioniranja se izračuna v skladu z določbami Priloge IV.

[15] Ker se pričakuje, da bodo za trgovino s civilnimi letali veljala posebna mnogostranska pravila, se omenjena mejna vrednost v tem pododstavku ne nanaša na to področje.

[16] Članice upoštevajo, da se pri financiranju, ki temelji na plačilu licenčnin za proizvodnjo civilnih letal, plačila ne realizirajo vedno s prodajo, ker je pod načrtovano, in da to samo po sebi ne pomeni resnega ogrožanja v smislu tega odstavka.

[17] Razen če veljajo druga posebna mnogostranska pravila za trgovino s tem proizvodom ali surovino.

[18] Dejstvo, da so določene okoliščine omenjene v tem odstavku, še ne pomeni, da imajo te okoliščine kak poseben pravni pomen na podlagi določb GATT 1994 ali določb tega sporazuma. Te okoliščine ne smejo biti osamljen pojav ter take, ki se redko pojavljajo ali pa so nepomembne.

7.2 Zahteva za posvetovanje v skladu s prvim odstavkom vsebuje tudi izjavo o razpoložljivih dokazih o (a) obstoju in naravi sporne subvencije in (b) škodi, ki je nastala v domači industriji, ali izničenju ali omejitvi ali resnem ogrožanju[19] interesov članice, ki zahteva posvetovanje.

7.3 Na podlagi zahteve za posvetovanje, ki jo določa prvi odstavek, članica, za katero se domneva, da daje ali ohranja določeno sporno subvencijo, čim prej začne posvetovanja. Namen posvetovanj je pojasnitev dejstev in oblikovanje vzajemno sprejemljive rešitve.

7.4 Če posvetovanja ne izoblikujejo vzajemno sprejemljive rešitve v 60 dneh,[20] lahko vsaka stranka, ki je udeležena posvetovanj, zadevo pošlje DSB zaradi ustanovitve ugotovitvenega sveta, razen če DSB soglasno ne sprejme odločitve, da takega sveta ne bo ustanovil. Sestava in mandat sveta se določita v 15 dneh od dneva ustanovitve.

7.5 Ugotovitveni svet prouči zadevo in predloži svoje končno poročilo strankam v sporu. Poročilo se pošlje vsem članicam v 120 dneh od dneva sestave in določitve mandata ugotovitvenega sveta.

7.6 V 30 dneh od dostave poročila sveta vsem članicam DSB sprejme poročilo,[21] razen če ena od strank v sporu formalno sporoči, da ima namen vložiti pritožbo, ali če DSB soglasno odloči, da poročila ne sprejme.

7.7 Če se zoper poročilo ugotovitvenega sveta vloži pritožba, Pritožbeni organ sprejme odločitev v 60 dneh od dneva, ko je stranka v sporu formalno sporočila svoj namen, da vloži pritožbo. Če Pritožbeni organ meni, da svojega poročila ne more pripraviti v 60 dneh, pisno obvesti DSB o razlogih za zamudo s presojo časa, v katerem bo pripravil poročilo. V nobenem primeru ne sme postopek trajati več kot 90 dni. Poročilo o pritožbi sprejme DSB in ga brezpogojno sprejmejo stranke v sporu, razen če DSB v 20 dneh potem, ko je poročilo poslano vsem članicam, soglasno odloči, da poročila o pritožbi ne sprejme[22].

7.8 Če je poročilo ugotovitvenega sveta ali Pritožbenega organa, v katerem je ugotovljeno, da je določena subvencija povzročila škodljive učinke glede na interese druge članice v smislu 5. člena, sprejeto, mora članica, ki tako subvencijo daje ali ohranja, sprejeti ustrezne ukrepe, da se škodljivi učinki odpravijo ali pa ukine subvencija.

7.9 Če članica ni sprejela ustreznih ukrepov za odpravo škodljivih učinkov subvencije ali subvencijo ukinila v 6 mesecih od dneva, ko je DSB sprejel poročilo ugotovitvenega sveta ali poročilo Pritožbenega organa in če ni sprejet sporazum o kompenzaciji, DSB pooblasti članico, ki se je pritožila, da sprejme protiukrepe, ki ustrezajo ugotovljeni stopnji in naravi škodljivih posledic, razen če DSB sprejme soglasno odločitev, da zavrne zahtevo.

7.10 Če ena od strank v sporu zahteva arbitražo v skladu s šestim odstavkom 22. člena DSU, arbitraža ugotovi, ali so protiukrepi v skladu s stopnjo in naravo ugotovljenih škodljivih učinkov.

IV. DEL: NEIZPODBOJNE SUBVENCIJE

8. člen

Opredelitev neizpodbojnih subvencij

8.1 Neizpodbojne subvencije so:[23]

(a) subvencije, ki niso specifične v smislu 2. člena;

(b) subvencije, ki so specifične v smislu 2. člena, vendar izpolnjujejo vse pogoje, ki so določeni v drugem(a), (b) ali (c) odstavku spodaj.

8.2 Ne glede na določbe III. in V. dela so neizpodbojne te subvencije:

(a) pomoč raziskovalnim dejavnostim, ki jih opravljajo podjetja ali visokošolski ali raziskovalni inštituti, na podlagi pogodb s podjetji, če: [24, 25, 26]

pomoč ne pokriva[27] več kot 75 odstotkov stroškov industrijskih raziskav[28] ali 50 odstotkov stroškov predkonkurenčne razvojne dejavnosti;[29,30]

ter pod pogojem, da je taka pomoč omejena zgolj na:

(i) stroške osebja (raziskovalci, tehniki in drugo pomožno osebje, ki je zaposleno izključno v zvezi z raziskovalno dejavnostjo);

(ii) stroške instrumentov, opreme, zemljišča in stavb, ki se izključno in trajno uporabljajo za raziskovalno dejavnost (z izjemo komercialne odprodaje);

(iii) stroške svetovanja in enakih storitev, ki se izključno uporabljajo v raziskovalne namene, vključno z zunanjo raziskavo, tehničnim znanjem, patenti, itd.;

(iv) dodatno režijo, ki je nastala neposredno v zvezi z opravljanjem raziskovalne dejavnosti;

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[19] Če se zahteva nanaša na subvencijo, za katero se domneva, da lahko povzroči resno ogrožanje v smislu prvega odstavka 6. člena, se lahko razpoložljivi dokazi resnega ogrožanja omejijo na dokaze o tem, ali so izpolnjeni pogoji prvega odstavka 6.člena.

[20] Vse roke, ki se omenjajo v tem členu, je možno podaljšati z medsebojnim soglasjem.

[21] Če zasedanje DSB v tem času ni predvideno, se skliče posebno zasedanje za ta namen.

[22] Če zasedanje DSB v tem času ni predvideno, se skliče posebno zasedanje za ta namen.

[23] Splošno je priznano, da članice uporabljajo vladno pomoč za različne namene in dejstvo, da taka pomoč ne izpolnjuje pogojev za obravnavo kot neizpodbojen ukrep na podlagi določb tega člena, samo po sebi ne omejuje članic, da dajejo take oblike pomoči.

[24] Ker se pričakuje, da bodo za trgovino s civilnimi letali veljala posebna mnogostranska pravila, se določbe tega pododstavka ne nanašajo na to vrsto proizvoda.

[25] Najpozneje v 18 mesecih od dneva začetka veljavnosti Sporazuma o WTO Odbor za subvencije in izravnalne ukrepe, na katerega se sklicuje 24. člen (ki se v tem sporazumu imenuje Odbor), prouči uresničevanje določb drugega (a) pododstavka z namenom, da opravi vse potrebne spremembe, da bi izboljšal uresničevanje teh določb. Pri obravnavanju možnih sprememb Odbor pozorno prouči definicije kategorij, ki jih vsebuje ta pododstavek, v skladu z izkušnjami članic pri vodenju raziskovalnih programov kakor tudi z delom v drugih ustreznih mednarodnih ustanovah.

[26] Določbe tega sporazuma se ne uporabljajo za bazične raziskovalne dejavnosti, ki jih neodvisno opravljajo visokošolske ali raziskovalne ustanove. Izraz "bazična raziskava" pomeni razširjanje splošnega znanstvenega in tehničnega znanja, ki ni vezano na industrijske ali trgovinske cilje.

[27] Dovoljena raven neizpodbojne pomoči, na katero se nanaša ta pododstavek, se določi odvisno od celote nastalih ustreznih stroškov med trajanjem posameznega projekta.

[28] Izraz "industrijska raziskava" pomeni načrtovano raziskavo ali kritično analizo, ki ima namen odkriti nova znanja, s ciljem, da je lahko tako znanje uporabno pri razvoju novih proizvodov, postopkov ali storitev ali lahko znatno izboljša že obstoječi proizvod, postopek ali storitev.

[29] Izraz "predkonkurenčna razvojna dejavnost" pomeni spreminjanje rezultatov industrijskih raziskav v načrt ali model za nov ali izboljšan proizvod, postopek ali storitev, ne glede, ali so namenjeni prodaji ali uporabi, vključno z izdelavo prvega prototipa, ki pa ni primeren za komercialno uporabo. Vključena so lahko tudi oblikovna zasnova in vzorec proizvoda, različice postopkov in storitev ter prve demonstracije ali poskusni projekti pod pogojem, da teh ni možno spremeniti ali uporabiti za industrijsko rabo ali trgovinsko izkoriščanje. Ne vključuje rutinskih ali občasnih sprememb obstoječega proizvoda, proizvodne linije, proizvodnega postopka, storitev in drugih tekočih operacij, čeprav te spremembe lahko pomenijo izboljšave.

[30] Pri programih, ki se nanašajo na industrijske raziskave in predkonkurenčne razvojne dejavnosti, dovoljena raven neizpodbojne pomoči ne sme presegati enostavnega povprečja dovoljenih ravni neizpodbojne pomoči, ki se uporablja v zvezi z zgornjima dvema kategorijama, ki se računa na podlagi vseh dovoljenih stroškov, kot je določeno od (i) do (v) tega podostavka.

(v) druge tekoče stroške (kot npr. za material, potrošni material, ipd.), ki nastanejo neposredno v povezavi z opravljanjem raziskovalne dejavnosti.

(b) pomoč manj razvitim območjem na ozemlju članice, ki se da na podlagi splošnega okvira regionalnega razvoja,[31] ter nespecifična pomoč (v smislu 2. člena) na območjih, ki so do pomoči upravičena, pod pogoji:

(i) vsako manj razvito območje mora biti jasno opredeljeno, zaokroženo zemljepisno območje, z ugotovljivimi ekonomskimi in upravnimi značilnostmi;

(ii) območje velja za manj razvito na podlagi objektivnih nepristranskih meril,[32] ki kažejo, da pomanjkljivosti območja izhajajo iz okoliščin, ki so več kot začasne; taka merila morajo biti jasno opredeljena v zakonu, predpisu ali drugih uradnih dokumentih, tako da jih je možno preverjati;

(iii) merila morajo vsebovati stopnjo gospodarske razvitosti, ki temelji na najmanj enem od teh dejavnikov:

– ali dohodek na prebivalca ali dohodek na gospodinjstvo ali bruto domači proizvod, ki pa ne sme biti višji od 85 odstotkov povprečja za določeno območje;

– stopnja brezposelnosti, ki mora biti vsaj 110 odstotkov povprečja za določeno območje;

in so merjeni v obdobju treh let, take meritve pa so lahko sestavljene in lahko vsebujejo tudi druge dejavnike.

(c) pomoč pri prilagajanju obstoječih osnovnih sredstev[33] novim ekološkim zahtevam, ki jih določajo zakon in/ali predpisi, ki imajo za posledico večje omejitve in finančna bremena za podjetje pod pogojem, da je pomoč:

(i) enkraten neponavljajoč ukrep;

(ii) omejena na 20 odstotkov stroškov prilagajanja;

(iii) taka, da ne pokriva stroškov nadomestitve in izvedbe investicije, ki jo mora podjetje v celoti kriti samo;

(iv) neposredno vezana in sorazmerna načrtom podjetja v zvezi z zmanjšanjem nadlog in ravni onesnaženja ter ne pokriva nobenih prihrankov pri proizvodnih stroških, ki bi jih lahko na ta način dosegli in

(v) na razpolago vsem podjetjem, sposobnim uporabiti novo opremo in/ali proizvodni postopek.

8.3 Program subvencioniranja, za katerega se uporabljajo določbe drugega odstavka, se vnaprej sporoči Odboru pred začetkom uporabe v skladu z določbami VII. dela. Vsaka taka notifikacija mora biti dovolj natančna, da lahko druge članice ocenijo skladnost programa s pogoji in merili, določenimi v ustreznih določbah drugega odstavka. Članice Odboru letno dostavijo vse spremembe v zvezi z omenjeno notifikacijo zlasti, kar zadeva skupni strošek za vsak program ter v zvezi z vsako spremembo v programu. Druge članice imajo pravico zahtevati podatke o posameznih primerih subvencioniranja na podlagi sporočenega programa.[34]

8.4 Na zahtevo članice Sekretariat prouči notifikacijo, ki je dana v skladu s tretjim odstavkom, in če je potrebno, lahko zahteva dodatne informacije od članice, ki določeno subvencijo daje, v zvezi s programom, ki je predmet proučitve. Sekretariat Odboru sporoči svoje ugotovitve. Odbor na podlagi zahteve takoj prouči ugotovitev Sekretariata (ali, če proučitev Sekretariata ni bila zahtevana, prouči samo notifikacijo) z namenom, da ugotovi, ali so upoštevani pogoji in merila, določena v drugem odstavku. Postopek, ki je določen v tem odstavku, mora biti končan najpozneje do prvega rednega zasedanja Odbora, če sta minila najmanj dve meseca med to notifikacijo in rednim zasedanjem Odbora. Opisan postopek v tem odstavku se uporabi tudi, če so večje spremembe v programu, ki so letno sporočene in jih določa tretji odstavek, če je taka zahteva dana.

8.5 Ugotovitve Odbora na podlagi četrtega odstavka ali če Odboru ne uspe priti do teh ugotovitev kot tudi kršitve pogojev v posameznih primerih, ki so predvideni v sporočenem programu, se na zahtevo članice predložijo obvezujoči arbitraži. Arbitraža predloži svoje sklepe članicam najpozneje v 120 dneh od dneva, ko je zadeva dana arbitraži v presojo. Če ni s tem odstavkom drugače določeno, se uporabi DSU v arbitražnih postopkih v smislu tega odstavka.

9. člen

Posvetovanja in dovoljena pravna sredstva

9.1 Če določena članica med izvajanjem programa, na katerega se nanaša drugi odstavek 8. člena, ne glede na to da program ustreza merilom, ki jih ta odstavek določa, meni, da obstajajo razlogi, zaradi katerih je program povzročil škodljive posledice za domačo industrijo te članice, zlasti težko odpravljive, taka članica lahko zahteva posvetovanja s članico, ki subvencijo daje ali ohranja.

9.2 Če obstaja zahteva za posvetovanja v smislu prvega odstavka, mora članica, ki sporno subvencijo daje, v čim krajšem času začeti posvetovanja. Namen posvetovanj je ugotoviti dejstva in oblikovati vzajemno sprejemljivo rešitev.

9.3 Če vzajemno sprejemljive rešitve ni možno doseči v posvetovanjih v smislu drugega odstavka v 60 dneh od dneva, ko je zahteva dana, lahko članica, ki je zahtevo dala, zadevo pošlje Odboru.

9.4 Ko se zadeva pošlje Odboru, Odbor takoj obravnava določena dejstva in dokaze o učinkih, na katere se nanaša prvi odstavek. Če Odbor ugotovi, da taki učinki obstajajo, priporoči članici, ki subvencijo daje, da spremeni program tako, da se taki učinki odpravijo. Odbor sporoči svoje ugotovitve v 120 dneh od dneva, ko je bila zadeva poslana v smislu tretjega odstavka. Če se priporočila ne upoštevajo v 6 mesecih, Odbor dovoli zahtevajoči članici, da uporabi ustrezne protiukrepe, ki so v sorazmerju z naravo in stopnjo učinkov, za katere je ugotovljeno, da obstajajo.

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[31] "Splošni okvir regionalnega razvoja" pomeni, da je program regionalnega subvencioniranja del interno konsistentne in splošno uporabne politike regionalnega razvoja in da se subvencije na področju regionalnega razvoja ne dajejo ločenim geografskim območjem, ki nimajo ali skoraj nimajo nobenega vpliva na razvoj regije.

[32] "Nepristranska in objektivna merila" so merila, ki ne dajejo prednosti določenim območjem bolj, kot je primerno za odpravo ali zmanjšanje regionalnih razvojnih razlik v okviru politike regionalnega razvoja. Glede na to morajo programi subvencij na področju regionalnega razvoja vsebovati najvišje možne zneske pomoči, ki jih je možno dati za vsak posamezni projekt, ki se subvencionira.Ti najvišji zneski morajo biti različni glede na različne ravni razvoja določenih območij in morajo biti izraženi v obliki investicijskih stroškov oz. stroškov odpiranja novih delovnih mest. Znotraj takih najvišjih ravni mora biti razporeditev take pomoči dovolj široka in enakomerna, da ne pride do neke prevladujoče oblike uporabe subvencije ali da ne bi bila dana nesorazmerno velika subvencija določenemu podjetju, kot je določeno v 2. členu.

[33] Izraz "obstoječa osnovna sredstva" pomeni tista osnovna sredstva, ki so v uporabi najmanj dve leti v času, ko se uvajajo nove ekološke zahteve.

[34] Razume se, da se v nobenem primeru v zvezi s to zahtevo notifikacije ne zahteva dajanje zaupnih informacij, vključno s poslovno zaupnimi informacijami.

V. DEL: IZRAVNALNI UKREPI

10. člen
Uporaba VI. člena GATT 1994[35]

Članice bodo storile vse potrebno, da bo uporaba izravnalnih ukrepov[36] za katerikoli proizvod, ki izvira z ozemlja ene članice in se uvozi na ozemlje druge članice, v skladu z določbami VI. člena GATT 1994 in pogoji tega sporazuma. Izravnalni ukrepi se lahko uporabljajo le na podlagi preiskav, ki se sprožijo[37] in vodijo v skladu z določbami tega sporazuma in Sporazuma o kmetijstvu.

11. člen
Uvedba in izvedba preiskave

11.1 Razen določb šestega odstavka se preiskava, ki ima namen ugotoviti obstoj, stopnjo in učinke katerekoli domnevne subvencije, sproži na podlagi pisne vloge domače industrije ali vloge v njenem imenu.

11.2 Vloga, ki je določena v prvem odstavku, mora vsebovati dovolj dokazov o obstoju (a) subvencije, po možnosti tudi o njeni višini, (b) škodi v smislu VI. člena GATT 1994, kot jo razlaga ta sporazum in (c) vzročni zvezi med subvencioniranim uvozom in domnevno škodo. Preprosta trditev, ki ni utemeljena z ustreznimi dokazi, ne zadošča za namene tega odstavka. Vloga mora vsebovati take informacije, ki so vlagatelju na voljo v razumnih mejah v zvezi z:

(i) istovetnostjo vlagatelja ter opisom obsega in vrednosti domače proizvodnje enakega proizvoda vlagatelja. Če se pisna vloga vloži v imenu domače industrije, vlagatelj opredeli industrijo, v imenu katere nastopa, v obliki pregleda vseh znanih domačih proizvajalcev enakega proizvoda (ali združenj domačih proizvajalcev enakega proizvoda) ter v možni meri opis obsega in vrednosti domače proizvodnje enakega proizvoda navedenih proizvajalcev;

(ii) popolnim opisom domnevnega subvencioniranega proizvoda, ime države ali držav porekla ali izvoza, istovetnost vsakega znanega izvoznika ali tujega proizvajalca in seznam znanih oseb, ki sporni proizvod uvažajo;

(iii) dokazi o obstoju, znesku in naravi sporne subvencije;

(iv) dokazi, da subvencionirani uvoz povzroča domnevno škodo domači industriji v obliki določenih učinkov subvencij; ti dokazi vsebujejo podatke o rasti obsega domnevnega subvencioniranega uvoza, o učinkih tega uvoza na cene enakih proizvodov na domačem trgu ter o posledičnem vplivu tega uvoza na domačo industrijo, kar izhaja iz ustreznih dejavnikov in kazalcev, ki se nanašajo na stanje domače industrije, naštetih v drugem in četrtem odstavku 15. člena.

11.3 Oblasti proučijo točnost in ustreznost dokazov, navedenih v vlogi, da bi ugotovili, ali je dovolj dokazov, ki utemeljujejo uvedbo preiskave.

11.4 Preiskava v smislu prvega odstavka se ne sproži, dokler oblasti na podlagi preverjanja stopnje podpore ali nasprotovanja vlogi[38] domačih proizvajalcev enakega proizvoda ne ugotovijo, da je vlogo vložila domača industrija oziroma je vložena v njenem imenu.[39] Vloga se obravnava, kot da je vložena "s strani ali v imenu domače industrije", če jo podpirajo domači proizvajalci, katerih skupen proizvod pomeni več kot 50 odstotkov celotne proizvodnje proizvoda, ki ga proizvaja ta del domače industrije, ki podpira ali pa nasprotuje vlogi. Toda v nobenem primeru se preiskava ne uvede, če domači proizvajalci, ki podpirajo vlogo, pomenijo manj kot 25 odstotkov celotne proizvodnje enakega proizvoda domače industrije.

11.5 Oblasti se izogibajo kakršnemukoli objavljanju vloge za uvedbo preiskave, razen če je bila odločitev o uvedbi preiskave že sprejeta.

11.6 Če se v posebnih primerih oblasti odločijo, da uvedejo postopek preiskave brez predhodne pisne vloge s strani ali v imenu domače industrije za uvedbo takega postopka, smejo nadaljevati s takim postopkom le, če imajo dovolj dokazov o obstoju subvencije, škode in vzročne zveze, kot je določeno v drugem odstavku, ki utemeljuje začetek postopka.

11.7 Dokazi o subvenciji in škodi se obravnavajo sočasno (a) s sklepom o uvedbi ali neuvedbi postopka in (b) med preiskavo, ki se začne najpozneje prvega dne, ko se na podlagi tega sporazuma smejo začeti uporabljati začasni ukrepi.

11.8 Kadar se proizvod ne uvaža neposredno iz države porekla, temveč se izvozi članici uvoznici po vmesni državi, se določbe tega sporazuma v celoti uporabljajo, pri čemer se za namene tega sporazuma šteje, da je posel ali da so posli potekali neposredno med državo porekla in članico uvoznico.

11.9 Vloga v skladu s prvim odstavkom se zavrne, preiskava pa se ustavi takoj, ko pristojne oblasti ugotovijo, da ni dovolj dokazov o subvenciji in škodi, ki bi opravičevali nadaljevanje postopka. Postopek se takoj ustavi, če se ugotovi, da je znesek subvencije de minimis, ali če sta obseg subvencioniranega uvoza, dejanskega ali potencialnega, ali škoda neznatna. Za namene tega odstavka znesek subvencije velja kot de minimis, če je subvencija nižja od 1 odstotka vrednosti proizvoda.

11.10 Preiskava ne sme ovirati postopkov carinjenja.

11.11 Razen v izjemnih primerih morajo biti preiskave končane v enem letu, v nobenem primeru pa v daljšem obdobju kot 18 mesecev po uvedbi.

12. člen
Dokazi

12.1 Zainteresirane članice in drugi zainteresirani subjekti v preiskavi v povezavi z izravnalnimi carinami imajo pravico, da so obveščeni o podatkih, ki jih oblasti zahtevajo, in pravico, da pisno sporočijo vse dokaze, za katere menijo, da so pomembni za določeno preiskavo.

12.1.1 Izvozniki, tuji proizvajalci ali zainteresirane članice, ki so prejeli vprašalnike v postopku preiskave zaradi uvedbe izravnalnih carin, morajo imeti na voljo vsaj 30 dni za odgovor.[40] Upoštevati je treba zahteve, da se 30-dnevni

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[35] Določbe II. in III. dela je možno uporabljati sočasno z določbami V. dela, toda v zvezi z učinki določene subvencije na domačem trgu članice uvoznice je na voljo samo ena oblika ukrepa (ali izravnalna carina, če so izpolnjeni pogoji V. dela ali protiukrep v smislu 4. ali 7. člena). Določbe III. in V. dela se ne morejo uporabljati za ukrepe, za katere velja, da so neizpodbojni v skladu z določbami IV. dela. Toda za ukrepe, na katere se nanaša prvi (a) odstavek 8.člena, je možno uvesti preiskavo, da bi se ugotovilo, ali so specifični po naravi v smislu 2. člena. Poleg tega je za subvencijo, na katero se nanaša drugi odstavek 8. člena, ki se uporablja v okviru programa, ki ni bil sporočen v skladu s tretjim odstavkom 8. člena, možno uporabiti določbe III. ali V. dela, vendar se taka subvencija obravnava kot neizpodbojna, če je v skladu s standardi, ki so določeni v drugem odstavku 8. člena.

[36] Izraz "izravnalna carina" pomeni posebno carino, ki se uporabi z namenom izravnave kakršnekoli subvencije, ki se neposredno ali posredno daje za predelavo, proizvodnjo ali izvoz določenega blaga, kot je določeno s tretjim odstavkom VI. člena GATT 1994.

[37] Izraz "sprožitev", ki se uporablja od tu naprej, pomeni začetek postopka ali dejavnosti, s katero članica formalno začne preiskavo v smislu 11. člena.

[38] V primeru razdrobljenosti industrije, ki pomeni izjemno veliko število proizvodov, smejo oblasti ugotavljati podporo ali nasprotovanje z uporabo statistično veljavnih tehnik vzorčenja.

[39] Članice se zavedajo, da na območju določenih članic lahko zaposleni delavci domačih proizvajalcev enakega proizvoda ali njihovi zastopniki vložijo ali podprejo vlogo za uvedbo poizvedb v smislu prvega odstavka.

[40] Kot splošno pravilo se rok za izvoznike šteje od dneva prejema vprašalnika, za katerega pa se domneva, da je prejet en teden od dneva, ko je poslan tistemu, ki ga je dolžan izpolniti ali ko je poslan ustreznim diplomatskim predstavnikom članice izvoznice ali, če gre za ločeno carinsko območje članice WTO, uradnemu predstavniku tega izvoznega območja.

rok podaljša, in če so razlogi za to, se tako podaljšanje odobri, če je izvedljivo.

12.1.2 Ob upoštevanju zahteve po varovanju zaupnih podatkov se dokazi, ki jih pisno predloži zainteresirana članica ali druga zainteresirana stran, takoj dajo drugim zainteresiranim članicam ali stranem, ki sodelujejo v preiskavi.

12.1.3 Takoj ko se preiskava sproži, dajo oblasti na razpolago celotno besedilo pisne vloge, ki so jo prejeli v skladu s prvim odstavkom 11. člena, vsem znanim izvoznikom[41] in oblastem članice izvoznice, na zahtevo pa tudi drugim sodelujočim v postopku. Ustrezno je treba paziti na varovanje zaupnih podatkov, kot je določeno v četrtem odstavku.

12.2 Zainteresirane članice in drugi zainteresirani subjekti imajo prav tako iz določenih razlogov pravico dati informacije ustno. Če se informacije dajejo ustno, se od zainteresiranih članic in drugih subjektov pozneje zahteva, da svoje izjave dajo pisno. Kakršnakoli odločitev preiskovalnih oblasti lahko temelji le na takih informacijah in argumentih, ki so zapisani pri teh oblasteh in so na voljo zainteresiranim članicam in drugim subjektom, ki so udeleženi v postopku, ob upoštevanju potrebe varovanja zaupnih podatkov.

12.3 Kadarkoli je to izvedljivo, oblasti pravočasno dajo možnost vpogleda vsem zainteresiranim članicam in drugim zainteresiranim subjektom v vse podatke, ki so pomembni za predstavitev njihovega primera, ki pa niso zaupni v smislu četrtega odstavka in jih oblasti uporabljajo v preiskavi uvedbe izravnalne carine, da lahko pripravijo predstavitve na temelju teh podatkov.

12.4 Kakršnekoli zaupne informacije (npr. če bi njihovo razkritje dalo bistveno konkurenčno prednost konkurentu, ali bi tako razkritje imelo škodljive posledice za osebo, ki je take informacije dala, ali za osebo, ki je vir teh informacij), ali ki so dane na zaupni podlagi v postopku, morajo oblasti na utemeljeni osnovi take informacije obravnavati kot zaupne. Take informacije se ne smejo razkrivati brez izrecnega dovoljenja tistega subjekta, ki jih je dal.[42]

12.4.1 Oblasti zahtevajo od zainteresiranih članic in drugih zainteresiranih subjektov, ki so priskrbeli zaupne informacije, da zagotovijo nezaupne povzetke. Ti povzetki morajo biti dovolj natančni, da je možno razumeti bistvo informacij, danih na zaupni podlagi. V izjemnih primerih lahko take članice ali zainteresirani subjekti nakažejo, da take informacije niso primerne za pripravo povzetkov. V teh izjemnih primerih je potrebna izjava z navedbo razlogov, zaradi katerih priprava povzetka ni primerna.

12.4.2 Če oblasti ugotovijo, da zahteva za varstvo zaupnosti ni upravičena in če subjekt, ki je vir informacij, ni pripravljen te informacije razkriti ali privoliti v razkritje v splošni ali povzeti obliki, lahko oblasti take informacije spregledajo, razen če je možno na podlagi ustreznih virov na zadovoljiv način ugotoviti, da so informacije točne.[43]

12.5 Razen pod pogoji, predvidenimi v sedmem odstavku, oblasti med postopkom na zadovoljiv način preverjajo točnost podatkov, ki so jih dale zainteresirane članice in druge zainteresirane strani, ki so osnova za njihove ugotovitve.

12.6 Preiskovalne oblasti lahko po potrebi vodijo preiskavo tudi na ozemlju druge članice, če so jo o tem predčasno obvestile in če temu ne nasprotuje. Dalje, preiskovalne oblasti lahko opravljajo preiskavo v prostorih podjetja in lahko pregledujejo dokumentacijo podjetja, če: (a) podjetje v to privoli in (b) če je članica obveščena in temu ne nasprotuje. Postopki, ki so določeni v Prilogi VI, se uporabljajo tudi ob preiskavi v prostorih podjetja. Razen če se zahteva varovanje zaupnih informacij, oblasti sporočijo rezultate preiskav ali jih razkrijejo v skladu z osmim odstavkom podjetju, na katero se nanašajo, in lahko te rezultate sporočijo tudi vlagateljem zahteve za uvedbo postopka.

12.7 Ko katerakoli zainteresirana članica ali zainteresiran subjekt odkloni dostop ali sicer ne zagotovi potrebnih informacij v razumnem roku ali znatno otežuje preiskave, je možno sprejeti predhodne ali končne ugotovitve, pritrdilne ali odklonilne, na podlagi razpoložljivih dejstev.

12.8 Pred sprejemom dokončne ugotovitve oblasti obvestijo vse zainteresirane članice in druge subjekte o temeljnih dejstvih, na katerih temelji odločitev o tem, ali je možno uporabiti končne ukrepe. Tako obvestilo mora biti dano tako, da imajo vse strani možnost zagovarjati svoje interese.

12.9 Za namene tega sporazuma so "zainteresirani subjekti":

(i) izvoznik ali tuji proizvajalec ali uvoznik proizvoda, ki je predmet preiskave, ali trgovinsko ali poslovno združenje, katerega večina članov so proizvajalci, izvozniki ali uvozniki takega proizvoda; in

(ii) proizvajalec enakega proizvoda na območju članice uvoznice ali trgovinsko ali poslovno združenje, katerih večina članov proizvaja enak proizvod na območju članice, ki je uvoznica.

Ta spisek ne preprečuje članicam, da dovolijo, da se domači ali tuji subjekti, poleg tistih, ki so omenjeni zgoraj, upoštevajo kot zainteresirani subjekti.

12.10 Oblasti morajo zagotoviti možnost industrijskim uporabnikom proizvoda, ki je predmet preiskave, in organizacijam potrošnikov, v primerih ko gre za proizvod, ki se običajno prodaja na drobno, da pošljejo informacije, ki so pomembne za preiskavo o subvencioniranju, škodi in vzročni zvezi.

12.11 Oblasti upoštevajo težave zainteresiranih subjektov, zlasti majhnih podjetij, v zvezi z zagotavljanjem zahtevanih podatkov ter zagotavljajo vso ustrezno pomoč.

12.12 Postopki, ki so določeni zgoraj, nimajo namena preprečevati oblastem določene članice, da ravnajo hitro pri uvedbi preiskave, da bi dosegle predhodne ali končne ugotovitve, pritrdilne ali odklonilne, ali da uporabijo začasne ali končne ukrepe, v skladu z ustreznimi določbami tega sporazuma.

13. člen

Posvetovanja

13.1 Kakor hitro je možno, potem ko je vloga v smislu 11. člena sprejeta, v vsakem primeru pa pred uvedbo preiskave, se članice, katerih proizvodi so predmet preiskav, povabijo na posvetovanje z namenom, da se pojasni dejansko stanje v zvezi z zadevami, ki jih vsebuje drugi odstavek 11. člena, in da se oblikuje vzajemno sprejemljiva rešitev.

13.2 Med preiskavo morajo članice, katerih proizvodi so predmet preiskav, imeti dovolj možnosti, da nadaljujejo s posvetovanji, z namenom, da se pojasni dejansko stanje in da se doseže vzajemno sprejemljiva rešitev.[44]

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[41] Razume se, da kadar je vključenih še posebej veliko izvoznikov, se dostavi celotno besedilo vloge le oblastem članice izvoznice ali pristojnemu trgovinskemu združenju, ki nato pošlje izvode vloge določenim izvoznikom.

[42] Članice se zavedajo, da je lahko na območju določenih članic razkritje nujno potrebno zaradi zelo ozke zaščite.

[43] Članice se sporazumejo, da zahteve za varstvo zaupnosti ne smejo biti arbitrarno odbite. Članice se dalje sporazumejo, da oblasti lahko zahtevajo odpoved zaupnosti le glede informacij v zvezi s postopkom.

[44] V skladu z določbami tega odstavka je posebej pomembno, da nobena pritrdilna ugotovitev, bodisi predhodna ali dokončna, ni možna, dokler se ne da razumna možnost, da se opravijo posvetovanja. Taka posvetovanja so lahko podlaga za postopke v skladu z določbami II., III. ali X. dela.

13.3 Brez poseganja v obveznost dati razumno priložnost za posvetovanje te določbe v zvezi s posvetovanjem nimajo namena preprečevati oblastem članice, da ravnajo hitro pri uvedbi preiskave, doseganju predhodnih ali končnih ugotovitev, pritrdilnih ali odklonilnih, ali v zvezi z uporabo začasnih ali dokončnih ukrepov v skladu z določbami tega sporazuma.

13.4 Članica, ki ima namen sprožiti ali je že sprožila preiskavo, mora na zahtevo dovoliti članici ali članicam, katerih proizvodi so predmet preiskave, dostop do dokazov, ki niso zaupni, vključno z nezaupnim povzetkom zaupnih podatkov, ki so podlaga za začetek ali vodenje preiskave.

14. člen

Izračun višine subvencije v smislu koristi za prejemnika

Za namene V. dela mora biti katerakoli metoda, ki jo uporabljajo preiskovalne oblasti z namenom, da ugotovijo koristi za prejemnika v smislu prvega odstavka 1. člena, določena z nacionalno zakonodajo ali izvedbenimi predpisi članice ter mora biti uporaba te metode v vsakem primeru pregledna in ustrezno obrazložena. Vsaka taka metoda upošteva te smernice:

(a) kapitalski vložek vlade ne velja kot vir koristi, če odločitev o vlaganju ne odstopa od običajne vlagateljske prakse (ki vključuje tudi zagotavljanje rizičnega kapitala) zasebnih vlagateljev na ozemlju članice;

(b) posojilo vlade ne velja kot vir koristi, razen če obstaja razlika v znesku, ki ga podjetje, ki je posojilo prejelo, plača z vladimi posojili in zneskom, ki bi ga podjetje plačalo na osnovi komercialnega posojila, ki ga dejansko lahko dobi na trgu kapitala. V tem primeru je razlika med tema dvema zneskoma korist;

(c) jamstvo vlade za posojilo ne velja kot vir koristi, razen če obstaja razlika med zneskom, ki ga podjetje, ki je jamstvo dobilo, plača za zajamčeno posojilo vlade, in zneskom, ki bi ga podjetje plačalo na osnovi primerljivega komercialnega posojila brez vladnega jamstva. V tem primeru je korist enaka razliki med tema dvema zneskoma ob upoštevanju razlik v provizijah;

(d) dobava blaga ali storitev ali vladni odkup blaga ne velja kot vir koristi, razen če obstaja dogovor o manj kot zadostnem plačilu ali če se nakup opravi na podlagi večjega plačila, kot je potrebno. Zadostnost plačila se ugotavlja na podlagi prevladujočih tržnih pogojev za določeno blago ali storitev v državi, v kateri se opravi dobava ali nakup (vključno s ceno, kakovostjo, razpoložljivostjo, tržnostjo, prevozom in drugimi pogoji nakupa ali prodaje).

15. člen

Ugotavljanje škode[45]

15.1 Ugotavljanje škode za namene VI. člena GATT 1994 temelji na podlagi pozitivnih dokazov ter obsega objektivno preučitev (a) obsega subvencioniranega uvoza in učinkov subvencioniranega uvoza na cene enakih proizvodov na domačem trgu[46] in (b) posledičnega vpliva tega uvoza na domače proizvajalce teh proizvodov.

15.2 V zvezi z obsegom subvencioniranega uvoza preiskovalne oblasti upoštevajo, ali je prišlo do znatne rasti tega uvoza, bodisi absolutno ali v razmerju do proizvodnje ali potrošnje v članici uvoznici. Glede učinkov subvencioniranega uvoza na cene preiskovalne oblasti upoštevajo, ali je nastalo znatno izpodbijanje cen v primerjavi z enakim proizvodom članice uvoznice, ali je učinek v tem, da se cene pomembno znižujejo, ali preprečuje znatno dvigovanje cen, da katerega bi sicer prišlo. Noben posamezni ali več dejavnikov skupaj ne more prevladovati.

15.3 Če je uvoz več proizvodov iz več kot ene države sočasno predmet preiskave zaradi uvedbe izravnalne carine, smejo preiskovalne oblasti kumulativo presojati učinke takega uvoza samo, če ugotovijo, da je (a) znesek subvencioniranja, ki se ugotovi za uvoz iz vsake države posebej, večji kot de minimis v smislu devetega odstavka 11. člena in da obseg uvoza iz vsake države ni zanemarljiv in (b) kumulativna presoja učinkov uvoza ustrezna glede na konkurenčne pogoje med uvoženimi proizvodi in konkurenčne pogoje med uvoženimi proizvodi in enakimi domačimi proizvodi.

15.4 Ugotavljanje vplivov subvencioniranega uvoza na domačo industrijo upošteva vse pomembne dejavnike in kazalce, ki se nanašajo na stanje industrije, vključno z dejanskim ali možnim zmanjšanjem proizvodnje, prodaje, dobičkov, produktivnosti, amortizacijo vlaganj, ali izrabe zmogljivosti; dejavnike, ki vplivajo na domače cene, dejanske ali možne negativne učinke na pretok gotovine, na zaloge, mezde, rast, sposobnost pridobivanja kapitala ali vlaganj in, v kmetijstvu, ali je prišlo do povečanega bremena za vlado na podlagi programov domače podpore. Ta seznam ni izčrpan niti ne more prevladovati en dejavnik ali več dejavnikov skupaj.

15.5 Prikazano mora biti, da subvencioniran uvoz z delovanjem[47] subvencij povzroča škodo v smislu tega sporazuma. Prikaz vzročne zveze med subvencioniranim uvozom in škodo domači industriji temelji na presoji vseh pomembnih dokazov pri oblasteh. Oblasti morajo upoštevati tudi vse druge znane dejavnike poleg subvencioniranega uvoza, ki prav tako sočasno škodujejo domači industriji, vendar pa škoda, ki jo ti dejavniki povzročajo, ne more biti pripisana subvencioniranemu uvozu. Dejavniki, ki utegnejo biti pomembni za ta primer, med drugim vključujejo obseg in cene nesubvencioniranega uvoza spornega proizvoda, zmanjšanje povpraševanja ali spremembe pri porabi, monopole in konkurenco med domačimi in tujimi proizvajalci, razvoj v tehnologiji in izvozne rezultate in produktivnost domače industrije.

15.6 Učinki subvencioniranega uvoza se presojajo v razmerju do domače proizvodnje enakega proizvoda, če razpoložljivi podatki dovoljujejo ločevanje te proizvodnje na podlagi takih meril, kot so proizvodni proces, prodaja in dobiček proizvajalcev. Če ni možna taka ločena opredelitev proizvodnje, se vplivi subvencioniranega uvoza presojajo na podlagi proizvodnje najožje skupine ali vrste proizvodov, ki obsega tudi enak proizvod, za katere je možno pridobiti podatke.

15.7 Ugotovitev, da grozi materialna škoda, mora temeljiti na dejstvih in ne zgolj na trditvah, namigih ali na oddaljeni možnosti. Sprememba v okoliščinah, ki utegne povzročiti situacijo, da subvencija povzroča škodo, mora biti jasno predvidljiva in neizogibna. Pri ugotavljanju obstoja grožnje materialne škode morajo preiskovalne oblasti med drugim upoštevati te dejavnike:

(i) naravo sporne subvencije ali subvencij in posledice za trgovino, ki lahko iz njih nastanejo;

(ii) bistveno povečanje stopnje subvencioniranega uvoza na domači trg, ki kaže na možnost bistvenega povečanja uvoza;

(iii) zadostne razpoložljive zmogljivosti ali neizogibno bistveno povečanje zmogljivosti izvoznika, ki kaže na mož-

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[45] V tem sporazumu izraz "škoda", če ni drugače določeno, pomeni materialno škodo domači industriji, grožnjo materialne škode domači industiji ali zaostajanje razvoja domače industije in se razlaga v skladu z določbami tega člena.

[46] V tem sporazumu izraz "enak proizvod" ("produit similaire") pomeni proizvod, ki je identičen, t.j. v vseh pogledih enak proizvodu, ki je predmet obravnave, ali če takega proizvoda ni, drugi proizvod, ki ni enak v vseh pogledih, ima pa značilnosti, ki so zelo blizu tistim, ki jih ima proizvod, ki se obravnava.

[47] Kot je določeno v drugem in četrtem odstavku.

nost bistvenega povečanja subvencioniranega izvoza na trg članice uvoznice ob upoštevanju drugih izvoznih trgov, ki lahko sprejmejo dodaten izvoz;

(iv) ali uvoz prihaja s cenami, ki utegnejo imeti bistven zniževalen učinek ali učinek zadrževanja domačih cen, kar bi utegnilo povečati povpraševanje po dodatnem uvozu; in

(v) zaloge proizvoda, ki je predmet preiskave.

Nobeden od teh dejavnikov sam po sebi ne more biti odločilen, toda vsi dejavniki skupaj, ki pridejo v poštev, pa morajo biti podlaga za sklep, da je nadaljnji subvencionirani izvoz neizogiben in da bi nastala materialna škoda, če se ne uvede zaščita.

15.8 V primerih, kjer obstaja grožnja škode zaradi subvencioniranja uvoza, je treba s posebno pozornostjo proučiti in sprejeti odločitev o uporabi izravnalnih ukrepov.

16. člen

Opredelitev domače industrije

16.1 V tem sporazumu izraz "domača industrija" z izjemo drugega odstavka pomeni domače proizvajalce enakih proizvodov kot celoto ali tiste, katerih skupen proizvod pomeni glavni delež celotne domače proizvodnje teh proizvodov, razen če so proizvajalci v razmerju[48] z izvozniki ali uvozniki ali so sami uvozniki domnevno subvencioniranega proizvoda ali enakega proizvoda iz drugih držav, se izraz "domača industrija" uporabi za preostale proizvajalce.

16.2 V izjemnih primerih je možno ozemlje članice v zvezi z določeno proizvodnjo razdeliti v dva ali več konkurenčnih trgov in je možno proizvajalce na vsakem od teh trgov obravnavati kot ločeno industrijo, če (a) proizvajalci na takem trgu prodajo vso ali skoraj vso proizvodnjo proizvoda, ki je predmet obravnave na tem trgu, in (b) če povpraševanja na tem trgu pretežno ne zadovoljujejo proizvajalci spornega proizvoda z drugih območij. V tem primeru je možno ugotoviti škodo, četudi glavni del celotne domače industrije ni oškodovan, pod pogojem, da obstaja koncentracija subvencioniranega uvoza na takem ločenem trgu in pod nadaljnjim pogojem, da subvencioniran uvoz povzroča škodo proizvajalcem vse ali skoraj vse proizvodnje na takem trgu.

16.3 Če se domača industrija tako razlaga, da pomeni proizvajalce na določenem območju, t.j. na trgu, ki je opredeljen v drugem odstavku, se izravnalne carine lahko uporabljajo le za sporne proizvode, ki so namenjeni končni porabi na tem območju. Če ustavno pravo članice uvoznice ne dopušča uporabe izravnalnih carin na taki podlagi, članica uvoznica lahko uporabi izravnalne carine brez omejitev, samo če (a) je izvoznikom dana možnost, da prekinejo izvoz na osnovi subvencioniranih cen na določeno območje ali sicer dajo zagotovila v skladu z 18. členom, vendar ta zagotovila niso zadostna ali pravočasna, in (b) se take carine ne morejo uvajati zgolj za proizvode posameznih proizvajalcev, ki so dobavitelji na določenem območju.

16.4 Če sta dve državi ali več držav v skladu z osmim (a) odstavkom XXIV. člena GATT 1994 dosegli tako stopnjo integracije, da imajo naravo skupnega trga, je industrija na celotnem takem območju domača industrija, na katero se nanašata prvi in drugi odstavek.

16.5 Določbe šestega odstavka 15. člena se uporabljajo tudi v zvezi s tem členom.

17. člen

Začasni ukrepi

17.1 Začasni ukrepi se lahko uporabljajo samo :

(a) če je sprožena preiskava v skladu z določbami 11. člena ter je dan razglas o tem, zainteresirane članice in drugi zainteresirani subjekti pa so imeli dovolj možnosti, da predložijo informacije in dajo pripombe;

(b) če je sprejeta predhodna pritrdilna ugotovitev, da subvencija obstaja in da je povzročena škoda domači industriji zaradi subvencioniranega uvoza; in

(c) če oblasti presodijo, da so taki ukrepi potrebni, da bi se preprečila škoda med trajanjem preiskave.

17.2 Začasni ukrepi so lahko začasne izravnalne carine, ki se zavarujejo z gotovinskimi pologi ali varščino, ki je enaka višini začasno izračunane subvencije.

17.3 Začasni ukrepi se ne smejo uporabiti prej kot v 60 dneh od dneva uvedbe preiskave.

17.4 Uporaba začasnih ukrepov mora biti omejena na čim krajši čas, ki pa ne sme biti daljši od štirih mesecev.

17.5 Pri uporabi začasnih ukrepov je treba upoštevati ustrezne določbe 19. člena.

18. člen

Zaveze

18.1 Postopek se lahko[49] začasno ustavi ali konča, ne da bi prišlo do uporabe začasnih ukrepov ali izravnalnih carin ob zadovoljivih prostovoljnih zavezah, s katerimi:

(a) vlada članice izvoznice pristane na to, da odpravi ali omeji uporabo subvencije ali uporabi druge ukrepe v zvezi z njenim učinkovanjem; ali

(b) izvoznik pristane na popravek cen, tako da so preiskovalne oblasti zadovoljne, da so škodljive posledice subvencije odpravljene. Dvig cen v okviru takih zavez ne sme biti večji, kot je potrebno, da se odpravi subvencija. Priporočljivo je, da so dvigi cen manjši od višine subvencije, če bi taki dvigi zadoščali za odpravo škode domači industriji.

18.2 Zaveze se ne smejo zahtevati ali sprejemati, razen če so oblasti članice uvoznice že predčasno pozitivno ugotovile subvencioniranje in škodo, ki jo povzroča tako subvencioniranje, ob zavezah izvoznikov pa samo, če so dobile soglasje članice izvoznice.

18.3 Ni nujno, da oblasti sprejmejo ponujeno zavezo, če članica uvoznica meni, da sprejem te zaveze ni izvedljiv, če je npr. število dejanskih ali možnih izvoznikov preveliko ali iz drugih razlogov, vključno z razlogi splošne politike. Če do takega primera pride in če je možno, morajo oblasti sporočiti izvozniku razloge, zaradi katerih so presodile, da bi bil sprejem zaveze neprimeren, ter po možnosti dajo priložnost izvozniku za pripombe.

18.4 Če se zaveza sprejme, se preiskava subvencioniranja in škode vendarle konča, če članica izvoznica tako želi ali se članica uvoznica tako odloči. Če pride do negativne ugotovitve subvencioniranja ali škode, zaveza avtomatično odpade, razen če je razlog za tako ugotovitev obstoj zaveze. Oblasti lahko zahtevajo, da se tako dejanje ohrani v določenem razumnem obdobju v skladu z določbami tega sporazuma. Ob pozitivni ugotovitvi subvencioniranja in škode se zaveza nadaljuje v skladu z določenimi pogoji in določbami tega sporazuma.

18.5 Cenovne zaveze lahko predlagajo oblasti članice uvoznice, vendar noben izvoznik ne sme biti prisiljen v tako zavezo. Dejstvo, da vlade ali izvozniki ne ponujajo takih zavez, ali ne sprejmejo predlogov za take zaveze, ne sme na

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[48] Za namene tega odstavka velja, da so proizvajalci v razmerju z izvozniki in uvozniki samo, če: (a) eden od njih posredno ali neposredno nadzoruje drugega; ali (b) sta oba posredno ali neposredno pod nadzorom tretje osebe; ali (c) skupaj posredno ali neposredno nadzorujejo tretjo osebo pod pogojem, da obstajajo razlogi, da se domneva, da je učinek tega razmerja tak, da povzroča, da proizvajalec drugače ravna od proizvajalca, ki ni v takem razmerju. Za namene tega odstavka velja, da je prvi pod nadzorom drugega, če ima zadnji na pravni ali operativni osnovi možnost omejevati ali usmerjati prvega.

[49] Beseda "lahko" se ne sme razlagati tako, da pomeni sočasno nadaljevanje postopka z uporabo zavez, razen na podlagi določbe četrtega odstavka.

noben način vplivati na obravnavanje določene zadeve. Toda oblasti lahko prosto ugotovijo, da obstaja večja verjetnost povzročitve škode, če se nadaljuje subvencionirani uvoz.

18.6 Oblasti članice uvoznice lahko od katerekoli vlade ali izvoznika, katerega zaveza je sprejeta, zahtevajo, da da občasna poročila o izvajanju takih zavez in da dovoli preverjanje ustreznih podatkov. Ob kršitvi zavez smejo oblasti članice uvoznice v skladu s tem sporazumom hitro ukrepati v smeri takojšnje uporabe začasnih ukrepov na osnovi najboljših dostopnih informacij. V takih primerih je možna uvedba končnih carin v skladu s tem sporazumom za proizvode, ki so prešli v porabo največ v 90 dneh pred uvedbo začasnih ukrepov, vendar taka določitev ne velja za nazaj za uvoz, ki je nastal pred nastalo kršitvijo zaveze.

19. člen

Uvedba in pobiranje izravnalnih carin

19.1 Če po razumnih prizadevanjih za uspešen konec posvetovanja članica dokončno ugotovi obstoj in višino subvencije in da z učinki subvencije subvencionirani uvoz povzroča škodo, lahko uvede izravnalno carino v skladu z določbami tega člena, razen če se ukine subvencija oziroma subvencije.

19.2 Odločitev o tem, ali se oziroma se ne uvede izravnalna carina v tistih primerih, v katerih so za to izpolnjeni vsi pogoji, in o tem, ali bo izravnalna carina enaka višini subvencije ali nižja, so odločitve, ki jih sprejmejo oblasti članice uvoznice. Priporočljivo je, da bi bila uvedba dovoljena na ozemljih vseh članic, da bi bila carina nižja od celotne višine subvencije, če bi taka nižja carina zadoščala za odpravo škode domači industriji, in da bi bili postopki taki, da omogočajo oblastem, da lahko upoštevajo predstavitve domačih zainteresiranih subjektov,[50] katerih interesi utegnejo biti v nasprotju z uvedbo izravnalne carine.

19.3 Če se izravnalna carina uvede za določen proizvod, se taka carina uporablja v vsakem primeru v ustrezni višini, na nediskriminacijski podlagi za uvoz takega proizvoda iz vseh virov, za katere se ugotovi, da so subvencionirani in da povzročajo škodo, z izjemo uvoza iz drugih virov, za katere so preklicane sporne subvencije ali v zvezi s katerimi so bile sprejete zaveze na podlagi tega sporazuma. Katerikoli izvoznik, katerega izvoz je predmet dokončne uporabe izravnalne carine, ki pa dejansko ni bil vključen v preiskavo, razen iz razloga, ker ni hotel sodelovati, ima pravico do pospešene proučitve z namenom, da lahko preiskovalne oblasti za takega izvoznika takoj določijo posebno stopnjo izravnalne carine.

19.4 Noben uvoženi proizvod se ne obremeni[51] z izravnalno carino, ki presega višino subvencije, za katero je ugotovljeno, da obstaja, ki pa se določa na podlagi subvencije na enoto subvencioniranega in izvoženega proizvoda.

20. člen

Veljavnost za nazaj

20.1 Začasni ukrepi in izravnalne carine se uporabljajo za proizvode, ki preidejo v porabo potem, ko je sprejeta odločitev v skladu s prvim odstavkom 17. člena in prvim odstavkom 19. člena postala pravnomočna, pod pogoji tistih izjem, ki so določene v tem členu.

20.2 Če se dokončno ugotovi, da obstaja škoda (vendar ne tudi, da grozi škoda ali materialno zaviranje razvoja določene industrije),ali ob dokončni ugotovitvi, da grozi škoda, če bi bili učinki subvencioniranega uvoza brez uporabe začasnih ukrepov taki, da bi pripeljali do ugotovitve škode, je možno uporabiti izravnalne carine za nazaj za tisti čas, v katerem so se, če so se, uporabljali začasni ukrepi.

20.3 Če je dokončna izravnalna carina višja od zneska, ki je zavarovan z gotovinskim pologom ali varščino, se razlika ne pobira. Če je dokončna carina nižja od zneska, ki je zavarovan z gotovinskim pologom ali varščino, se presežek izplača ali varščina hitro sprosti.

20.4 Z izjemo določbe drugega odstavka, ko se ugotovi, da grozi škoda ali materialno zaviranje (vendar nobena škoda dejansko ni nastala), se lahko uvede dokončna izravnalna carina le od dneva, ko se ugotovi, da grozi škoda ali materialno zaviranje, vsi gotovinski pologi ter varščine, ki so bili dani med uporabo začasnih ukrepov, pa se hitro izplačajo oziroma sprostijo.

20.5 Ob negativni dokončni ugotovitvi se vsi gotovinski pologi in varščine, ki so bili dani med uporabo začasnih ukrepov, hitro izplačajo oziroma sprostijo.

20.6 V kritičnih primerih, ko oblasti v zvezi z določenim subvencioniranim proizvodom ugotovijo, da je nastala škoda težko popravljiva zaradi nenadnega velikega uvoza proizvoda, ki uživa koristi subvencij, ki se izplačujejo ali dajejo na način, ki ni v skladu z določbami GATT 1994 in tega sporazuma, in če se presodi, da je treba preprečiti ponovitev škode, določiti izravnalno carino za tak uvoz za nazaj, je možno tako carino določiti za uvoz, ki je prešel v porabo največ 90 dni pred dnevom uvedbe izravnalnih ukrepov.

21. člen

Trajanje in proučitev izravnalnih carin in zavez

21.1 Izravnalna carina velja do takrat in do te mere, kot je potrebno, da se omeji subvencioniranje, ki povzroča škodo.

21.2 Oblasti ponovno preučijo potrebo po nadaljnji uporabi carine, če je primerno na lastno pobudo ali pod pogojem, da je pretekel določen razumen čas od uvedbe dokončne izravnalne carine na zahtevo kateregakoli zainteresiranega subjekta, ki predloži informacije, ki opravičujejo potrebo po taki presoji. Zainteresirani subjekti imajo pravico zahtevati od oblasti, da presodijo, ali je nadaljnja uporaba carine potrebna, da se izravna subvencioniranje, ali bi se škodljivi učinki nadaljevali ali ponovili, če bi bila carina odpravljena ali spremenjena, ali oboje. Če kot rezultat proučitve na podlagi tega odstavka oblasti ugotovijo, da izravnalna carina ni več upravičena, jo morajo takoj ukiniti.

21.3 Ne glede na določbe prvega in drugega odstavka se mora katerakoli izravnalna carina ukiniti najpozneje na dan, ko poteče pet let od dneva uvedbe (ali od dneva zadnje proučitve v smislu drugega odstavka, če sta s to proučitvijo obravnavana subvencioniranje in škoda, ali v smislu tega odstavka), razen če oblasti v proučitvenem postopku, ki je sprožen pred tem dnem, ugotovijo na lastno pobudo ali na podlagi pravilno utemeljene zahteve, ki jo da domača industrija ali je dana v njenem imenu, v razumnem roku pred omenjenim dnem, da bi ukinitev carine zelo verjetno imela za posledico ponovno uvedbo oziroma nadaljevanje subvencije oziroma škode.[52] Carina lahko ostane veljavna v pričakovanju izida take proučitve.

21.4 Določbe 12. člena v zvezi z dokazi in postopkom se uporabljajo za kakršnokoli proučitev v skladu s tem členom. Vsaka taka proučitev se opravi hitro in v normalnih razmerah v 12 mesecih od dneva, ko je proučitev sprožena.

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[50] Za namene tega odstavka "domači zainteresirani subjekti" vključujejo tudi potrošnike in industrijske porabnike uvoženega proizvoda, ki je v preiskavi.

[51] V tem sporazumu se "obremenitev" uporablja za dokončno ali končno zakonito določitev ali plačilo carine ali takse.

[52] Če se višina izravnalne carine določa za nazaj, ugotovitev v zadnjem postopku, da se carina ne plača, sama po sebi ne zahteva od oblasti, da ukinejo prej dokončno določeno carino.

21.5 Določbe tega člena se smiselno uporabljajo tudi za sprejete zaveze v smislu 18. člena.

22. člen

Razglas in obrazložitev ugotovitev

22.1 Ko so oblasti zadovoljne, da je dovolj dokazov, ki opravičujejo sprožitev preiskave v skladu z 11. členom, mora biti članica ali članice, katere proizvod je predmet take preiskave, in drugi zainteresirani subjekti, ki so znani preiskovalnim oblastem, da imajo določen interes, obveščene, hkrati pa se da tudi razglas.

22.2 Razglas o uvedbi preiskave vsebuje ali sicer zagotavlja v obliki ločenega poročila[53] dovolj informacij o:

(i) imenu države izvoznice ali držav in proizvoda, na katerega se postopek nanaša;

(ii) datumu začetka preiskave;

(iii) opisu subvencioniranja ali druge prakse, ki bo predmet preiskave;

(iv) povzetku dejavnikov, na katerih temelji trditev o škodi;

(v) naslovu za pošiljanje izjav zainteresiranih članic in zainteresiranih subjektov; in

(vi) rokih za sporočanje stališč zainteresiranih članic in zainteresiranih subjektov.

22.3 Razglas se da tudi v zvezi s kakaršnokoli začasno ali dokončno ugotovitvijo, bodisi negativno ali pozitivno, v zvezi z odločitvijo, da se sprejme zaveza v skladu z 18. členom, v zvezi s potekom zaveze in odpravo dokončne izravnalne carine. Vsak tak razglas vsebuje ali drugače zagotavlja v obliki ločenega poročila dovolj podrobnosti v zvezi z ugotovitvami in sprejetimi sklepi, v zvezi z vsemi vprašanji dejanskih okoliščin in zakonitih določb, ki so imele odločilen pomen za preiskovalne oblasti. Vsi taki razglasi in poročila se pošljejo članici ali članicam, katerih proizvodi so bili predmet takih ugotovitev ali zavez, in drugim zainteresiranim subjektom, za katere je znano, da imajo določen interes.

22.4 Razglas o uvedbi začasnih ukrepov vsebuje ali drugače v obliki ločenega poročila zagotavlja dovolj podrobnosti v zvezi s predhodnimi ugotovitvami o tem, da subvencija in škoda obstajata, in se opira na dejstva in zakonite določbe, ki so bile podlaga za upoštevanje ali neupoštevanje določenih argumentov. Tak razglas ali poročilo ob upoštevanju potrebe po varovanju zaupnih informacij zlasti vsebuje:

(i) imena dobaviteljev ali, če to ni možno, imena držav dobaviteljic;

(ii) opis blaga, ki zadošča za potrebe carine;

(iii) ugotovljeno višino subvencije ter podlago za ugotovitev obstoja subvencije;

(iv) elemente, ki so pomembni za ugotovitev škode v smislu 15. člena;

(v) glavne razloge za določene ugotovitve.

22.5 Razglas, ki se nanaša na konec ali ustavitev preiskav v primeru potrdilne ugotovitve, ki predvideva uvedbo dokončne carine ali sprejem zavez, vsebuje vse informacije ali v obliki ločenega poročila omogoča dostop do vseh informacij, ki se nanašajo na dejstva in zakone ter razloge za uvedbo končnih ukrepov ali za sprejem zaveze ob hkratnem upoštevanju potreb po varovanju zaupnih informacij. Razglas ali poročilo zlasti vsebuje informacije, ki so opisane v četrtem odstavku, kakor tudi razloge za upoštevanje ali neupoštevanje pomembnih argumentov ali trditev zainteresiranih članic, izvoznikov in uvoznikov.

22.6 Razglas, ki se nanaša na konec ali ustavitev preiskave, ki sledi sprejemu zaveze v skladu z 18. členom, vsebuje informacije, ki niso zaupne, ali drugače omogoča dostop do njih v obliki ločenega poročila v zvezi z omenjeno zavezo.

22.7 Določbe tega člena se smiselno uporabljajo tudi za začetek in konec proučitev na podlagi 21. člena in za odločitve na podlagi 20. člena, ki se nanašajo na uvedbo carin za nazaj.

23. člen

Sodna revizija

Vsaka članica, katere nacionalna zakonodaja vsebuje določbe o uporabi izravnalnih carin, mora imeti sodne, arbitražne ali upravne svete ali postopke, med drugim z namenom, da lahko pravočasno opravi revizijo upravnih dejanj, ki se nanašajo na dokončne ugotovitve in proučitve teh ugotovitev na podlagi 21. člena. Taki sveti oziroma postopki morajo biti neodvisni od oblasti, ki so odgovorne za omenjene ugotovitve in proučitve, in morajo dajati možnost dostopa do take revizije vsem zainteresiranim stranem, ki so sodelovale v upravnem postopku in so neposredno ali posamično prizadete z upravnimi dejanji.

VI. DEL: ORGANI

24. člen

Odbor za subvencije in izravnalne ukrepe in podrejena telesa

24.1 Ustanovi se Odbor za subvencije in izravnalne ukrepe, ki ga sestavljajo predstavniki vsake članice. Odbore izvoli predsedujočega iz lastnih vrst ter se sestaja najmanj dvakrat na leto, sicer pa na zahtevo katerekoli članice, kot je predvideno z ustreznimi določbami tega sporazuma. Odbor ima odgovornosti v skladu s tem sporazumom ali na podlagi zahtev članic ter omogoča članicam, da se posvetujejo o katerikoli zadevi, ki se nanaša na izvajanje ali na doseganje ciljev tega sporazuma. Sekretariat WTO opravlja naloge Sekretariata Odbora.

24.2 Odbor lahko po potrebi ustanovi podrejena telesa.

24.3 Odbor ustanovi Stalno skupino izvedencev (PGE), ki jo sestavlja pet neodvisnih oseb, ki so visoko kvalificirane za področje subvencij in trgovinskih odnosov. Izvedence izvoli Odbor ter enega med njimi nadomesti vsako leto. PGE sodeluje z ugotovitvenim svetom, kot je določeno s petim odstavkom 4. člena. Odbor lahko pridobiva tudi svetovalna mnenja o obstoju in naravi katerekoli subvencije.

24.4 Vsaka članica lahko dobi mnenje PGE ali daje svetovalno mnenje o naravi katerekoli subvencije, ki jo namerava uporabljati ali jo že uporablja. Tako svetovalno mnenje je zaupno ter se nanj ni možno sklicevati v postopku, ki ga določa 7. člen.

24.5 Pri opravljanju svoje funkcije se lahko Odbor in podrejena telesa posvetujejo in pridobivajo informacije iz katerihkoli virov, za katere menijo, da so primerni. Toda preden Odbor ali podrejeno telo poskuša dobiti informacije iz virov, ki so v pravni pristojnosti neke članice, mora določeno članico obvestiti o tem.

VII.DEL: NOTIFIKACIJA IN NADZOR

25. člen

Notifikacije

25.1 Članice se sporazumejo, da brez poseganja v določbe prvega odstavka XVI. člena GATT 1994 svojo notifikacije o subvencijah predložijo najpozneje do 30. junija vsa-

[53] Če oblasti dajo informacije in razloge v obliki ločenega poročila v skladu z določbami tega člena, morajo poskrbeti za to, da je poročilo dostopno javnosti.

ko leto in se ravnajo po določbah od drugega do šestega odstavka.

25.2 Članice sporočijo katerokoli subvencijo, ki je opredeljena v prvem odstavku 1. člena in je specifična v smislu 2. člena ter se daje ali ohranja na njihovem ozemlju.

25.3 Vsebina notifikacij mora biti dovolj natančna, da omogoča drugim članicam ovrednotenje trgovinskih učinkov in razumevanje načina delovanja sporočenega programa subvencioniranja. V tej zvezi, vendar brez vpliva na vsebino in obliko vprašalnikov o subvencijah,[54] članice zagotavljajo, da njihove notifikacije vsebujejo te informacije:

(i) oblika subvencije (t.j. dotacija, posojilo, davčna ugodnost itd.);

(ii) subvencija na enoto, ali če to ni možno, skupna višina letnega proračunskega zneska za to subvencijo (ob navedbi, če je možno, povprečne subvencije na enoto v preteklem letu);

(iii) cilji politike (subvencioniranja) in/ali namen subvencije;

(iv) trajanje subvencije in/ali katerikoli drugi časovni elementi v zvezi z njo;

(v) statistični podatki, ki omogočajo presojo trgovinskih učinkov subvencije.

25.4 Če posamezne točke tretjega odstavka niso vsebovane v notifikaciji, je to treba ustrezno obrazložiti v notifikaciji sami.

25.5 Če so subvencije dane za določen proizvod ali sektor, mora biti notifikacija urejena glede na proizvod ali sektor.

25.6 Članice, ki menijo, da na njihovem območju ni ukrepov, ki bi jih bilo treba sporočiti v skladu s prvim odstavkom XVI. člena GATT 1994 in tem sporazumom, morajo o tem pisno obvestiti Sekreariat.

25.7 Članice ugotavljajo, da notifikacija ukrepa ne pomeni že sodbe o njegovi pravni naravi v smislu GATT 1994 in tega sporazuma ter o posledicah tega sporazuma ali naravi ukrepa samega.

25.8 Katerakoli članica lahko kadarkoli pisno zahteva podatke o naravi in obsegu katerekoli subvencije, ki jo daje, uporablja ali ohranja druga članica (vključno s kakršnokoli subvencijo, na katero se nanaša IV. del), ali obrazložitev razlogov, zakaj določen ukrep ni predmet notifikacije.

25.9 Tiste članice, od katerih se tako zahteva, morajo te podatke dati, čim prej je možno in celovito, na zahtevo pa dati dodatne informacije članici, ki jih zahteva. Zlasti morajo dati dovolj podrobnosti, da lahko druga članica presodi skladnost s pogoji tega sporazuma. Katerakoli članica, ki meni, da take informacije niso bile zagotovljene, lahko na to opozori Odbor.

25.10 Katerakoli članica, ki meni, da kakršenkoli ukrep druge članice, ki ima učinke subvencije, ni bil sporočen v skladu z določbami prvega odstavka XVI. člena GATT 1994 in tega sporazuma, lahko na zadevo opozori drugo članico. Če domnevna subvencija ni takoj sporočena, lahko taka članica sama seznani Odbor z domnevno sporno subvencijo.

25.11 Članice brez odlašanja poročajo Odboru o vseh predhodnih in končnih dejanjih v zvezi z izravnalnimi carinami. Taka poročila so na voljo drugim članicam pri Sekretariatu z namenom proučitve. Članice na polletni osnovi predložijo poročila o uvedbi izravnalnih carin v preteklih 6 mesecih. Ta polletna poročila so v dogovorjeni standardni obliki.

25.12 Vsaka članica obvesti Odbor o tem, (a) katere oblasti so pristojne, da sprožijo in vodijo preiskave v skladu z 11. členom in (b) kateri domači postopki urejajo uvedbo in opravljanje preiskav.

26. člen

Nadzor

26.1 Odbor pregleduje nove in celovite notifikacije, ki se predložijo v smislu prvega odstavka XVI. člena GATT 1994 in prvega odstavka 25. člena tega sporazuma na posebnih zasedanjih, ki se sklicujejo vsako tretje leto. Notifikacije, ki se predložijo v vmesnih letih (dopolnilne tekoče notifikacije), pa se pregledujejo na vsakem rednem zasedanju Odbora.

26.2 Odbor obravnava poročila, ki se predložijo v smislu enajstega odstavka 25. člena na vsakem rednem zasedanju Odbora.

VIII. DEL: ČLANICE DRŽAVE V RAZVOJU

27. člen

Posebna in pristranska obravnava članic držav v razvoju

27.1 Članice ugotavljajo, da lahko imajo subvencije pomembno vlogo pri gospodarskem razvoju članic držav v razvoju.

27.2 Prepoved prvega (a) odstavka 3. člena se ne uporablja za:

(a) članice države v razvoju, na katere se nanaša Priloga VII;

(b) druge članice države v razvoju za čas 8 let od dneva začetka veljavnosti Sporazuma o WTO, če so izpolnjeni pogoji četrtega odstavka.

27.3 Prepoved prvega (b) odstavka 3. člena se ne uporablja za članice države v razvoju za 5 let, za najmanj razvite države članice pa za 8 let od dneva začetka veljavnosti Sporazuma WTO.

27.4 Katerakoli članica država v razvoju, na katero se nanaša drugi (b) odstavek, postopoma odpravi uporabo izvoznih subvencij v osmih letih, po možnosti progresivno. Toda članica država v razvoju ne sme povečati ravni izvoznih subvencij[55] in jih mora odpraviti v času, ki je krajši od časa, ki ga določa ta odstavek, če je uporaba takih izvoznih subvencij neskladna z njenimi razvojnimi potrebami. Če članica država v razvoju meni, da obstaja potreba po uporabi takih subvencij po osmih letih, mora vsaj eno leto pred potekom tega obdobja sprožiti posvetovanje z Odborom, ki ugotovi, ali je utemeljeno podaljševanje tega obdobja, potem ko prouči vse ustrezne gospodarske, finančne in razvojne potrebe določene članice države v razvoju. Če Odbor ugotovi, da je podaljšanje utemeljeno, članica država v razvoju opravi letna posvetovanja z Odborom, da se ugotovi, ali obstaja potreba po nadaljnjem ohranjanju subvencij. Če Odbor ne sprejme nobene take ugotovitve, mora članica država v razvoju postopoma odpraviti preostali del izvoznih subvencij v dveh letih od začetka zadnjega odobrenega obdobja.

27.5 Članica država v razvoju, ki je dosegla izvozno konkurenčnost za katerikoli proizvod, postopoma odpravi izvozne subvencije za tak(e) proizvod(e) v dveh letih. Toda članica država v razvoju, na katero se nanaša Priloga VII in je dosegla izvozno konkurenčnost za enega ali več proizvodov, postopoma odpravi izvozne subvencije za take proizvode v osmih letih.

27.6 Izvozna konkurenčnost določenega proizvoda obstaja, če je izvoz članice države v razvoju za ta proizvod dosegel najmanj 3.25 odstotka svetovne trgovine tega pro-

[54] Odbor ustanovi Delovno skupino za proučitev vsebine in oblike vprašalnika, kot je določen v dokumentu BISD 9S/193-194.

[55] Za članico državo v razvoju, ki od dneva začetka veljavnosti Sporazuma o WTO ne daje izvoznih subvencij, se ta odstavek uporabi na podlagi višine izvoznih subvencij v letu 1986.

izvoda v dveh zaporednih koledarskih letih. Izvozna konkurenčnost obstaja ali (a) na podlagi notifikacije članice države v razvoju, da je dosegla izvozno konkurenčnost, ali (b) na podlagi izračuna Sekretariata na zahtevo katerekoli članice. Za namene tega odstavka je proizvod določen kot poglavje oddelka HS-nomenklature. Odbor preveri izvajanje te določbe pet let po začetku veljavnosti Sporazuma o WTO.

27.7 Določbe 4. člena se ne uporabljajo za članico državo v razvoju, če so izvozne subvencije v skladu z določbami od drugega do petega odstavka. Ustrezne določbe v takem primeru so določbe 7. člena.

27.8 Ni možno uporabiti domnev v smislu prvega odstavka 6. člena, da subvencija, ki jo daje članica država v razvoju, pomeni resno ogrožanje, kot je določeno s tem sporazumom. Tako resno ogrožanje v ustreznih primerih, ki jih določa deveti odstavek, mora biti dokazano s pozitivnimi dokazi v skladu z določbami od tretjega do osmega odstavka 6. člena.

27.9 V zvezi z izpodbojnimi subvencijami, ki jih članica država v razvoju daje ali ohranja, razen tistih, ki so določene v prvem odstavku 6. člena, ni možno dati pooblastila ali izvajati nobenega dejanja v smislu 7. člena, razen če se ugotovi izničenje ali omejevanje carinskih koncesij oziroma drugih obveznosti GATT 1994 kot rezultat take subvencije, z izpodrivanjem ali oviranjem uvoza enakega proizvoda druge članice na trg članice države v razvoju, ki subvencijo daje, in če nastane škoda domači industriji na trgu članice uvoznice.

27.10 Vsaka preiskava v zvezi z uvedbo izravnalne carine, ki se nanaša na proizvod članice države v razvoju, se prekine takoj, ko oblasti ugotovijo, da:

(a) celotna raven subvencij za določen proizvod ne presega 2 odstotkov vrednosti, preračunano na enoto proizvoda, ali

(b) obseg subvencioniranega uvoza pomeni manj kot 4 odstotke celotnega uvoza enakega proizvoda na trgu članice uvoznice, razen če posamezni deleži v celotnem uvozu od članic držav v razvoju pomenijo manj kot 4 odstotke, skupaj pa več kakor 9 odstotkov celotnega uvoza enakega proizvoda na trgu članice uvoznice.

27.11 Za tiste članice države v razvoju na podlagi drugega (b) odstavka, ki so odpravile izvozne subvencije pred iztekom osem- letnega obdobja od dneva začetka veljavnosti Sporazuma o WTO, in za tiste članice države v razvoju, na katere se nanaša Priloga VII, so v desetem (a) odstavku 3 odstotki, namesto 2 odstotkov. Ta določba se uporablja od dneva, ko se Odboru sporoči odprava izvoznih subvencij, in toliko časa, dokler članica država v razvoju teh izvoznih subvencij ne uporablja. Ta določba ni veljavna po osmih letih od dneva začetka veljavnosti Sporazuma o WTO.

27.12 Določbe desetega in enajstega odstavka so odločilne pri ugotavljanju de minimis subvencije v povezavi s tretjim odstavkom 15. člena.

27.13 Določbe III. dela se ne uporabljajo za neposreden odpust dolga, subvencije, ki pokrivajo socialne stroške v kakršnikoli obliki, vključno z odpovedjo državnim dohodkom in drugim oblikam prenosa obveznosti, če se take subvencije dajejo na podlagi ali v neposredni povezavi s programom privatizacije članice države v razvoju pod pogojem, da so program in subvencije za določen čas in da so sporočeni Odboru ter da je končni rezultat programa privatizacija določenih podjetij.

27.14 Na zahtevo zainteresirane članice Odbor prouči prakso članice države v razvoju, ki uporablja specifične izvozne subvencije, z namenom, da ugotovi, ali je praksa v skladu z njenimi razvojnimi potrebami.

27.15 Na zahtevo zainteresirane članice države v razvoju Odbor prouči določen izravnalni ukrep z namenom, da ugotovi, ali je v skladu z določbami desetega in enajstega odstavka, kot se uporabljajo za določene članice države v razvoju.

IX. DEL: PREHODNA UREDITEV

28. člen

Obstoječi programi

28.1 Programi subvencioniranja, ki so bili v uporabi na območju katerekoli članice pred njenim podpisom Sporazuma o WTO, ki pa niso skladni z določbami tega sporazuma, morajo biti:

(a) sporočeni Odboru najpozneje v 90 dneh od dneva začetka veljavnosti Sporazuma o WTO za to članico; in

(b) usklajeni z določbami tega sporazuma v treh letih od dneva začetka veljavnosti Sporazuma o WTO za to članico in se do takrat ne uporablja II. del.

28.2 Nobena članica ne sme razširiti obseg takega programa niti obnoviti takega programa, ko ta poteče.

29. člen

Prehod v tržno gospodarstvo

29.1 Članice lahko na prehodu iz centralnoplanskega v tržno, svobodno podjetniško gospodarstvo uporabljajo programe in ukrepe, ki so potrebni za tak prehod.

29.2 Za take članice se programi subvencioniranja, ki sodijo v 3. člen in so sporočeni v skladu s tretjim odstavkom, postopoma ukinjajo ali uskladijo s 3. členom v sedmih letih od dneva začetka veljavnosti Sporazuma o WTO. V takih primerih se 4. člen ne uporablja. Poleg tega v istem obdobju:

(a) subvencijski programi, ki sodijo v prvi (d) odstavek 6. člena, niso izpodbojni v smislu 7. člena;

(b) v zvezi z drugimi izpodbojnimi subvencijami se uporabljajo določbe devetega odstavka 27. člena.

29.3 Programi subvencioniranja, ki sodijo v 3. člen, se sporočijo Odboru v najkrajšem možnem času po začetku veljavnosti Sporazuma o WTO. Poznejše notifikacije so možne v dveh letih od dneva začetka veljavnosti Sporazuma o WTO.

29.4 V izjemnih primerih lahko članice, ki so določene v prvem odstavku, od Odbora dobijo dovoljenje za odstop od sporočenih programov in ukrepov v določenem časovnem okviru, če menijo, da so taka odstopanja potrebna na prehodu v tržno gospodarstvo.

X. DEL: REŠEVANJE SPOROV

30. člen

Določbe XXII. in XXIII. člena GATT 1994, kot so razčlenjene in se uporabljajo v Dogovoru o reševanju sporov, se uporabljajo za posvetovanja in reševanje sporov na podlagi tega sporazuma, razen če ni izrecno drugače določeno.

XI. DEL: KONČNE DOLOČBE

31. člen

Začasna uporaba

Določbe prvega odstavka 6. člena in določbe 8. in 9. člena se uporabljajo pet let od dneva začetka veljavnosti Sporazuma o WTO. Najpozneje v 180 dneh pred koncem tega obdobja Odbor prouči uporabo teh določb z namenom, da ugotovi, ali naj se podaljša uporaba teh določb v istem besedilu ali v spremenjenem besedilu za določen čas vnaprej.

32. člen

Druge končne določbe

32.1 Nobena druga dejavnost proti subvenciji druge članice ni možna, razen tiste, ki je v skladu z določbami GATT 1994, kot jih razlaga ta sporazum.[56]

32.2 Noben pridržek glede katerekoli določbe tega sporazuma ni možen brez soglasja drugih članic.

32.3 Pod pogoji četrtega odstavka se določbe tega sporazuma nanašajo na preiskave in proučitve obstoječih ukrepov, ki so v uporabi ali se začnejo uporabljati na dan začetka veljavnosti Sporazuma o WTO za določeno članico ali po dnevu začetka veljavnosti Sporazuma o WTO za določeno članico.

32.4 Za namene tretjega odstavka 21. člena za obstoječe izravnalne ukrepe velja, da so se začeli uporabljati najprej na dan začetka veljavnosti Sporazuma o WTO, razen če domača veljavna zakonodaja članice na ta dan že vsebuje tako določbo, kot je določena v tem odstavku.

32.5 Najpozneje do dneva začetka veljavnosti Sporazuma o WTO za določeno članico vsaka članica stori vse potrebno v splošnem ali konkretnem pomenu, da zagotovi skladnost svoje zakonodaje, predpisov in upravnih postopkov z določbami tega sporazuma, kakor se te uporabljajo za določeno članico.

32.6 Vsaka članica obvesti Odbor o vsaki spremembi v zakonih in predpisih, ki so pomembni za ta sporazum, kakor tudi v izvajanju teh zakonov in predpisov.

32.7 Odbor letno prouči izvajanje in uporabo tega sporazuma ob upoštevanju njegovih ciljev. Odbor letno poroča Svetu za trgovino z blagom v vmesnem obdobju, na katero se nanaša posamezna proučitev.

32.8 Priloge so sestavni del tega sporazuma.

PRILOGA I

PONAZORITVENI SEZNAM IZVOZNIH SUBVENCIJ

(a) Vlada neposredno daje subvencije podjetju ali industriji na podlagi izvoznih rezultatov.

(b) Razne oblike zadrževanja deviz ali podobna praksa, ki vključuje nagrado za izvoz.

(c) Stroški notranjega prevoza in prevoza blaga za izvoz, ki jih določi ali odobri vlada pod ugodnejšimi pogoji kot za domače pošiljke.

(d) Če vlade ali njihove agencije na podlagi programov, ki jih vlade odobrijo, neposredno ali posredno dobavljajo blago ali storitve iz uvoza za potrebe proizvodnje za izvoz, pod pogoji, ki so ugodnejši od dobav enakih ali neposredno konkurenčnih proizvodov ali storitev za potrebe proizvodnje za domačo porabo, če so (pri proizvodih) taki pogoji ugodnejši od obstoječih komercialnih pogojev[57] za njihove izvoznike na svetovnih trgih.

(e) Popolna ali delna oprostitev ali odlog plačila neposrednih davkov[58], ki so v neposredni zvezi z izvozom, ali dajatev socialnega zavarovanja, ki so plačane ali pa bi jih morala plačati industrijska ali trgovinska podjetja[59].

(f) Dajanje posebnih popustov v neposredni povezavi z izvozom ali izvoznimi dosežki, ki so višji in poleg tistih, ki se dajejo proizvodnji za domače potrebe pri izračunavanju osnove za plačilo neposrednih davkov.

(g) Oprostitev ali odlog posrednih davkov[58] v zvezi s proizvodnjo in distribucijo proizvodov za izvoz, ki je večja od dajatev, ki se plačujejo v zvezi s proizvodnjo in distribucijo enakih proizvodov, ko se ti prodajajo za domačo porabo.

(h) Oprostitev, odlog ali prenos fazne kumulative posrednih davkov[58] za blago in storitve, ki se porabijo v proizvodnji proizvodov za izvoz, ki pa so večji od oprostitev, odloga ali prenosa podobne fazne kumulative za blago in storitve, ki se uporabljajo v proizvodnji blaga za domačo porabo, toda pod pogojem, da so take oprostitve dovoljene za izvoženo blago, ne pa tudi za blago za domačo porabo, če se običajno fazna kumulativa posrednih davkov računa le za inpute, ki se porabijo samo v proizvodnji blaga za izvoz (ob normalnem upoštevanju izpada).[60] Ta točka se razlaga v skladu z navodili o porabi inputov v proizvodnji, ki so določeni v Prilogi II.

(i) Odlog ali povračilo uvoznih dajatev,[58] ki so višje od tistih, ki se plačujejo za uvoženi input, in se porabi v proizvodnji za izvoz (ob normalnem upoštevanju izpada); toda pod pogoji, da lahko podjetje v določenih primerih porabi enako količino domačih inputov, ki je enake kakovosti in značilnosti kot uvoženi inputi, kot nadomestitev, da bi bila na ta način deležna enakih ugodnosti, če se uvoz in nanj vezan izvoz opravita v razumnem obdobju, ki pa ne sme biti daljše od dveh let. Ta odstavek se razlaga v povezavi z navodili o porabi inputov v proizvodnji, ki jih vsebuje Priloga II, in navodili o ugotavljanju sistemov povračil uvoznih dajatev z uporabo nadomeščanja uvoza kot oblike izvozne subvencije iz Priloge III.

(j) Če vlada (ali posebna ustanova, ki jo vlada nadzoruje) daje jamstva za izvozna posojila ali zavarovanja in zavarovanja ali jamstva proti naraščanju stroškov izvoženih proizvodov ali za prevzem tečajnih razlik po diskontnih stopnjah, ki ne pokrivajo dolgoročnih tekočih stroškov in izgub omenjenih programov.

(k) Dotacije vlad (ali posebnih ustanov, ki jih nadzorujejo in/ali ki imajo pooblastila vlade) izvoznih posojil po obrestnih merah, ki so pod ravnijo tistih, ki jih vlade plačujejo za uporabo takih sredstev (ali ki bi jih morale plačevati, če bi si izposojevale kapital na mednarodnem trgu kapitala za pridobitev sredstev z enako dobo in drugimi posojilnimi pogoji, določenimi v enaki valuti kot izvozna posojila), ali

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[56] Namen tega odstavka ni preprečiti dejavnosti na podlagi drugih ustreznih določb GATT 1994, če je smiselno.

[57] Izraz "obstoječi komercialni" pomeni, da izbira med domačimi in uvoženimi proizvodi ni omejena in je odvisna le od komercialnih meril.

[58] Za namene tega sporazuma navedeni izrazi pomenijo:

"neposredni davki": davki na plače, dobički, obresti, najemnine, licenčnine, in vse druge oblike dohodka in davki na lastnino nepremičnin;

"uvozne dajatve": carine in druge fiskalne dajatve, ki niso drugje določene in se plačujejo za uvoz;

"posredni davki": prometni davek, akciza, davek na dodano vrednost, davek na franšizo, kolek, davek na transfer, davek na zaloge in opremo, mejni davki in vsi drugi davki, ki niso neposredni, in uvozne dajatve;

"fazni" posredni davki: plačajo se za blago in storitve, ki se neposredno ali posredno uporabljajo pri izdelavi določenega proizvoda;

"kumulativa" posrednih davkov: so posredni davki, ki se obračunavajo v različnih fazah, če ni posebnega mehanizma za obračun davka na blago in storitve na podlagi enotne proizvodne faze in se zato obračunavajo za vsako naslednjo fazo proizvodnje;

"odlog" davkov: obsega povračila davkov;

"odlog ali povračila uvoznih dajatev": vključuje celotno ali delno oprostitev ali odložitev plačila uvoznih dajatev.

[59] Članice upoštevajo, da odlog nujno ne pomeni tudi izvozne subvencije, če se npr. plačajo ustrezne obresti. Članice potrjujejo načelo, da so cene za blago v poslovanju med izvoznimi podjetji in tujimi kupci pod njihovim ali pod skupnim nadzorom iz davčnih razlogov tiste cene, ki se neprizadeto plačujejo med podjetji. Vsaka članica lahko opozori drugo članico na administrativno ali podobno prakso, ki to načelo zanika in ki lahko omogoča precejšnje prihranke pri neposrednih davkih na izvoz. V takih okoliščinah si članice prizadevajo, da odpravijo medsebojne razlike z uporabo obstoječih sporazumov o izogibanju dvojnega obdavčenja ali drugih mednarodnih mehanizmov, brez poseganja v pravice in obveznosti članic na podlagi GATT 1994, vključno s pravico do posvetovanja. Odstavek (e) ne omejuje članice, da ukrepa, da bi se izognila dvojnemu obdavčenju dohodkov iz tujih virov, ki jih pridobivajo njena podjetja ali podjetja druge članice.

[60] Odstavek (h) se ne nanaša na davčne sisteme na dodano vrednost ali uravnavanje mejnih davkov namesto prejšnjih; vprašanje pretiranega odloga davka na dodano vrednost je obravnavano samo v okviru točke (g).

prevzem plačila stroškov, v celoti ali deloma, stroškov, ki so jih imeli izvozniki ali finančne ustanove pri pridobivanju posojil, če je namen tega, da se zagotovi materialna prednost pri pogojih izvoznih posojil.

Vendar to izvozno kreditiranje ne velja za prepovedano izvozno subvencijo v skladu s tem sporazumom, če je članica pogodbenica mednarodnega akta o vladnih izvoznih posojilih, katerega pogodbenic je 12 izvirnih članic tega sporazuma od 1. januarja 1979 (ali nasledstvenega akta, ki so ga sprejele te izvirne članice), ali če članica v praksi uporablja določbe tega akta, ki se nanašajo na obrestne mere, če je njena praksa izvoznega kreditiranja v skladu z omenjenimi določbami.

(l) Katerakoli druga dajatev na javni račun, ki pomeni izvozno subvencijo v smislu XVI. člena GATT 1994.

PRILOGA II

SMERNICE ZA PORABO INPUTOV V PROIZVODNJI[61]

I

1. Programi povračil posrednih davkov lahko dopuščajo oprostitev, odlog ali prenos faznih kumulativ posrednih davkov, ki se nanašajo na inpute, ki se porabijo v proizvodnji za izvoz (ob normalnem upoštevanju izpada). Podobno temu lahko tudi programi povračil uvoznih dajatev dopuščajo odlog ali povračilo uvoznih dajatev, ki se plačujejo v zvezi z inputi, ki se porabijo v proizvodnji izvoznega proizvoda (ob normalnem upoštevanju izpada).

2. Ponazoritveni seznam izvoznih subvencij, ki ga vsebuje Priloga I k temu sporazumu, uporablja izraz "inputi, ki se porabijo v proizvodnji za izvoz" v odstavkih (h) in (i). Glede na odstavek (h) lahko programi povračil posrednih davkov pomenijo izvozno subvencijo do te mere, da pomeni oprostitev, odlog ali prenos faznih posrednih davkov, ki presegajo zneske takih davkov, ki se dejansko plačujejo za inpute, ki se porabijo v proizvodnji za izvoz. Glede na odstavek (i) lahko programi povračil uvoznih dajatev pomenijo izvozno subvencijo v taki meri, ki pomeni odlog ali povračilo uvoznih dajatev, ki presega tiste, ki se dejansko plačujejo za inpute, ki se porabijo v proizvodnji za izvoz. Odstavka predpisujeta, da je treba upoštevati normalen izpad pri ugotavljanju porabe inputov v proizvodnji za izvoz. Odstavek (i) se prav tako ustrezno nanaša na nadomestitev uvoza.

II

Pri ugotavljanju, ali se inputi porabijo v proizvodnji za izvoz kot del preiskave zaradi uvedbe izravnalnih carin na podlagi tega sporazuma, preiskovalne oblasti ravnajo tako:

1. Če se sumi, da obstaja program povračila posrednih davkov ali povračila uvoznih dajatev, ki pomeni subvencijo zaradi prevelikega povračila posrednih davkov in uvoznih dajatev za inpute, ki se porabijo v proizvodnji za izvoz, preiskovalne oblasti najprej ugotovijo, ali vlada članice izvoznice ima oziroma izvaja postopke za ugotavljanje, kateri inputi se porabijo v proizvodnji za izvoz in v kakšnih količinah. Če se ugotovi, da se taki postopki izvajajo, preiskovalne oblasti ugotovijo, ali je ta postopek racionalen, učinkovit glede na namen in ali temelji na splošno sprejeti trgovinski praksi v državi izvoza. Preiskovalne oblasti lahko menijo, da je treba opraviti določene praktične preizkuse v skladu s šestim odstavkom 12. člena, da bi preverili informacije oziroma da bi se zadovoljili, da se postopek učinkovito uporablja.

2. Če takega postopka ni oziroma če ni razumen ali če se ugotovi, da je predpisan in da je razumen, vendar se ne izvaja ali pa se ne izvaja učinkovito, je potrebna nadaljnja preiskava članice izvoznice na podlagi dejanskih inputov, da bi bilo možno ugotoviti, ali je prišlo do prevelikega plačila. Če preiskovalne oblasti menijo, da je potrebno, se opravi nadaljnja preiskava v skladu s prvim odstavkom.

3. Preiskovalne oblasti morajo obravnavati inpute kot fizične sestavine, če so kot taki porabljeni v proizvodnji in so fizične sestavine proizvoda za izvoz. Članice ugotavljajo, da ni nujno, da je input sestavina končnega proizvoda v enaki obliki, kot je sestavina na začetku proizvodnega postopka.

4. Pri ugotavljanju količine določenega inputa, ki se porabi v proizvodnji za izvoz, je "normalno upoštevanje izpada" kategorija, ki jo je treba upoštevati, tak izpad pa je treba obravnavati, kot da je porabljen v proizvodnji za izvoz. Izraz "izpad" se nanaša na tisti del določenega inputa, ki nima nobene samostojne vloge v proizvodnem procesu, se ne porabi v proizvodnji za izvoz (zaradi neučinkovitosti) in isti proizvajalec tega ne more ponovno porabiti ali prodajati.

5. Ko preiskovalne oblasti presojajo, ali je upoštevanje izpada "normalno", upoštevajo naravo proizvodnje, povprečno izkušenost določene industrije v državi izvoza ter druge ustrezne tehnične dejavnike. Preiskovalne oblasti tudi upoštevajo, da je pomembno, ali so oblasti članice izvoznice ustrezno izračunale obseg izpada z namenom, da se upošteva pri vračilu ali odlogu davkov ali carin.

PRILOGA III

SMERNICE ZA UGOTAVLJANJE SISTEMOV POVRAČIL UVOZNIH DAJATEV Z VKLJUČITVIJO NADOMESTITVE UVOZA KOT OBLIKE IZVOZNE SUBVENCIJE

I

Sistemi povračil uvoznih dajatev lahko omogočajo povračilo uvoznih dajatev za inpute, ki se porabijo v proizvodnem procesu nekega drugega proizvoda, ki pri izvozu vsebuje domače inpute z enako kakovostjo in značilnostmi, kot jih imajo uvozni inputi, ki so nadomeščeni z domačimi inputi. Na osnovi odstavka (i) Ponazoritvenega seznama izvoznih subvencij v Prilogi I lahko imajo sistemi povračil uvoznih dajatev, ki vključujejo nadomestitev uvoza, naravo izvozne subvencije do višine presežka povrnjenih uvoznih dajatev nad tisto višino, ki je prvotno plačana za uvožene inpute in za katere se dejansko zahteva povračilo.

II

Pri proučevanju kateregakoli sistema povračil, ki vključuje nadomestitev uvoza kot del preiskave glede možne uvedbe izravnalne carine na podlagi tega sporazuma, preiskovalne oblasti ravnajo tako:

1. Odstavek (i) Ponazoritvenega seznama določa, da lahko inputi domačega trga nadomestijo uvozne inpute v proizvodnji za izvoz pod pogojem, da so taki inputi enaki po količini in da imajo enake značilnosti kakor nadomeščeni uvozni inputi. Obstoj sistema kontrole je pomemben, ker omogoča vladi članice izvoznice, da zagotovi in prikaže, da količina inputov, za katero se zahteva povračilo dajatev, ne presega enake količine proizvodov za izvoz v kakršnikoli obliki in da ne obstaja povračilo uvoznih dajatev, ki presega tiste, ki so prvotno plačane za določene uvozne inpute.

[61] Inputi, ki se porabijo v procesu proizvodnje, so inputi, ki postanejo sestavine, energija, gorivo in olje, ki se porabijo v procesu proizvodnje in primesi, ki se porabijo med proizvodnjo, da se pridobi izvozni proizvod.

2. Če se sumi, da sistem povračil uvoznih dajatev, ki vključuje nadomestitev uvoza, pomeni subvencijo, morajo preiskovalne oblasti najprej ugotoviti, ali ima vlada članice izvoznice in ali izvaja postopek kontrole. Če se ugotovi, da se ta izvaja, tedaj preiskovalne oblasti ugotovijo, ali je postopek kontrole razumen, učinkovit glede na namen, in ali temelji na splošno sprejeti trgovinski praksi v državi izvoza. Do mere, do katere se ugotovi, da so postopki opravili preizkus in se učinkovito izvajajo, se domneva, da subvencija ne obstaja. Preiskovalne oblasti lahko v skladu s šestim odstavkom 12. člena presodijo, da je treba opraviti določene praktične preizkuse, da bi lahko preverili informacije oziroma da bi se lahko zadovoljili, da se kontrolni postopki učinkovito izvajajo.

3. Če kontrolnih postopkov ni ali če niso razumni ali če taki postopki so in se presodi da so razumni, vendar se ne izvajajo ali pa se ne izvajajo učinkovito, se lahko domneva, da obstaja subvencija. V takih primerih članica izvoznica posebej na podlagi dejanskih transakcij ugotovi, ali morebiti ni prišlo do presežnega plačila. Če preiskovalne oblasti menijo, da je potrebno, lahko opravijo dodatne poizvedbe v skladu z drugim odstavkom.

4. Obstoj sistema povračil uvoznih dajatev z vključitvijo nadomestitve uvoza, ki dovoljuje izvoznikom, da izbirajo določene pošiljke iz uvoza, na podlagi katerih zahtevajo povračila uvoznih dajatev, sam po sebi ne pomeni, da gre za subvencioniranje.

5. Domneva se, da obstajajo presežna povračila uvoznih dajatev v smislu odstavka (i), če vlada plačuje obresti na zneske, ki so izplačani na osnovi sistema povračil do višine obresti, ki so dejansko plačane ali pa jih je treba plačati.

PRILOGA IV

IZRAČUN CELOTNE VREDNOSTI SUBVENCIONIRANJA (PRVI (a) ODSTAVEK 6. ČLENA)[62]

1. Kakršenkoli izračun višine subvencije za namene prvega (a) odstavka 6. člena je treba opraviti v smislu stroška vlade, ki daje subvencijo.

2. Z izjemo določb od tretjega do petega odstavka pri ugotavljanju, ali celotna višina subvencioniranja presega 5 odstotkov vrednosti proizvoda, se izračuna vrednost proizvoda kot celotna vrednost prodaje podjetja, ki je dobilo subvencije[63] v zadnjih 12 mesecih, za katere so na voljo podatki o prodaji, vendar pred obdobjem, za katero je subvencija dana.[64]

3. Če se subvencija navezuje na proizvodnjo ali prodajo določenega proizvoda, se vrednost proizvoda izračuna kot celotna vrednost prodaje podjetja, ki je dobilo subvencije, tega proizvoda v zadnjih 12 mesecih, za katere so na voljo podatki o prodaji, ki pa je obdobje pred tistim, za katero je subvencija dana.

4. Če gre za podjetje na začetku poslovanja in je dobilo subvencije, se domneva, da obstaja resno ogrožanje, če celotna stopnja subvencioniranja presega 15 odstotkov celote vloženih sredstev. Za namene tega odstavka začetno obdobje ne more biti daljše od prvega leta proizvodnje.[65]

5. Če podjetje, ki je dobilo subvencije, obstaja v državi z gospodarstvom z visoko inflacijo, se vrednost proizvoda podjetja izračuna na podlagi celotne prodaje (ali prodaje določenega proizvoda, če je subvencija vezana) v prejšnjem koledarskem letu z indeksom, ki temelji na stopnji inflacije v zadnjih 12 mesecih pred tistim mesecem, v katerem je bila dana subvencija.

6. Pri določanju celotne stopnje subvencioniranja v danem letu se subvencije, ki se dajejo v okviru različnih programov in jih dajejo različne oblasti na območju članice, seštevajo.

7. Subvencije, ki so dane pred dnevom začetka veljavnosti Sporazuma o WTO, katerih koristi so namenjene prihodnji proizvodnji, se vključijo v celotno višino subvencioniranja.

8. Subvencije, ki niso izpodbojne v smislu ustreznih določb tega sporazuma, se ne vključujejo v izračun višine subvencije za potrebe prvega (a) odstavka 6. člena.

PRILOGA V

POSTOPKI ZA PRIDOBIVANJE INFORMACIJ O RESNEM OGROŽANJU

1. Vsaka članica sodeluje pri zbiranju dokazov, ki naj jih prouči ugotovitveni svet po postopkih na podlagi četrtega do šestega odstavka 7. člena. Stranke v sporu in katerakoli tretja država Članica, ki ima interes, DSB obvesti takoj, ko se sproži uporaba četrtega odstavka 7. člena, o organizaciji, odgovorni za izvajanje te določbe na njenem območju in za postopke, ki se uporabijo, da se zadovoljijo zahteve po informacijah.

2. Ko se zadeve dajo DSB v obravnavo na podlagi četrtega odstavka 7. člena, DSB na zahtevo sproži postopek za pridobivanje takih informacij od vlade članice, ki določeno subvencijo daje, za katere meni, da so potrebne, da se ugotovijo obstoj in višina subvencioniranja, vrednost skupne prodaje podjetja, ki subvencijo dobiva, kakor tudi informacije, ki so potrebne, da se analizirajo škodljivi učinki, ki jih povzroča subvencionirani proizvod.[66] Ta postopek lahko vključuje, če je ustrezno, tudi postavljanje vprašanj vladi članice, ki subvencijo daje, in članici, ki se je pritožila, z namenom, da se zberejo informacije, kakor tudi da se zberejo pojasnila v zvezi s tistimi informacijami, ki so strankam v sporu že na razpolago na podlagi postopkov notifikacije, ki jih določa VII. del.[67]

3. Glede učinkov na trgih tretjih držav lahko stranka v sporu zbira informacije, vključno z vprašanji vladi tretje države članice, ki so potrebne, da se ugotovijo škodljivi učinki, ki drugače niso na voljo na razumen način iz virov članice, ki se pritožuje oziroma članice, ki subvencijo daje. Ta del postopka se izvaja tako, da se tretji državi članici ne povzročajo nepotrebna bremena. Zlasti se od take članice ne pričakuje, da bi pripravila tržno ali cenovno analizo posebej za ta namen. Informacije, ki naj se dajo, so tiste, ki

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[62] Po potrebi se lahko članice sporazumejo o zadevah, ki niso zajete v tej prilogi ali pa potrebujejo nadaljnjo razlago za namene prvega (a) odstavka 6. člena.

[63] Podjetje, ki je dobilo subvencijo, je podjetje na območju članice, ki daje subvencijo.

[64] Pri subvencijah v povezavi z davki se kot vrednost proizvoda računa celotna vrednost prodaje podjetja, ki je subvencijo dobilo, v proračunskem letu, v katerem je podjetje dobilo davčni popust ali odpust.

[65] Primeri zagona vključujejo primere nastale finančne obveznosti v zvezi z razvojem proizvoda ali gradnjo za proizvodnjo proizvodov, ki se subvencionirajo, četudi se proizvodnja še ni začela.

[66] Kadar je treba dokazati obstoj resnega ogrožanja.

[67] V postopku zbiranja informacij, ki ga opravlja DSB, se upošteva potreba po varovanju informacij, ki so po naravi zaupne, ali jih članice, ki so vključene v postopek, dajejo na zaupni osnovi.

so že na voljo ali jih lahko ta članica enostavno dobi (t.j. zadnji statistični podatki, ki so jih že zbrale statistične službe, a še niso objavljeni, podatki carine o uvozu in prijavljenih vrednostih določenih proizvodov itd.). Toda če se določena stranka v sporu loti natančne tržne analize na svoje stroške, morajo oblasti tretje države članice omogočiti, da osebe ali podjetja to nalogo opravijo ter jim morajo zagotaviti dostop do vseh informacij, ki jih vlada običajno ne obravnava kot zaupne.

4. DSB določi predstavnika, ki skrbi za izvajanje postopka zbiranja informacij. Edina naloga takega predstavnika je, da skrbi za časovno ustrezno pridobivanje informacij, ki so potrebne za lažjo nadaljnjo mnogostransko obravnavo spora. Predstavnik predlaga zlasti načine najučinkovitejšega pridobivanja informacij ter spodbuja sodelovanje določenih strani.

5. Postopek zbiranja informacij, ki je določen od drugega do četrtega odstavka, je treba končati v 60 dneh od dneva, ko je zadeva poslana DSB v skladu s četrtim odstavkom 7. člena. Informacije, ki se zberejo v tem postopku, se pošljejo ugotovitvenemu svetu, ki ga ustanovi DSB v skladu z določbami X. dela. Te informacije naj bi med drugim vključevale podatke, ki se nanašajo na višino sporne subvencije (po možnosti tudi vrednost celotne prodaje podjetij, ki subvencijo dobivajo), cene subvencioniranega proizvoda, cene nesubvencioniranega proizvoda, cene drugih dobaviteljev na trgu, spremembe v dobavah subvencioniranega proizvoda na trgu in spremembe v tržnih deležih. Vsebovale naj bi tudi dokaze, ki pobijajo trditve, kakor tudi take dopolnilne informacije, za katere ugotovitveni svet meni, da so pomembne pri oblikovanju sklepov.

6. Če članica, ki subvencijo daje, in/ali tretja država članica ne sodeluje pri zbiranju informacij, članica, ki se je pritožila, predloži zadevo na podlagi informacij, ki jih ima sama, skupaj z dejstvi in okoliščinami, ki se nanašajo na nesodelovanje prej omenjenih članic. Če informacije niso na voljo zaradi nesodelovanja omenjenih članic, lahko ugotovitveni svet pripravi poročilo s pomočjo najboljših informacij, s katerimi razpolaga.

7. Pri oblikovanju sklepov lahko ugotovitveni svet sprejme negativne sklepe zaradi primerov nesodelovanja katerekoli stranke pri zbiranju informacij.

8. Pri odločanju o tem, ali bo uporabil najboljše razpoložljive informacije ali negativne sklepe, ugotovitveni svet upošteva nasvete predstavnika DSB, ki je imenovan v skladu s četrtim odstavkom, o upravičenosti določenih zahtev po informacijah in o prizadevanjih posameznih strank, da zadovoljijo te zahteve kooperativno in pravočasno.

9. Pri zbiranju informacij ne sme nič ovirati ugotovitvenega sveta, da pridobi take dodatne informacije, za katere meni, da so bistvene za pravilno rešitev spora in niso bile dovolj raziskane v postopku. Toda ugotovitveni svet ne bi smel zahtevati dopolnilnih informacij z namenom dopolnitve poročila tako, da bi informacije dajale podporo določeni stranki, pomanjkanje te informacije pa je rezultat nerazumnega nesodelovanja te stranke pri zbiranju informacij.

PRILOGA VI

POSTOPKI ZA PREISKAVE NA KRAJU SAMEM NA PODLAGI ŠESTEGA ODSTAVKA 12. ČLENA

1. Po začetku preiskave se oblasti članice izvoznice in znana zainteresirana podjetja obvestijo o namenu, da se izvaja preiskava na kraju samem.

2. Če obstaja namen, da se v izjemnih primerih vključijo v preiskovalno skupino nevladni izvedenci, je treba o tem obvestiti podjetja in oblasti članice izvoznice. Za take nevladne izvedence bi morale veljati učinkovite sankcije, če bi zlorabili zaupnost.

3. Pridobivanje izrecnega soglasja določenih podjetij v članici izvoznici, preden je obisk dokončno določen, naj bi postala običajna praksa.

4. Takoj po pridobitvi soglasja določenih podjetij preiskovalne oblasti obvestijo oblasti članice izvoznice o imenih in naslovih podjetij, ki jih nameravajo obiskati, in o dogovorjenih datumih.

5. Obvestilo mora biti dano podjetjem dovolj zgodaj pred obiskom.

6. Obiski v zvezi z razlago vprašalnikov se opravijo le na zahtevo izvoznega podjetja. Ob taki zahtevi so lahko preiskovalne oblasti podjetju na razpolago; tak obisk pa je možen le, če: (a) oblasti članice uvoznice obvestijo predstavnike vlade določene članice in (b) ta ne nasprotuje takemu obisku.

7. Ker je osnovni namen preiskave na kraju samem preverjati informacije, ki so že pridobljene ali ugotoviti nadaljnje podrobnosti, je treba tako preiskavo opraviti, ko prispe izpolnjeni vprašalnik, razen če podjetje soglaša z nasprotnim, in so preiskovalne oblasti obvestile vlado članice izvoznice o predvidenem obisku in ta temu ne nasprotuje; dalje, običajna praksa bi morala biti, da se podjetja pred obiskom obvestijo o naravi informacij, ki naj bi jih preverjali in o tem, ali se zahtevajo dodatne informacije, kar ne izključuje zahtev po nadaljnjih podrobnostih na kraju samem v luči pridobljenih informacij.

8. Na poizvedbe ali vprašanja, ki jih postavljajo oblasti ali podjetja članice izvoznice, ki pa so bistvenega pomena za preiskave na kraju samem, je treba po možnosti odgovoriti pred obiskom.

PRILOGA VII

ČLANICE DRŽAVE V RAZVOJU, NA KATERE SE NANAŠA DRUGI (a) ODSTAVEK 27. ČLENA

Članice države v razvoju, ki niso predmet določb prvega (a) odstavka 3. člena pod pogoji drugega (a) odstavka 27. člena, so:

(a) najmanj razvite države, ki jih kot take opredeljujejo Združeni narodi in so članice WTO;

(b) za vsako od naštetih držav v razvoju, ki so članice WTO, se uporabljajo določbe, ki veljajo tudi za druge članice države v razvoju, v skladu z drugim (b) odstavkom 27. člena, ko bruto narodni dohodek na prebivalca doseže 1000 dolarjev letno:[68] Bolivija, Kamerun, Kongo, Slonokoščena obala, Dominikanska republika, Egipt, Gana, Gvatemala, Gvajana, Indija, Indonezija, Kenija, Maroko, Nikaragva, Nigerija, Pakistan, Filipini, Senegal, Šrilanka in Zimbabve.

[68] Vključitev članic držav v razvoju v seznam v odstavku (b) temelji na najnovejših podatkih Svetovne banke o bruto narodnem dohodku na prebivalca.

S P O R A Z U M
O POSEBNIH ZAŠČITNIH UKREPIH

Članice se

ob upoštevanju skupnega cilja članic, da izboljšajo in utrdijo mednarodni trgovinski sistem na podlagi GATT 1994,

ob spoznanju potrebe razjasniti in utrditi discipline GATT 1994, zlasti tiste, ki so vsebovane v XIX. členu (nujni posegi v zvezi z uvozom določenih proizvodov), da se ponovno ustanovi mnogostranski nadzor nad uporabo posebnih zaščitnih ukrepov in odpravijo ukrepi, ki so zunaj tega nadzora,

ob spoznanju pomembnosti strukturnih prilagoditev in potrebe, da se pospešuje, namesto omejuje, konkurenca na mednarodnih trgih; in

ob nadaljnjem spoznanju, da je s temi nameni potreben vseobsežen sporazum, ki se uporablja za vse članice in temelji na načelih GATT 1994,

sporazumejo, kot sledi:

1. člen
Splošna določba

Ta sporazum uvaja pravila za uporabo posebnih zaščitnih ukrepov, za katere se razume, da so ukrepi, določeni v XIX. členu GATT 1994.

2. člen
Pogoji

1. Članica[1] lahko uporablja posebne zaščitne ukrepe za določen proizvod samo, če je ta članica v skladu z določbami, ki so navedene spodaj, ugotovila, da se tak proizvod uvaža na njeno ozemlje v tako povečanih količinah, absolutnih ali relativnih, glede na domačo proizvodnjo in pod takimi pogoji, da povzročajo ali grozijo s povzročitvijo resne škode domači industriji, ki proizvaja enak ali neposredno konkurenčen proizvod.

2. Posebni zaščitni ukrepi se uporabljajo za uvoženi proizvod ne glede na njegov vir.

3. člen
Preiskava

1. Članica lahko uporablja posebni zaščitni ukrep samo na podlagi preiskave, ki jo opravijo pristojne oblasti te članice v skladu s prej določenimi postopki, ki so objavljeni v skladu z X. členom GATT 1994. Ta preiskava vsebuje primerno javno obvestilo vsem zainteresiranim stranem in javno zaslišanje ali druge ustrezne načine, s katerimi lahko uvozniki, izvozniki in druge zainteresirane strani predlagajo dokaze in svoja mnenja, vključno z možnostjo odgovora na trditve drugih strani in njihova stališča, med drugim tudi v zvezi s tem, ali bi bila uporaba posebnega zaščitnega ukrepa v skladu z javnim interesom. Pristojne oblasti objavijo poročilo, ki vsebuje njihove ugoto vitve in utemeljene sklepe v zvezi z vsemi ustreznimi vprašanji, ki se nanašajo na dejansko stanje in pravno podlago.

2. Katerokoli zaupno informacijo ali ki je dana na zaupni podlagi, pristojne oblasti iz utemeljenih razlogov obravnavajo kot tako. Taka informacija se ne sme razkrivati brez dovoljenja strani, ki jo je dala. Od strani, ki dajejo zaupne informacije, se lahko zahteva, da predloži povzetke, ki niso zaupne narave, če pa te sporočijo, da take informacije ni možno povzemati, pa sporočijo razloge za to. Toda če pristojne oblasti ugotovijo, da zahteva za zaupnost ni opravičljiva in če določena stran ne želi take informacije objaviti ali dovoliti razkritja v splošni ali povzeti obliki, oblasti zanemarijo tako informacijo, razen če zadovoljivo iz ustreznih virov ugotovijo, da je taka informacija točna.

4. člen
Ugotavljanje resne škode oziroma grožnje

1. Za namene tega sporazuma:

(a) "resna škoda" pomeni znatno celovito omejevanje položaja domače industrije;

(b) "grožnja resne škode" pomeni resno škodo, ki je neizbežna v skladu z določbami drugega odstavka. Ugotavljanje obstoja grožnje resne škode temelji na dejstvih in ne zgolj na trditvah, sklepih ali oddaljeni možnosti; in

(c) pri ugotavljanju škode ali grožnje "domača industrija" pomeni vse proizvajalce enakega ali neposredno konkurenčnega proizvoda, ki delujejo na območju članice, ali tiste, katerih skupna proizvodnja enakega ali neposredno konkurenčnega proizvoda ima glavni delež celotne domače proizvodnje teh proizvodov.

2. (a) V preiskavi, ki ugotavlja, ali je povečan uvoz povzročil ali grozi s povzročitvijo resne škode domači industriji v skladu s pogoji tega sporazuma, pristojne oblasti ovrednotijo vse ustrezne dejavnike, ki so objektivni ali količinsko oziroma vrednostno opredeljivi in vplivajo na stanje te industrije, zlasti stopnja in količina povečanega uvoza določenega proizvoda v absolutnih ali relativnih količinah in vrednostih, delež domačega trga, ki ga je dosegel povečan uvoz, spremembe ravni prodaje, proizvodnje, produktivnosti, uporabe proizvodnih zmogljivosti, dobička in izgube in zaposlovanja.

(b) Ugotavljanje, na katero se nanaša pododstavek (a), se ne opravi, razen če preiskava na podlagi objektivnih dokazov pokaže, da obstaja vzročna zveza med povečanim uvozom določenega proizvoda in resno škodo oziroma grožnjo take škode. Če dejavniki sočasno poleg povečanega uvoza povzročajo škodo domači industriji, se taka škoda ne more pripisovati povečanemu uvozu.

(c) Pristojne oblasti v skladu z določbami 3. člena takoj objavijo podrobno analizo primera, ki je v preiskavi, in prikažejo vplive dejavnikov, ki so jih proučevale.

5. člen
Uporaba posebnih zaščitnih ukrepov

1. Članica uporablja posebne zaščitne ukrepe samo, kolikor je potrebno, da prepreči ali popravi resno škodo in olajša prilagoditev. Če se uporabi količinska omejitev, tak ukrep ne sme zmanjšati količine uvoza pod ravnijo zadnjega obdobja, kar je povprečje uvoza v zadnjih treh značilnih

[1] Carinska unija lahko uporablja poseben zaščitni ukrep enotno ali v korist določene države članice. Ko carinska unija uporablja poseben zaščitni ukrep enotno, morajo vse zahteve v zvezi z ugotavljanjem resne škode ali grožnje na podlagi tega sporazuma temeljiti na pogojih, ki se nanašajo na carinsko unijo kot celoto. Če se poseben zaščitni ukrep uporablja v korist določene države članice, morajo vse zahteve, ki se nanašajo na ugotavljanje resne škode ali grožnje, temeljiti na pogojih, ki obstajajo v tej državi članici, in mora biti ukrep omejen na to državo članico. Nič v tem sporazumu vnaprej ne vpliva na razlago razmerja med XIX. členom in osmim odstavkom XXIV. člena GATT 1994.

letih, za katera je na voljo statistika, razen če obstajajo jasni razlogi za to, da je potrebna drugačna raven, da bi se preprečila ali popravila resna škoda. Članice bi morale izbrati najustreznejše ukrepe za doseganje teh ciljev.

2. (a) Če se razdeli kvota na države dobaviteljice, lahko članica, ki uporablja te omejitve, zahteva soglasje za razdelitev deležev v kvoti od vseh drugih članic, ki imajo bistven interes pri dobavi določenega blaga. Če ta metoda ni ustrezna, določena članica dodeli članicam, ki imajo bistven interes pri dobavi blaga, deleže, ki temeljijo na obsegu dobav članic v preteklem značilnem obdobju, celotne količine ali vrednosti uvoza proizvoda ob ustreznem upoštevanju katerihkoli posebnih dejavnikov, ki so morda imeli ali pa imajo vpliv na trgovino s tem proizvodom.

(b) Članica lahko odstopa od določb pododstavka (a) pod pogojem, da se v skladu s tretjim odstavkom 12. člena posvetuje pod okriljem Odbora za posebne zaščitne ukrepe, ki je določen v prvem odstavku 13. člena, in da je temu odboru jasno prikazano, da se je (i) uvoz iz določenih članic povečal v nesorazmernem odstotku glede na celotno povečanje uvoza določenega proizvoda v značilnem obdobju, (ii) da so razlogi za odstop od določb pododstavka (a) upravičeni in (iii) da so pogoji takega odstopa enakovredni za vse dobavitelje določenega proizvoda. Trajanje takega ukrepa se ne sme podaljšati preko začetnega obdobja na podlagi prvega odstavka 7. člena. Odstop, na katerega se nanaša zgornje besedilo, ni dovoljen v primerih grožnje resne škode.

6. člen

Začasni posebni zaščitni ukrepi

V kritičnih okoliščinah, v katerih bi odlašanje povzročalo škodo, ki bi jo bilo težko popraviti, lahko članica sprejme začasne posebne zaščitne ukrepe na podlagi predhodne ugotovitve, da obstajajo jasni dokazi, da je povečan uvoz povzročil ali pa grozi s povzročitvijo resne škode. Trajanje začasnega ukrepa ne sme presegati 200 dni, v tem času pa je treba upoštevati ustrezne zahteve od 2. do 7. in 12. člena. Taki ukrepi morajo biti v obliki povečanja carin, ki jih je treba takoj vrniti, če poznejša preiskava, na katero se nanaša drugi odstavek 4. člena, ne ugotovi, da je povečan uvoz povzročil ali grozil s povzročitvijo resne škode domači industriji. Trajanje kateregakoli začasnega ukrepa se šteje kot del začetnega obdobja in kakršnegakoli podaljšanja, na katero se nanašajo prvi, drugi in tretji odstavek 7. člena.

7. člen

Trajanje in proučitev posebnih zaščitnih ukrepov

1. Članica uporablja posebne zaščitne ukrepe samo za tisti čas, ki je potreben, da prepreči ali popravi resno škodo in olajša prilagoditev. Ta čas ne sme presegati štirih let, razen če se podaljša na podlagi drugega odstavka.

2. Obdobje, ki je omenjeno v prvem odstavku, se lahko podaljša pod pogojem, da so pristojne oblasti članice uvoznice v skladu s postopki, ki so določeni v 2., 3., 4. in 5. členu, ugotovile, da obstaja nadaljnja potreba po posebnih zaščitnih ukrepih, da se prepreči ali popravi resna škoda in da obstajajo dokazi, da se industrija prilagaja, in pod pogojem, da se spoštujejo ustrezne določbe 8. in 12. člena.

3. Skupno obdobje uporabe posebnih zaščitnih ukrepov, vključno z obdobjem uporabe kateregakoli začasnega ukrepa, z obdobjem začetne uporabe in kakršnimikoli podaljšanji, ne sme presegati osem let.

4. Z namenom, da se omogoči prilagajanje v situaciji, v kateri je pričakovano trajanje posebnega zaščitnega ukrepa, ki je sporočen v skladu z določbami prvega odstavka 12. člena, več kot eno leto, mora članica ukrep, ki ga uporablja, progresivno liberalizirati v enakih intervalih v obdobju njegove uporabe. Če trajanje ukrepa presega tri leta, članica, ki uporablja tak ukrep, prouči situacijo najpozneje na sredini obdobja uporabe ukrepa, in če je smiselno, ga umakne ali pa pospeši liberalizacijo. Ukrep, ki se podaljša v skladu z drugim odstavkom, ne sme biti bolj omejujoč, kot je bil na koncu začetnega obdobja, in se mora še naprej liberalizirati.

5. Noben poseben zaščitni ukrep se ne sme ponovno uporabljati za uvoz proizvoda, ki je bil predmet takega ukrepa, ki je sprejet po datumu začetka veljavnosti Sporazuma o WTO, za obdobje, ki je enako tistemu, v katerem je bil tak ukrep prej v uporabi, pod pogojem neuporabe ukrepa najmanj dve leti.

6. Ne glede na določbe petega odstavka se lahko ponovno uporabi poseben zaščitni ukrep s trajanjem 180 dni ali manj za uvoz proizvoda, če:

(a) poteče najmanj eno leto od dneva uvedbe posebnega zaščitnega ukrepa za uvoz tega proizvoda; in

(b) da tak poseben zaščitni ukrep ni bil v uporabi za isti proizvod več kot dvakrat v petletnem obdobju, ki se je končalo pred dnevom uvedbe ukrepa.

8. člen

Raven koncesij in druge obveznosti

1. Članica, ki namerava uporabiti poseben zaščitni ukrep ali želi podaljšati poseben zaščitni ukrep, si prizadeva ohraniti pretežno enakovredno raven koncesij in drugih obveznosti, ki obstajajo na podlagi GATT 1994 med njo in članico izvoznico, ki bi bila prizadeta s takim ukrepom v skladu z določbami tretjega odstavka 12. člena. Da bi dosegla ta cilj, se lahko ustrezne članice sporazumejo o primernem načinu trgovinske kompenzacije za škodljive posledice ukrepa za njihovo trgovino.

2. Če sporazum ni dosežen v 30 dneh s posvetovanji na podlagi tretjega odstavka 12. člena, imajo članice izvoznice pravico po preteku 30 dni od dneva, ko je pisno sporočilo o prekinitvi dano Svetu za trgovino z blagom, vendar najpozneje v 90 dneh po uvedbi ukrepa, začasno prekiniti uporabo približno enakovrednih koncesij ali drugih obveznosti v okviru GATT 1994 v zvezi s trgovino s članico, ki uporablja poseben zaščitni ukrep, če Svet za trgovino z blagom tej prekinitvi ne nasprotuje.

3. Pravica do začasne prekinitve, na katero se nanaša drugi odstavek, se ne izvaja prva tri leta veljavnosti posebnega zaščitnega ukrepa, pod pogojem, da je poseben zaščitni ukrep sprejet kot rezultat absolutnega povečanja uvoza in da je tak ukrep v skladu z določbami tega sporazuma.

9. člen

Članice države v razvoju

1. Posebni zaščitni ukrepi se ne uporabljajo za proizvode, ki izvirajo iz članic držav v razvoju, če delež uvoza določenega proizvoda v članici uvoznici ne presega tri odstotke, pod pogojem, da članice države v razvoju z manj kot

tremi odstotki uvoznega deleža ne presegajo devet odstotkov skupnega uvoza določenega proizvoda.[2]

2. Članica država v razvoju ima pravico podaljšati uporabo posebnega zaščitnega ukrepa za obdobje do dveh let nad najdaljšim dovoljenim obdobjem, ki je določeno v tretjem odstavku 7. člena. Ne glede na določbe petega odstavka 7. člena ima članica država v razvoju pravico ponovno uporabiti poseben zaščitni ukrep za uvoz proizvoda, ki je že bil predmet takega ukrepa, ki ga je uvedla po dnevu začetka veljavnosti Sporazuma o WTO, po obdobju, ki je za polovico krajši od tistega obdobja, za katero je bil tak ukrep prej v uporabi, pod pogojem, da je obdobje neuporabe najmanj dve leti.

10. člen

Prej obstoječi ukrepi na podlagi XIX. člena

Članice odpravijo vse posebne zaščitne ukrepe, ki so jih sprejele na podlagi XIX. člena GATT 1947, ki so obstajali na dan začetka veljavnosti Sporazuma o WTO, najpozneje v osmih letih od dneva, ko so bili prvič v uporabi, ali v petih letih od dneva začetka veljavnosti Sporazuma o WTO, karkoli je pozneje.

11. člen

Prepoved in odprava določenih ukrepov

1. (a) Članica ne sme uveljaviti ali predlagati kakršnegakoli nujnega ukrepa v zvezi z uvozom določenih proizvodov, kot je določen v XIX. členu GATT 1994, razen če je tak ukrep v skladu z določbami tega člena in se uporablja v skladu s tem sporazumom.

(b) Poleg tega si članica ne sme prizadevati, uporabljati ali ohranjati kakršnihkoli prostovoljnih omejitev izvoza, tržnih redov ali podobnih ukrepov na strani izvoza ali uvoza.[3,4] Ti vključujejo ukrepe, ki jih uporablja posamezna članica, kakor tudi ukrepe na podlagi sporazumov in dogovorov med dvema ali več članicami. Vsak tak ukrep, ki velja na dan začetka veljavnosti Sporazuma o WTO, se uskladi s tem sporazumom ali pa postopoma odpravi v skladu z drugim odstavkom.

(c) Ta sporazum se ne nanaša na ukrepe, ki jih predlaga, izvaja ali ohranja članica na podlagi določb GATT 1994, z izjemo XIX. člena in mnogostranskih trgovinskih sporazumov v Aneksu 1 A, razen tega sporazuma, ali na podlagi protokolov in sporazumov ali dogovorov, sklenjenih na podlagi GATT 1994.

2. Postopna odprava ukrepov, na katere se nanaša prvi (b) odstavek, se izvede v skladu s časovnimi razporedi, ki jih določene članice predložijo Odboru za posebne zaščitne ukrepe najpozneje v 180 dneh od dneva začetka veljavnosti Sporazuma o WTO. Ti časovni razporedi za vse ukrepe, na katere se nanaša prvi odstavek, določajo postopno odpravo ali prilagoditev s tem spora zumom v obdobju, ki ni daljše od štirih let od dneva začetka veljavnosti Sporazuma o WTO, pod pogojem, da ne velja več kot en določen ukrep za članico uvoznico,[5] katerega trajanje ne sme biti daljše od 31. decembra 1999. Vsaka taka izjema mora biti dogovor jena med neposredno prizadetimi članicami in sporočena Odboru za posebne zaščitne ukrepe z namenom proučitve in sprejema v 90 dneh od dneva začetka veljavnosti Sporazuma o WTO. Priloga k temu sporazumu kaže na ukrep, ki je dogovorjen v okviru te izjeme.

3. Članice ne smejo spodbujati ali podpirati, da javna ali zasebna podjetja sprejemajo ali ohranjajo nevladne ukrepe, ki so enaki tistim, ki jih določa prvi odstavek.

12. člen

Notifikacija in posvetovanje

1. Članica Odboru za posebne zaščitne ukrepe takoj sporoči:

(a) da je sprožila preiskovalni postopek, ki se nanaša na resno škodo ali grožnjo škode, in razloge za to;

(b) da je ugotovila obstoj resne škode ali grožnje škode, ki jo povzroča povečan uvoz; in

(c) da je sprejela odločitev, da bo uporabila ali podaljšala uporabo posebnega zaščitnega ukrepa.

2. Pri notifikacijah, na katere se nanašata prvi (b) in (c) odstavek, članica, ki predlaga uporabo ali podaljšanje posebnega zaščitnega ukrepa, predloži Odboru za posebne zaščitne ukrepe vse potrebne informacije, ki vključujejo dokaze o resni škodi ali grožnji škode, ki jo povzroča povečan uvoz, natančen opis določenega proizvoda in predlog ukrepa, predlog datuma uvedbe ukrepa, pričakovano trajanje ter časovni razpored postopne liberalizacije. Ob podaljšanju ukrepa prav tako predloži dokaz, da se določena industrija prilagaja. Svet za trgovino z blagom ali Odbor za posebne zaščitne ukrepe lahko zahtevata od članice, ki predlaga uporabo ali podaljšanje ukrepa, še take dodatne informacije, za katere menita, da so potrebne.

3. Članica, ki predlaga uporabo ali podaljšanje posebnega zaščitnega ukrepa, zagotovi ustrezno priložnost za predhodna posvetovanja s tistimi članicami, ki imajo bistven interes kot izvoznice določenega proizvoda, med drugim z namenom, da proučijo predložene informacije na osnovi drugega odstavka, da si izmenjajo mnenja o ukrepu in doseganju dogovora o načinu doseganja cilja, ki je določen v prvem odstavku 8. člena.

4. Članica Odboru za posebne zaščitne ukrepe pošlje notifikaci jo pred uporabo začasnega zaščitnega ukrepa, na katerega se nanaša 6. člen. Posveti se sprožijo takoj po uvedbi ukrepa.

5. Rezultate posvetovanj, na katere se nanaša ta člen, kakor tudi rezultate vmesnih proučitev, na katere se nanaša četrti odstavek 7. člena, kakršnokoli obliko kompenzacije, na katero se nanaša prvi odstavek 8. člena, in predlagano začasno prekinitev koncesij in drugih obveznosti, na katere se nanaša drugi odstavek osmega člena, določene članice takoj sporočijo Svetu za trgovino z blagom.

6. Članice takoj sporočijo Odboru za posebne zaščitne ukrepe svoje zakone, predpise in upravne postopke, ki se nanašajo na posebne zaščitne ukrepe in kakršnekoli spremembe v njih.

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[2] Članica Odboru za posebne zaščitne ukrepe takoj sporoči ukrep v zvezi s prvim odstavkom 9. člena.

[3] Uvozno kvoto, ki se uporablja kot poseben zaščitni ukrep v skladu z ustreznimi določbami GATT 1994 in tega sporazuma, lahko na podlagi medsebojnega sporazuma nadzira članica izvoznica.

[4] Primeri podobnih ukrepov vključujejo zmernejši izvoz, sisteme spremljanja izvoznih in uvoznih cen, nadzor izvoza in uvoza, obvezne uvozne kartele, arbitrarne sisteme izdajanja izvoznih in uvoznih dovoljenj oziroma katerekoli od teh, ki dajejo zaščito.

[5] Edina izjema, do katere imajo pravico Evropske skupnosti, je določena v Prilogi k temu sporazumu.

7. Članice, ki ohranjajo ukrepe, na katere se nanašata 10. člen in prvi odstavek 11. člena, ki obstajajo na dan začetka veljavnosti Sporazuma o WTO, take ukrepe sporočijo Odboru za posebne zaščitne ukrepe najpozneje v 60 dneh od dneva začetka veljavnosti Sporazuma o WTO.

8. Vsaka članica lahko sporoči Odboru za posebne zaščitne ukrepe vse zakone, predpise in upravne postopke in kakršnekoli ukrepe, na katere se nanaša ta sporazum, ki jih ni sporočila druga članica v skladu z zahtevami tega sporazuma.

9. Vsaka članica lahko sporoči Odboru za posebne zaščitne ukrepe kakršnekoli nevladne ukrepe, na katere se nanaša tretji odstavek 11. člena.

10. Vse notifikacije Svetu za trgovino z blagom, na katere se nanaša ta sporazum, se običajno opravijo preko Odbora za posebne zaščitne ukrepe.

11. Določbe v zvezi z notifikacijo tega sporazuma ne pomenijo zahteve od katerekoli članice, da razkriva zaupne informacije, katerih razkrivanje bi oviralo izvajanje zakonov ali bi sicer bilo v nasprotju z javnim interesom, ali pa bi vplivalo na legitimne trgovinske interese določenih javnih ali zasebnih družb.

13. člen
Nadzor

1. Ustanovi se Odbor za posebne zaščitne ukrepe pod oblastjo Sveta za trgovino z blagom, v katerem lahko sodeluje katerakoli članica, ki izrazi željo, da v njem sodeluje. Odbor ima te naloge:

(a) spremlja in letno poroča Svetu za trgovino z blagom o izvajanju tega sporazuma in daje priporočila za njegovo izboljšanje;

(b) na zahtevo določene članice ugotavlja, ali so zahteve tega sporazuma v zvezi s postopki izpolnjene glede na zaščitne ukrepe, in sporoča svoje ugotovitve Svetu za trgovino z blagom;

(c) pomaga članicam, če tako zahtevajo, pri njihovih posvetovanjih v skladu z določbami tega sporazuma;

(d) proučuje ukrepe, na katere se nanašata 10. člen in prvi odstavek 11. člena, spremlja postopno zmanjševanje teh ukrepov in ustrezno poroča Svetu za trgovino z blagom;

(e) na zahtevo članice, ki je sprejela zaščitni ukrep, ugotavlja, ali so predlogi začasne prekinitve koncesij in drugih obveznosti "približno enakovredni", in ustrezno poroča Svetu za trgovino z blagom;

(f) sprejema in pregleda vse notifikacije, ki jih določa ta sporazum, in ustrezno poroča Svetu za trgovino z blagom; in

(g) opravlja kakršnokoli drugo nalogo v zvezi s tem spora zumom, ki jo določi Svet za trgovino z blagom.

2. Z namenom pomoči Odboru pri izvajanju njegovih nadzornih nalog Sekretariat vsako leto pripravi dejansko poročilo o izvajanju tega sporazuma, ki temelji na notifikacijah in drugih zanesljivih informacijah, ki so mu na razpolago.

14. člen
Reševanje sporov

Določbe XXII. in XXIII. člena GATT 1994, kot jih razlaga in uporablja Dogovor o reševanju sporov, se nanašajo na posvetovanja in reševanje sporov, ki izvirajo iz tega sporazuma.

PRILOGA

IZJEMA, NA KATERO SE NANAŠA DRUGI ODSTAVEK 11. ČLENA

Članice	Proizvod	Prenehanje
Evropske skupnosti/Japonska	Osebna vozila, terenska vozila, lahka vozila za prevoz blaga, lahka tovorna vozila (do 5 ton) in enaka vozila v celoti v sestavnih delih (CKD kompleti)	31. december 1999

ANEKS 1 B

S P L O Š N I S P O R A Z U M O TRGOVINI S STORITVAMI

S P L O Š N I S P O R A Z U M O TRGOVINI S STORITVAMI

Članice se

ob upoštevanju vse pomembnejše vloge trgovine s storitvami v rasti in razvoju svetovnega gospodarstva,

z željo, da ustvarijo mnogostranski okvir načel in pravil za trgovino s storitvami, kar bi omogočilo širjenje take trgovine ob preglednosti in progresivni liberalizaciji ter bi spodbudilo gospodarsko rast pri vseh trgovinskih partnerjih in razvoj v državah v razvoju,

z željo, da se doseže vse večja liberalizacija trgovine s storitvami v zaporednih krogih mnogostranskih pogajanj, katerih cilj je uveljavljanje interesov vseh udeleženk na podlagi vzajemnih koristi in zagotavljanja celovitega ravnotežja pravic in obvez ob sočasnem upoštevanju ciljev nacionalnih politik,

ob upoštevanju pravice članic, da s predpisi urejajo ponudbo storitev na svojem ozemlju in uvajajo nove predpise v zvezi z njo, da bi tako izpolnile zastavljene cilje nacionalnih politik glede na nesorazmernost v stopnji razvoja predpisov o trgovini s storitvami različnih članic, pa tudi posebno potrebo držav v razvoju po uresničevanju te pravice,

z željo, da spodbudijo povečevanje udeležbe držav v razvoju v trgovini s storitvami ter povečevanje njihovega izvoza storitev, med drugim s krepitvijo njihovih domačih storitvenih zmogljivosti in njihove učinkovitosti ter konkurenčnosti,

zlasti ob upoštevanju resnih težav najmanj razvitih držav glede na njihov posebni gospodarski položaj in njihove razvojne, trgovinske ter finančne potrebe,

sporazumejo, kot sledi:

I. DEL

OBSEG IN DEFINICIJE

I. člen

Obseg in definicije

1. Ta sporazum se uporablja za ukrepe članic, ki vplivajo na trgovino s storitvami.

2. Za namene tega sporazuma je trgovina s storitvami opredeljena kot ponudba storitev:

(a) z ozemlja ene članice na ozemlje druge članice;

(b) na ozemlju ene članice uporabniku storitev iz druge članice;

(c) ponudnika storitev iz ene članice s tržno prisotnostjo na ozemlju druge članice;

(d) ponudnika storitev iz ene članice s prisotnostjo fizičnih oseb iz te članice na ozemlju druge članice.

3. Za namene tega sporazuma:

(a) "Ukrepi članic" pomenijo ukrepe, ki jih sprejmejo:

(i) centralne, regionalne ali lokalne vlade in organi oblasti;

(ii) nevladne organizacije pri izvajanju pooblastil, ki jim jih podelijo centralne, regionalne ali lokalne vlade in organi oblasti.

Pri izpolnjevanju svojih obvez po tem sporazumu sprejema vsaka članica vse ukrepe, ki so ji na razpolago, da zagotovi, da jih regionalne in lokalne vlade in organi oblasti ter nevladne organizacije upoštevajo na svojem ozemlju.

(b) "Storitve" zajemajo vsako storitev v kateremkoli sektorju, razen storitev, opravljenih pri izvajanju vladnih pooblastil.

(c) "Storitev, opravljena pri izvajanju vladnih pooblastil", pomeni vsako storitev, ki ni opravljena na tržni podlagi ali v konkurenci z drugimi ponudniki storitev.

II. DEL

SPLOŠNE OBVEZNOSTI IN PRAVILA

II. člen

Obravnava države z največjimi ugodnostmi

1. Pri vseh ukrepih, na katere se nanaša ta sporazum, vsaka članica za vse storitve in ponudnike storitev nemudoma in brezpogojno uveljavi obravnavo, ki ni manj ugodna od tiste, ki se uveljavlja za podobne storitve in ponudnike storitev iz katerkoli druge države.

2. Članica lahko ohranja ukrep, ki ni v skladu s prvim odstavkom tega člena, če je ta ukrep naveden v prilogi v zvezi z izjemami II. člena in izpolnjuje tam navedene pogoje.

3. Določbe tega sporazuma se ne razlagajo tako, da bi preprečevale katerikoli članici dodeljevanje ugodnosti sosednjim članicam z namenom olajševanja trgovine s storitvami, omejene na mejno območje, za storitve, ki se ponujajo in porabljajo lokalno.

III. člen

Preglednost

1. Vsaka članica nemudoma, razen v izjemnih razmerah, najkasneje do začetka njihove veljavnosti, objavi vse ukrepe splošne veljavnosti, ki se nanašajo ali vplivajo na uporabo tega sporazuma. Objavi tudi vse mednarodne sporazume, katerih podpisnica je in se nanašajo ali vplivajo na trgovino s storitvami.

2. Kadar objava iz prvega odstavka tega člena ni možna, mora biti ta informacija dostopna javnosti na drug način.

3. Vsaka članica nemudoma in vsaj enkrat letno obvesti Svet za trgovino s storitvami o uvajanju novih ali spreminjanju obstoječih zakonov, predpisov in upravnih smernic, ki znatno vplivajo na trgovino s storitvami, vključenimi v njene specifične obveze po tem sporazumu.

4. Vsaka članica nemudoma odgovori na vsako zahtevo katerekoli članice za podrobnejše informacije o njenih ukrepih splošne veljave ali iz mednarodnih sporazumov v smislu prvega odstavka tega člena. Vsaka članica ustanovi enega ali več informacijskih centrov, ki na zahtevo omogočajo drugim članicam dostop do podatkov o vseh tovrstnih zadevah, tudi o tistih, o katerih je potrebna notifikacija po tretjem odstavku tega člena. Taki informacijski centri se ustanovijo v dveh letih po začetku veljavnosti Sporazuma o WTO. Pri roku za ustanovitev informacijskih centrov je za posamezne članice države v razvoju mogoč sporazum o sprejemljivih odstopanjih. Za informacijske centre ni nujno, da so depozitarne ustanove za zakone in predpise.

5. Vsaka članica lahko Svet za trgovino s storitvami obvesti o ukrepu, ki ga sprejme katerakoli druga članica, če ta po njenem mnenju vpliva na delovanje tega sporazuma.

III. bis člen

Razkrivanje zaupnih informacij

Ta sporazum ne zahteva od članice, da daje zaupne informacije, katerih razkritje bi oviralo uveljavitev zakona ali bilo kako drugače v nasprotju z javnimi interesi ali bi posegalo v legitimne tržne interese posameznih javnih ali zasebnih podjetij.

IV. člen

Povečevanje udeležbe držav v razvoju

1. Povečevanje udeležbe držav v razvoju v svetovni trgovini se spodbuja z dogovorjenimi specifičnimi obvezami različnih članic v skladu s III. in IV. delom tega sporazuma, in sicer v zvezi:

(a) s krepitvijo njihovih domačih storitvenih zmogljivosti in njihove učinkovitosti ter konkurenčnosti, med drugim z dostopom do tehnologije na tržni podlagi;

(b) z izboljševanjem njihovega dostopa do distribucijskih poti in informacijskih omrežij;

(c) z liberalizacijo dostopa na trg po sektorjih in oblikah ponudbe, ki so v njihovem izvoznem interesu.

2. Razvite države članice, če je to mogoče pa tudi druge članice, v dveh letih po začetku veljavnosti Sporazuma o WTO ustanovijo informacijske centre, s katerimi se olajšuje dostop ponudnikom storitev članic držav v razvoju do informacij, povezanih z njihovimi trgi, v zvezi:

(a) s tržnimi in tehničnimi vidiki ponudbe storitev;

(b) z registracijo, priznavanjem in pridobivanjem poklicnih kvalifikacij;

(c) z razpoložljivostjo storitvene tehnologije.

3. Posebno prednost pri izvajanju prvega in drugega odstavka tega člena imajo najmanj razvite države članice. Posebej je treba upoštevati resne težave najmanj razvitih držav pri sprejemanju dogovorjenih specifičnih obvez glede na njihov posebni gospodarski položaj ter njihove razvojne, trgovinske in finančne potrebe.

V. člen

Gospodarsko povezovanje

1. Ta sporazum nobeni članici ne preprečuje, da bi bila pogodbenica oziroma da bi sklepala sporazume, s katerimi se liberalizira trgovina s storitvami med dvema ali več pogodbenicami, če tak sporazum:

(a) predvideva pretežno pokrivanje sektorjev[1] in

(b) zagotavlja odsotnost ali pretežno ukinitev diskriminacije v smislu XVII. člena med dvema ali več pogodbenicami v sektorjih, omenjenih v pododstavku (a), in sicer:

(i) z ukinitvijo obstoječih diskriminacijskih ukrepov in/ali

(ii) s prepovedjo novih ali bolj diskriminacijskih ukrepov,

bodisi ob začetku veljavnosti sporazuma bodisi na podlagi razumnega časa, z izjemo ukrepov, ki so dovoljeni po XI., XII., XIV. in XIV. bis členu tega sporazuma.

2. Pri presojanju, ali so izpolnjeni pogoji iz prvega (b) odstavka, je treba upoštevati razmerje med sporazumom in širšim procesom gospodarskega povezovanja oziroma liberalizacijo trgovine določenih držav.

3. (a) Kadar so države v razvoju pogodbenice tiste vrste sporazuma, ki ga določa prvi odstavek, tedaj je možna določena prožnost glede pogojev, ki jih določa prvi odstavek, zlasti pododstavek (b), v skladu s stopnjo razvitosti določenih držav tako v celoti kot v posameznih sektorjih ter podsektorjih.

(b) Ne glede na določbe šestega odstavka se lahko ob takem sporazumu, kot ga določa prvi odstavek, ki se izključno nanaša na države v razvoju, pravne osebe, katerih lastniki ali upravljavci so fizične osebe iz držav pogodbenic takega sporazuma, ugodneje obravnavajo.

4. Katerikoli sporazum iz prvega odstavka se oblikuje tako, da olajšuje trgovino med pogodbenicami sporazuma.

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[1] Ta pogoj se razume v smislu števila sektorjev, vpliva na obseg trgovine in oblik ponudbe. Za izpolnitev tega pogoja sporazum a priori ne izključuje nobene oblike.

Za nobeno članico, ki ni sklenila sporazuma, se ne smejo uvajati večje splošne ovire v trgovini s storitvami v sektorjih in podsektorjih v primerjavi z ovirami, ki so veljale pred sklenitvijo takega sporazuma.

5. Če namerava podpisnica zaradi sklenitve, razširitve ali spremembe kakega sporazuma iz prvega odstavka odstopiti od ali spremeniti določeno specifično obvezo v nasprotju s pogoji v svoji listi, mora najmanj 90 dni vnaprej obvestiti o nameravanem odstopu ali spremembi, pri čemer se uporablja postopek, določen v drugem, tretjem in četrtem odstavku XXI. člena.

6. Ponudnik storitev iz katerekoli druge članice, ki je pravna oseba, ustanovljena v skladu z zakoni pogodbenice sporazuma iz prvega odstavka, je upravičen do obravnave, ki jo predpisuje tak sporazum, pod pogojem, da opravlja na ozemlju pogodbenic takega sporazuma poslovno dejavnost večjega obsega.

7. (a) Članice, ki so pogodbenice kateregakoli sporazuma iz prvega odstavka, morajo o vsakem takem sporazumu, njegovi razširitvi ali pomembnejši spremembi nemudoma obvestiti Svet za trgovino s storitvami. Svetu morajo dati na razpolago tudi vse pomembne informacije, ki jih ta zahteva. Svet lahko ustanovi delovno skupino, da prouči tak sporazum in njegove razširitve oziroma spremembe ter poroča Svetu o njegovi skladnosti s tem členom.

(b) Članice, ki so pogodbenice kateregakoli sporazuma iz prvega odstavka, ki se izvaja na podlagi dogovorjenih rokov, o njegovem izvajanju občasno poročajo Svetu za trgovino s storitvami. Svet lahko, če presodi, da je to potrebno, ustanovi delovno skupino, da prouči ta poročila.

(c) Na podlagi poročil delovnih skupin, omenjenih v pododstavkih (a) in (b) tega odstavka, lahko Svet, če je ustrezno, da pogodbenicam takega sporazuma svoja priporočila.

8. Članica, ki je pogodbenica kateregakoli sporazuma iz prvega odstavka, ne more zahtevati kompenzacije za trgovinske koristi, ki utegnejo po takem sporazumu pripadati katerikoli drugi članici.

V. bis člen

Sporazumi o povezovanju trgov delovne sile

Ta sporazum nobeni članici ne preprečuje, da bi bila pogodbenica sporazumov, ki vzpostavljajo celovito povezavo[2] trgov delovne sile med svojimi pogodbenicami, pod pogojem:

(a) da ta sporazum odvezuje državljane podpisnic zahtev v zvezi z dovoljenji za bivanje in delo;

(b) da se o takem sporazumu obvesti Svet za trgovino s storitvami.

VI. člen

Domača zakonodaja

1. V sektorjih, za katera veljajo specifične obveze, mora vsaka članica zagotoviti, da se vsi ukrepi splošne veljave, ki vplivajo na trgovino s storitvami, izvajajo razumno, objektivno in nepristransko.

2. (a) Vsaka članica mora imeti oziroma mora, čim prej je možno, ustanoviti sodne, arbitražne ali upravne svete ali postopke, ki na zahtevo prizadetega ponudnika storitev omogočajo takojšnjo proučitev in če je to upravičeno, zagotavljajo ustrezne spremembe upravnih odločb, ki vplivajo na trgovino s storitvami. Če taki postopki niso neodvisni od agencije, ki ji je zaupana ta upravna odločba, članica zagotovi, da se s temi postopki doseže objektivna in nepristranska proučitev.

(b) Določbe pododstavka (a) se ne smejo razlagati v smislu zahteve, da članice ustanavljajo take svete oziroma postopke, če bi bilo to v neskladju z njihovo ustavno ureditvijo ali z naravo njihovih pravnih sistemov.

3. Če je za ponudbo storitve, za katero velja specifična obveza, potrebno posebno dovoljenje, pristojne oblasti članice v razumnem času po vložitvi prošnje, ki velja po domači zakonodaji za popolno, obvestijo vlagatelja o odločitvi v zvezi z njegovo prošnjo. Na zahtevo vlagatelja pristojne oblasti članice brez nepotrebnega odlašanja dajo vse podatke, ki se nanašajo na prošnjo.

4. Da bi se zagotovilo, da ukrepi v zvezi s kvalifikacijskimi zahtevami in postopki, tehničnimi standardi in zahtevami za dovoljenja ne pomenijo nepotrebnih ovir za trgovino s storitvami, Svet za trgovino s storitvami po ustreznih telesih, ki jih lahko ustanovi v ta namen, določi vsa potrebna pravila. Ta pravila imajo namen zagotoviti, da take zahteve med drugim:

(a) temeljijo na objektivnih in preglednih merilih, kot sta sposobnost in zmožnost ponujati storitev;

(b) ne pomenijo večjega bremena, kot je to potrebno za zagotovitev kakovosti storitve;

(c) pri postopkih za izdajanje dovoljenj niso same po sebi omejitev za ponujanje storitev.

5. (a) V sektorjih, kjer je članica sprejela specifične obveze, ta članica do začetka veljavnosti pravil, ki so nastala v teh sektorjih v skladu s četrtim odstavkom tega člena, ne uporablja zahtev za izdajanje dovoljenj ali kvalifikacijskih zahtev in tehničnih standardov, ki izničujejo ali zmanjšujejo sprejete specifične obveze na način, ki:

(i) ni v skladu z merili, navedenimi v četrtem (a), (b) ali (c) pododstavku; in

(ii) ga od te članice ni bilo moč razumno pričakovati v času, ko je ta sprejela specifične obveze v določenih sektorjih.

(b) Pri ugotavljanju, ali je ravnanje članice v skladu z obvezami po petem (a) odstavku zgoraj, je treba upoštevati mednarodne standarde ustreznih mednarodnih organizacij,[3] ki jih uporablja ta članica.

6. V sektorjih, kjer veljajo specifične obveze v zvezi s storitvami svobodnih poklicev, vsaka članica poskrbi za ustrezne postopke za potrjevanje sposobnosti strokovnjakov katerekoli druge članice.

VII. člen

Priznavanje

1. Pri izpolnjevanju svojih standardov oziroma meril za dovoljevanje, izdajanje dovoljenj ali potrjevanje ponudnikov storitev ter na podlagi zahtev tretjega odstavka lahko članica v celoti ali delno prizna izobrazbo ali pridobljene izkušnje, izpolnjene zahteve ali dana dovoljenja ali potrdila v določeni državi. Tako priznanje, ki se lahko doseže s harmonizacijo ali kako drugače, lahko temelji na sporazumu ali na posebnih dogovorih z določeno članico ali pa se daje avtonomno.

2. Članica, ki je pogodbenica določene vrste obstoječega ali prihodnjega sporazuma ali dogovora, na katere se nanaša prvi odstavek tega člena, da ustrezno možnost drugim zainteresiranim članicam, da se pogajajo o pristopu k takemu sporazumu ali dogovoru ali da se pogajajo o primerljivih sporazumih ali dogovorih. Če članica avtonomno daje priznanje, da možnost katerikoli drugi članici, da dokaže, da je na njenem ozemlju treba priznati pridobljeno izobrazbo, izkušnje, dovoljenja ali potrdila ter izpolnjene zahteve.

3. Članica ne sme dati priznanja tako, da bi standardi ali merila za dovoljevanje, izdajanje dovoljenj ali potrdil ponud-

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[2] Tako povezovanje daje državljanom pogodbenic pravico do prostega vstopa na trg delovne sile v pogodbenicah in vključuje ukrepe, ki zadevajo pogoje plačevanja, druge pogoje zaposlovanja in socialne ugodnosti.

[3] Izraz "ustrezne mednarodne organizacije" se nanaša na mednarodna telesa, v katera se lahko včlanijo ustrezni organi vsaj vseh članic WTO.

nikom storitev pomenili diskriminacijo med državami ali prikrito omejevanje trgovine s storitvami.

4. Vsaka članica:

(a) v 12 mesecih po začetku veljavnosti Sporazuma o WTO zanjo obvesti Svet za trgovino s storitvami o svojih obstoječih ukrepih priznavanja in izjavi, ali ti ukrepi temeljijo na sporazumih ali dogovorih, ki jih omenja prvi odstavek;

(b) nemudoma in kolikor mogoče vnaprej obvesti Svet za trgovino s storitvami o začetku pogajanj o določeni vrsti sporazuma ali dogovora, ki jo omenja prvi odstavek, da bi dala drugim članicam ustrezno možnost,da izrazijo svoj interes za sodelovanje pri pogajanjih, preden so ta v polnem poteku;

(c) nemudoma obvesti Svet za trgovino s storitvami o sprejemu novih ukrepov priznavanja ali bistvenih spremembah obstoječih ukrepov in izjavi, ali ti ukrepi temeljijo na sporazumih ali dogovorih, ki jih omenja prvi odstavek.

5. Če je primerno, naj bi priznanje temeljilo na mnogostransko sprejetih merilih. V ustreznih primerih članice sodelujejo z ustreznimi medvladnimi ali nevladnimi organizacijami z namenom oblikovanja in sprejemanja skupnih mednarodnih standardov in meril za priznavanje in skupnih mednarodnih standardov za opravljanje določenih storitev in poklicev.

VIII. člen

Monopoli in izključni ponudniki storitev

1. Vsaka članica zagotovi, da monopolni ponudnik storitev na njenem ozemlju pri ponudbi monopolne storitve na trgu ne deluje na način, ki ni v skladu z obvezami te članice po II. členu in specifičnimi obvezami.

2. Če monopolni ponudnik storitev članice bodisi neposredno bodisi po svojem povezanem podjetju konkurira pri ponudbi storitve, ki je zunaj njegovih monopolnih pravic in za katero je ta članica sprejela specifične obveze, ta članica zagotovi, da tak ponudnik ne zlorablja svojega monopolnega položaja in da ne deluje na njenem ozemlju na način, ki ni v skladu z njenimi obvezami.

3. Svet za trgovino s storitvami lahko na zahtevo članice, ki meni, da monopolni ponudnik storitve v katerikoli drugi članici ravna na način, ki ni v skladu s prvim in drugim odstavkom tega člena, zahteva od članice, ki ustanavlja, vzdržuje ali pooblašča takega ponudnika, da priskrbi posebne podatke o njegovem ravnanju.

4. Če po začetku veljavnosti Sporazuma o WTO določena članica da monopolne pravice za ponudbo storitve, za katero je prevzela specifične obveze, o tem obvesti Svet za trgovino s storitvami najkasneje tri mesece pred nameravano uporabo monopolnih pravic. Pri tem se uporabljajo določbe drugega, tretjega in četrtega odstavka XXI. člena.

5. Določbe tega člena veljajo tudi za izključne ponudnike storitev, če članica formalno ali dejansko: (a) pooblašča ali ustanavlja majhno število ponudnikov storitev ali (b) če znatno preprečuje konkurenco med temi ponudniki na svojem ozemlju.

IX. člen

Poslovna praksa

1. Članice ugotavljajo, da lahko določena poslovna praksa ponudnikov storitev, razen tistih, na katere se nanaša VIII. člen, omejuje konkurenco in s tem trgovino s storitvami.

2. Vsaka članica mora na zahtevo katerekoli druge članice začeti posvetovanja za odpravo prakse, ki jo omenja prvi odstavek tega člena. Pozvana članica taki zahtevi posveti popolno in razumevajočo pozornost in priskrbi vse javno dostopne podatke, ki niso zaupni in so v zvezi z določeno zadevo. Pozvana članica priskrbi zahtevajoči članici tudi druge razpoložljive podatke na podlagi svoje domače zakonodaje in ob sklenitvi zadovoljivega sporazuma o varovanju zaupnosti podatkov članice, ki zahteva podatke.

X. člen

Zaščitni ukrepi v sili

1. O vprašanju zaščitnih ukrepov v sili, ki temeljijo na nediskriminaciji, se sprožijo mnogostranska pogajanja. Dosežki takih pogajanj začnejo veljati najkasneje tri leta po začetku veljavnosti Sporazuma o WTO.

2. Pred začetkom veljavnosti dosežkov pogajanj, omenjenih v prvem odstavku tega člena, po preteku enega leta od dne, ko je obveza začela veljati, lahko vsaka članica ne glede na določbe prvega odstavka XXI. člena obvesti Svet za trgovino s storitvami o svojem namenu, da namerava spremeniti določeno specifično obvezo ali od nje odstopiti, pod pogojem, da članica Svetu utemelji, da sprememba ali odstop ne more čakati, da preteče triletno obdobje, ki ga določa prvi odstavek XXI. člena.

3. Določbe drugega odstavka se prenehajo uporabljati po treh letih po začetku veljavnosti Sporazuma o WTO.

XI. člen

Plačila in transferji

1. Razen v razmerah, ki jih predvideva XII. člen, ne sme nobena članica omejevati mednarodnih transferjev in plačil za tekoče transakcije v zvezi s specifičnimi obvezami.

2. V tem sporazumu nič ne vpliva na pravice in obveze članic Mednarodnega denarnega sklada po členih Sporazuma o Skladu, vključno z deviznimi transakcijami, ki so v skladu s členi Sporazuma, če članica ne uvaja omejitev za kapitalske transakcije, ki niso v skladu z njenimi specifičnimi obvezami za take transakcije, razen po XII. členu ali na zahtevo Sklada.

XII. člen

Omejitve za zaščito plačilne bilance

1. Ob resnih plačilnobilančnih ali zunanjefinančnih težavah ali grožnji teh težav lahko članica uvede ali ohranja omejitve za trgovino s storitvami, za katere je prevzela specifične obveze, vključno s plačili ali transferji za transakcije, povezane s temi obvezami. Ugotavlja se, da lahko določeni pritiski na plačilno bilanco članice v procesu gospodarskega razvoja ali prehoda zahtevajo uporabo omejitev, da bi se med drugim zagotovila ohranitev določene ravni finančnih rezerv, potrebnih za izvajanje njenega progama gospodarskega razvoja ali prehoda.

2. Omejitve, ki jih omenja prvi odstavek:

(a) ne smejo diskriminirati članic;

(b) morajo biti v skladu s členi Sporazuma o Mednarodnem denarnem skladu;

(c) izogibati se morajo nepotrebni škodi tržnih, gospodarskih in finančnih interesov katerihkoli drugih članic;

(d) ne smejo preseči omejitev, potrebnih za razreševanje okoliščin, opisanih v prvem odstavku;

(e) morajo biti začasne in se morajo postopoma odpraviti glede na izboljšanje položaja, določenega v prvem odstavku.

3. Pri določanju obsega takih omejitev članica lahko da prednost storitvam, ki so za njene gospodarske ali razvojne programe pomembnejše. Takih omejitev pa ne sme sprejemati ali ohranjati z namenom zaščite določenega sektorja storitev.

4. O vseh omejitvah, sprejetih ali ohranjenih po prvem odstavku, pa tudi o vseh spremembah takih omejitev je treba nemudoma obvestiti Generalni svet.

5. (a) Članice, ki uporabljajo določbe tega člena, se o omejitvah, sprejetih po tem členu, nemudoma posvetujejo z Odborom za plačilnobilančne omejitve.

(b) Ministrska konferenca določi postopke[4] za občasna posvetovanja s ciljem, da se omogočajo ustrezna priporočila določeni članici.

(c) Taka posvetovanja presodijo plačilnobilančni položaj določene članice in omejitve, ki so bile uvedene ali se ohranjajo po tem členu, med drugim z upoštevanjem dejavnikov, kot so:

(i) narava in obseg plačilnobilančnih in zunanjefinančnih težav;

(ii) zunanje gospodarsko in trgovinsko okolje določene članice;

(iii) morebitni drugačni primerni ukrepi.

(d) Posvetovanja pretehtajo skladnost omejitev z drugim odstavkom tega člena, zlasti postopno odpravljanje omejitev na podlagi drugega (e) odstavka.

(e) Na takih posvetovanjih se sprejmejo vse statistične in druge ugotovitve in dejstva, ki jih predloži Mednarodni denarni sklad v zvezi s tujo valuto, denarnimi rezervami in plačilno bilanco. Vsi sklepi temeljijo na presoji Sklada o plačilnobilančnem in zunanjefinančnem položaju določene članice.

6. Če članica, ki ni članica Mednarodnega denarnega sklada, želi uporabiti določbe tega člena, Ministrska konferenca določi postopek proučitve in vse druge potrebne postopke.

XIII. člen

Vladne nabave

1. Določbe II., XVI. in XVII. člena se ne uporabljajo za zakone, predpise ali zahteve, ki urejajo storitev vladnih agencij za vladne potrebe, in ne z namenom preprodaje na trgu ali uporabe v ponudbi storitev na trgu.

2. Mnogostranska pogajanja o vladnih nabavah storitev je treba opraviti v dveh letih po začetku veljavnosti Sporazuma o WTO.

XIV. člen

Splošne izjeme

V skladu z zahtevo, da se tovrstni ukrepi ne uporabljajo na način, ki bi pomenil samovoljno ali neupravičeno diskriminacijo med državami, v katerih prevladujejo enake razmere ali prikrito omejevanje trgovine s storitvami, se nič v tem sporazumu ne razlaga, da članici preprečuje sprejemanje ali izvajanje ukrepov:

(a) potrebnih za varovanje javne morale ali ohranjanje javnega reda in miru;[5]

(b) potrebnih za varovanje življenj ali zdravja ljudi, živali ali rastlin;

(c) potrebnih za zagotovitev skladnosti z zakoni ali predpisi, ki niso v neskladju z določbami tega sporazuma, vključno s tistimi, ki se nanašajo na:

(i) preprečevanje prevar in goljufij ali zaradi odprave posledic neizpolnitve storitvenih pogodb;

(ii) varovanje zasebnosti posameznikov v zvezi z obdelavo ali razširjanjem osebnih podatkov ter varovanje zaupnosti zasebne knjigovodske dokumentacije;

(iii) ki se nanašajo na varnost;

(d) ki niso v skladu s XVII. členom, pod pogojem, da ima razlika v obravnavi namen zagotoviti enako ali učinkovito nalaganje ali pobiranje neposrednih davkov[6] glede storitev ali glede ponudnikov storitev drugih članic;

(e) ki niso v skladu z II. členom, pod pogojem, da je razlika v obravnavi dosežek sporazuma o preprečevanju dvojne obdavčitve ali določb o preprečevanju dvojne obdavčitve iz kateregakoli drugega mednarodnega sporazuma ali dogovora, ki zavezuje določeno članico.

XIV. bis člen

Varnostne izjeme

1. V tem sporazumu se nič ne razlaga tako:

(a) da se zahteva od kake članice, da zagotovi informacije, katerih razkritje se ji zdi v nasprotju z njenimi bistvenimi varnostnimi interesi; ali

(b) da prepoveduje katerikoli članici uvedbo ukrepov, za katere ta presodi, da so potrebni za zavarovanje njenih bistvenih varnostnih interesov:

(i) v zvezi s ponudbo storitev, ki poteka posredno ali neposredno za oskrbo oboroženih sil;

(ii) v zvezi s fisijskimi ali fuzijskimi snovmi oziroma snovmi, iz katerih se te izdelujejo;

(iii) med vojno ali v drugih kritičnih razmerah v mednarodnih odnosih; ali

(c) da preprečijo katerikoli članici uvedbo kakršnihkoli dejanj v skladu z njenimi obveznostmi po Ustanovni listini Združenih narodov za ohranitev mednarodnega miru in varnosti.

2. Svet za trgovino s storitvami se kar najpopolneje obvešča o ukrepih, sprejetih po prvem (b) in (c) odstavku tega člena, ter o njihovi ukinitvi.

XV. člen

Subvencije

1. Članice ugotavljajo, da imajo lahko subvencije v določenih okoliščinah izkrivljajoč vpliv na trgovino s storitvami. Zato članice začnejo pogajanja za oblikovanje mnogostranskih pravil, po katerih bi se lahko izognili takim izkrivljajočim učinkom.[7] Pogajanja obravnavajo tudi ustreznost izravnalnih postopkov. Taka pogajanja upoštevajo vlogo subvencij v razvojnih programih držav v razvoju in potrebe članic, zlasti članic držav v razvoju, glede prožnosti na tem področju. Za namene takih pogajanj si članice izmenjujejo informacije o vseh subvencijah v trgovini s storitvami, ki jih dajejo svojim domačim ponudnikom storitev.

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[4] Razume se, da naj bi bili postopki po petem odstavku enaki postopkom GATT 1994.

[5] Možna je izjema od javnega reda le, če obstaja resnična in dovolj resna grožnja enemu od temeljnih interesov družbe.

[6] Ukrepi, ki imajo za namen zagotoviti enako ali učinkovito nalaganje ali pobiranje neposrednih davkov, vključujejo ukrepe, ki jih članica sprejme na podlagi svojega davčnega sistema, ki:

(i) se uporabljajo za nerezidenčne ponudnike storitev ob priznavanju dejstva, da se davčne obveznosti nerezidentov določajo glede na obdavčljive postavke, ki izvirajo z ozemlja članice ali ki so na njem; ali

(ii) se uporabljajo za nerezidente, da bi se zagotovila uveljavitev ali pobiranje davkov na ozemlju članice; ali

(iii) se uporabljajo za nerezidente ali rezidente, da bi se preprečilo izogibanje ali utaja davkov, vključno z ukrepi za zagotovitev upoštevanja predpisov; ali

(iv) se uporabljajo za uporabnike storitev, opravljenih na ozemlju ali z ozemlja druge članice, da bi bili zagotovljeni nalaganje in pobiranje davkov od teh uporabnikov, ki imajo izvor na ozemlju te članice; ali

(v) ločujejo ponudnike storitev, ki plačujejo davek za predmete, obdavčljive po celem svetu, in druge ponudnike storitev ob priznavanju razlike v naravi davčne osnove med obema; ali

(vi) določajo, razporejajo ali razdeljujejo dohodek, dobiček, zaslužek, izgubo, odbitke ali posojila rezidentov ali podružnic oziroma med osebami v razmerju ali podružnicami iste osebe, da bi tako zavarovali davčno osnovo članice.

Davčno izrazoslovje ali koncepti v (d) odstavku XIV. člena in tej opombi se določajo po davčnih definicijah in konceptih ali enakih ali podobnih definicijah in konceptih domače zakonodaje članice, ki sprejema ukrep.

[7] Bodoči delovni program bo določil, kako in kdaj bodo potekala pogajanja za oblikovanje takih mnogostranskih pravil.

2. Vsaka članica, ki meni, da je prizadeta s subvencijo druge članice, lahko zahteva posvetovanje s to članico o teh zadevah. Take zahteve je treba obravnavati z razumevanjem.

III. DEL

SPECIFIČNE OBVEZE

XVI. člen

Dostop na trg

1. Glede dostopa na trg pri oblikah ponudbe, navedenih v I. členu, vsaka članica uveljavlja za storitve in ponudnike storitev iz drugih članic obravnavo, ki ni manj ugodna od določil, omejitev in pogojev, ki so dogovorjeni in navedeni v njeni listi obvez.[8]

2. V sektorjih, kjer se prevzemajo obveze glede dostopa na trg, so ukrepi, ki jih članica ne ohranja ali sprejema na regionalni podlagi ali na podlagi celotnega ozemlja, razen če v njeni listi obvez ni drugače določeno, definirani takole:

(a) omejitve števila ponudnikov storitev v obliki številčnih kvot, monopolov, izključnih ponudnikov storitev ali zahtev po preverjanju gospodarskih potreb;

(b) omejitve skupne vrednosti storitvenih transakcij ali premoženja v obliki številčnih kvot ali zahtev po preverjanju gospodarskih potreb;

(c) omejitve skupnega števila opravljenih storitev ali celotne količine storitvenega proizvoda, izraženega v obliki števila enot, kvot ali zahtev po preverjanju gospodarskih potreb;[9]

(d) omejitve skupnega števila fizičnih oseb, ki so lahko zaposlene v posameznem storitvenem sektorju ali jih lahko zaposli posamezen ponudnik storitev in so nujno potrebne za opravljanje določene storitve ali z njo neposredno povezane, v obliki številčnih kvot ali zahtev po preverjanju gospodarskih potreb;

(e) ukrepi, ki omejujejo ali zahtevajo posebne vrste pravnih oseb ali skupnih naložb, s pomočjo katerih lahko ponudnik storitev opravi storitev; in

(f) omejitve udeležbe tujega kapitala v obliki določanja najvišjega dovoljenega odstotka tujega deleža v skupni vrednosti posameznega ali skupnega tujega vlaganja.

XVII. člen

Nacionalna obravnava

1. V sektorjih v njeni listi obvez in po tam navedenih pogojih ter kvalifikacijah vsaka članica pri vseh ukrepih, ki vplivajo na ponudbo storitev, storitev in ponudnikov storitev iz katerihkoli drugih članic ne obravnava manj ugodno kot enake domače storitve ali ponudnike storitev.[10]

2. Članica lahko izpolni zahteve prvega odstavka tega člena tako, da obravnava storitve ali ponudnike storitev iz katerekoli druge članice tako, da je bodisi formalno enaka obravnavi enakih domačih storitev in ponudnikov storitev ali od nje formalno različna.

3. Formalno enaka ali formalno različna obravnava velja za manj ugodno, če spreminja konkurenčne pogoje v prid storitev ali ponudnikov storitev članice v primerjavi z enakimi storitvami ali ponudniki storitev katerekoli druge članice.

XVIII. člen

Dodatne obveze

Članice se lahko pogajajo o dodatnih obvezah glede ukrepov, ki vplivajo na trgovino s storitvami in niso navedene v listah po XVI. ali XVII. členu, vključno z ukrepi, ki zadevajo kvalifikacije, standarde ali dovoljenja. Take obveze morajo biti zapisane v listi obvez članice.

IV. DEL

PROGRESIVNA LIBERALIZACIJA

XIX. člen

Pogajanja o specifičnih obvezah

1. V skladu s cilji tega sporazuma in za dosego vse večje liberalizacije se članice udeležujejo zaporednih krogov pogajanj, ki se začnejo najkasneje pet let po začetku veljavnosti Sporazuma o WTO, potem pa se nadaljujejo občasno. Taka pogajanja so usmerjena k zmanjševanju ali odstranjevanju negativnih učinkov ukrepov na trgovino s storitvami, kot načina zagotavljanja učinkovitega dostopa na trg. Ta proces poteka v prid interesov vseh udeležencev na podlagi vzajemnih koristi in zagotavljanja celovitega ravnovesja pravic in obveznosti.

2. Proces liberalizacije poteka ob upoštevanju ciljev nacionalnih politik in ravni razvitosti posameznih članic tako na splošno kot po posameznih sektorjih. Potrebna je ustrezna prožnost za posamezne članice države v razvoju, da se odpirajo na manj sektorjih, liberalizirajo manj vrst transakcij in progresivno širijo dostop na trg v skladu s svojo razvitostjo. Pri odpiranju dostopa do svojih trgov tujim ponudnikom storitev uveljavljajo pogoje, usmerjene k spodbujanju ciljev, omenjenih v IV. členu.

3. Za vsak krog pogajanj se določijo smernice in postopki. Za določitev teh smernic Svet za trgovino s storitvami presodi trgovino s storitvami na splošno in po sektorjih glede na cilje tega sporazuma, vključno s tistimi, ki so navedeni v prvem odstavku IV. člena. Smernice za pogajanja določijo oblike obravnave liberalizacije, ki so jo članice samostojno uvedle po zadnjih pogajanjih, pa tudi posebno obravnavo najmanj razvitih držav članic po določbah tretjega odstavka IV. člena.

4. Proces progresivne liberalizacije se pospeši na vsakem takem krogu dvostranskih, večstranskih ali mnogostranskih pogajanj, usmerjenih k povečevanju splošne ravni specifičnih obvez, ki jih sprejemajo članice po tem sporazumu.

XX. člen

Liste specifičnih obvez

1. Vsaka članica v listi navede vse specifične obveze, ki jih prevzema po III. delu tega sporazuma. Glede na sektorje, za katere prevzema te obveze, vsaka lista vsebuje:

(a) določila, omejitve in pogoje dostopa na trg;

(b) pogoje in kvalifikacije nacionalne obravnave;

(c) zaveze, povezane z dodatnimi obvezami;

(d) roke za izpolnitev teh obvez, če je ustrezno;

(e) datum začetka veljavnosti teh obvez.

2. Ukrepi, ki niso v skladu s XVI. in XVII. členom, se vpišejo v stolpec, ki se nanaša na XVI. člen. V tem primeru velja, da pomeni ta vpis pogoj oziroma kvalifikacijo tudi za XVII. člen.

3. Liste specifičnih obvez so priloge k temu sporazumu in so njegov sestavni del.

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[8] Če članica prevzame obvezo dostopa na trg v zvezi s ponudbo kake storitve na način, omenjen v drugem (a) pododstavku I. člena tega sporazuma, in če je čezmejni pretok kapitala bistven del same storitve, je ta članica s tem obvezana, da dovoli tak pretok. Če članica prevzame obvezo glede dostopa na trg v zvezi s ponudbo kake storitve na način, omenjen v drugem (c) pododstavku I. člena tega sporazuma, je s tem obvezna dovoliti s tem povezane transferje kapitala na svoje ozemlje.

[9] Drugi (c) pododstavek ne obsega ukrepov članice, s katerimi omejuje inpute v ponudbo storitev.

[10] Posebne zahteve, ki jih predpostavlja ta člen, se ne razlagajo tako, da zahtevajo od kake članice, da kompenzira morebitne notranje konkurenčne pomanjkljivosti, ki izhajajo iz tuje narave določenih storitev ali ponudnikov storitev.

XXI. člen

Spreminjanje list

1. (a) Članica (v nadaljnjem besedilu tega člena "spreminjajoča članica") lahko spremeni vsako obvezo v svoji listi ali odstopi od nje kadarkoli po preteku treh let od dne, ko je ta obveza začela veljati v skladu z določbami tega člena.

(b) Spreminjajoča članica o svoji nameri, da v skladu s tem členom spremeni obvezo ali od nje odstopi, obvesti Svet za trgovino s storitvami najkasneje tri mesece pred nameravanim dnem uveljavitve spremembe ali odstopa.

2. (a) Na zahtevo katerekoli članice, katere ugodnosti po tem sporazumu so s predlagano spremembo ali odstopom, sporočenim po prvem (b) pododstavku, prizadete (v tem členu "prizadeta članica"), začne spreminjajoča članica pogajanja o kompenzaciji. Na teh pogajanjih in v tem sporazumu si vse prizadete članice prizadevajo za ohranitev splošne ravni vzajemno koristnih obvez, ki niso manj ugodne od predvidenih v listah specifičnih obvez pred začetkom pogajanj.

(b) Kompenzacija velja na podlagi načela države z največjimi ugodnostmi.

3. (a) Če se spreminjajoča in prizadeta članica ne sporazumeta pred pretekom obdobja, ki je bilo določeno za pogajanja, lahko prizadeta članica zadevo predloži arbitraži. Vsaka prizadeta članica, ki želi uveljaviti svojo pravico do morebitne kompenzacije, sodeluje v arbitraži.

(b) Če nobena od prizadetih članic ne zahteva abritraže, ima spreminjajoča članica vso pravico, da uveljavi predlagane spremembe ali odstop.

4. (a) Spreminjajoča članica ne sme spremeniti svoje obveze ali od nje odstopiti, dokler ni dala kompenzacije v skladu z ugotovitvami arbitraže.

(b) Če spreminjajoča članica uveljavi predlagano spremembo ali odstop in ne ravna na podlagi ugotovitev arbitraže, lahko vsaka prizadeta članica, ki je sodelovala v arbitraži, spremeni bistveno enakovredne ugodnosti v skladu s temi ugotovitvami ali od njih odstopi. Ne glede na določbe II. člena se lahko taka sprememba ali odstop uveljavlja izključno za spreminjajočo članico.

5. Svet za trgovino s storitvami določi postopke za popravljanje ali spreminjanje list obvez. Članica, ki je po določbah tega člena spremenila v listi obvez zapisane spremembe ali je od njih odstopila, svojo listo obvez popravi v skladu s tem postopkom.

V. DEL

INSTITUCIONALNE DOLOČBE

XXII. člen

Posvetovanja

1. Vsaka članica s pozornostjo prouči in da zadostno možnost za posvetovanja o predstavitvah katerekoli druge članice glede zadev, ki vplivajo na izvajanje tega sporazuma. Pri teh posvetovanjih se uporablja Dogovor o reševanju sporov (DSU).

2. Svet za trgovino s storitvami ali Organ za reševanje sporov (DSB) se lahko na zahtevo članice posvetuje s katerokoli članico ali članicami o zadevi, za katero ni bilo mogoče najti zadovoljive rešitve na posvetovanjih po prvem odstavku.

3. Članica ne sme uporabljati XVII. člena bodisi na podlagi tega člena ali XXIII. člena v zvezi z ukrepom druge članice, ki sodi k mednarodnemu sporazumu med njima o preprečevanju dvojne obdavčitve. Ob nesoglasju med članicama, ali kak ukrep sodi k temu sporazumu, ima vsaka od obeh članic pravico predložiti zadevo Svetu za trgovino s storitvami.[11] Svet tako zadevo pošlje arbitraži. Odločitev arbitraže je končna in za članice obvezna.

XXIII. člen

Reševanje sporov in uveljavljanje obvez

1. Če članica meni, da katerakoli druga članica ne izvaja svojih obveznosti ali specifičnih obvez po tem sporazumu, se lahko, da bi dosegla vzajemno zadovoljivo rešitev, obrne na DSU.

2. Če DSB meni, da so okoliščine dovolj resne, da to upravičujejo, lahko pooblasti članico ali članice, da prenehajo izpolnjevati obveznosti ali specifične obveze do druge članice ali članic v skladu z 22. členom DSU.

3. Če katerakoli članica meni, da je kakršnakoli ugodnost, ki jo je razumno pričakovala po specifični obvezi druge članice po III. delu tega sporazuma, izničena ali zmanjšana kot posledica uporabe ukrepa, ki ni v neskladju z določbami tega sporazuma, se lahko obrne na DSU. Če DSU ugotovi, da je tak ukrep izničil ali zmanjšal tako ugodnost, je prizadeta članica upravičena do obojestransko zadovoljive prilagoditve po drugem odstavku XXI. člena, kar lahko vključuje tudi spremembo ali umik spornega ukrepa. Če se prizadeti članici ne moreta sporazumeti, se uporabi 22. člen DSU.

XXIV. člen

Svet za trgovino s storitvami

1. Svet za trgovino s storitvami opravlja naloge, ki se mu naložijo zaradi izvajanja tega sporazuma in zaradi uresničevanja njegovih ciljev. Svet lahko ustanavlja podrejena telesa, za katera meni, da so potrebna za učinkovito opravljanje njegovih nalog.

2. Razen če Svet ne odloči drugače, v Svetu in njegovih podrejenih telesih lahko sodelujejo predstavniki vseh članic.

3. Članice Sveta izvolijo predsedujočega.

XXV. člen

Tehnično sodelovanje

1. Ponudniki storitev iz članic, ki potrebujejo tovrstno pomoč, imajo dostop do storitev informacijskih centrov, omenjenih v drugem odstavku IV. člena.

2. Za tehnično pomoč državam v razvoju na mnogostranski ravni skrbi Sekretariat, o njej pa odloča Svet za trgovino s storitvami.

XXVI. člen

Odnosi z drugimi mednarodnimi organizacijami

Generalni svet pripravi vse potrebno za posvetovanja in sodelovanje z Združenimi narodi in njegovimi specializiranimi agencijami, pa tudi z drugimi medvladnimi organizacijami, ki se ukvarjajo s storitvami.

VI. DEL

KONČNE DOLOČBE

XXVII. člen

Odrekanje ugodnosti

Članica lahko odreče ugodnosti po tem sporazumu:

(a) za ponudbo storitve, če ugotovi, da je storitev ponujena z ali na ozemlju nečlanice ali članice, glede katere članica, ki odreka ugodnost, ne uporablja Sporazuma o WTO;

(b) ob ponudbi storitve pomorskega prevoza, če ugotovi, da storitev opravlja:

[11] Pri sporazumih o preprečevanju dvojne obdavčitve, ki že obstajajo na dan začetka veljavnosti Sporazuma o WTO, se lahko zadeva predloži Svetu za trgovino s storitvami le s soglasjem obeh pogodbenic takega sporazuma.

(i) plovilo, registrirano po zakonih nečlanice ali članice, glede članice, ki odreka ugodnost, ne uporablja Sporazuma o WTO, in

(ii) oseba, ki upravlja in/ali uporablja plovilo v celoti ali delno, pripada nečlanici ali članici, glede katere članica, ki odreka ugodnost, ne uporablja Sporazuma o WTO;

(c) ponudniku storitev, ki je pravna oseba, če ugotovi, da ni ponudnik storitve iz druge članice ali da je ponudnik storitve iz članice, glede katere članica, ki odreka ugodnost, ne uporablja Sporazuma o WTO.

XXVIII. člen

Definicije

V tem sporazumu:

(a) je "ukrep" vsak ukrep članice bodisi v obliki zakona, predpisa, pravila, postopka, odločitve upravnega ukrepa ali v katerikoli drugi obliki;

(b) "ponudba storitve" vključuje pripravo, distribucijo, trženje, prodajo in izvedbo storitve;

(c) "ukrepi članic, ki vplivajo na trgovino s storitvami" zajemajo ukrepe, ki se nanašajo na:

(i) nakup, plačilo ali uporabo storitve,

(ii) uporabo oziroma dostop do storitve, za katero ta članica zahteva, da je dostopna javnosti na splošno;

(iii) prisotnost, vključno s tržno prisotnostjo, oseb iz kake članice za ponudbo storitve na ozemlju druge članice;

(d) "tržna prisotnost" je kakršnakoli poslovna ali profesionalna oblika ustanavljanja, vključno z

(i) ustanovitvijo, pridobitvijo ali vzdrževanjem pravne osebe ali

(ii) ustanovitvijo ali ohranjanjem podružnice ali predstavništva

na ozemlju članice s ciljem ponudbe storitev;

(e) storitveni "sektor" je

(i) glede na specifično obvezo en ali več ali vsi podsektorji te storitve, kot je navedeno v listi obvez določene članice,

(ii) sicer pa celota tega storitvenega sektorja z vsemi podsektorji;

(f) "storitev druge članice" je storitev, ki se opravlja

(i) z ozemlja ali na ozemlju druge članice ali pri pomorskem prevozu s plovilom, ki je registrirano po zakonih druge članice, ali jih opravlja oseba druge članice, ki opravlja storitev z uporabo plovila v celoti ali deloma, ali

(ii) pri ponudbi storitve s tržno prisotnostjo ali prisotnostjo fizičnih oseb ponudniku storitve te druge članice;

(g) "ponudnik storitve" je vsaka oseba, ki ponudi storitev;[12]

(h) "monopolni ponudnik storitev" je vsaka oseba, javna ali zasebna, ki jo na ustreznem trgu na ozemlju članice ta članica formalno ali dejansko pooblasti ali ustanovi kot izključnega ponudnika te storitve;

(i) "porabnik storitve" je vsaka oseba, ki prejme ali uporabi storitev;

(j) "oseba" je fizična ali pravna oseba;

(k) "fizična oseba druge članice" je fizična oseba, ki prebiva na ozemlju te druge članice ali kake druge članice in ima po zakonih te druge članice:

(i) državljanstvo te druge članice; ali

(ii) pravico do trajnega bivanja na ozemlju te druge članice v primeru članice, ki

1. nima državljanov; ali

2. zagotavlja pretežno enako obravnavo osebam s stalnim prebivališčem kot svojim državljanov v zvezi z ukrepi, ki vplivajo na trgovino s storitvami, kot je določeno ob sprejemu ali pristopu k Sporazumu o WTO, pod pogojem, da nobena članica ni obvezna take osebe obravnavati ugodneje od tistih, kot jih obravnava ta druga članica. Taka notifikacija vključuje zagotovilo, da prevzema ta članica za osebe s stalnim prebivališčem na podlagi njenih zakonov in predpisov enake odgovornosti, kot jih druge članice prevzemajo za svoje državljane;

(l) "pravna oseba" je vsaka pravna entiteta, pravilno ustanovljena ali kako drugače organizirana po ustreznem zakonu kot pridobitna ali nepridobitna ter v zasebni ali državni lasti, vključno z delniškimi družbami, trusti, solastniškimi podjetji, skupnimi vlaganji, samostojnimi podjetniki posamezniki ali združenji;

(m) "pravna oseba druge članice" je pravna oseba, ki je:

(i) ustanovljena ali kako drugače organizirana po zakonodaji druge članice in opravlja znatno poslovno dejavnost na ozemlju te ali katerekoli druge članice; ali

(ii) ob ponudbi storitev s tržno prisotnostjo, ki je v lasti ali pod nadzorom

1. fizičnih oseb te članice; ali

2. pravnih oseb te druge članice, navedenih v pododstavku (i) tega odstavka;

(n) pravna oseba je

(i) "v lasti" oseb članice, če več kot 50 odstotkov lastniškega deleža pripada osebam te članice;

(ii) "pod nadzorom" oseb članice, če imajo te osebe moč imenovati večino njenih direktorjev ali da drugače zakonito usmerjajo njeno delovanje;

(iii) "povezano" z drugo osebo, če je druga oseba pod njenim nadzorom ali je sama pod nadzorom druge osebe ali če sta tako ona kot druga oseba pod nadzorom iste osebe;

(o) "neposredni davki" vsebujejo vse davke na skupne dohodke, na skupni kapital ali na elemente dohodka ali kapitala, vključno z davkom na razliko pri odtujitvi lastnine, davke na nepremičnine, dedovanja in darila ter davke na skupni znesek plač, ki jih plačajo podjetja, kot tudi davke na povečanje kapitala.

XXIX. člen

Priloge

Priloge k temu sporazumu so sestavni del tega sporazuma.

PRILOGA V ZVEZI Z IZJEMAMI II. ČLENA

Obseg

1. Ta priloga določa pogoje, po katerih je lahko članica ob začetku veljavnosti tega sporazuma oproščena svojih obvez po prvem odstavku II. člena.

2. Morebitne nove izjeme, za katere članica zaprosi po datumu začetka veljavnosti Sporazuma o WTO, se obravnavajo v skladu s tretjim odstavkom IX. člena tega sporazuma.

Proučitev

3. Svet za trgovino s storitvami prouči vse izjeme, odobrene za več kot pet let. Prva taka proučitev se opravi najkasneje pet let po začetku veljavnosti Sporazuma o WTO.

[12] Če storitve ne ponudi neposredno pravna oseba, temveč je ponujena z drugimi oblikami tržne prisotnosti, npr. podružnicami ali predstavništvi, ne glede na to ponudniku storitve (tj. pravni osebi) s tovrstno prisotnostjo pripada obravnava, zagotovljena ponudnikom storitev po tem sporazumu. Taka obravnava se razširi tudi na prisotnost, s katero je storitev ponujena, in je ni treba širiti na druga območja ponudnika storitev, ki so zunaj ozemlja, na katerem je ponujena storitev.

4. Svet za trgovino s storitvami v postopku proučitve:

(a) prouči, ali okoliščine, zaradi katerih je bila potrebna izjema, še vedno obstajajo; in

(b) določi datum morebitne naslednje proučitve.

Prenehanje izjeme

5. Izjema članice glede njenih obveznosti po prvem odstavku II. člena tega sporazuma glede posameznega ukrepa preneha veljati na dan, ki je določen z odločitvijo o izjemi.

6. Take izjeme naj načeloma ne bi bile daljše od deset let. V vsakem primeru jih je treba obravnavati na nadaljnjih krogih pogajanj o liberalizaciji.

7. Članica ob prenehanju veljavnosti izjeme obvesti Svet za trgovino s storitvami, da je prej neusklajeni ukrep usklajen s prvim odstavkom II. člena.

Spiski izjem po II. členu

(Dogovorjeni spiski izjem na podlagi drugega odstavka II. člena bodo priložni k izvirniku Sporazuma o WTO.)

PRILOGA O GIBANJU FIZIČNIH OSEB, KI OPRAVLJAJO STORITVE PO SPORAZUMU

1. Ta priloga se nanaša na ukrepe v zvezi s fizičnimi osebami, ki so ponudniki storitev članice in fizičnih oseb članice, ki so zaposlene pri ponudnikih storitev članice, v zvezi s ponudbo storitve.

2. Sporazum se ne uporablja za ukrepe, ki se nanašajo na fizične osebe, ki si prizadevajo za dostop na trg delovne sile članice, niti se ne uporablja za ukrepe, ki se nanašajo na državljanstvo, na bivanje ali stalno delovno dovoljenje.

3. V skladu s III. in IV. delom sporazuma se lahko članice pogajajo o specifičnih obvezah v zvezi z gibanjem vseh kategorij fizičnih oseb, ki opravljajo storitve po tem sporazumu. Fizičnim osebam, ki jih zajema specifična obveza, je treba dovoliti opravljanje storitve v skladu z določili te obveze.

4. Sporazum ne preprečuje nobeni članici, da uporablja ukrepe za vstop fizičnih oseb na njihovo ozemlje ali za njihovo začasno bivanje, vključno z ukrepi, potrebnimi za zaščito celovitosti njenih meja in zagotovitev urejenega prehajanja fizičnih oseb, če se ti ukrepi ne uporabljajo na način, ki bi izničil ali zmanjšal koristi, ki pripadajo katerikoli članici na podlagi določil njenih specifičnih obvez.[1]

PRILOGA O STORITVAH ZRAČNEGA PREVOZA

1. Ta priloga se uporablja za ukrepe, ki vplivajo na trgovino s storitvami zračnega prevoza, ki so zapisane v listi obvez ali ne, ter za pomožne storitve. Potrjuje se, da katerakoli specifična obveza ali obveznost, ki jo prevzema članica na podlagi tega sporazuma, ne zmanjšuje ali vpliva na obveznosti članice na podlagi dvostranskih ali mnogostranskih sporazumov, ki veljajo na dan začetka veljavnosti Sporazuma o WTO.

2. Ta sporazum, vključno s postopki za reševanje sporov, se ne uporablja za ukrepe, ki vplivajo na:

(a) prometne pravice, dane kakorkoli; ali

(b) storitve, ki se neposredno nanašajo na uporabo prometnih pravic,

razen kot je določeno v tretjem odstavku te priloge.

3. Ta sporazum se uporablja za ukrepe, ki vplivajo na:

(a) storitve popravil in vzdrževanja zračnih plovil;

(b) prodajo in trženje storitev zračnega prevoza;

(c) storitve računalniškega sistema rezervacij (CRS).

4. Postopki za reševanje sporov tega sporazuma se lahko uporabljajo le, če so določene članice prevzele obveznosti ali specifične obveze in če so bili postopki za reševanje sporov v dvostranskih in drugih mnogostranskih sporazumih in dogovorih izčrpani.

5. Svet za trgovino s storitvami občasno, najmanj pa vsakih pet let, prouči razvoj letalskega prevoza in izvajanje te priloge, da prouči možno nadaljnjo uporabo tega sporazuma na tem področju.

6. Definicije:

(a) "storitve popravil in vzdrževanja zračnih plovil" so dejavnosti, ki se opravljajo na zračnem plovilu ali njegovem delu, medtem ko ne obratuje, in ne vključujejo tako imenovanega linijskega vzdrževanja;

(b) "prodaja in trženje storitev zračnega prevoza" so možnosti določenega letalskega prevoznika, da prosto prodaja in trži svoje storitve zračnega prevoza, vključno z vsemi vidiki trženja, kot so tržne raziskave, oglaševanje in distribucija. Te dejavnosti ne vključujejo določanja cen storitev zračnega prevoza niti pogojev, ki se nanašajo na storitve letalskega prevoza;

(c) "storitve računalniškega sistema rezervacij (CRS)" so storitve računalniških sistemov, ki vsebujejo podatke o voznih redih letalskih prevoznikov, o razpoložljivih zmogljivostih, o vozninah in pravilih, na podlagi katerih je možno rezervirati ali izdajati vozovnice;

(d) "prometne pravice" so pravice, zapisane ali nezapisane v listi obvez, ki se nanašajo na prevoz potnikov, tovora in pošte za plačilo ali najem z, na ali čez ozemlje članice, vključno z medkrajevnimi povezavami, smermi, vrstami prevoza, razpoložljivimi zmogljivostmi, vozninami in pogoji ter merili za določanje letalskih prevoznikov, vključno z merili, kot so število, lastništvo in kontrola.

PRILOGA O FINANČNIH STORITVAH

1. *Obseg in definicije*

(a) Ta priloga se uporablja za ukrepe, ki se nanašajo na ponudbo finančnih storitev. Ponudba finančne storitve po tej prilogi je ponudba storitve, kot je definirana v drugem odstavku I. člena tega sporazuma.

(b) V tretjem (b) pododstavku I. člena tega sporazuma so "storitve, ki se opravljajo na podlagi vladnih pooblastil":

(i) dejavnosti centralne banke ali finančnih oblasti ali kake druge javne ustanove v skladu z denarno politiko ali politiko obrestne mere;

(ii) dejavnosti, ki so del statutarnega sistema socialne varnosti ali pokojninske politike; in

(iii) druge dejavnosti, ki jih opravlja javna ustanova za račun vladnih finančnih virov ali z njihovim jamstvom ali uporabo.

(c) Za namene tretjega (b) pododstavka I. člena sporazuma, če članica dovoli, da njeni ponudniki finančnih storitev opravljajo katerokoli dejavnost iz pododstavka (b)(ii) ali (iii) tega odstavka v konkurenci z javno ustanovo ali ponudnikom finančnih storitev, tedaj "storitve" vključujejo tudi te dejavnosti.

(d) Tretji (c) pododstavek I. člena tega sporazuma se ne uporablja za storitve, ki jih obravnava ta priloga.

[1] Zgolj dejstvo, da fizične osebe iz določenih članic za prehod meje potrebujejo vizum iz drugih pa ne, ne velja za izničenje ali zmanjšanje koristi po določilih njenih specifičnih obvez.

2. *Domača zakonodaja*

(a) Ne glede na druge določbe tega sporazuma se članicam ne preprečuje, da sprejemajo varnostne ukrepe, vključno z zaščito investitorjev, vlagateljev, lastnikov polic ali upnikov, ki jim ponudniki finančnih storitev dolgujejo fiduciarne pristojbine, ali ukrepe za zagotovitev integritete in stabilnosti finančnega sistema. Če ti ukrepi niso v skladu z določbami tega sporazuma, se ne smejo uporabljati kot način izogibanja obvez ali obveznosti članice po tem sporazumu.

(b) V tem sporazumu se nič ne sme razlagati kot zahteva, da določena članica razkriva informacije o zadevah in računih posameznih strank ali kake druge zaupne ali zasebne informacije, ki jih imajo javne ustanove.

3. *Priznavanje*

(a) Članica pri določanju, kako naj uporablja svoje ukrepe v zvezi s finančnimi storitvami, lahko prizna varnostne ukrepe katerekoli druge članice. Tako priznanje, doseženo s harmonizacijo ali kako drugače, lahko temelji na sporazumu ali dogovoru z določeno članico, ali pa se lahko da samostojno.

(b) Članica, ki je pogodbenica prihodnjega ali obstoječega sporazuma ali dogovora iz pododstavka (a), da drugim zainteresiranim članicam možnost, da se pogajajo o pristopu k takemu sporazumu ali dogovoru ali da se pogajajo za primerljiv sporazum ali dogovor pod pogojem enake ureditve, nadzora, izvajanja take ureditve, in če je to ustrezno, postopkov, ki se nanašajo na delitev informacij med pogodbenicami sporazuma ali dogovora. Če članica daje priznanje samostojno, mora dati tudi drugim članicam možnost, da dokažejo obstoj takih okoliščin.

(c) Če članica razmišlja o priznanju varnostnih ukrepov katerekoli druge članice, se četrti (b) odstavek VII. člena ne uporablja.

4. *Reševanje sporov*

Ugotovitveni sveti za spore o varnostnih ukrepih in drugih finančnih zadevah imajo potrebno strokovno znanje, ustrezno posebnim finančnim storitvam, ki so predmet spora.

5. *Definicije*

Za namene te priloge:

(a) Finančna storitev je katerakoli storitev finančne narave, ki jo ponudi ponudnik finančnih storitev iz članice. Finančne storitve zajemajo vse zavarovalniške in z zavarovanjem povezane storitve ter vse bančne in druge finančne storitve (razen zavarovanja). Finančne storitve zajemajo te aktivnosti:

Zavarovalniške in z zavarovanjem povezane storitve

(i) neposredno zavarovanje (vključno s sozavarovanjem):

(A) življenjsko;

(B) neživljenjsko (premoženjsko);

(ii) pozavarovanje in retrocesija;

(iii) posredovanje v zavarovalništvu kot je posredništvo in zastopanje;

(iv) pomožne storitve na področju zavarovanja, kot so svetovanje, aktuarske storitve, presoja tveganja in likvidacija škod.

Bančne in druge finančne storitve (razen zavarovanja)

(v) sprejemanje depozitov in drugih denarnih vlog od javnosti;

(vi) vse vrste posojil, vključno s potrošniškimi in hipotekarnimi, faktoring in financiranje poslovnih transakcij;

(vii) finančni lizing;

(viii) opravljanje plačilnega prometa in storitev s posredovanjem denarja, vključno s kreditnimi, debetnimi in plačilnimi karticami, potovalnimi čeki in bančnimi menicami;

(ix) garancije in poroštva;

(x) trgovanje za lastni račun ali za račun strank bodisi na urejenem ali prostem trgu ali drugače z:

(A) instrumenti denarnega trga (vključno s čeki, blagajniškimi zapisi in certifikati);

(B) tuja gotovina;

(C) vključeni finančni derivati, vendar ne omejeno na terminske posle in opcije;

(D) instrumenti tečajnih sprememb in obrestne mere, vključno s swapi in dogovori o obrestni meri;

(E) prenosljivi vrednostni papirji;

(F) drugi vrednostni papirji in finančna sredstva, vključno zlato v palicah;

(xi) sodelovanje pri izdajanju vseh vrst vrednostnih papirjev, vključno z organiziranjem, pripravo in izvedbo odkupa novo izdanih vrednostnih papirjev, kot posrednik (javno ali zasebno) in opravljanje drugih storitev, povezanih s tem izdajanjem;

(xii) posredovanje denarja;

(xiii) upravljanje premoženja kot upravljanje denarja ali portfelja, vse oblike kolektivnega vlaganja, upravljanje pokojninskih skladov, hrambeni, depo in skrbniški posli;

(xiv) storitve kliringa in poravnave finančnih sredstev, vljučno z vrednostnimi papirji, derivativnimi proizvodi in drugimi tržnimi instrumenti;

(xv) dajanje in prenos finančnih informacij, obdelava finančnih informacij in povezanih programov drugih ponudnikov finančnih storitev;

(xvi) svetovanje, posredovanje in opravljanje drugih pomožnih finančnih storitev v zvezi z vsemi dejavnostmi, navedenimi v pododstavkih (v) do (xv), vključno s kreditno boniteto in analizami, raziskave in svetovanje v zvezi z naložbami in portfeljem in svetovanje po akvizicijah, prestrukturiranju podjetij in oblikovanju strategije.

(b) Ponudnik finančnih storitev je vsaka fizična ali pravna oseba članice, ki želi opravljati ali opravlja finančne storitve, toda izraz "ponudnik finančnih storitev" ne vključuje javne ustanove.

(c) "Javna ustanova" je:

(i) vlada, centralna banka ali denarna oblast članice ali ustanova, ki je v lasti ali pod nadzorom članice in pretežno opravlja vladne naloge ali dejavnosti v vladne namene, brez ustanov, ki pretežno opravljajo finančne storitve na tržni podlagi, ali

(ii) zasebna ustanova, ki opravlja naloge, kakršne običajno opravlja centralna banka ali denarna oblast, kadar opravlja te naloge.

DRUGA PRILOGA O FINANČNIH STORITVAH

1. Ne glede na II. člen sporazuma in prvi ter drugi odstavek priloge v zvezi z izjemami II. člena lahko članica v šestdesetih dneh z začetkom štiri mesece po začetku veljavnosti Sporazuma o WTO vpiše v omenjeno prilogo ukrepe v zvezi s finančnimi storitvami, ki niso v skladu s prvim odstavkom II. člena tega sporazuma.

2. Ne glede na XXI. člen sorazuma lahko članica v šestdesetih dneh z začetkom štiri mesece po začetku veljavnosti Sporazuma o WTO izboljša, spremeni ali umakne vse ali del specifičnih obvez glede finančnih storitev, zapisanih v njeni listi obvez.

3. Svet za trgovino s storitvami določi postopke za uporabo prvega in drugega odstavka.

PRILOGA O POGAJANJIH O POMORSKIH PREVOZNIH STORITVAH

1. II. člen in Priloga v zvezi z izjemami II. člena, vključno z zahtevami, da se vpišejo vsi ukrepi, ki so neskladni z načelom države z največjimi ugodnostmi, ki jih bo članica zadržala, za pomorski prevoz, pomožne storitve in dostop ter uporabo pristaniških zmogljivosti začnejo veljati:

(a) na dan izvajanja, ki bo določen na podlagi četrtega odstavka Ministrske odločitve o pogajanjih o storitvah pomorskega prevoza, ali

(b) če pogajanja niso uspešna, na dan končnega poročila Pogajalske skupine o storitvah mednarodnega pomorskega prevoza, ki je predviden v tej Odločitvi.

2. Prvi odstavek se ne uporablja za kakršnekoli specifične obveze o storitvah pomorskega prevoza, vpisane v listo obvez članice.

3. Od konca pogajanja, na katerega se nanaša prvi odstavek, in pred datumom izvajanja lahko članica izboljša, spremeni ali umakne vse ali del specifičnih obvez tega sektorja brez ponudbe kompenzacije ne glede na določbe XXI. člena.

PRILOGA O TELEKOMUNIKACIJAH

1. *Cilji*

Ob priznanju posebnosti telekomunikacijskih storitev, zlasti pa njihove dvojne vloge kot posebnega sektorja gospodarskih dejavnosti in obenem kot prenosne podlage drugim gospodarskim dejavnostim, se članice sporazumejo o tej prilogi s ciljem razčlenitve določb tega sporazuma glede ukrepov, ki vplivajo na dostop do in na uporabo telekomunikacijskih prenosnih omrežij in storitev. Temu primerno ta priloga določa opombe in dopolnilne določbe k sporazumu.

2. *Obseg*

(a) Ta priloga se ne uporablja za vse ukrepe članic, ki vplivajo na dostop do in uporabo javnih telekomunikacijskih prenosnih omrežij in storitev.[1]

(b) Ta priloga se ne uporablja za ukrepe, ki vplivajo na kabelsko ali drugo oddajanje radijskih in televizijskih programov.

(c) V tej prilogi se nič ne razlaga tako:

(i) da se zahteva od članice, da pooblasti ponudnika storitev druge članice, da ustanovi, sestavi, pridobi, zakupi, upravlja ali dobavlja telekomunikacijska prenosna omrežja in storitve, razen tistih, ki so določeni v njeni listi obvez; ali

(ii) da se zahteva od članice (ali da se zahteva od članice, da obvezuje ponudnike storitev pod njeno jurisdikcijo), da ustanovi, sestavi, pridobi, zakupi, upravlja ali dobavlja telekomunikacijska prenosna omrežja in storitve, ki niso na voljo javnosti.

3. *Definicije*

V tej prilogi:

(a) so "telekomunikacije" oddajanje in sprejemanje signalov s kakršnimikoli elektromagnetnimi sredstvi;

(b) je "javna telekomunikacijska storitev" vsaka prenosna telekomunikacijska storitev, za katero članica izrecno ali dejansko zahteva, da je dostopna javnosti. Take storitve lahko med drugim vključujejo telegraf, telefon, teleks in prenos podatkov, ki običajno vključuje prenos informacij, ki jih pošiljajo stranke med dvema ali več točkami brez spremembe oblike ali vsebine teh informacij;

(c) je "javno telekomunikacijsko prenosno omrežje" javna telekomunikacijska infrastruktura, ki omogoča telekomunikacije med določenimi omrežnimi terminali;

(d) so "podjetniške komunikacije" telekomunikacije, s katerimi podjetje komunicira interno ali s svojimi podružnicami in na podlagi domače zakonodaje s povezanimi podjetji. Za te namene "podružnice" in, če je to ustrezno, "povezana podjetja" definira vsaka članica posebej. "Podjetniške komunikacije" v tej prilogi izključujejo tržne ali netržne storitve, ki se opravljajo za podjetja, ki niso podružnice ali povezana podjetja oziroma ki se opravljajo za stranke ali možne stranke;

(e) vsako sklicevanje na odstavek ali pododstavek tega dodatka vključuje vse njegove podrazdelke.

4. *Preglednost*

Pri uporabi III. člena tega sporazuma vsaka članica zagotovi, da so vsi ustrezni podatki o pogojih dostopa do javnih telekomunikacijskih prenosnih omrežij in storitev ter njihove uporabe dostopni javnosti, vključno s: cenami in drugimi pravili in pogoji za opravljanje storitev; specifikacijami o tehničnih povezavah takih omrežij in storitev; podatki o organih, odgovornih za pripravo in sprejemanje standardov takega dostopa in uporabe; pogoji, ki veljajo za priključitev terminala ali druge opreme; in notifikacijami, zahtevami registracije ali izdajanja dovoljenj, če obstajajo.

5. *Dostop do in uporaba javnih prenosnih telekomunikacijskih omrežij in storitev*

(a) Vsaka članica zagotovi, da ima katerikoli ponudnik storitev katerekoli članice omogočen dostop do in uporabo javnih telekomunikacijskih prenosnih omrežij in storitev po razumnih in nediskriminacijskih določilih in pogojih, ki so vključeni v njeno listo obvez. Ta obveznost se med drugim uporablja od pododstavka (b) do (f).[2]

(b) Vsaka članica zagotovi, da imajo ponudniki storitev iz katerekoli druge članic dostop do in možnost uporabe kateregakoli telekomunikacijskega prenosnega omrežja in storitve, ki se ponujajo v ali čez tiste članice, vključno z zasebno zakupljenimi mrežami, ter s tem namenom na podlagi pododstavkov (e) in (f) zagotovi, da so takim ponudnikom zagotovljeni:

(i) nakup ali zakup ter priključitev terminala ali druge opreme, ki se povezujejo z omrežjem, ki je nujno potrebno za za ponudnikovo storitev;

(ii) medsebojno povezovanje zasebno zakupljenih ali lastniških mrež z javnimi prenosnimi telekomunikacijskimi omrežji in storitvami ali z mrežami, ki so v zakupu ali lasti drugih ponudnikov storitev;

(iii) uporaba delovnih protokolov pri ponudbi katerekoli storitve po izbiri ponudnika, razen tistih, ki so potrebni, da se zagotovi dostop do telekomunikacijskega prenosnega omrežja in storitev javnosti.

(c) Vsaka članica zagotovi, da lahko ponudniki storitev katerekoli druge članice uporabijo javna telekomunikacijska prenosna omrežja in storitve za prenos informacij v in čez meje, vključno s podjetniškimi komunikacijami takih ponud-

[1] Ta odstavek se razume tako, da vsaka članica zagotavlja, da se obveznosti iz te priloge uporabljajo glede ponudnikov javnih telekomunikacijskih prenosnih omrežij in storitev z vsemi potrebnimi ukrepi.

[2] Izraz "nediskriminacijski" se razume tako, da se nanaša na obravnavo države z največjimi ugodnostmi in nacionalno obravnavo, kot je opredeljena v sporazumu, in na sektorsko specifično rabo izraza "določila in pogoji, ki niso manj ugodni od tistih, ki veljajo za kateregakoli drugega uporabnika enakih javnih telekomunikacijskih prenosnih omrežij ali storitev v enakih okoliščinah".

nikov storitev in za dostop do podatkov, vsebovanih v podatkovnih bazah ali kako drugače shranjenih v obliki, ki omogoča dostop do podatkov s čitalniki na ozemlju katerekoli članice. Vsak nov ali spremenjen ukrep članice, ki bistveno vpliva na tako uporabo, se sporoči in je predmet posvetovanja v skladu z ustreznimi določbami sporazuma.

(d) Ne glede na določbe prejšnjega odstavka lahko članica sprejema take ukrepe, ki so potrebni za zagotovitev varnosti in zaupnosti sporočil, pod pogojem, da se taki ukrepi ne uporabljajo kot sredstvo samovoljne ali neupravičene diskriminacije ali prikritega omejevanja trgovine s storitvami.

(e) Vsaka članica zagotovi, da se za dostop do javnih telekomunikacijskih omrežij in storitev ne postavljajo nobeni pogoji, razen tistih, potrebnih za:

(i) zaščito odgovornosti za javne storitve ponudnikov javnih telekomunikacijskih prenosnih omrežij in storitev, zlasti njihove zmožnosti, da dajejo svoja omrežja ali storitve na razpolago javnosti;

(ii) zaščito tehnične celovitosti javnih telekomunikacijskih prenosnih omrežij ali storitev; ali

(iii) zagotovitev, da ponudniki storitev katerekoli druge članice ne ponujajo storitev, razen če jim je dovoljeno na podlagi obvez v listi obvez članice.

(f) Pod pogojem, da izpolnjujejo merila, določena v odstavku (e), lahko pogoji za dostop do in uporabo javnih prenosnih telekomunikacijskih omrežij in storitve vključujejo:

(i) omejitve preprodaje ali skupne uporabe takih storitev;

(ii) zahteve po uporabi predpisanih tehničnih povezav, vključno s protokoli za medsebojno povezovanje takih omrežij in storitev;

(iii) če je to potrebno, zahteve po vzajemni združljivosti takih storitev in zahteve v podporo ciljev v sedmem (a) odstavku;

(iv) odobritev tipa terminala ali druge opreme, ki je v povezavi z omrežjem in tehnične zahteve v zvezi s priključitvijo take opreme na taka omrežja;

(v) omejitve medsebojnega povezovanja mrež v zasebni lasti ali zakupu s takimi omrežji ali storitvami ali z mrežami v zakupu ali lasti drugih ponudnikov storitev; ali

(vi) notifikacijo, registracijo ali izdajanje dovoljenj.

(g) Ne glede na določbe prejšnjih odstavkov v tem delu lahko članica država v razvoju v skladu s stopnjo svoje razvitosti določi razumne pogoje za dostop in uporabo javnih telekomunikacijskih prenosnih omrežij in storitev, ki so potrebni za izboljšanje domače telekomunikacijske infrastrukture in storitvenih zmogljivosti ter za povečanje njene udeležbe v mednarodni trgovini s telekomunikacijskimi storitvami. Taki pogoji so določeni v listi obvez te članice.

6. *Tehnično sodelovanje*

(a) Članice priznavajo, da je učinkovita, tehnično napredna telekomunikacijska infrastruktura v državah, zlasti državah v razvoju, bistvenega pomena za širitev njihove trgovine s storitvami. V ta namen članice podpirajo in spodbujajo najširšo udeležbo razvitih držav in držav v razvoju in njihovih ponudnikov javnih telekomunikacijskih prenosnih omrežij in storitev ter drugih ustanov v razvojnih programih mednarodnih in regionalnih organizacij, vključno z Mednarodno telekomunikacijsko zvezo, Programom Združenih narodov za razvoj in Mednarodno banko za obnovo in razvoj.

(b) Članice spodbujajo in podpirajo telekomunikacijsko sodelovanje med državami v razvoju na mednarodni, regionalni in podregionalni ravni.

(c) V sodelovanju z ustreznimi mednarodnimi organizacijami dajejo članice, če je to izvedljivo, državam v razvoju informacije o telekomunikacijskih storitvah in razvoju telekomunikacij in informacijske tehnologije, da bi tako pomagale pri izboljšanju njihovih domačih telekomunikacijskih storitev.

(d) Članice posvečajo posebno pozornost priložnostim najmanj razvitih držav, da spodbudijo tuje ponudnike telekomunikacijskih storitev k pomoči pri prenosu tehnologije, pri usposabljanju in drugih dejavnostih, ki podpirajo razvoj njihove telekomunikacijske infrastrukture in širjenje njihove trgovine s telekomunikacijskimi storitvami.

7. *Razmerja z mednarodnimi organizacijami in sporazumi*

(a) Članice priznavajo pomembnost mednarodnih standardov za globalno združljivost in vzajemnost telekomunikacijskih omrežij in storitev in si prizadevajo podpirati take standarde z delom ustreznih mednarodnih teles, vključno z Mednarodno telekomunikacijsko zvezo in Mednarodno organizacijo za standardizacijo.

(b) Članice priznavajo vlogo, ki jo imajo medvladne in nevladne organizacije in sporazumi pri zagotavljanju učinkovitega opravljanja domačih in globalnih telekomunikacijskih storitev, zlasti Mednarodne telekomunikacijske zveze. Če ustreza, članice storijo vse potrebno za posvetovanja s takimi organizacijami o zadevah, ki izhajajo iz izvajanja te priloge.

PRILOGA O POGAJANJIH O OSNOVNIH TELEKOMUNIKACIJAH

1. II. člen in Priloga v zvezi z izjemami II. člena, vključno z zahtevami, da se v prilogi vpišejo vsi ukrepi, ki niso v skladu z obravnavo države z največjimi ugodnostmi in jih članica namerava ohranjati, začnejo veljati za osnovne telekomunikacije šele:

(a) na dan izvajanja, ki bo določen na podlagi petega odstavka Ministrske odločitve o pogajanjih o osnovnih telekomunikacijah; ali

(b) če ta pogajanja niso uspešna, na dan končnega poročila Pogajalske skupine za osnovne telekomunikacije, ki je predviden v tej Odločitvi.

2. Prvi odstavek se ne uporablja za nobeno specifično obvezo glede osnovnih telekomunikacij, zapisanih v listi obvez članice.

REPUBLIKA SLOVENIJA

Lista specifičnih obvez

(Ta lista je verodostojna le v angleškem jeziku)

Opombi:
1) Razvrstitev po sektorjih temelji na začasni Razvrstitvi proizvodov (Central Product Classification - CPC) iz leta 1991, ki jo je izdal Statistični urad Združenih narodov, medtem ko je razvrščanje v skladu z Razvrstitveno listo storitvenih sektorjev (MTN.GNS/W/120 iz julija 1991). Oznaka ** pomeni, da posamezna razvrstitev kaže, da je določena storitev le del skupine dejavnosti, ki so zajete v tem CPC.
2) Zapis "Brez obvez*" pomeni, da obvez ni zaradi pomanjkanja tehničnih možnosti.

December 1994

REPUBLIKA SLOVENIJA – LISTA SPECIFIČNIH OBVEZ

Oblike ponudbe: 1) Čezmejna menjava 2) Gibanje potrošnikov 3) Tržna prisotnost 4) Prisotnost fizične osebe

Sektor ali podsektor	Omejitve dostopa na trg	Omejitve nacionalne obravnave	Dodatne obveze
I. VODORAVNE OBVEZE			
VELJA ZA VSE SEKTORJE, VKLJUČENE V TO LISTO			
	Vlaganja:		
	3) a) Za tujo udeležbo v družbah, ki so v postopku lastninjenja po Zakonu o lastninskem preoblikovanju podjetij, ki presega 10-odstotni delež skupne vrednosti družbe, je potrebno dovoljenje in je omejena z zneskom, ki ga določi vlada.	3) Tuje podjetje lahko ustanovi podružnico, če je matično podjetje vpisano v register pri sodišču v državi porekla vsaj eno leto.	
		Subvencije:	
	b) Za vsak tuj nakup, ki presega 10-odstotni delež kapitala ali glasovalnih pravic v obstoječem slovenskem podjetju, ki je že lastninsko preoblikovano po Zakonu o lastninskem preoblikovanju podjetij, katerega skupna bilanca presega 5 milijonov ekujev, in za vsak nakup kapitalskega vložka v obstoječem slovenskem podjetju, ki presega 1.25 milijona ekujev, če se ta kapitalski vložek uporabi za nakup samostojnega dela ali obrata podjetja, je potrebno predhodno dovoljenje vlade. Presoja vlaganj pod a) in b) izhaja iz učinkov na gospodarstvo države. Pri presoji teh vlaganj se upoštevajo ta merila: – položaj družbe na domačem in tujih trgih s stališča monopolnega položaja in vpliv tujega vlagatelja na monopolni položaj obstoječe družbe v skladu z Zakonom o varstvu konkurence; – vrednost pridobljenega deleža ali delnic v odnosu do konkurenčne sposobnosti družbe na domačem in tujih trgih; – potencialno ogrožanje lojalne konkurence z vključitvijo tujega vlagatelja; – preprečitev pridobitve ali prevzema, ki ima lahko za posledico zaprtje sicer donosne in konkurenčne proizvodnje in odpravo notranje in zunanje konkurence v Republiki Sloveniji za določene proizvode ali trge; – trenutna lastninska sestava družbe; – učinek nakupa na razvoj družbe ob upoštevanju načina in obdobja nakupa.	Ni omejitev, razen za podružnice, ki jih v Republiki Sloveniji ustanovi tuje podjetje. Sposobnost pridobivanja subvencij Republike Slovenije je lahko omejena na pravne osebe, ki se ustanovijo na ozemlju Republike Slovenije ali na določenem ožjem zemljepisnem območju. Brez obvez glede subvencij, ki so namenjene raziskovalni dejavnosti in razvoju. Ponudba storitve oziroma njeno subvencioniranje v javnem sektorju ni kršitev te obveze. Vsaj polovica navadnih članov upravnega odbora morajo biti državljani Republike Slovenije. Izvršni direktor družbe z omejeno odgovornostjo ali vsaj prokurist mora biti slovenski državljan. Neslovenski državljan, direktor podružnice, ki jo v Sloveniji ustanovi tuja pravna oseba, mora imeti stalno bivališče v Republiki Sloveniji.	

Oblike ponudbe: 1) Čezmejna menjava 2) Gibanje potrošnikov 3) Tržna prisotnost 4) Prisotnost fizične osebe

Sektor ali podsektor	Omejitve dostopa na trg	Omejitve nacionalne obravnave	Dodatne obveze
	Za vlaganja pod a) se upoštevajo ta dodatna merila: – pomen blagovne znamke; – učinek tujega vlaganja v družbo na nakup nove tehnologije ali sodobne opreme; – učinek tujega vlaganja v družbo na pridobitev dodatnih finančnih sredstev kot obratni ali fiksni kapital; – učinek tujega vlaganja v družbo na vzdrževanje tekoče ravni zaposlovanja ali zaposlovanja novega osebja. Za finančne storitve izdajo pristojni organi, navedeni v specifičnih obvezah po sektorjih, dovoljenje v skladu s pogoji, ki so navedeni v specifičnih obvezah po sektorjih. Ni omejitev za ustanovitev novih podjetij (nova - "greenfield" vlaganja). Storitve, ki se obravnavajo v Republiki Sloveniji kot javne službe na nacionalni ali lokalni ravni, so lahko predmet javnih monopolov ali izključnih pravic, ki se dodeljujejo zasebnim izvajalcem, kot je to določeno v specifičnih obvezah po sektorjih. <u>Nepremičnine:</u> Pravne osebe, ustanovljene v Republiki Sloveniji z udeležbo tujega kapitala, lahko pridobijo samo nepremičnine, potrebne za opravljanje poslovne dejavnosti, za katero so ustanovljene. Podružnice,* ki jih ustanovijo tuje osebe v Republiki Sloveniji, lahko pridobijo samo nepremičnine, razen zemljišč, ki so potrebne za opravljanje njihove poslovne dejavnosti, za katero so ustanovljene. Za lastništvo na nepremičninah v obmejnem pasu 10 km, ki ga lahko pridobijo podjetja, v katerih večinski delež kapitala ali glasovalnih pravic neposredno ali posredno pripada pravnim osebam ali državljanom druge članice, je potrebno posebno dovoljenje.		

* Po Zakonu o gospodarskih družbah podružnica, ustanovljena v Republiki Sloveniji, ne velja za pravno osebo, vendar se, kar zadeva njeno poslovanje, obravnava enako kot sestrska družba, kar je v skladu z odstavkom (g) člena XXVIII Splošnega sporazuma o trgovini s storitvami.

Oblike ponudbe: 1) Čezmejna menjava 2) Gibanje potrošnikov 3) Tržna prisotnost 4) Prisotnost fizične osebe

Sektor ali podsektor	Omejitve dostopa na trg	Omejitve nacionalne obravnave	Dodatne obveze
	4) Brez obvez, razen za ukrepe, ki se nanašajo na vstop ali začasno bivanje fizičnih oseb, brez zahtevkov po preverjanju gospodarskih potreb,* ki sodijo v eno izmed teh kategorij: Poslovni obiskovalec Fizična oseba, ki biva v Republiki Sloveniji, brez pridobivanja dohodka od Republike Slovenije ali v njej brez neposrednega opravljanja prodaje javnosti ali opravljanja storitev, temveč z namenom sodelovanja na poslovnih sestankih, vzpostavitve poslovnih stikov, vključno s pogajanji v zvezi z opravljanjem storitev ali podobnih dejavnosti, vključno s tistimi, ki so v zvezi s pripravami na tržno prisotnost v Republiki Sloveniji. Trajanje začasnega bivanja je omejeno z 90-dnevno vizo.	4) Brez obvez, razen za ukrepe, ki se nanašajo na kategorije fizičnih oseb, ki so določene v stolpcu, ki obravnava dostop na trg. Če je katerakoli subvencija dostopna fizičnim osebam, je njena dostopnost lahko omejena na državljane Republike Slovenije.	

* Vse druge zahteve, ki izhajajo iz zakonov in predpisov, ki se nanašajo na vstop, bivanje, delo in ukrepe socialne varnosti, se bodo še naprej izpolnjevale, vključno s predpisi, ki se nanašajo na čas bivanja, najnižji osebni dohodek kakor tudi kolektivne pogodbe o osebnem dohodku.

Gibanje oseb znotraj združb*

Fizične osebe druge članice, ki so zaposlene pri pravni osebi druge članice za čas, ki ni krajši od treh let pred njenim vstopom, ali pa so v družabniškem razmerju (izključujoč večinske delničarje):

a) Fizične osebe, ki zasedajo vodilni položaj in v glavnem upravljajo podjetje pod splošnim nadzorom in s potrebnimi navodili upravnega odbora ali odbora delničarjev podjetja ali podobno, vključno z:
– vodenjem podjetja, sektorja ali pododdelka podjetja;
– nadzorom in kontrolo dela drugih nadzornih, poklicnih ali operativnih uslužbencev;
– s pooblastilom za najemanje in odpuščanje delavcev ali drugih kadrovskih zadev.

b) Fizične osebe, ki delajo pri pravni osebi in imajo posebno znanje, ki je bistvenega pomena za storitve podjetja, za raziskovalno opremo, metode ali upravljanje. Pri presoji takega posebnega znanja se ne upošteva samo znanje, ki je specifično za podjetje, temveč tudi ali ima oseba visoke kvalifikacije, ki se nanašajo na vrsto dela ali poklica, ki zahteva specifično tehnično znanje, vključno s članstvom v strokovnih združenjih.

Trajanje začasnega bivanja za "gibanje oseb znotraj družb" je omejena s "poslovno vizo" in dovoljenjem za stalno bivanje, ki se lahko podeli za obdobje do 1 leta z možnostjo podaljšanja.

* "Gibanje oseb znotraj združb" pomeni začasno premestitev fizične osebe, ki dela pri pravni osebi, razen nepridobitne organizacije, ki je ustanovljena na ozemlju članice Svetovne trgovinske organizacije (WTO) in je v zvezi z opravljanjem storitve v obliki tržne prisotnosti na ozemlju Republike Slovenije; te pravne osebe morajo imeti glavni sedež poslovanja na ozemlju članice WTO in premestitev mora biti k neki organizacijski obliki te pravne osebe, ki dejansko opravlja podobne storitve na ozemlju Republike Slovenije.

Oblike ponudbe: 1) Čezmejna menjava 2) Gibanje potrošnikov 3) Tržna prisotnost 4) Prisotnost fizične osebe

Sektor ali podsektor	Omejitve dostopa na trg	Omejitve nacionalne obravnave	Dodatne obveze
II. SPECIFIČNE OBVEZE PO SEKTORJIH			
1. POSLOVNE STORITVE			
A. Storitve samostojnih poklicev			
a) Pravne storitve (CPC 861)	1) Brez obvez glede priprave pravnih dokumentov.	1) Brez obvez glede priprave pravnih dokumentov.	
	2) Ni omejitev.	2) Ni omejitev.	
	3) Tržna prisotnost je omejena na samostojnega odvetnika ali na odvetniške družbe z neomejeno odgovornostjo (družabništvo). Samo odvetniki z dovoljenjem za opravljanje odvetniškega poklica so lahko družabniki odvetniške družbe. Za dejavnosti v zvezi z nacionalnim pravom se zahteva sprejem v Odvetniško zbornico Republike Slovenije. Za ustanovitev odvetniške družbe je potrebno soglasje Odvetniške zbornice.		
	Tuji državljan, ki izpolnjuje pogoje za opravljanje odvetniškega poklica po pravu države, katere državljan je, se vpiše v imenik odvetnikov ob pogoju, da opravi preizkus znanja o poznavanju pravnega reda Republike Slovenije in da tekoče obvlada slovenski jezik.	3) Tuji državljan, ki izpolnjuje pogoje za opravljanje odvetniškega poklica po pravu države, katere državljan je, se vpiše v imenik odvetnikov ob pogoju, da opravi preizkus znanja o poznavanju pravnega reda Republike Slovenije in da tekoče obvlada slovenski jezik.	
	Notarji so fizične osebe, ki izvajajo javno storitev. Koncesijske pravice se lahko pridobijo z dovoljenjem.		
	4) Brez obvez, z izjemo določil I. dela.	4) Brez obvez, z izjemo določil I. dela.	
b) Računovodske, revizijske in knjigovodske storitve* (CPC 862)	1) Brez obvez.	1) Brez obvez.	
	2) Ni omejitev.	2) Ni omejitev.	
	3) Tržna prisotnost mora imeti obliko pravne osebe. Delež tujih oseb v revizijskih družbah ne sme presegati 49 odstotkov kapitalskega vložka. Opravljanje dejavnosti le z revizijskimi družbami.	3) Ni omejitev.	
	4) Brez obvez, z izjemo določil I. dela, in so predmet omejitev le za fizične osebe, zaposlene pri pravnih osebah.	4) Brez obvez, z izjemo določil I. dela in določil v stolpcu, ki obravnava dostop na trg.	
* V skladu z Zakonom o revidiranju, opravljajo revizijske storitve samo družbe in ne fizične osebe.			
d) Arhitektonske storitve (CPC 8671)	1) Brez obvez.	1) Ni omejitev.	
	2) Ni omejitev.	2) Ni omejitev.	
	3) Ni omejitev.	3) Ni omejitev.	
	4) Brez obvez, z izjemo določil I. dela.	4) Brez obvez, z izjemo določil I. dela.	

Oblike ponudbe: 1) Čezmejna menjava 2) Gibanje potrošnikov 3) Tržna prisotnost 4) Prisotnost fizične osebe

Sektor ali podsektor	Omejitve dostopa na trg	Omejitve nacionalne obravnave	Dodatne obveze
e) Inženirske storitve (CPC 8672)	1) Ni omejitev.	1) Ni omejitev za storitve projektiranja; predložitev načrtov v odobritev pristojnim organom zahteva sodelovanje z registriranim ponudnikom storitev projektiranja.	
	2) Ni omejitev.	2) Ni omejitev.	
	3) Ni omejitev.	3) Ni omejitev.	
	4) Brez obvez, z izjemo določil I. dela.	4) Brez obvez, z izjemo določil I. dela.	
f) Povezane inženirske storitve (CPC 8673)	1) Ni omejitev.	1) Ni omejitev za storitve projektiranja; predložitev načrtov v odobritev pristojnim organom zahteva sodelovanje z registriranim ponudnikom storitev projektiranja.	
	2) Ni omejitev.	2) Ni omejitev.	
	3) Ni omejitev.	3) Ni omejitev.	
	4) Brez obvez, z izjemo določil v I. delu.	4) Brez obvez, z izjemo določil v I. delu.	
h) Medicinske* in zobozdravstvene storitve (CPC 93121, 93122**)	1) Brez obvez.	1) Brez obvez.	
	2) Ni omejitev.	2) Ni omejitev.	
	3) Zdravnik mora biti član Zdravniške zbornice. Zdravniki, ki niso slovenski državljani, postanejo člani Zdravniške zbornice ob pogoju, da imajo dovoljenje za opravljanje zdravniškega poklica v drugi članici in da obvladajo slovenski jezik.**	3) Ni omejitev.	
	4) Brez obvez, z izjemo določil I. dela.	4) Brez obvez, z izjemo določil I. dela.	

* razen teh dejavnosti: socialno-medicinske, sanitarne, epidemiološke, zdravstveno-ekološke storitve; preskrba s krvjo, krvni pripravki in organi za presajanje; obdukcija.
** Ministrstvo za zdravstvo izda dovoljenje za ustanovitev pravne osebe. Za vstop v mrežo javnega zdravstva izda koncesijo Zavod za zdravstveno varstvo Republike Slovenije.

B. Računalniške in sorodne storitve			
a) Svetovalne storitve, ki se nanašajo na inštalacijo računalniške opreme (CPC 841)	1) Ni omejitev.	1) Ni omejitev.	
	2) Ni omejitev.	2) Ni omejitev.	
	3) Ni omejitev.	3) Ni omejitev.	
	4) Brez obvez, z izjemo določil I. dela.	4) Brez obvez, z izjemo določil I. dela.	
b) Storitve uporabe programske opreme (CPC 842)	1) Ni omejitev.	1) Ni omejitev.	
	2) Ni omejitev.	2) Ni omejitev.	
	3) Ni omejitev.	3) Ni omejitev.	
	4) Brez obvez, z izjemo določil I. dela.	4) Brez obvez, z izjemo določil I. dela.	
c) Storitve računalniških obdelav (CPC 843)	1) Ni omejitev.	1) Ni omejitev.	
	2) Ni omejitev	2) Ni omejitev.	
	3) Ni omejitev.	3) Ni omejitev.	
	4) Brez obvez, z izjemo določil I. dela.	4) Brez obvez, z izjemo določil I. dela.	

Oblike ponudbe: 1) Čezmejna menjava 2) Gibanje potrošnikov 3) Tržna prisotnost 4) Prisotnost fizične osebe

Sektor ali podsektor	Omejitve dostopa na trg	Omejitve nacionalne obravnave	Dodatne obveze
d) Storitve, ki izvirajo iz baz podatkov (CPC 844)	1) Ni omejitev.	1) Ni omejitev.	
	2) Ni omejitev.	2) Ni omejitev.	
	3) Ni omejitev.	3) Ni omejitev.	
	4) Brez obvez, z izjemo določil I. dela.	4) Brez obvez, z izjemo določil I. dela.	
e) Drugo (CPC 845+849)	1) Ni omejitev.	1) Ni omejitev.	
	2) Ni omejitev.	2) Ni omejitev.	
	3) Ni omejitev.	3) Ni omejitev.	
	4) Brez obvez, z izjemo določil I. dela.	4) Brez obvez, z izjemo določil I. dela.	
C. Raziskovalne in razvojne storitve*			
a) Raziskovalne in razvojne storitve v naravoslovnih vedah (CPC 851)	1) Ni omejitev.	1) Ni omejitev.	
	2) Ni omejitev.	2) Ni omejitev.	
	3) Ni omejitev.	3) Ni omejitev.	
	4) Brez obvez, z izjemo določil I. dela.	4) Brez obvez, z izjemo določil I. dela.	
b) Raziskovalne in razvojne storitve v družboslovnih in humanističnih vedah (CPC 852)	1) Ni omejitev.	1) Ni omejitev.	
	2) Ni omejitev.	2) Ni omejitev.	
	3) Ni omejitev.	3) Ni omejitev.	
	4) Brez obvez, z izjemo določil I. dela.	4) Brez obvez, z izjemo določil I. dela.	
c) Interdisciplinarne raziskovalne in razvojne storitve (CPC 853)	1) Ni omejitev.	1) Ni omejitev.	
	2) Ni omejitev.	2) Ni omejitev.	
	3) Ni omejitev.	3) Ni omejitev.	
	4) Brez obvez, z izjemo določil I. dela.	4) Brez obvez, z izjemo določil I. dela.	

* Javna služba obstaja; koncesijske pravice se lahko dajejo zasebnim izvajalcem s sedežem v Republiki Sloveniji.

E. Storitve izposojanja/ lizing brez upravljavcev			
a) Storitve v zvezi z ladjami (CPC 83103)	1) Ni omejitev.	1) Ni omejitev.	
	2) Ni omejitev.	2) Ni omejitev.	
	3) Ni omejitev.	3) Ni omejitev.	
	4) Brez obvez, z izjemo določil I. dela.	4) Brez obvez, z izjemo določil I. dela.	
b) Storitve v zvezi z letali (CPC 83104)	1) Ni omejitev.	1) Ni omejitev.	
	2) Ni omejitev.	2) Ni omejitev.	
	3) Morajo biti registrirana v registru letal Republike Slovenije, letalo mora biti ali v lasti pravne ali fizične osebe, ki ustreza posebnim nacionalnim ali domicilnim merilom, ki se tudi uporabljajo za člane posadke.	3) Ni omejitev.	
	4) Brez obvez, z izjemo določil I. dela.	4) Brez obvez, z izjemo določil I. dela.	

Oblike ponudbe: 1) Čezmejna menjava 2) Gibanje potrošnikov 3) Tržna prisotnost 4) Prisotnost fizične osebe

Sektor ali podsektor	Omejitve dostopa na trg	Omejitve nacionalne obravnave	Dodatne obveze
c) Storitve v zvezi z drugo prevozno opremo (CPC 83102, 83105)	1) Brez obvez.	1) Ni omejitev.	
	2) Ni omejitev.	2) Ni omejitev.	
	3) Ni omejitev.	3) Ni omejitev.	
	4) Brez obvez, z izjemo določil I. dela.	4) Brez obvez, z izjemo določil I. dela.	
d) Storitve v zvezi z drugimi stroji in opremo (CPC 83106, 83107, 83108, 83109)	1) Ni omejitev.	1) Ni omejitev.	
	2) Ni omejitev.	2) Ni omejitev.	
	3) Ni omejitev.	3) Ni omejitev.	
	4) Brez obvez, z izjemo določil I. dela.	4) Brez obvez, z izjemo določil I. dela.	
F. Druge poslovne storitve			
a) Storitve oglaševanja, ki ne vključujejo neposrednega oglaševanja, zunanjega oglaševanja in ne vključujejo storitev za blago, za katero je potrebno uvozno dovoljenje in ki izključuje farmacevtske proizvode, alkohol, tobak, strupe, razstrelivo, orožje in strelivo (8711**, 8712**)	1) Ni omejitev.	1) Ni omejitev.	
	2) Ni omejitev.	2) Ni omejitev.	
	3) Ni omejitev.	3) Ni omejitev.	
	4) Brez obvez, z izjemo določil I. dela.	4) Brez obvez, z izjemo določil I. dela.	
b) Tržne raziskave in raziskave javnega mnenja (CPC 864)	1) Ni omejitev.	1) Ni omejitev.	
	2) Ni omejitev.	2) Ni omejitev.	
	3) Ni omejitev.	3) Ni omejitev.	
	4) Brez obvez, z izjemo določil I. dela.	4) Brez obvez, z izjemo določil I. dela.	
c) Storitve upravljanja in svetovanja (CPC 865)	1) Ni omejitev.	1) Ni omejitev.	
	2) Ni omejitev.	2) Ni omejitev.	
	3) Ni omejitev.	3) Ni omejitev.	
	4) Brez obvez, z izjemo določil I. dela.	4) Brez obvez, z izjemo določil I. dela.	
d) Storitve v zvezi z upravljanjem in svetovanjem (CPC 866)	1) Ni omejitev.	1) Ni omejitev.	
	2) Ni omejitev.	2) Ni omejitev.	
	3) Ni omejitev.	3) Ni omejitev.	
	4) Brez obvez, z izjemo določil I. dela.	4) Brez obvez, z izjemo določil I. dela.	
e) Storitve tehničnega preizkušanja in analiz* (CPC 8676)	1) Ni omejitev.	1) Ni omejitev.	
	2) Ni omejitev.	2) Ni omejitev.	
	3) Ni omejitev.	3) Ni omejitev.	
	4) Brez obvez, z izjemo določil I. dela.	4) Brez obvez, z izjemo določil I. dela.	
j) Storitve, ki se nanašajo na distribucijo energije - omejeno na plin* (CPC 887**)	1) Ni omejitev.	1) Ni omejitev.	
	2) Ni omejitev.	2) Ni omejitev.	
	3) Ni omejitev.	3) Ni omejitev.	
	4) Brez obvez, z izjemo določil I. dela.	4) Brez obvez, z izjemo določil I. dela.	

* Obstaja javna služba; koncesijske pravice se lahko dajejo zasebnim izvajalcem s sedežem v Republiki Sloveniji.

Oblike ponudbe: 1) Čezmejna menjava 2) Gibanje potrošnikov 3) Tržna prisotnost 4) Prisotnost fizične osebe

Sektor ali podsektor	Omejitve dostopa na trg	Omejitve nacionalne obravnave	Dodatne obveze
n) Vzdrževanje in popravila opreme (niso vključeni morska plovila, letala in druga prevozna oprema) (CPC 633+8861-8866)	1) Ni omejitev. 2) Ni omejitev. 3) Ni omejitev. 4) Brez obvez, z izjemo določil I. dela.	1) Ni omejitev. 2) Ni omejitev. 3) Ni omejitev. 4) Brez obvez, z izjemo določil I. dela.	
p) Fotografske storitve (CPC 875)	1) Ni omejitev. 2) Ni omejitev. 3) Ni omejitev 4) Brez obvez, z izjemo določil I. dela.	1) Ni omejitev. 2) Ni omejitev. 3) Ni omejitev. 4) Brez obvez z izjemo določil I. dela.	
2. KOMUNIKACIJSKE STORITVE			
B. Kurirske storitve samo storitve posebne dostave (CPC 7512**)	1) Brez obvez. 2) Ni omejitev. 3) Ni omejitev. 4) Brez obvez, z izjemo določil I. dela.	1) Brez obvez. 2) Ni omejitev. 3) Ni omejitev. 4) Brez obvez, z izjemo določil I. dela.	
C. Telekomunikacijske storitve			
Postavitev in uporaba telekomunikacijske infrastukture, vključno z zvočno telefonijo, paketnim prenosom podatkov in prenosom podatkov s preklapljanjem linij, telegraf, teleks, prenosni radijski telefon, satelitske in storitve osebnega klica (paging) so izključene (javni monopol).			
Storitev z dodano vrednostjo obsega:			
h) Elektronsko pošto (CPC 7523**) i) Glasovno pošto (CPC 7523**) j) On-line informacije in uporaba baz podatkov (CPC 7523**) l) Storitve faksimila z dodano vrednostjo, vključno s shranjevanjem in posredovanjem ter shranjevanjem in vračilom (CPC 7523**)	1) Ni omejitev od 1. januarja 1998. 2) Ni omejitev. 3) Tuja udeležba ne sme presegati 99 odstotkov kapitalskega vložka. Dovoljenje za delovanje je pogojeno z obveznostjo izvajalca storitev z dodano vrednostjo, da uporablja osnovno telekomunikacijsko mrežo. 4) Brez obvez, z izjemo določil I. dela.	1) Ni omejitev od 1. januarja 1998. 2) Ni omejitev. 3) Ni omejitev. 4) Brez obvez, z izjemo določil I. dela.	
m) Pretvorba kod in protokolov (CPC n.a.)			
3. GRADBENE IN GRADBENIM SORODNE STORITVE			
A. Splošna gradbena dela, visoke gradnje (CPC 512)	1) Brez obvez.* 2) Ni omejitev. 3) Ni omejitev. 4) Brez obvez, z izjemo določil I. dela; zahteva se tržna prisotnost.	1) Brez obvez.* 2) Ni omejitev. 3) Ni omejitev. 4) Brez obvez, z izjemo določil I. dela; zahteva se tržna prisotnost.	

Oblike ponudbe: 1) Čezmejna menjava 2) Gibanje potrošnikov 3) Tržna prisotnost 4) Prisotnost fizične osebe

Sektor ali podsektor	Omejitve dostopa na trg	Omejitve nacionalne obravnave	Dodatne obveze
B. Splošna dela, nizke gradnje (CPC 513)	1) Brez obvez.*	1) Brez obvez.*	
	2) Ni omejitev.	2) Ni omejitev.	
	3) Ni omejitev.	3) Ni omejitev.	
	4) Brez obvez, z izjemo določil I. dela; zahteva se tržna prisotnost.	4) Brez obvez, z izjemo določil I. dela; zahteva se tržna prisotnost.	
C. Inštalacije in montažna dela (CPC 514, 516)	1) Brez obvez.*	1) Brez obvez.*	
	2) Ni omejitev.	2) Ni omejitev.	
	3) Ni omejitev.	3) Ni omejitev.	
	4) Brez obvez, z izjemo določil I. dela; zahteva se tržna prisotnost.	4) Brez obvez, z izjemo določil I. dela; zahteva se tržna prisotnost.	
D. Dograditev zgradb in končna dela (CPC 517)	1) Brez obvez.*	1) Brez obvez.*	
	2) Ni omejitev.	2) Ni omejitev.	
	3) Ni omejitev.	3) Ni omejitev.	
	4) Brez obvez, z izjemo določil I. dela; zahteva se tržna prisotnost.	4) Brez obvez, z izjemo določil I. dela; zahteva se tržna prisotnost.	
E. Drugo:	1) Brez obvez.*	1) Brez obvez.*	
– Pripravljalna dela na gradbeni lokaciji in posebna gradbena dela (CPC 511, 515)	2) Ni omejitev.	2) Ni omejitev.	
	3) Ni omejitev.	3) Ni omejitev.	
	4) Brez obvez, z izjemo določil I. dela; zahteva se tržna prisotnost.	4) Brez obvez, z izjemo določil I. dela; zahteva se tržna prisotnost.	
4. TRGOVINA (DISTRIBUCIJSKE STORITVE)			
(Razen pirotehničnega blaga, vnetljivih izdelkov in razstreliva, strelnega orožja, streliva in vojaške opreme, strupenih snovi in določenih medicinskih snovi).			
A. Posredniške storitve (CPC 621)	1) Ni omejitev.	1) Ni omejitev.	
	2) Ni omejitev.	2) Ni omejitev.	
	3) Ni omejitev.	3) Ni omejitev.	
	4) Brez obvez, z izjemo določil I. dela.	4) Brez obvez, z izjemo določil I. dela.	
B. Trgovina na debelo (CPC 622)	1) Ni omejitev.	1) Ni omejitev.	
	2) Ni omejitev.	2) Ni omejitev.	
	3) Ni omejitev.	3) Ni omejitev.	
	4) Brez obvez, z izjemo določil I. dela.	4) Brez obvez, z izjemo določil I. dela.	
C. Trgovina na drobno (CPC 631, 632**, 61112, 6113, 6121, razen 63211)	1) Ni omejitev.	1) Ni omejitev.	
	2) Ni omejitev.	2) Ni omejitev.	
	3) Ni omejitev.	3) Ni omejitev.	
	4) Brez obvez, z izjemo določil I. dela.	4) Brez obvez, z izjemo določil I. dela.	

Oblike ponudbe: 1) Čezmejna menjava 2) Gibanje potrošnikov 3) Tržna prisotnost 4) Prisotnost fizične osebe

Sektor ali podsektor	Omejitve dostopa na trg	Omejitve nacionalne obravnave	Dodatne obveze
D. Franšizing (CPC 8929)	1) Ni omejitev.	1) Ni omejitev.	
	2) Ni omejitev.	2) Ni omejitev.	
	3) Ni omejitev.	3) Ni omejitev.	
	4) Brez obvez, z izjemo določil I. dela.	4) Brez obvez, z izjemo določil I. dela	
5. IZOBRAŽEVALNE STORITVE			
B. Srednje šolstvo - samo zasebno financirano (CPC 922**)	1) Ni omejitev.	1) Ni omejitev.	
	2) Ni omejitev.	2) Ni omejitev.	
	3) Tuji državljani lahko dobijo dovoljenje pristojnih organov za ustanovitev in vodenje izobraževalne ustanove z namenom poučevanja. Pogoj je zagotovitev kakovosti (poučevanja) in (ustrezne) ravni izobraževanja ter ustreznost šolskih prostorov.	3) Ni omejitev, razen da mora imeti večina članov odbora slovensko državljanstvo.	
	4) Brez obvez, z izjemo določil I. dela.	4) Brez obvez, z izjemo določil I. dela.	
C. Višje in visoko šolstvo - samo zasebno financirano (CPC 923**)	1) Ni omejitev.	1) Ni omejitev.	
	2) Ni omejitev.	2) Ni omejitev.	
	3) Tuji državljani lahko dobijo dovoljenje pristojnih organov za ustanovitev in začetek dela zasebne univerze s pooblastilom za izdajanje priznanih diplom in priznavanje stopenj izobrazbe.	3) Ni omejitev, razen da mora imeti večina članov odbora slovensko državljanstvo.	
	4) Brez obvez, z izjemo določil I. dela.	4) Brez obvez, z izjemo določil I. dela.	
D. Izobraževanje odraslih (CPC 924)	1) Ni omejitev.	1) Ni omejitev.	
	2) Ni omejitev.	2) Ni omejitev.	
	3) Ni omejitev.	3) Ni omejitev.	
	4) Brez obvez, z izjemo določil I. dela.	4) Brez obvez, z izjemo določil I. dela.	
6. STORITVE VAROVANJA OKOLJA *			
A. Odstranjevanje komunalnih odplak (CPC 9401)	1) Brez obvez.*	1) Brez obvez.*	
	2) Ni omejitev.	2) Ni omejitev.	
	3) Ni omejitev.	3) Ni omejitev.	
	4) Brez obvez, z izjemo določil I. dela.	4) Brez obvez, z izjemo določil I. dela.	
B. Odstranjevanje komunalnih odpadkov (CPC 9402)	1) Brez obvez*.	1) Brez obvez.*	
	2) Ni omejitev.	2) Ni omejitev.	
	3) Ni omejitev.	3) Ni omejitev.	
	4) Brez obvez, z izjemo določil I. dela.	4) Brez obvez, z izjemo določil I. dela.	

* Javna služba obstaja; koncesijske pravice se lahko dajejo zasebnim izvajalcem s sedežem v Republiki Sloveniji.

Oblike ponudbe: 1) Čezmejna menjava 2) Gibanje potrošnikov 3) Tržna prisotnost 4) Prisotnost fizične osebe

Sektor ali podsektor	Omejitve dostopa na trg	Omejitve nacionalne obravnave	Dodatne obveze
C. Sanitarne in podobne storitve (CPC 9403)	1) Brez obvez.*	1) Brez obvez.*	
	2) Ni omejitev.	2) Ni omejitev.	
	3) Ni omejitev.	3) Ni omejitev.	
	4) Brez obvez, z izjemo določil I. dela.	4) Brez obvez, z izjemo določil I. dela.	
D. Drugo	1) Brez obvez.*	1) Brez obvez.*	
- Storitve varstva narave in urejanja prostora (CPC 9406)	2) Ni omejitev.	2) Ni omejitev.	
	3) Ni omejitev.	3) Ni omejitev.	
	4) Brez obvez, z izjemo določil I. dela.	4) Brez obvez, z izjemo določil I. dela.	

7. FINANČNE STORITVE

1. Dovoljenje za dostop na trg za nove finančne storitve ali izdelke je lahko pogojeno z obstojem in skladnostjo s predpisi, ki imajo namen doseči cilje, določene v 2.(a) členu Priloge o finančnih storitvah.
2. Kot splošno pravilo in na nediskriminacijski osnovi morajo imeti finančne ustanove, ustanovljene v Republiki Sloveniji, določeno pravno obliko.
3. Zavarovalne in bančne storitve morajo opravljati pravno ločeni ponudniki finančnih storitev.
4. Storitve investiranja lahko opravljajo le banke in investicijske družbe.

A. Zavarovanje in sorodne storitve kot so določene v Prilogi o finančnih storitvah (odst.5.(a)(i) - 5.(a)(iv))		
(i) Zavarovanje (vključno s sozavarovanjem) (A) življenjsko (B) neživljenjsko (premoženjsko)	1),2) Brez obvez, razen za pomorski prevoz in poslovno letalstvo s tovorom, s takim zavarovanjem, ki pokrije vse ali del blaga, ki se prevaža, vozilo, ki prevaža blago, in vse obveznosti, ki iz tega izhajajo; kot tudi blago v mednarodnem tranzitu.	1),2) Brez obvez, razen za pomorski prevoz in poslovno letalstvo s tovorom, s takim zavarovanjem, ki pokrije vse ali del blaga, ki se prevaža, vozilo, ki prevaža blago, in vse obveznosti, ki iz tega izhajajo; kot tudi blago v mednarodnem tranzitu.
	3) Za ustanovitev je potrebno dovoljenje Ministrstva za finance. Tuje osebe lahko ustanovijo zavarovalno družbo samo v obliki skupnega vlaganja z domačo osebo, kjer je udeležba tuje osebe omejena do 99 odstotkov. Tuja oseba lahko pridobi ali poveča delež v domači zavarovalni družbi po predhodnem soglasju Ministrstva za finance. Ob izdaji dovoljenja ali soglasja za pridobitev deleža v domači zavarovalni družbi, upošteva Ministrstvo za finance ta merila: – razpršitev lastništva delnic in prisotnost delničarjev iz različnih držav; – ponudba novih zavarovalniških proizvodov in prenos sorodnega znanja, če je tuji vlagatelj zavarovalna družba. Brez obvez za tujo udeležbo v zavarovalnih družbah v procesu privatizacije. Brez obvez glede podružnic, predstavništev in zavarovalniških agencij. Zavarovalne storitve vzajemnih zavarovalniških ustanov so omejene na družbe, ustanovljene v Republiki Sloveniji.	3) Ni omejitev.
	4) Brez obvez, z izjemo določil I. dela.	4) Brez obvez, z izjemo določil I. dela.

Oblike ponudbe: 1) Čezmejna menjava 2) Gibanje potrošnikov 3) Tržna prisotnost 4) Prisotnost fizične osebe

Sektor ali podsektor	Omejitve dostopa na trg	Omejitve nacionalne obravnave	Dodatne obveze
(ii) Pozavarovanje in retrocesija	1) Brez obvez.	1) Brez obvez.	
	2) Pozavarovalne družbe v Republiki Sloveniji imajo prednost pri zbiranju zavarovalnih premij. Če te družbe niso sposobne prevzeti vseh tveganj, se lahko pozavarujejo in retrocesirajo v tujini.	2) Ni omejitev.	
	3) Tuja udeležba v pozavarovalnicah je omejena do kontrolnega deleža kapitala.	3) Ni omejitev, le zavarovalnica s tujim kontrolnim deležem se ne sme ukvarjati s pozavarovanjem ali ustanoviti pozavarovalne družbe.	
	4) Brez obvez, z izjemo določil I. dela	4) Brez obvez, z izjemo določil I. dela.	
(iii) Posredovanje v zavarovalništvu, kot je posredništvo in zastopanje	1) Brez obvez.	1) Ni omejitev.	
	2) Ni omejitev.	2) Ni omejitev.	
(iv) Pomožne storitve na področju zavarovanja, kot so svetovanje, aktuarske storitve, presoja tveganja in likvidacija škod	3) Za svetovanje in likvidacijo škod se zahteva ustanovitev v obliki pravne osebe s soglasjem Urada za zavarovanje. Za aktuarije in za presojo tveganja je opravljanje storitev možno samo z ustanovitvijo poklicne ustanove. Delovanje je omejeno na dejavnosti navedene pod 7 A (i) in (ii) te liste.	3) Samostojni podjetnik mora imeti stalno bivališče v Republiki Sloveniji.	
	4) Brez obvez, z izjemo določil I. dela, za aktuarije in presojo tveganja se zahtevata stalno bivališče in strokovni izpit, članstvo v Združenju aktuarjev Republike Slovenije in znanje slovenskega jezika.	4) Brez obvez, z izjemo določil I. dela.	
B. <u>Bančne in druge finančne storitve</u> kot so določene v Prilogi o finančnih storitvah			
(v) Sprejemanje depozitov in drugih denarnih vlog od javnosti	1),2) Brez obvez, razen za sprejemanje posojil (posojanje vseh vrst, razen potrošniških posojil), in garancij in poroštev tujih finančnih ustanov, ki jih sprejemajo domače pravne osebe in samostojni podjetniki. Vsi zgoraj navedeni kreditni dogovori morajo biti registrirani pri Banki Slovenije.	1) Ni omejitev, razen da tuje osebe lahko ponujajo tuje vrednostne papirje le preko domačih bank in borznoposredniških družb. Člani Slovenske borze vrednostnih papirjev morajo imeti sedež v Republiki Sloveniji.	
(vi) Vse vrste posojil, vključno potrošniška, hipotekarna posojila, faktoring in financiranje poslovnih transakcij		2) Ni omejitev, razen da so lahko samo pravne osebe, ustanovljene v Republiki Sloveniji depozitarji premoženja investicijskih skladov.	
(viii) Opravljanje plačilnega prometa in storitev s posredovanjem denarja, vključno s kreditnimi, debetnimi in plačilnim karticami, potovalnimi čeki in bančnimi menicami			
(ix) Garancije in poroštva (izključujoč državne garancije in poroštva)			
(x) Trgovanje za lastni račun ali za račun strank, bodisi na urejenem ali prostem trgu ali drugače z:			

Oblike ponudbe: 1) Čezmejna menjava 2) Gibanje potrošnikov 3) Tržna prisotnost 4) Prisotnost fizične osebe

Sektor ali podsektor	Omejitve dostopa na trg	Omejitve nacionalne obravnave	Dodatne obveze
(A) instrumenti denarnega trga (vključno s čeki, blagajniškimi zapisi in certifikati) (B) tuja valuta (C) vključeni finančni derivati, vendar ne omejeno na terminske posle in opcije (D) instrumenti tečajnih sprememb in obrestne mere, vkjučno s swapi in dogovori o obrestni meri (E) prenosljivi vrednostni papirji (F) drugi vrednostni papirji in finančna sredstva, vključno z zlatom v palicah	3) Ustanavljanje vseh vrst bank je pogojeno z dovoljenjem banke Slovenije. Tuje osebe lahko postanejo delničarji bank ali pridobijo dodatne delnice bank po predhodnem soglasju Banke Slovenije. Ob izdaji dovoljenja za ustanovitev banke, v celoti tuje ali s tujim večinskim deležem, ali soglasja za pridobitev dodatnih delnic bank upošteva Banka Slovenije te smernice*: – prisotnost vlagateljev iz različnih držav; – mnenje tuje ustanove, odgovorne za nadzor bank. Brez obvez za tujo udeležbo v bankah v procesu privatizacije. V skladu z dovoljenjem Banke Slovenije se dovoljuje bankam in podružnicam tujih bank opravljanje vseh ali omejenih bančnih storitev, odvisno od višine kapitala.	3) Ni omejitev.	

* Poleg višine kapitala upošteva Banka Slovenije ob izdaji neomejenega ali omejenega bančnega dovoljenja te smernice (enako za domače in tuje prosilce):
– družbenoekonomske prednosti za določene bančne dejavnosti;
– obstoječe regionalno pokrivanje z bankami v Republiki Sloveniji;
– dejansko opravljanje bančnih dejavnosti v primerjavi z navedenimi v obstoječem dovoljenju.

(xi) Sodelovanje pri izdajanju vseh vrst vrednostnih papirjev, vključno z organiziranjem, pripravo in izvedbo odkupa novo izdanih vrednostnih papirjev, kot posrednik in opravljanje drugih storitev, povezanih s tem izdajanjem	Podružnice tujih bank morajo biti pravne osebe, ustanovljene v Republiki Sloveniji. Brez obvez za vse vrste hipotekarnih bank, hranilnic in posojilnic. Brez obvez za ustanavljanje zasebnih pokojninskih skladov (neobvezni pokojninski skladi).		
(xii) Posredovanje denarja (xiii) Upravljanje premoženja kot upravljanje denarja ali portfelja, vse oblike kolektivnega vlaganja, hrambeni, depo in skrbniški posli (izključujoč upravljanje pokojninskih skladov);	Družbe za upravljanje so komercialne družbe, ustanovljene samo z namenom upravljanja investicijskih skladov. Tuje osebe lahko neposredno ali posredno pridobijo največ 20 odstotkov deleža ali glasovalnih pravic družbe za upravljanje; za večji delež je potrebno dovoljenje Agencije za trg vrednostnih papirjev.		
(xiv) Storitve kliringa in poravnave finančnih sredstev, vključno z vrednostnimi papirji, derivativnimi proizvodi in drugimi tržnimi instrumenti	Pooblaščena investicijska družba je investicijska družba, ustanovljena samo z namenom zbiranja lastninskih certifikatov ter nakupa in prodaje delnic, izdanih v skladu s predpisi o lastninskem preoblikovanju podjetij. Pooblaščena družba za upravljanje je ustanovljena samo z namenom upravljanja pooblaščenih investicijskih družb.		

Oblike ponudbe: 1) Čezmejna menjava 2) Gibanje potrošnikov 3) Tržna prisotnost 4) Prisotnost fizične osebe

Sektor ali podsektor	Omejitve dostopa na trg	Omejitve nacionalne obravnave	Dodatne obveze
	Tuje osebe lahko neposredno ali posredno pridobijo največ 10 odstotkov deleža ali glasovalnih pravic pooblaščene družbe za upravljanje; za večji delež je potrebno dovoljenje Agencije za trg vrednostnih papirjev s soglasjem ministra za ekonomske odnose in razvoj. Naložbe investicijskih skladov v vrednostne papirje tujih izdajateljev so omejene na 10 odstotkov naložb investicijskih skladov. Taki vrednostni papirji morajo kotirati na borzah, ki jih predhodno določi Agencija za trg vrednostnih papirjev. Tuje osebe lahko postanejo delničarji ali partnerji v borznoposredniški družbi le z dovoljenjem Agencije za trg vrednostnih papirjev in imajo lahko največ 24-odstotni delež osnovnega kapitala borznoposredniške družbe. Vrednostne papirje tujih izdajateljev, ki se prvič ponujajo na ozemlju Republike Slovenije, lahko ponujajo le borznoposredniške družbe ali banke, pooblaščene za izvajanje takih transakcij. Borznoposredniška družba ali banka mora predhodno dobiti dovoljenje Agencije za trg vrednostnih papirjev. Zahtevku za to dovoljenje morata biti priložena prospekt in dokumentacija, da je garant za izdajo vrednostnih papirjev tujega izdajatelja banka ali borznoposredniška družba, razen v primeru izdaje delnic tujega izdajatelja.		
	4) Brez obvez, z izjemo določil I. dela.	4) Brez obvez, z izjemo določil I. dela.	
(xv) Dajanje in prenos finančnih informacij, obdelava finančnih informacij in povezanih programov drugih ponudnikov finančnih storitev	1) Ni omejitev. 2) Ni omejitev. 3) Ni omejitev. 4) Brez obvez, z izjemo določil I. dela.	1) Ni omejitev. 2) Ni omejitev. 3) Ni omejitev. 4) Brez obvez, z izjemo določil I. dela.	
(xvi) Svetovanje, posredovanje in opravljanje drugih pomožnih finančnih storitev v zvezi z vsemi dejavnostmi, navedenimi v pododstavkih (v) do (xv), vključno s kreditno boniteto in analizami, raziskave in svetovanje v zvezi z naložbami in portfeljem in svetovanje po akvizicijah, restrukturiranju podjetij in oblikovanju strategije			

Oblike ponudbe: 1) Čezmejna menjava 2) Gibanje potrošnikov 3) Tržna prisotnost 4) Prisotnost fizične osebe

Sektor ali podsektor	Omejitve dostopa na trg	Omejitve nacionalne obravnave	Dodatne obveze
8. ZDRAVSTVENE STORITVE IN STORITVE SOCIALNEGA VARSTVA			
A. Storitve bolnišnic			
- Zasebne bolnišnice in zdravilišča (CPC 9311** razen storitev, ki jih opravlja javni sektor)	1) Brez obvez.*	1) Brez obvez.*	
	2) Ni nujno, da programi javnega zdravstvenega zavarovanja pokrivajo stroške ponudbe zdravstvene oskrbe v tujini.	2) Uporabniki storitev nimajo pravice do finančne podpore iz javnih sredstev. Potrebno je dovoljenje Zavoda za zdravstveno zavarovanje Republike Slovenije.	
	3) Potrebno je dovoljenje Ministrstva za zdravstvo; dovoljenje za ustanovitev bolnišnic se izdaja za vsak primer posebej; pri tem se upoštevajo gostota naselitve, obstoječe ustanove, prometna infrastruktura, specializacija in oddaljenost med bolnišnicami. Za vstop v mrežo javnega zdravstva izda koncesijo Zavod za zdravstveno varstvo Republike Slovenije.	3) Tuje zasebne ustanove in uporabniki njihovih storitev nimajo pravice do finančne podpore iz javnih sredstev, vključno z uporabo javnih programov zdravstvenega zavarovanja.	
	4) Brez obvez, z izjemo določil I. dela.	4) Brez obvez, z izjemo določil I. dela.	
B. Druge zdravstvene storitve	1) Brez obvez.*	1) Brez obvez.*	
	2) Ni omejitev.	2) Ni omejitev.	
- Storitve nebolnišničnih zdravstvenih ustanov, kot so zdraviliške, terapevtske in storitve toplic (CPC 93193)	3) Ni omejitev.	3) Ni omejitev.	
	4) Brez obvez, z izjemo določil I. dela.	4) Brez obvez, z izjemo določil I. dela.	
9. TURIZEM IN STORITVE, POVEZANE S POTOVANJI			
A. Hoteli, restavracije in katering (CPC 641, 642, 643 z izjemo kateringa v prevoznem sektorju)	1) Brez obvez.*	1) Brez obvez.*	
	2) Ni omejitev.	2) Ni omejitev.	
	3) Brez obvez, razen tega, da je za lokacijo na zaščitenih področjih posebnega zgodovinskega in umetniškega interesa ter v narodnih ali krajinskih parkih potrebno dovoljenje, za katero je možno, da se ne izda.	3) Ni omejitev.	
	4) Brez obvez, z izjemo določil I. dela.	4) Brez obvez, z izjemo določil I. dela.	
B. Turistične agencije in storitve organizatorjev potovanj (CPC 7471)	1) Zahteva se tržna prisotnost.	1) Zahteva se tržna prisotnost.	
	2) Ni omejitev.	2) Ni omejitev.	
	3) Ni omejitev.	3) Ni omejitev.	
	4) Brez obvez, z izjemo določil I. dela in zahteva se tržna prisotnost.	4) Brez obvez, z izjemo določil I. dela. in zahteva se tržna prisotnost.	

Oblike ponudbe: 1) Čezmejna menjava 2) Gibanje potrošnikov 3) Tržna prisotnost 4) Prisotnost fizične osebe

Sektor ali podsektor	Omejitve dostopa na trg	Omejitve nacionalne obravnave	Dodatne obveze
10. REKREACIJSKE, KULTURNE IN ŠPORTNE STORITVE (razen avdiovizualnih storitev)			
D. Športne in druge rekreacijske storitve (razen smučarskih šol, smučarskih in gorskih vodnikov, igralništva in stavnic) CPC 9641, 96491)	1) Ni omejitev. 2) Ni omejitev. 3) Ni omejitev. 4) Brez obvez, z izjemo določil I. dela.	1) Ni omejitev. 2) Ni omejitev. 3) Ni omejitev. 4) Brez obvez, z izjemo določil I. dela.	
11. PREVOZNE STORITVE			
A. Pomorski prevoz	1) Brez obvez.*	1) Brez obvez.*	
d) Vzdrževanje in popravila ladij (CPC 8868**)	2) Ni omejitev. 3) Ni omejitev. 4) Brez obvez, z izjemo določil I. dela.	2) Ni omejitev. 3) Ni omejitev. 4) Brez obvez, z izjemo določil I. dela.	
C. Letalski prevoz			
d) Vzdrževanje in popravilo letal (CPC 8868**)	1) Brez obvez.* 2) Ni omejitev. 3) Ni omejitev. 4) Brez obvez, z izjemo določil I. dela.	1) Brez obvez.* 2) Ni omejitev. 3) Ni omejitev. 4) Brez obvez, z izjemo določil I. dela.	
- Računalniški rezervacijski sistem (CRS)	1) Ni omejitev. 2) Ni omejitev. 3) Ni omejitev. 4) Brez obvez, z izjemo določil I. dela.	1) Brez obvez za matične ali sodelujoče prevoznike glede na računalniški rezervacijski sistem, ki ga nadzira letalski prevoznik ene ali več tretjih držav. 2) Ni omejitev. 3) Brez obvez za matične ali sodelujoče prevoznike glede na računalniški rezervacijski sistem, ki ga nadzira letalski prevoznik ene ali več tretjih držav. 4) Brez obvez, z izjemo določil I. dela.	
- Prodaja in trženje	1) Ni omejitev 2) Ni omejitev 3) Ni omejitev 4) Brez obvez, z izjemo določil I. dela	1) Brez obvez za distribucijo storitev letalskega prevoza z računalniškim rezervacijskim sistemom, ki jo zagotavlja matični prevoznik. 2) Ni omejitev 3) Brez obvez za distribucijo storitev letalskega prevoza z računalniškim rezervacijskim sistemom, ki jo zagotavlja matični prevoznik. 4) Brez obvez, z izjemo določil I.dela	

Oblike ponudbe: 1) Čezmejna menjava 2) Gibanje potrošnikov 3) Tržna prisotnost 4) Prisotnost fizične osebe

Sektor ali podsektor	Omejitve dostopa na trg	Omejitve nacionalne obravnave	Dodatne obveze
E. Železniški prevoz			
d) Vzdrževanje in popravilo železniške opreme (CPC 8868**)	1) Brez obvez.*	1) Brez obvez.*	
	2) Ni omejitev.	2) Ni omejitev.	
	3) Ni omejitev.	3) Ni omejitev.	
	4) Brez obvez, z izjemo določil I. dela.	4) Brez obvez, z izjemo določil I. dela.	
F. Cestni prevoz			
d) Vzdrževanje in popravilo opreme za cestni prevoz (CPC 6112**)	1) Ni omejitev.	1) Ni omejitev.	
	2) Ni omejitev.	2) Ni omejitev.	
	3) Ni omejitev.	3) Ni omejitev.	
	4) Brez obvez, z izjemo določil I. dela.	4) Brez obvez, z izjemo določil I. dela.	
H. Storitve, povezane z vsemi prevoznimi panogami			
b) Storitve skladiščenja in shranjevanja (CPC 742)	1) Brez obvez.*	1) Brez obvez.*	
	2) Ni omejitev.	2) Ni omejitev.	
	3) Ni omejitev.	3) Ni omejitev.	
	4) Brez obvez, z izjemo določil I. dela.	4) Brez obvez, z izjemo določil I. dela.	
c) Storitve prevoznih agencij/špediterske storitve (CPC 748)	1) Ni omejitev.	1) Ni omejitev, razen da carinjenje opravlja le pravna oseba, ustanovljena v Republiki Sloveniji.	
	2) Ni omejitev.	2) Ni omejitev.	
	3) Ni omejitev.	3) Ni omejitev, z izjemo tega, da carinjenje opravlja le pravna oseba, ustanovljena v Republiki Sloveniji.	
	4) Brez obvez, z izjemo določil I. dela.	4) Brez obvez, z izjemo določil I. dela.	
d) Nadzor pred odpremo (CPC 749**)	1) Ni omejitev.	1) Ni omejitev.	
	2) Ni omejitev	2) Ni omejitev.	
	3) Ni omejitev.	3) Ni omejitev.	
	4) Brez obvez, z izjemo določil I. dela	4) Brez obvez, z izjemo določil I. dela.	

REPUBLIKA SLOVENIJA - LISTA IZJEM (MFN) K II. ČLENU

Sektor ali podsektor	Opis ukrepa, ki izraža neskladnost z II. členom	Države, za katere velja ukrep	Predvideno trajanje	Pogoji, ki določajo potrebo po izjemi
Avdiovizualne storitve	Ukrepi, ki se uporabljajo za izvajanje in so v skladu z obstoječimi ali prihodnjimi sporazumi o koprodukciji in zagotavljajo nacionalno obravnavo za tam določene izdelke.	Pogodbenice sporazuma.	Nedoločeno.	Spodbujanje kulturnih povezav med določenimi pogodbenicami.
	Ukrepi, ki se uporabljajo za izvajanje in so v skladu s programi pomoči, kot so Konvencija Sveta Evrope o čezmejni televiziji, Eureka, Media in Eurimages, za avdiovizualne programe in oskrba teh programov, ki zadostuje posebnim izvornim merilom.	Evropske države.	Nedoločeno.	Spodbujanje kulturne izmenjave med evropskimi državami, ki temelji na tradicionalnih kulturnih vezeh.
	Preferencialna obravnava za avdiovizualne izdelke, ki zadovoljujejo evropska izvorna merila za predvajanje.	Evropske države.	Nedoločeno.	Spodbujanje skupnih kulturnih povezav in varovanje splošne kulturne dediščine.
Cestni prevoz potnikov in blaga	Ukrepi, ki se uporabljajo po obstoječih ali prihodnjih sporazumih in zadržijo ali omejujejo določilo o prevoznih storitvah in opredeljujejo pogoje delovanja, vključno s tranzitnimi dovoljenji in/ali preferencialnimi cestnimi taksami za prevozne storitve v, čez in iz Republike Slovenije do določenih pogodbenic.	Vse države, s katerimi so ali bodo uveljavlje ni sporazumi.	Nedoločeno.	Varovanje celovitosti infrastrukture cestnega prevoza in okolja ter urejanje prevoznih pravic na ozemlju Republike Slovenije in med določenimi pogodbenicami.
Računalniški rezervacijski sistem (CRS) in trženje storitev letalskega prevoza	Določilo 7. člena Uredbe (EC) št. 2299/89, spremenjene z Uredbo (EC) št. 3089/93, pri čemer se obveznosti prodajalcev sistema CRS ali matičnih ali soudeleženih letalskih prevoznikov ne bodo uporabljale, kadar enakovredna obravnava tisti, ki se uporablja po Uredbi, ne obstaja v državi porekla matičnega prevoznika ali prodajalca sistema.	Vse države, v katerih obstaja sistem prodaje CRS ali matični letalski prevoznik.	Nedoločeno.	Potreba po izjemi, ki izvira iz nezadostno razvitih mednarodnih pravil za delovanje sistema CRS.
Finančne storitve	Dovoljenje za ustanovitev tržne prisotnosti za ponudnika storitev druge članice ali vodenje nove dejavnosti se lahko zavrne, če se v državi ponudnika za določene storitve slovenskim ponudnikom zavrneta enak pristop in obravnava.	Vse države.	Nedoločeno.	Pridobitev enakih možnosti dostopa na trg za slovenske ponudnike.

ANEKS 1 C

S P O R A Z U M
O TRGOVINSKIH VIDIKIH PRAVIC INTELEKTUALNE LASTNINE

S P O R A Z U M
O TRGOVINSKIH VIDIKIH PRAVIC INTELEKTUALNE LASTNINE

Članice se

z željo, da bi zmanjšale nesorazmerja in ovire v mednarodni trgovini in ob upoštevanju potrebe po spodbujanju učinkovitega in ustreznega varstva pravic intelektualne lastnine ter z željo, da bi preprečili, da ukrepi in postopki za uveljavljanje pravic intelektualne lastnine sami ne bi postali ovire v zakoniti trgovini,

ob spoznanju potrebe po novih pravilih in redu v zvezi z:

(a) uporabnostjo osnovnih načel GATT 1994 in ustreznih mednarodnih sporazumov ali konvencij o intelektualni lastnini;

(b) določbo o ustreznih standardih in načelih, ki se nanašajo na razpoložljivost, obseg in uporabo pravic intelektualne lastnine, povezanih s trgovino;

(c) določbo o učinkovitih in ustreznih sredstvih za uveljavljanje pravic intelektualne lastnine, povezanih s trgovino, ob upoštevanju razlik v nacionalnih pravnih sistemih;

(d) določbo o učinkovitih in hitrih postopkih za mnogostransko preprečevanje in reševanje sporov med vladami in

(e) prehodnimi ureditvami, katerih cilj je polna udeležba pri rezultatih pogajanj,

ob spoznanju potrebe po mnogostranskem okviru za načela, pravila in red, ki zadevajo mednarodno trgovino s ponarejenim blagom,

ob spoznanju, da so pravice intelektualne lastnine zasebne pravice,

ob spoznanju določenih ciljev javne politike nacionalnih sistemov za varstvo intelektualne lastnine, vključno z razvojnimi in tehnološkimi cilji,

ob spoznanju posebnih potreb najmanj razvitih držav članic glede največje prožnosti pri izvajanju domačih zakonov in predpisov, da bi jim omogočili ustvariti trdno in obstojno tehnološko bazo,

ob poudarjanju pomena zmanjševanja napetosti s sprejemanjem trdnih obvez, da se spori v zvezi z vprašanji intelektualne lastnine, povezanimi s trgovino, rešujejo z mnogostranskimi postopki,

z željo, da bi ustvarili odnos medsebojne podpore med WTO in Svetovno organizacijo za intelektualno lastnino (v nadaljnjem besedilu WIPO), kot tudi drugimi ustreznimi mednarodnimi organizacijami,

sporazumejo, kot sledi:

I. DEL

SPLOŠNE DOLOČBE IN TEMELJNA NAČELA

1. člen
Narava in obseg obveznosti

1. Članice so dolžne izvajati določbe tega sporazuma. Članice smejo, vendar ne da bi bile k temu zavezane, z domačim zakonom izvajati širše varstvo, kot ga zahteva ta sporazum, pod pogojem, da tako varstvo ni v nasprotju z določbami tega sporazuma. Članice svobodno določajo ustrezen način izvajanja določb tega sporazuma v okviru njihovega lastnega pravnega sistema in prakse.

2. V tem sporazumu se izraz "intelektualna lastnina" nanaša na vse kategorije intelektualne lastnine, ki so predmet poglavij od 1 do 7 v II. delu.

3. Članice obravnavajo državljane drugih članic tako, kot je določeno s tem sporazumom.[1] Glede na določeno pravico intelektualne lastnine se štejejo za državljane drugih članic tiste fizične ali pravne osebe, ki izpolnjujejo merila za pridobitev varstva, kot jih določajo Pariška konvencija (1967), Bernska konvencija (1971), Rimska konvencija in Pogodba o intelektualni lastnini na področju integriranih vezij, če so bile vse članice WTO tudi članice teh konvencij.[2] Vsaka članica, ki izkoristi možnosti, določene v tretjem odstavku 5. člena ali drugem odstavku 6. člena Rimske konvencije, mora o tem skladno s temi določbami obvestiti Svet za trgovinske vidike pravic intelektualne lastnine (Svet za TRIPS).

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[1] Če se v tem sporazumu omenjajo "državljani", se domneva, če gre za ločeno carinsko ozemlje članice WTO, da pomeni fizično ali pravno osebo, ki ima na tem carinskem ozemlju prebivališče ali dejansko in učinkovito industrijsko ali trgovinsko ustanovo.

[2] S "Pariško konvencijo" je v tem sporazumu mišljena Pariška konvencija za varstvo industrijske lastnine; s "Pariško konvencijo (1967)" je mišljen Stockholmski akt te konvencije z dne 14. julija 1967. "Bernska konvencija" se nanaša na Bernsko konvencijo za varstvo književnih in umetniških del; z "Bernsko konvencijo (1971)" je mišljen Pariški akt te konvencije z dne 24. julija 1971. "Rimska konvencija" se nanaša na Mednarodno konvencijo za varstvo izvajalcev, proizvajalcev fonogramov in radiodifuznih organizacij, ki je bila sprejeta v Rimu 26. oktobra 1961. "Pogodba o intelektualni lastnini na področju integriranih vezij" se nanaša na Pogodbo o intelektualni lastnini na področju integriranih vezij, ki je bila sprejeta v Washingtonu 26. maja 1989. "Sporazum o WTO" se nanaša na Sporazum o ustanovitvi WTO.

2. člen

Konvencije o intelektualni lastnini

1. V zvezi z II., III. in IV. delom tega sporazuma se članice ravnajo po členih od 1 do 12 in po 19. členu Pariške konvencije (1967).

2. Nič v I. do IV. delu tega sporazuma ne sme zmanjšati obstoječih obveznosti, ki jih utegnejo imeti članice med seboj po Pariški konvenciji, Bernski konvenciji, Rimski konvenciji in Pogodbi o intelektualni lastnini na področju integriranih vezij.

3. člen

Nacionalna obravnava

1. Glede varstva[3] intelektualne lastnine vsaka članica državljanom drugih članic zagotovi enake ugodnosti kot svojim državljanom, razen z izjemami, ki so že določene v Pariški konvenciji (1967) oziroma Bernski konvenciji (1971) oziroma Rimski konvenciji oziroma Pogodbi o intelektualni lastnini na področju integriranih vezij. Za izvajalce, proizvajalce fonogramov in radiodifuzne organizacije, se ta obveznost nanaša samo na pravice iz tega sporazuma. Vsaka članica, ki izkoristi možnosti, ki jih določa 6. člen Bernske konvencije (1971) in prvi (b) odstavek 16. člena Rimske konvencije, mora skladno s temi določbami to sporočiti Svetu za TRIPS.

2. Članice lahko izkoristijo izjeme, ki jih dovoljuje prvi odstavek glede sodnih in upravnih postopkov, vključno z navedbo naslova za storitev ali imenovanjem zastopnika v jurisdikciji članice, samo, če so take izjeme potrebne za zagotovitev skladnosti z zakoni in predpisi, ki niso v neskladju z določbami tega sporazuma, in če ta praksa ni uporabljena na način, ki bi prikrito omejeval trgovino.

4. člen

Obravnava države z največjimi ugodnostmi

Glede varstva intelektualne lastnine se vsaka prednost, ugodnost, privilegij ali imuniteta, ki jo da neka članica državljanu katerekoli druge članice, odobri takoj in brezpogojno tudi državljanom vseh drugih članic. Iz te obveznosti so izvzeti vsaka prednost, ugodnost, privilegij ali imuniteta, ki jo odobri članica:

(a) ki izvira iz mednarodnih sporazumov o pravni pomoči ali uveljavitvi zakona splošnega pomena in niso posebej omejeni na varstvo intelektualne lastnine;

(b) ki je dana v skladu z določbami Bernske konvencije (1971) ali Rimske konvencije, ki dovoljujeta, da je obravnava odvisna od obravnave druge države, in ne od nacionalne obravnave;

(c) ki se nanaša na pravice izvajalcev, proizvajalcev fonogramov in radiodifuznih organizacij, ki niso določene s tem sporazumom;

(d) ki izvira iz mednarodnih sporazumov o varstvu intelektualne lastnine, ki so začeli veljati pred začetkom veljavnosti Sporazuma o WTO, pod pogojem, da so taki sporazumi sporočeni Svetu za TRIPS in da ne pomenijo samovoljne ali neutemeljene diskriminacije državljanov drugih članic.

[3] Za namene 3. in 4. člena vključuje "varstvo" tudi zadeve, ki vplivajo na razpoložljivost, pridobitev, obseg, ohranjanje in uveljavljanje pravic intelektualne lastnine, kakor tudi na tiste zadeve, ki vplivajo na uporabo pravic intelektualne lastnine, ki jih posebej obravnava ta sporazum.

5. člen

Mnogostranski sporazumi o pridobitvi ali ohranjanju varstva

Obveznosti po 3. in 4. členu se ne nanašajo na postopke, ki jih določajo mnogostranski sporazumi, ki so sklenjeni pod pokroviteljstvom WIPO in se nanašajo na pridobitev ali ohranjanje pravic intelektualne lastnine.

6. člen

Izčrpanje

Za namene reševanja sporov po tem sporazumu se ne sme nič v tem sporazumu skladno z določbami 3. in 4. člena uporabljati za obravnavanje vprašanja o izčrpanju pravic intelektualne lastnine.

7. člen

Cilji

Varstvo in uveljavljanje pravic intelektualne lastnine bi moralo prispevati k pospeševanju tehnoloških inovacij in k prenosu in razširjanju tehnologije v vzajemno korist tako proizvajalcev kot uporabnikov tehnološkega znanja in na način, ki vodi k družbeni in gospodarski blaginji ter ravnovesju pravic in obveznosti.

8. člen

Načela

1. Članice lahko pri oblikovanju ali spreminjanju svojih zakonov in predpisov sprejemajo ukrepe, ki so potrebni za zavarovanje javnega zdravja in prehrane ter za spodbujanje javnega interesa na področjih, ki so življenjskega pomena za njihov družbenoekonomski in tehnološki razvoj, pod pogojem, da so taki ukrepi v skladu z določbami tega sporazuma.

2. Ustrezni ukrepi pod pogojem, da so v skladu z določbami tega sporazuma, utegnejo biti potrebni zato, da se imetnikom pravic prepreči zloraba pravic intelektualne lastnine ali uporaba prakse, ki nerazumno omejuje trgovino ali negativno vpliva na mednarodni prenos tehnologije.

II. DEL

STANDARDI, KI SE NANAŠAJO NA RAZPOLOŽLJIVOST, OBSEG IN UPORABO PRAVIC INTELEKTUALNE LASTNINE

1. POGLAVJE: AVTORSKE IN SORODNE PRAVICE

9. člen

Razmerje z Bernsko konvencijo

1. Članice se ravnajo po členih od 1 do 21 Bernske konvencije (1971) in po prilogi k njej. Vendar pa članice nimajo pravic ali obveznosti po tem sporazumu glede pravic, danih na podlagi 6.bis člena te konvencije, ali pravic, ki iz njega izhajajo.

2. Varstvo avtorskih pravic obsega izraze, ne pa idej, postopkov, metod delovanja ali matematičnih pojmov kot takih.

10. člen

Računalniški programi in zbirke podatkov

1. Računalniški programi, bodisi v izvirni ali strojni kodi, so po Bernski konvenciji (1971) varovani kot književna dela.

2. Zbirke podatkov ali drugega gradiva, bodisi v strojno berljivi ali drugačni obliki, ki so zaradi izbora ali razpore-

ditve njihove vsebine intelektualne stvaritve, so varovane kot take. To varstvo, ki pa ne zajema samih podatkov ali gradiva, ne sme posegati v nobeno avtorsko pravico, ki obstaja na samih podatkih ali gradivu.

11. člen

Pravice iz najema

Vsaj za računalniške programe in kinematografska dela članica avtorjem in njihovim pravnim naslednikom zagotovi pravico, da lahko dovolijo ali prepovedo komercialno dajanje v najem javnosti izvirnikov ali kopij njihovih avtorskih del. Za kinematografska dela članici ni treba izpolnjevati obveznosti, razen če bi tako dajanje v najem povzročilo širše kopiranje teh del v takem obsegu, da bi materialno škodovalo izključni pravici do razmnoževanja, ki je bila dana v tej članici avtorjem in njihovim pravnim naslednikom. V primeru računalniških programov se ta obveznost ne nanaša na tiste najeme, pri katerih sam program ni bistveni predmet najema.

12. člen

Trajanje varstva

Če se trajanje varstva nekega dela, ki ni fotografsko delo ali delo uporabne umetnosti, ne računa na podlagi življenjske dobe fizične osebe, tako obdobje ne sme biti krajše od 50 let, šteto od konca koledarskega leta avtorizirane izdaje, ali 50 let, šteto od konca koledarskega leta izdelave, če ni bilo take avtorizirane izdaje v 50 letih od izdelave tega dela.

13. člen

Omejitve in izjeme

Članice postavljajo omejitve ali izjeme pri izključnih pravicah v določenih posebnih primerih, ki niso v nasprotju z običajnim izkoriščanjem dela in nerazumno ne ogrožajo legitimnih interesov imetnika pravice.

14. člen

Varstvo izvajalcev, proizvajalcev fonogramov (zvočnih zapisov) in radiodifuznih organizacij

1. Izvajalci imajo pri snemanju svoje izvedbe na fonogram možnost preprečiti ta dejanja, če so storjena brez njihovega dovoljenja: snemanje njihove neposnete izvedbe in reprodukcijo takega posnetka. Izvajalci imajo tudi možnost preprečiti ta dejanja, če so storjena brez njihovega dovoljenja: radiodifuzno oddajanje po brezžičnem mediju in javno prenašanje njihovega nastopa v živo.

2. Proizvajalci fonogramov imajo pravico dovoliti ali prepovedati neposredno ali posredno reproduciranje svojih fonogramov.

3. Radiodifuzne organizacije imajo pravico prepovedati ta dejanja, če so storjena brez njihovega dovoljenja: snemanje, reproduciranje posnetkov in ponovno radiodifuzno oddajanje po oddajnih brezžičnih medijih kakor tudi javno televizijsko prenašanje le-teh. Če članice takih pravic radiodifuznim organizacijam ne dajo, morajo dati lastnikom avtorskih pravic na predmetu oddaj možnost, da zgoraj omenjena dejanja preprečijo skladno z določbami Bernske konvencije (1971).

4. Določbe 11. člena v zvezi z računalniškimi programi se nanašajo, mutatis mutandis, na proizvajalca fonogramov in druge imetnike pravic na fonogramih, skladno z zakonom članice. Če je dne 15. aprila 1994 v neki članici veljal sistem pravičnega nadomestila imetnikom pravic v zvezi z dajanjem v najem fonogramov, lahko le-ta tak sistem obdrži pod pogojem, da komercialno dajanje v najem fonogramov ne povzroča materialne škode izključnim pravicam do reproduciranja, ki jih imajo imetniki pravic.

5. Varstvo za izvajalce in proizvajalce fonogramov mora po tem sporazumu trajati vsaj do konca obdobja 50 let, šteto od konca koledarskega leta, v katerem je bil posnetek narejen ali izvajan. Varstvo, zagotovljeno po tretjem odstavku, traja najmanj dvajset let od konca koledarskega leta, v katerem se je izvajalo radiodifuzno oddajanje.

6. Vsaka članica lahko v zvezi s pravicami, zagotovljenimi po prvem, drugem in tretjem odstavku, predpiše pogoje, omejitve, izjeme in zadržke do take mere, kot to dovoljuje Rimska konvencija. Vendar pa veljajo, mutatis mutandis, določbe 18. člena Bernske konvencije (1971) tudi za pravice izvajalcev in proizvajalcev fonogramov na fonogramih.

2. POGLAVJE: ZNAMKE

15. člen

Varstvo vsebine

1. Vsak znak ali kombinacija znakov, ki omogočajo razlikovanje med proizvodi ali storitvami enega podjetja in proizvodi ali storitvami drugega podjetja, lahko postane znamka. Taki znaki, zlasti besede, ki vključujejo osebna imena, črke, številke, figurativne elemente in kombinacije barv kakor tudi kombinacije takih znakov, se smejo registrirati kot znamke. Če znaki sami po sebi ne omogočajo razlikovanja določenih proizvodov ali storitev, lahko članice registracijo pogojujejo z razločljivostjo, pridobljeno z uporabo. Članice lahko kot pogoj za registracijo zahtevajo, da so znaki vizualno zaznavni.

2. Zgornji odstavek se ne razume tako, da je članicam onemogočena zavrnitev registracije znamke iz drugih razlogov pod pogojem, da ti ne odstopajo od določb Pariške konvencije (1967).

3. Članice lahko registracijo pogojujejo z uporabo. Vendar pa dejanska uporaba znamke ne sme biti pogoj za vložitev prijave za registracijo. Prijava ne sme biti zavrnjena samo zato, ker ni prišlo do predvidene uporabe pred iztekom treh let od datuma vložitve prijave.

4. Narava proizvodov oziroma storitev, za katere naj bi veljala znamka, ne sme biti ovira za registracijo znamke.

5. Članice vsako znamko objavijo bodisi pred registracijo ali takoj po njem in omogočajo primerno priložnost za vložitev zahteve za preklic registracije. Prav tako lahko članice dajo priložnost za ugovor proti registraciji znamke.

16. člen

Dane pravice

1. Lastnik registrirane znamke ima izključno pravico preprečiti tretjim osebam, ki nimajo njegove privolitve, da v trgovini uporabljajo enake ali podobne znake za proizvode ali storitve, ki so enaki ali podobni tistim, za katere je bila znamka registrirana, če bi taka uporaba utegnila povzročiti zmedo. Domneva se, da uporaba enakega znaka za enake proizvode ali storitve povzroča zmedo. Zgoraj opisane pravice ne smejo posegati v nobene prej obstoječe pravice in tudi ne smejo vplivati na možnost članic, da dajo pravice na razpolago na podlagi uporabe.

2. 6.bis člen Pariške konvencije (1967) se uporablja, mutatis mutandis, za storitve. Pri ugotavljanju, ali je znamka nedvomno znana, članice upoštevajo poznavanje znamke pri določenem delu javnosti, vključno s poznavanjem v določeni članici, ki je posledica predstavljanja znamke.

3. 6.bis člen Pariške konvencije (1967) se uporablja, mutatis mutandis, za proizvode ali storitve, ki niso podobni tistim, za katere je znamka registrirana, če uporaba te znamke za te proizvode ali storitve kaže na povezanost med temi proizvodi ali storitvami in lastnikom registrirane znamke, in

če utegnejo biti interesi lastnika registrirane znamke s tako uporabo oškodovani.

17. člen

Izjeme

Članice lahko določijo omejene izjeme za pravice, dane z znamko, kot so npr. poštena uporaba opisnih izrazov, pod pogojem, da te izjeme upoštevajo legitimne interese lastnika znamke in tretjih oseb.

18. člen

Trajanje varstva

Prva registracija znamke in vsako njeno obnavljanje velja za čas, ki ni krajši od sedem let. Registracijo znamke je možno neskončno obnavljati.

19. člen

Zahteva glede uporabe

1. Če se za ohranjanje registracije zahteva uporaba, je možno registracijo razveljaviti šele po neprekinjenem obdobju neuporabe najmanj treh let, razen če lastnik znamke navede utemeljene razloge, ki kažejo na ovire za tako uporabo. Okoliščine, ki se pojavijo neodvisno od volje lastnika znamke in so ovira za uporabo znamke, kot so npr. uvozne omejitve ali druge vladne zahteve za proizvode ali storitve, ki jih varuje znamka, se priznajo kot utemeljeni razlogi za neuporabo.

2. Če pod nadzorom lastnika znamke le-to uporablja druga oseba, se taka uporaba prizna kot uporaba znamke za namene ohranjanja registracije.

20. člen

Druge zahteve

Uporabe znamke v trgovini ne smejo neutemeljeno ovirati posebne zahteve, kot so uporaba v povezavi z drugo znamko, uporaba v posebni obliki ali uporaba na način, ki škoduje njeni lastnosti razločevanja med proizvodi ali storitvami enega podjetja in proizvodi ali storitvami drugih podjetij. To ne izključuje zahteve po uporabi znamke za prepoznavo podjetja, ki proizvaja proizvode ali storitve, kakor tudi znamke, vendar ne v povezavi s prejšnjo, ki razločuje določene posebne proizvode ali storitve tega podjetja.

21. člen

Dajanje licenc in prenos

Članice lahko določijo pogoje za dajanje licenc in za prenos znamk, s tem da se razume, da obvezno dajanje licenc za znamke ni dovoljeno in da ima lastnik registrirane znamke pravico do prenosa svoje znamke z ali brez prenosa poslovanja, ki mu znamka pripada.

3. POGLAVJE: GEOGRAFSKE OZNAČBE

22. člen

Varstvo geografskih označb

1. V tem sporazumu so geografske označbe oznake, ki označujejo, da blago izvira z ozemlja članice ali iz regije ali lokacije na tem ozemlju, če se dana kakovost, sloves ali kaka druga značilnost tega blaga bistveno pripisuje njegovemu geografskemu poreklu.

2. V zvezi z geografskimi označbami članice zainteresiranim strankam zagotovijo zakonita sredstva za preprečitev:

(a) uporabe vsakega takega sredstva pri imenovanju ali predstavitvi blaga, ki bi označevalo ali nakazovalo, da določeno blago izvira iz geografskega območja, ki ni resnični kraj porekla, na način, ki bi zavajal javnost glede geografskega porekla blaga;

(b) vsake uporabe, ki je dejanje nelojalne konkurence v smislu 10.bis člena Pariške konvencije (1967).

3. Članica po uradni dolžnosti, če njena zakonodaja to dovoljuje, ali na zahtevo zainteresirane stranke, zavrne ali razveljavi registracijo znamke, ki vsebuje ali je sestavljena iz geografske označbe za blago, ki ne izvira z označenega ozemlja, če je uporaba take označbe na znamki za tako blago v tej članici taka, da zavaja javnost glede resničnega kraja porekla.

4. Varstvo na podlagi prvega, drugega in tretjega odstavka se uporablja za geografsko označbo, ki je sicer resnična, kar zadeva ozemlje, regijo ali lokacijo, iz katere izvira blago, vendar pa javnosti napačno predstavlja, da blago izvira z drugega ozemlja.

23. člen

Dodatno varstvo za geografske označbe vin in žganih pijač

1. Vsaka članica zainteresiranim strankam zagotovi zakonita sredstva za preprečevanje uporabe geografske označbe, ki označuje vina, za vina, ki ne izvirajo iz kraja, ki ga označuje določena geografska označba, ali ki označuje žgane pijače za žgane pijače, ki ne izvirajo iz kraja, ki ga označuje določena geografska označba, tudi če je označen resnični izvor blaga ali je uporabljena geografska označba v prevodu ali ga spremljajo izrazi, kot so "vrsta", "tip", "stil", "imitacija" ali podobno.[4]

2. Registracija znamke vin, ki vsebuje ali se sestoji iz geografske označbe, ki označuje vina ali žgane pijače, ki vsebuje ali se sestoji iz geografske označbe, ki označuje žgane pijače, se zavrne ali razveljavi po uradni dolžnosti, če to dovoljuje zakonodaja članice, ali na zahtevo zainteresirane stranke, v zvezi s takimi vini ali žganimi pijačami, ki nimajo tega porekla.

3. Če so geografske označbe za vina homonimne, se varstvo zagotovi vsaki označbi v skladu z določbami četrtega odstavka 22. člena. Vsaka članica določi praktične pogoje za razlikovanje med homonimnimi označbami ob upoštevanju potrebe po zagotavljanju nepristranskega obravnavanja določenih proizvajalcev in preprečevanja zavajanja potrošnikov.

4. Da bi omogočili varstvo geografskih označb za vina, bodo v Svetu za TRIPS potekala pogajanja v zvezi z ustanovitvijo mnogostranskega sistema notifikacije in registracije geografskih označb za vina, ki imajo pravico do varstva v članicah, ki sodelujejo v sistemu.

24. člen

Mednarodna pogajanja; izjeme

1. Članice se sporazumejo, da začnejo pogajanja za povečanje varstva posameznih geografskih označb po 23. členu. Določb odstavkov od štiri do osem spodaj ne sme uporabljati članica za to, da zavrne pogajanja ali sklepanje dvostranskih ali mnogostranskih sporazumov. V kontekstu takih pogajanj so članice pripravljene obravnavati nadaljnjo uporabo teh določb za posamezne geografske označbe, katerih uporaba je bila predmet teh pogajanj.

2. Svet za TRIPS prouči izvajanje določb tega poglavja; prva taka proučitev se opravi v dveh letih od začetka veljavnosti Sporazuma o WTO. Na vsako zadevo, ki vpliva na izpolnjevanje obveznosti po teh določbah, je treba Svet opozoriti, in ta se mora na zahtevo ene članice posvetovati s katerokoli članico ali članicami o zadevi, za katero ni bilo

[4] Ne glede na prvi stavek 42. člena lahko članice glede teh obveznosti v zamenjavo določijo izvajanje z upravnimi sredstvi.

mogoče najti zadovoljive rešitve z dvostranskimi ali večstranskimi posvetovanji med določenimi članicami. Svet ukrepa v skladu z dogovorom tako, da omogoči delovanje in pospeši cilje tega poglavja.

3. Članica pri izvajanju tega poglavja ne sme zmanjšati varstva geografskih označb, ki so obstajala v tej članici neposredno pred začetkom veljavnosti Sporazuma o WTO.

4. Nič v tem poglavju ne zavezuje članice, da prepreči nadaljnjo in podobno uporabo določene geografske označbe druge članice za označevanje vin ali žganih pijač v zvezi z blagom ali storitvami kateregakoli od njenih državljanov ali prebivalcev, ki je neprekinjeno uporabljal to geografsko označbo za isto ali sorodno blago ali storitev na ozemlju te članice ali (a) najmanj deset let pred 15. aprilom 1994 ali (b) v dobri veri pred tem datumom.

5. Če je bila znamka prijavljena ali registrirana v dobri veri ali če so bile pravice do znamke pridobljene z uporabo v dobri veri, ali

(a) pred datumom uporabe teh določb v tej članici, kot je določeno v VI. delu, ali

(b) preden je geografska označba zavarovana v državi porekla,

ne smejo ukrepi, sprejeti za izvajanje tega poglavja, vplivati na možnosti za registracijo ali veljavnost znamke ali pravice do uporabe znamke na podlagi dejstva, da je znamka enaka ali podobna geografski označbi.

6. Nič v tem poglavju ne zavezuje članice, da uporablja svoje določbe v zvezi z geografsko označbo katerekoli druge članice, ki se nanašajo na blago ali storitve, katerih ustrezna označba je enaka običajnemu izražanju v skupnem jeziku kot skupno ime za tako blago ali storitve na ozemlju te članice. Nič v tem poglavju ne zavezuje članice, da zahteva uporabo svojih določb v zvezi z geografsko označbo katerekoli druge članice, ki se nanaša na proizvode iz vinske trte, katerih ime je enako kot običajno ime za sorto grozdja, ki je obstajalo na ozemlju te članice na dan začetka veljavnosti Sporazuma o WTO.

7. Članica lahko določi, da mora biti vsaka zahteva po tem poglavju v zvezi z uporabo ali registracijo znamke vložena v petih letih, potem ko je postala nepravilna uporaba zaščitene označbe splošno znana v tej članici, ali po datumu registracije znamke v tej članici, pod pogojem, da je bila ta znamka do tega datuma objavljena, če je tak datum zgodnejši od datuma, ko je postala nepravilna uporaba splošno znana v tej članici, pod pogojem, da se ta geografska označba ne uporablja ali ni registrirana v slabi veri.

8. Določbe tega poglavja nikakor ne posegajo v pravice katerekoli osebe, da v trgovini uporablja svoje ime ali ime svojega predhodnika v poslu, razen če je tako ime uporabljeno tako, da zavaja javnost.

9. Po tem sporazumu ni obveznosti za varstvo geografskih označb, ki niso ali prenehajo biti varovane v državi porekla ali ki so se v tej državi prenehale uporabljati.

4. POGLAVJE: INDUSTRIJSKI VZORCI IN MODELI

25. člen

Pogoji za varstvo

1. Članice zagotavljajo varstvo neodvisno ustvarjenih industrijskih vzorcev in modelov, ki so novi ali izvirni. Članice lahko določijo, da vzorci in modeli niso novi ali izvirni, če se bistveno ne razlikujejo od znanih vzorcev in modelov ali kombinacij znanih vzorcev in modelov. Članice lahko določijo, da se tako varstvo ne prenese na vzorce in modele, ki jih v bistvu narekujejo tehnični ali funkcionalni nagibi.

2. Vsaka članica zagotovi, da pogoji za zagotovitev varstva tekstilnih vzorcev, še zlasti glede na morebitne stroške, preizkus ali objavo, nerazumno ne poslabšajo možnosti za zahtevo in pridobitev takega varstva. Članice svobodno izpolnjujejo to obveznost v obliki zakona o industrijskem oblikovanju ali zakona o avtorskih pravicah.

26. člen

Varstvo

1. Lastnik varovanega industrijskega vzorca ali modela ima pravico preprečiti tretjim strankam, ki nimajo njegove privolitve, da izdelujejo, prodajajo ali uvažajo predmete, ki nosijo ali vsebujejo vzorec ali model, ki je kopija ali v veliki meri kopija varovanega vzorca ali modela, če so taka dejanja storjena v trgovinske namene.

2. Članice lahko določijo omejene izjeme pri varstvu industrijskih vzorcev in modelov pod pogojem, da take izjeme niso v nerazumnem nasprotju z običajnim izkoriščanjem varovanih industrijskih vzorcev in modelov in da nerazumno ne posegajo v legitimne interese lastnika varovanega industrijskega vzorca ali modela ob upoštevanju legitimnih interesov tretjih strank.

3. Varstvo traja najmanj deset let.

5. POGLAVJE: PATENTI

27. člen

Predmet, ki izpolnjuje pogoje za pridobitev patenta

1. Pod pogoji določb drugega in tretjega odstavka so patenti mogoči za katerekoli izume, ali proizvode ali postopke, na vseh področjih tehnologije pod pogojem, da so novi, da so na ravni izumiteljstva in jih je možno uporabiti v industriji.[5] Pod pogojem četrtega odstavka 65. člena, osmega odstavka 70. člena in tretjega odstavka tega člena morajo biti patenti in njihove pravice dane v uporabo brez diskriminacije glede na kraj izuma, področje tehnologije ali glede na to ali so proizvodi uvoženi ali lokalno proizvedeni.

2. Članice lahko iz patentiranja izključijo izume, za katere je preprečitev trgovinskega izkoriščanja na njihovem ozemlju potrebna zaradi varovanja javnega reda ali morale vključno z zaščito življenja ljudi, živali ali rastlin ali zdravja ali da se izogne resno ogrožanje okolja pod pogojem, da taka izključitev ni samo zaradi tega, ker tako izkoriščanje prepoveduje njihov zakon.

3. Članice lahko iz patentiranja izključijo tudi:

(a) diagnostične, terapevtske in kirurške metode za zdravljenje ljudi ali živali;

(b) rastline in živali, ki niso mikroorganizmi, in pretežno biološke procese za proizvodnjo rastlin ali živali, ki niso nebiološki in mikrobiološki procesi. Vendar pa morajo članice zagotoviti varstvo rastlinskih vrst ali s patenti ali s sui generis sistemom ali s kakršnokoli kombinacijo obeh. Določbe tega pododstavka se proučijo štiri leta po začetku veljavnosti Sporazuma o WTO.

[5] Za namene tega člena lahko katerakoli članica izraza "raven izumiteljstva" in "možnost uporabe v industriji" šteje kot sinonima izrazoma "neočiten" in "uporaben".

28. člen

Dane pravice

1. S patentom se lastniku dajejo te izključne pravice:

(a) če je predmet patenta proizvod, preprečitev tretjim strankam, ki nimajo njegove privolitve, da izdelujejo, uporabljajo, dajejo v prodajo, prodajajo ali v te namene uvažajo[6] ta proizvod;

(b) če je predmet patenta postopek, preprečitev tretjim strankam, ki nimajo njegove privolitve, da postopek uporabljajo in da uporabljajo, dajejo v prodajo, prodajajo ali v te namene uvažajo vsaj proizvod, ki je pridobljen neposredno s tem postopkom.

2. Prav tako imajo lastniki patentov pravico prenesti ali z dedovanjem prenesti patent in sklepati licenčne pogodbe.

29. člen

Pogoji za prijavitelje patentov

1. Članice zahtevajo, da prijavitelj patenta izum predstavi dovolj jasno in popolnoma, da ga lahko izvede oseba, ki je usposobljena na določenem področju, in lahko od prijavitelja zahteva, da pokaže najboljši način izvedbe izuma, ki ga pozna izumitelj, na datum prijave, ali če se zahteva prednostna pravica, na datum prve prijave.

2. Članice lahko od prijavitelja patenta zahtevajo, da zagotovi informacije v zvezi z ustreznimi prijaviteljevimi tujimi prijavami in podeljenimi patenti.

30. člen

Izjeme pri danih pravicah

Članice lahko določijo omejene izjeme pri izključnih pravicah, ki jih vsebuje patent, če take izjeme niso v nerazumnem nasprotju z običajnim izkoriščanjem patenta in nerazumno ne ogrožajo legitimnih interesov lastnika patenta ob upoštevanju legitimnih interesov tretjih strank.

31. člen

Drugačna uporaba brez dovoljenja imetnika pravice

Če zakon članice dovoljuje drugačno uporabo[7] predmeta patenta brez dovoljenja imetnika pravice, vključno če jih uporabljajo vlade ali tretje stranke, ki jih vlade pooblastijo, je treba spoštovati te določbe:

(a) dovoljenje za tako uporabo se obravnava glede na posamezne pogoje;

(b) taka uporaba se lahko dovoli le, če si je predlagani uporabnik pred uporabo prizadeval pridobiti dovoljenje od imetnika pravic pod razumnimi trgovinskimi določili in pogoji in če ta prizadevanja v razumnem obdobju niso bila uspešna. To zahtevo lahko članica oprosti ob izrednih razmerah v državi ali drugih okoliščinah skrajne sile ali ob javni netrgovinski uporabi. Ob izrednih razmerah v državi ali ob drugih okoliščinah skrajne sile pa mora biti imetnik pravice vseeno obveščen takoj, ko je to možno. Ob javni netrgovinski uporabi, če država ali pogodbena stranka brez patentne poizvedbe ve ali ima dokazljivo podlago za to, da ve, da je ali bo veljavni patent uporabila vlada ali bo uporabljen v njenem imenu, je treba imetnika pravice nemudoma obvestiti;

(c) obseg in trajanje take uporabe sta omejena glede na namen, za katerega sta bila dovoljena, in mora v primeru tehnologije polprevodnikov veljati samo za javno netrgovinsko uporabo ali kot ukrep proti praksi, ki je bila v sodnem ali upravnem postopku ugotovljena kot protikonkurenčna;

(d) taka uporaba je neizključna;

(e) taka uporaba je neprenosljiva, razen za tisti del podjetja, ki uživa uporabo;

(f) vsaka taka uporaba mora biti dovoljena pretežno za oskrbovanje domačega trga članice, ki je dovolila tako uporabo;

(g) dovoljenje za tako uporabo mora ob upoštevanju legitimnih interesov tako pooblaščenih oseb prenehati, če in ko prenehajo obstajati okoliščine, ki so pripeljale do nje, in če ni verjetno, da bi se ponovile. Pristojna oblast ima na podlagi utemeljene zahteve pravico proučiti nadaljnji obstoj teh okoliščin;

(h) imetniku pravice se plača primerna odškodnina glede na okoliščine vsakega posameznega primera ob upoštevanju ekonomske vrednosti dovoljenja;

(i) zakonsko veljavnost vsake odločitve v zvezi z dovoljevanjem take uporabe preveri sodna oblast ali druga ločena višja oblast v tej članici;

(j) katerakoli odločitev o odškodnini, ki se zagotovi glede take uporabe, je predmet sodne proučitve ali druge neodvisne proučitve po ločeni višji oblasti v tej članici;

(k) članice niso zavezane uporabljati pogojev, določenih v pododstavkih (b) in (f) če je taka uporaba dovoljena kot ukrep proti praksi, ki je bila v sodnem ali upravnem postopku ugotovljena kot protikonkurenčna. Potreba po odpravi protikonkurenčne prakse se lahko upošteva pri določanju višine odškodnine v takih primerih. Pristojne oblasti imajo pravico zavrniti ukinitev dovoljenja, če obstaja možnost, da se okoliščine, ki so privedle do takega dovoljenja, ponovijo;

(l) če je taka uporaba dovoljena za izkoriščanje nekega patenta ("drugi patent"), ki ne more biti izkoriščan, ne da bi pri tem posegal v neki drug patent ("prvi patent"), se uporabljajo ti dodatni pogoji:

(i) izum, ki je predmet drugega patenta, vsebuje tehnični napredek znatnega gospodarskega pomena glede na izum, ki je predmet prvega patenta;

(ii) imetnik prvega patenta je pod razumnimi pogoji upravičen do obratne licence za uporabo izuma, ki je predmet drugega patenta in

(iii) dovoljena uporaba v zvezi s prvim patentom ni prenosljiva brez sočasnega prenosa drugega patenta.

32. člen

Preklic/odvzem patenta

Obstajati mora možnost sodne proučitve kakršnekoli odločitve o preklicu ali odvzemu patenta.

33. člen

Trajanje varstva

Trajanje varstva ne sme poteči pred iztekom dvajsetih let od datuma vložitve prijave.[8]

34. člen

Patenti za postopke: dokazno breme

1. Za namene civilnega postopka glede kršitev pravic lastnika, navedenih v prvem (b) odstavku 28. člena, če je predmet patenta postopek za pridobivanje nekega proizvoda, imajo sodne oblasti pravico odrediti tožencu, da dokaže, da je postopek za pridobivanje enakega proizvoda drugačen od patentiranega postopka. Zato članice zagotovijo, da se vsak enak proizvod, ki je proizveden brez privolitve lastnika patenta, kadar ni dokaza o nasprotnem, obravnava, kot da je pridobljen s patentiranim postopkom, v vsaj eni od teh okoliščin:

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[6] Ta kakor tudi vse preostale pravice, ki so dane po tem sporazumu v zvezi z uporabo, prodajo, uvozom ali drugačno distribucijo blaga, so predmet določb 6. člena.

[7] "Drugačna uporaba" je uporaba, ki ni tista, ki jo dovoljuje 30. člen.

[8] Razume se, da tiste članice, ki nimajo izvirnega sistema dajanja patenta, lahko določijo, da se obdobje zaščite šteje od datuma vložitve prijave v izvirni sistem dajanja patenta.

(a) če je proizvod, pridobljen s patentiranim postopkom, nov;

(b) če obstaja pretežna verjetnost, da je bil enak proizvod proizveden s postopkom, lastnik patenta pa ni mogel z razumnimi prizadevanji ugotoviti, kateri postopek je bil dejansko uporabljen.

2. Vsaka članica lahko svobodno določi, da domnevni kršitelj nosi dokazno breme, ki je določeno v prvem odstavku le, če je izpolnjen pogoj iz pododstavka (a) ali če je izpolnjen pogoj iz pododstavka (b).

3. Pri navajanju nasprotnega dokaza se upoštevajo legitimni interesi tožencev v zvezi z varovanjem njihovih proizvodnih in poslovnih skrivnosti.

6. POGLAVJE: TOPOGRAFIJE INTEGRIRANIH VEZIJ

35. člen

Razmerje s pogodbo IPIC

Članice se sporazumejo, da zagotavljajo varstvo topografij integriranih vezij (v nadaljevanju besedila integrirana vezja) v skladu s členi od 2 do 7 (razen tretjega odstavka 6. člena), 12. členom in tretjim odstavkom 16. člena Pogodbe o intelektualni lastnini na področju integriranih vezij ter da dodatno izpolnjujejo te določbe.

36. člen

Obseg varstva

V skladu z določbami prvega odstavka 37. člena članice obravnavajo kot nezakonita ta dejanja, če so storjena brez dovoljenja imetnika pravice:[9] uvažanje, prodajanje ali drugačno distribuiranje v trgovinske namene varovane topografije, integriranega vezja, v katerem je vgrajena varovana topografija, ali predmeta, v katerem je vgrajeno tako integrirano vezje, samo če še naprej vsebuje nezakonito reproducirano topografijo.

37. člen

Dejanja, za katera se ne zahteva dovoljenje imetnika pravice

1. Ne glede na 36. člen nobena članica ne šteje kot nezakonito nobeno dejanje, ki je določeno v tistem členu v zvezi z integriranim vezjem, v katerem je vgrajena nezakonito reproducirana topografija, ali predmetom, v katerem je vgrajeno tako integrirano vezje, če oseba, ki je storila ali naročila taka dejanja, ni vedela in ni imela razumne podlage, da bi vedela, ko je pridobila integrirano vezje ali predmet, v katerem je bilo vgrajeno tako integrirano vezje, da je v njem vgrajena nezakonito reproducirana topografija. Članice določijo, da lahko taka oseba potem, ko je bila ustrezno opozorjena, da je bila topografija nezakonito reproducirana, stori katero od dejanj v zvezi z obstoječo zalogo ali zalogo, ki je bila predhodno naročena, vendar mora plačati imetniku pravice znesek, ki je enakovreden razumni licenčnini, ki bi jo bilo treba plačati za svobodno dogovorjeno licenco za tako topografijo.

2. Pogoji, določeni v pododstavkih od (a) do (k) 31. člena, se mutatis mutandis uporabljajo ob kateremkoli neprostovoljnem dajanju licence za topografijo ali uporabo le-te po vladi ali za vlado brez dovoljenja imetnika pravice.

38. člen

Trajanje varstva

1. V članicah, ki zahtevajo registracijo kot pogoj za varstvo, trajanje varstva topografij ne sme poteči pred potekom desetih let od datuma vložitve prijave za registracijo ali od prvega trgovinskega izkoriščanja, ne glede na to, kje na svetu se je to zgodilo.

2. V članicah, ki kot pogoj za varstvo ne zahtevajo registracije, mora varstvo topografij trajati najmanj deset let od datuma prvega trgovinskega izkoriščanja, ne glede na to, kje na svetu se je to zgodilo.

3. Ne glede na prvi in drugi odstavek lahko članica določi, da varstvo preneha petnajst let po nastanku topografije.

7. POGLAVJE: VARSTVO NEOBJAVLJENIH INFORMACIJ

39. člen

1. Pri zagotavljanju učinkovitega varstva proti nelojalni konkurenci, kot jo določa 10.bis člen Pariške konvencije (1967), so članice dolžne varovati neobjavljene informacije v skladu z drugim odstavkom in podatke, predložene vladam in vladnim agencijam v skladu s tretjim odstavkom.

2. Fizične in pravne osebe morajo imeti možnost preprečiti, da se informacija, ki je zakonito pod njihovim nadzorom, brez njihovega privoljenja ne objavi ali da jo drugi pridobijo ali uporabijo brez njihovega privoljenja v nasprotju s pošteno trgovinsko prakso,[10] samo če:

(a) je ta informacija skrivnost v tem smislu, da ni njena celota ali natančna konfiguracija in sestava njenih komponent splošno znana ali lahko dosegljiva osebam v krogih, ki se običajno ukvarjajo s to vrsto informacij;

(b) ima ta informacija trgovinsko vrednost, zato je skrivnost; in

(c) je oseba, ki ima zakoniti nadzor nad to informacijo, v teh okoliščinah razumno ukrepala, da ohrani informacijo kot skrivnost.

3. Če članice kot pogoj za dovoljenje trženja farmacevtskih ali kmetijskih kemičnih proizvodov, ki uporabljajo nove kemične sestavine, zahtevajo predložitev neobjavljenih podatkov o preizkusih ali drugih podatkov, za izdajanje katerih je bil potreben precejšen trud, take podatke zavarujejo pred nepošteno trgovinsko uporabo. Poleg tega članice zaščitijo take podatke pred objavo, razen če je treba varovati javnost, ali če ne ukrepa, da se zagotovi varnost podatkov pred nepošteno trgovinsko uporabo.

8. POGLAVJE: NADZOR NAD PROTIKONKURENČNO PRAKSO PRI POGODBENIH LICENCAH

40. člen

1. Članice se sporazumejo, da lahko določena praksa pri dajanju licenc ali pogoji v zvezi s pravicami intelektualne lastnine, ki omejujejo konkurenco, lahko na trgovino negativno učinkujejo in lahko omejujejo prenos in širjenje tehnologije.

2. Nič v tem sporazumu članicam ne preprečuje, da v svoji zakonodaji določijo prakso ali pogoje dajanja licenc, ki v določenih primerih pomeni zlorabo pravic intelektualne lastnine, in imajo negativen učinek na konkurenco na ustreznem trgu. Kot je določeno zgoraj, lahko članica v skladu z drugimi določbami tega sporazuma sprejme ustrezne ukrepe

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[9] Izraz "imetnik pravice" se v tem poglavju razume enako kot izraz "imetnik pravice" v pogodbi IPIC.

[10] V tej določbi pomeni "v nasprotju s pošteno trgovinsko prakso" vsaj prakso, kot je kršitev pogodbe, kršitev zaupanja in napeljevanje na kršitev, in vključuje pridobitev neobjavljene informacije po tretjih strankah, ki so vedele, ali zaradi velike malomarnosti niso vedele, da gre pri pridobivanju informacij za tako prakso.

za preprečitev ali nadzor take prakse, ki vključuje npr. izključne povratne pogoje, pogoje za preprečitev zanikanja veljavnosti in prisilno dajanje licenc za pakiranje na podlagi ustreznih zakonov in predpisov te članice.

3. Vsaka članica se na zahtevo posvetuje s katerokoli drugo članico, ki ima razlog za mnenje, da lastnik pravice intelektualne lastnine, ki je državljan ali ima prebivališče v članici, na katero je bila naslovljena zahteva za posvetovanje, izvaja prakso, ki krši zakone in predpise članice, ki zahteva posvetovanje, v zvezi s tem poglavjem in želi zagotoviti izvajanje te zakonodaje brez poseganja v katerokoli zakonito dejanje in s polno svobodo dokončne odločitve ene ali druge članice. Članica, na katero se je obrnila druga članica, posvetovanju z zahtevajočo članico posveti polno in naklonjeno pozornost in ji ponudi ustrezne možnosti za to ter sodeluje z njo tako, da ji zagotovi javno dostopne, nezaupne informacije, ki se nanašajo na obravnavano zadevo, ter druge informacije, ki so članici na razpolago v skladu z domačo zakonodajo in s sklenitvijo zadovoljivih medsebojnih sporazumov v zvezi z varovanjem zaupnosti po zahtevajoči članici.

4. Članici, katere državljani ali osebe, ki imajo prebivališče v njej, so v drugi članici v postopku zaradi domnevne kršitve njenih zakonov in predpisov v zvezi s predmetom tega poglavja,se na dano zahtevo omogoči posvetovanje z drugo članico pod istimi pogoji kot v tretjem odstavku.

III. DEL

UVELJAVLJANJE PRAVIC INTELEKTUALNE LASTNINE

1. POGLAVJE: SPLOŠNE OBVEZNOSTI

41. člen

1. Članice zagotovijo, da so postopki uveljavljanja pravic, določeni v tem delu, v njihovih zakonih taki, da omogočajo učinkovito ukrepanje proti kateremukoli dejanju poseganja v pravice intelektualne lastnine, ki jih vsebuje ta sporazum, vključno s hitrimi sredstvi za preprečevanje poseganja in sredstvi, ki preprečujejo nadaljnja poseganja. Ti postopki se uporabljajo tako, da se izogiba nastajanju ovir pri legitimni trgovini in da se zagotovi varstvo pred zlorabami teh postopkov.

2. Postopki v zvezi z uveljavljanjem pravic intelektualne lastnine morajo biti pravični. Ne smejo biti po nepotrebnem zapleteni ali dragi ali postavljati nerazumne časovne omejitve ali povzročati neupravičene zamude.

3. Odločitve o teži primera so po možnosti pisne in obrazložene. Brez nepotrebne zamude so na razpolago vsaj strankam v postopku. Odločitve o teži primera temeljijo samo na dokazih, v zvezi s katerimi je bilo strankam omogočeno zaslišanje.

4. Stranke v postopku imajo možnost za sodno proučitev končnih upravnih odločitev in pod pogoji določb o sodni pristojnosti v zakonodaji članice, ki se nanašajo na pomembnost primera, vsaj pravnih vidikov prvih sodnih odločitev o teži primera. V kazenskih zadevah pa ni obveznosti proučitve oprostilnih sodb.

5. Razume se, da ta del ne pomeni nikakršne obveznosti za vzpostavitev sodnega sistema za uveljavljanje pravic intelektualne lastnine, ki je drugačno od splošno veljavnega pravnega sistema. Nič v tem delu ne ustvarja nikakršne obveznosti glede razdelitve resursov v zvezi z uveljavljanjem pravic intelektualne lastnine in uveljavljanjem zakonodaje na splošno.

2. POGLAVJE: CIVILNI IN UPRAVNI POSTOPKI TER SREDSTVA

42. člen

Pravični in enaki postopki

Članice omogočajo imetnikom pravic[11] v zvezi z uveljavljanjem vsake pravice intelektualne lastnine po tem sporazumu civilne sodne postopke. Toženi imajo pravico do pravočasnega in dovolj natančnega pisnega obvestila, vključno s pravno podlago zahtevkov. Stranke imajo možnost, da jih zastopajo neodvisni pravni zastopniki in postopki ne smejo biti prezahtevni glede obvezne osebne prisotnosti. Vse stranke v takih postopkih imajo pravico do utemeljitve svojih zahtevkov in predložitve ustreznih dokazov. V postopku morajo biti zagotovljena sredstva opredelitve in varstva zaupnih podatkov, razen če je to v nasprotju z veljavnimi ustavnimi določbami.

43. člen

Dokazi

1. Sodne oblasti imajo pristojnost zahtevati, če je neka stranka predložila razumno dosegljive dokaze, ki zadoščajo za utemeljitev njenih zahtevkov, in razčleni dokaze, ki so pomembni za tako utemeljitev in so pod nadzorom nasprotne stranke, da nasprotna stranka te dokaze predloži, kar je v posameznih primerih odvisno tudi od pogojev, ki zagotavljajo varstvo zaupnih podatkov.

2. Če neka stranka v postopku prostovoljno in brez pravega razloga zavrne dostop do potrebnih podatkov ali jih kako drugače ne priskrbi v razumnem obdobju, ali če resno ovira postopek v zvezi z uveljavitvijo pravic, lahko članica da sodnim oblastem pooblastilo, da pripravijo predhodne in končne, pozitivne ali negativne ugotovitve na podlagi informacij, ki so jim na voljo, vključno s pritožbo ali navedbo, ki jo da stranka, ki ji je bil onemogočen dostop do informacij, pod pogojem, da je strankam omogočeno zaslišanje v zvezi z danimi navedbami ali dokazi.

44. člen

Začasne odredbe

1. Sodne oblasti imajo pravico odrediti stranki, naj preneha s kršitvijo, med drugim tudi preprečiti vstop uvoženega blaga, ki krši pravice intelektualne lastnine, v trgovinske tokove pod njihovo jurisdikcijo takoj po carinjenju takega blaga. Članicam ni treba dati take pravice v zvezi s predmetom varstva, ki ga je pridobila ali naročila določena oseba, preden je zvedela ali imela utemeljene razloge, da ve, da bo trgovina s takim predmetom povzročila kršitev pravic intelektualne lastnine.

2. Ne glede na druge določbe tega dela in pod pogojem, da so izpolnjene določbe II. dela, ki se posebej nanašajo na uporabo vlad ali tretjih oseb, ki jih pooblasti vlada, a brez dovoljenja imetnika pravice, lahko članice omejijo sicer razpoložljiva sredstva proti taki uporabi na plačilo nadomestila v skladu s pododstavkom (h) 31. člena. V drugih primerih se uporabljajo sredstva, določena v tem delu, ali če sredstva niso v skladu z zakonodajo članice, morajo biti na voljo javne sodbe in ustrezno nadomestilo.

45. člen

Odškodnine

1. Sodne oblasti imajo pravico zahtevati od kršilca, naj plača imetniku pravice ustrezno odškodnino za nadomestilo

[11] V tem delu izraz "imetnik pravice" vključuje zveze in združenja, ki lahko zakonito zahtevajo take pravice.

zaradi škode, ki jo je imetnik pravice utrpel, ker je kršilec imetnikovo pravico intelektualne lastnine namenoma kršil ali pa je utemeljeno, da bi moral vedeti, da s svojimi dejanji krši to pravico.

2. Prav tako imajo sodne oblasti pravico odrediti, da kršilec imetniku pravice plača stroške, ki lahko vključujejo ustrezne odvetniške stroške. V ustreznih primerih lahko članice pooblastijo sodne oblasti, da zahtevajo povračilo dobička in/ali plačilo pavšalne odškodnine, tudi če kršilec ni namenoma kršil pravice ali pa je utemeljeno, da ni mogel vedeti, da s svojimi dejanji krši to pravico.

46. člen

Druga sredstva

Z namenom, da se ustvari učinkovito preprečevanje kršitev, imajo sodne oblasti pravico odrediti, da se blago, za katero so ugotovile, da krši pravice, brez kakršnegakoli nadomestila umakne iz tokov trgovine tako, da se pri tem izogne povzročitvi škode imetniku pravice ali da se uniči, razen če bi to bilo v nasprotju z veljavnimi ustavnimi določbami. Prav tako lahko sodne oblasti potrdijo, da se materiala ali orodja, ki se pretežno uporabljata pri izdelavi spornega blaga, brez kakršnegakoli nadomestila znebijo iz trgovinskih tokov tako, da se zmanjša tveganje nadaljnjih kršitev. Pri takih zahtevah je treba upoštevati razmerje med resnostjo kršitve in odrejenimi sredstvi kakor tudi interese tretjih oseb. Pri blagu s ponarejeno znamko ne zadostuje samo odstranitev nezakonito pritrjene znamke, razen v izjemnih primerih, da bi dovolili vstop takega blaga v trgovinske tokove.

47. člen

Pravica do obvestila

Članice lahko določijo, razen če je to v nesorazmerju s težo kršitve, da imajo sodne oblasti pravico odrediti, da kršilec imetnika pravice obvesti o istovetnosti tretjih oseb, ki so vpletene v proizvodnjo in promet blaga ali storitev, ki je predmet kršitve, in o njihovih poslovnih zvezah.

48. člen

Nadomestilo tožencu

1. Sodne oblasti imajo pravico odrediti, da stranka, ki je zahtevala ukrepanje in je pri tem zlorabila postopke uveljavitve pravic, da stranki, ki je krivično vpletena ali zadržana, izplača ustrezno odškodnino za škodo, ki jo je ta imela zaradi take zlorabe. Sodne oblasti imajo tudi pravico odrediti, da prijavitelj plača toženčeve stroške, ki lahko vključujejo ustrezno plačilo odvetniku.

2. Pri izvajanju kateregakoli zakona, ki se nanaša na varstvo ali uveljavljanje pravic intelektualne lastnine, članice izvzamejo oblasti in uradnike od odgovornosti za ustrezna sredstva, če jih za izvajanje takih zakonov sprejemajo v dobri veri.

49. člen

Upravni postopki

V tisti meri, do katere je možno odrediti civilnopravno sredstvo kot rezultat upravnih postopkov, so taki postopki v skladu z načeli, ki so vsebinsko enaki načelom tega poglavja.

3. POGLAVJE: ZAČASNI UKREPI

50. člen

1. Sodne oblasti lahko odredijo takojšnje in učinkovite začasne ukrepe:

(a) da bi preprečili nastanek kršitve kakršnekoli pravice intelektualne lastnine, zlasti pa da bi preprečili blagu vstop v trgovinske tokove na njihovem jurisdikcijskem območju, vključno z uvoženim blagom takoj po carinjenju;

(b) da bi ohranili pravno ustrezne dokaze v zvezi z domnevno kršitvijo.

2. Sodne oblasti imajo, če je potrebno, pravico sprejeti začasne ukrepe brez zaslišanja druge strani, zlasti če lahko morebitna zamuda povzroči nepopravljivo škodo imetniku pravice ali če obstaja nevarnost uničenja dokazov.

3. Sodne oblasti imajo pravico zahtevati od vlagatelja, da predloži vse razumno dosegljive dokaze, da bi se lahko z zadostno mero gotovosti prepričali o tem, da je vlagatelj dejansko imetnik pravice in da se krši njegovo pravico ali da je taka kršitev neizbežna, in zahtevati od vlagatelja, da položi varščino ali drugo primerno zavarovanje za zaščito toženca in preprečitev zlorabe.

4. Če so bili začasni ukrepi sprejeti brez zaslišanja druge strani, je treba stranke o tem obvestiti najkasneje takoj po izpolnitvi teh ukrepov. Na tožen čevo zahtevo se lahko opravi proučitev in zaslišanje, da bi v razumnem času po notifikaciji ukrepov lahko sprejeli odločitev, ali naj se ti ukrepi spremenijo, prekličejo ali potrdijo.

5. Od vlagatelja se lahko zahteva, da priskrbi tudi druge podatke, ki so potrebni, da lahko oblasti, ki bodo izpolnile začasne ukrepe, ugotovijo, za katero blago gre.

6. Brez poseganja v četrti odstavek se začasni ukrepi, sprejeti na podlagi prvega in drugega odstavka, na tožen čevo zahtevo prekličejo ali drugače prenehajo učinkovati, če postopek, ki vodi do odločitve na podlagi okoliščin primera, ni bil sprožen v razumnem obdobju, ki ga določi sodna oblast, ki je odredila začasne ukrepe, če to dovoljuje domača zakonodaja ali če take odločitve ni, v največ dvajsetih delovnih dneh ali enaintridesetih koledarskih dneh, kar je dlje.

7. Če so začasni ukrepi preklicani ali če prenehajo veljati zaradi kakšnegakoli vlagateljevega dejanja ali opustitve ali če se pozneje ugotovi, da ni bilo kršitve ali ogrožanja pravice intelektualne lastnine, imajo sodne oblasti na tožen čevo zahtevo pravico zahtevati od vlagatelja, naj zagotovi tožencu ustrezno nadomestilo škode, če je ta povzročena s temi ukrepi.

8. Če se v upravnem postopku lahko odredijo kakšni začasni ukrepi, mora biti tak postopek v skladu z načeli, ki so vsebinsko enaka načelom tega poglavja.

4. POGLAVJE: POSEBNE ZAHTEVE V ZVEZI Z UKREPI NA MEJI[12]

51. člen

Sprostitev blaga, ki jo začasno prekinejo carinski organi

V skladu s spodaj navedenimi določbami članice sprejmejo postopke,[13] ki bodo imetniku pravice, ki utemeljeno sumi, da lahko pride do uvoza blaga s ponarejeno znamko ali piratskega avtorskega blaga,[14] omogočili, da vloži pisno zah-

[12] Če je članica odpravila pretežno ves nadzor v zvezi s prehodom blaga čez svojo mejo z drugo članico, ki je del carinske unije, se od nje ne zahteva, da uporablja določbe tega poglavja na tej meji.

[13] Razume se, da ni obveznosti, da se uporabljajo taki postopki za uvoz blaga, ki je dano na trg v drugi državi po ali s privoljenjem imetnika pravice, ali za blago v tranzitu.

[14] Za namene tega sporazuma:

(a) "blago s ponarejeno znamko" pomeni blago, vključno z embalažo, ki brez dovoljenja nosi znamko, ki je enaka veljavno registrirani znamki za tako blago, ali ki je ni mogoče razlikovati od take znamke in s tem krši pravice lastnika znamke v skladu z zakoni države uvoza;

(b) piratsko avtorsko blago" pomeni vsako blago, katerega kopije so izdelane brez pristanka imetnika pravice ali osebe, ki jo pooblasti imetnik pravice v državi izdelave, in ki je posredno ali neposredno izdelano iz predmeta, pri katerem bi izdelava kopije pomenila kršitev avtorske ali sorodne pravice v skladu z zakoni države uvoza.

tevo pri pristojnih upravnih ali sodnih organih za začasno prekinitev sprostitve takega blaga v prosto kroženje. Članice lahko omogočijo tako zahtevo tudi za druge vrste blaga, ki pomenijo še druge kršitve pravic intelektualne lastnine, pod pogojem, da upoštevajo določbe tega poglavja. Članice lahko pri carinskih organih poskrbijo tudi za ustrezne postopke v zvezi z začasno prekinitvijo sprostitve spornega blaga, ki je namenjeno izvozu z njihovega območja.

52. člen

Uporaba

Od kateregakoli imetnika pravice, ki sproži postopke po 51. členu, pristojni organi zahtevajo predložitev ustreznih dokazov, da je po zakonih države uvoznice njegova pravica intelektualne lastnine kršena prima facie, in dovolj natančen opis blaga, da bo za carinske organe hitro razpoznavno. Pristojni organi vlagatelja v primernem obdobju obvestijo, ali so vlogo sprejeli, in o obdobju, ki so ga določili za ukrepanje carinskih organov.

53. člen

Varščina ali enakovredno zavarovanje

1. Pristojni organi morajo imeti tako pristojnost, da zahtevajo od vlagatelja, da priskrbi varščino ali enakovredno zavarovanje, ki dovolj ščiti toženca in pristojne oblasti ter preprečuje zlorabo. Taka varščina ali zavarovanje ne sme nerazumno odvračati od teh postopkov.

2. Če carinski organi v skladu z vlogo na podlagi tega poglavja začasno prekinejo sprostitev blaga, ki vključuje industrijske modele in vzorce, patente, topografijo vezij ali neobjavljene informacije, v prosto kroženje na podlagi odločitve, ki ni odločitev sodnih ali drugih neodvisnih organov, in je potekel rok, določen v 55. členu, brez zagotovitve začasnega dovoljenja ustrezno pooblaščenega organa in če so izpolnjeni vsi pogoji za uvoz, ima lastnik, uvoznik ali prejemnik takega blaga pravico do sprostitve blaga, pod pogojem, da predloži varščino v takem znesku, da zadošča za zaščito imetnika pravice pred kakršnimkoli poseganjem. Plačilo take varščine ne sme posegati v katerokoli drugo sredstvo, ki je na razpolago imetniku pravice, pri čemer se razume, da se varščina sprosti, če imetnik pravice v razumnem obdobju ne izkoristi možnosti, da sproži ustrezen postopek.

54. člen

Obvestilo o začasni prekinitvi

Uvoznik in vlagatelj morata biti takoj obveščena o začasni prekinitvi sprostitve blaga v skladu z 51. členom.

55. člen

Trajanje začasne prekinitve

Če v obdobju, ki ni daljše od deset delovnih dni, potem ko je vlagatelj prejel obvestilo o začasni prekinitvi, carinski organi niso obveščeni, da je neka stranka, ki ni toženec, sprožila postopke, ki vodijo k odločitvi glede teže primera, ali da so ustrezni pooblaščeni organi uporabili začasne ukrepe in podaljšali začasno prekinitev sprostitve blaga, se blago sprosti, če so bili vsi drugi pogoji za uvoz ali izvoz izpolnjeni; v določenih primerih se lahko ta rok podaljša za nadaljnjih deset delovnih dni. Če so bili sproženi postopki, ki vodijo k odločitvi o teži primera, se na zahtevo toženca opravi proučitev, vključno s pravico zaslišanja, z namenom, da se v ustreznem obdobju sprejme odločitev o spremembi, preklicu ali potrditvi teh ukrepov. Ne glede na omenjeno se, če se prekine sprostitev blaga ali se nadaljuje v skladu z začasnim sodnim ukrepom, uporabljajo določbe šestega odstavka 50. člena.

56. člen

Povračilo uvozniku in lastniku blaga

Ustrezni organi imajo pravico zahtevati od vlagatelja, da plača uvozniku, prejemniku in lastniku blaga ustrezno povračilo kakršnekoli škode, ki jim je bila povzročena zaradi neupravičenega zadrževanja blaga ali zaradi zadrževanja blaga, ki je bilo sproščeno v skladu s 55. členom.

57. člen

Pravica do nadzora in obvestila

Brez poseganja v varovanje zaupnih podatkov članice dajo pristojnim organom pooblastilo, da lahko imetniku pravice omogočijo, da pregleda vsako blago, ki so ga zadržali carinski organi, z namenom, da lahko imetnik pravice utemeljuje svoje zahteve. Pristojne oblasti morajo imeti tudi pooblastilo, da dajo uvozniku enako možnost, da lahko pregleda vsako tako blago. Če je sprejeta pozitivna odločitev o teži primera, lahko dajo članice pristojnim organom pooblastilo, da obvestijo imetnika pravice o imenu in naslovu pošiljatelja, uvoznika in prejemnika, in o količini določenega blaga.

58. člen

Ravnanje po uradni dolžnosti

Če članice od pristojnih organov zahtevajo, da ravnajo po lastni pobudi in začasno prekinejo sprostitev blaga, za katero so dobile prima facie dokaze, da je prišlo do kršitve pravice intelektualne lastnine:

(a) pristojni organi lahko kadarkoli prosijo imetnika pravice za katerekoli podatke, ki jim lahko pomagajo pri izvajanju teh pooblastil;

(b) se uvoznik in imetnik pravice takoj obvestita o prekinitvi. Če uvoznik vloži pritožbo proti prekinitvi pri pristojnih organih, za razveljavitev mutatis mutandis veljajo pogoji, določeni v 55. členu;

(c) članice razrešijo javne organe in uradnike odgovornosti samo za ukrepe, ki so sprejeti v dobri veri.

59. člen

Sredstva

Brez poseganja v druge pravice ukrepanja, ki jih ima imetnik pravice in pod pogojem pravice toženca, da predlaga sodno proučitev, morajo imeti pristojni organi moč, da zahtevajo uničenje ali odstranitev blaga, ki krši pravice, v skladu z načeli, določenimi v 46. členu. Glede blaga s ponarejenimi znamkami oblasti ne smejo dovoliti ponovnega izvoza takega blaga v nespremenjenem stanju ali pa jih obravnavati v drugih carinskih postopkih, razen tistih v izjemnih okoliščinah.

60. člen

De minimis uvoz

Članice lahko izključijo uporabo zgornjih določb za majhne količine nekomercialnega blaga, ki so del osebne prtljage potnikov ali se pošiljajo v majhnih pošiljkah.

5. POGLAVJE: KAZENSKI POSTOPKI

61. člen

Članice zagotovijo kazenske postopke in kazni, ki se uporabljajo vsaj pri zavestnem ponarejanju znamk ali piratstvu avtorskih pravic v trgovinsko pomembnem obsegu. Sredstva, ki so na voljo, vključujejo zaporno kazen in/ali denarne kazni, ki so dovolj visoke, da pomenijo odvračanje od takih dejanj, sorazmerno višini kazni za ustrezna kazniva dejanja. V določenih primerih sredstva pomenijo tudi od-

vzem, zaplembo in uničenje blaga, ki krši pravico intelektualne lastnine, in kateregakoli drugega materiala in orodja, ki se v pretežni meri uporabljajo pri kaznivem dejanju. Članice lahko določijo kazenske postopke in kazni še za druge primere kršitev pravic intelektualne lastnine, še posebej, če je to storjeno zavestno in v trgovinsko pomembnem obsegu.

IV. DEL

PRIDOBITEV IN OHRANJANJE PRAVIC INTELEKTUALNE LASTNINE IN Z NJIMI POVEZANI INTER-PARTES POSTOPKI

62. člen

1. Kot pogoj za pridobitev ali ohranjanje pravic intelektualne lastnine na podlagi 2. do 6. poglavja II. dela sporazuma lahko članice zahtevajo skladnost z razumnimi postopki in formalnostmi. Taki postopki in formalnosti morajo biti v skladu z določbami tega sporazuma.

2. Če je pogoj za pridobitev pravice intelektualne lastnine podelitev ali registracija pravice, članice zagotovijo, da postopki za podelitev ali registracijo, ki morajo biti v skladu z bistvenimi pogoji za pridobivanje pravice, dovolijo podelitev ali registracijo pravice v razumnem obdobju, da bi se izognile neupravičenemu skrajšanju dobe varstva.

3. 4. člen Pariške konvencije (1967) se mutatis mutandis uporablja za storitvene znamke.

4. Postopki pridobivanja in ohranjanja pravice intelektualne lastnine in če zakon članice zagotavlja take postopke, upravne razveljavitve in inter partes postopke, kot so npr. ugovor, preklic in odpoved, se določajo v skladu s splošnimi načeli, določenimi v drugem in tretjem odstavku 41. člena.

5. Dokončne upravne odločitve v kateremkoli postopku iz četrtega odstavka mora preveriti sodni ali nesodni organ. Toda ne obstaja obveznost zagotavljanja proučitve takih odločitev ob neuspešnem ugovoru ali upravnem preklicu pod pogojem, da so podlage za take postopke lahko predmet razveljavitvenih postopkov.

V. DEL

PREPREČEVANJE IN REŠEVANJE SPOROV

63. člen

Preglednost

1. Zakoni in predpisi, končne sodne odločitve in upravni sklepi splošne veljave, ki jih uveljavlja članica in se nanašajo na vsebino tega sporazuma (razpoložljivost, obseg, pridobivanje, uveljavljanje in preprečevanje zlorab pravic intelektualne lastnine), se objavijo ali, če taka objava ni izvedljiva, se javnosti omogoči dostop do njih v nacionalnem jeziku na tak način, da se vladam in imetnikom pravic omogoči, da se z njimi seznanijo. Sporazumi v zvezi z vsebino tega sporazuma, ki veljajo med vlado ali vladno agencijo neke članice in vlado ali vladno agencijo neke druge članice, se prav tako objavijo.

2. Članice sporočijo zakone in predpise, na katere se nanaša prvi odstavek, Svetu za TRIPS z namenom, da Svetu pomagajo pri proučevanju izvajanja tega sporazuma. Svet skuša to obveznost članice zmanjšati in se lahko odloči, da se prenese obveznost notifikacije takih zakonov in predpisov neposredno Svetu, če uspe posvetovanje z WIPO za ustanovitev skupnega registra, ki bo vseboval te zakone in predpise. Svet v tej zvezi upošteva vsak drug postopek, ki se zahteva v zvezi z notifikacijami na podlagi obveznosti iz tega sporazuma, ki izhajajo iz določb 6ter. člena Pariške konvencije (1967).

3. Vsaka članica mora biti pripravljena, da na pisno zahtevo druge članice priskrbi take informacije, ki jih določa prvi odstavek. Članica, ki utemeljeno meni, da določena sodna odločitev ali upravni sklep ali dvostranski sporazum na področju pravic intelektualne lastnine posega v njene pravice iz tega sporazuma, lahko tudi pisno zahteva dostop do ali natančnejše obvestilo o takih posebnih sodnih odločitvah ali upravnih sklepih ali dvostranskih sporazumih.

4. Nič iz prvega, drugega in tretjega odstavka članic ne obvezuje, da razkrivajo zaupne informacije, ki bi ovirale uveljavitev zakona ali bile kako drugače v nasprotju z javnim interesom ali bi posegale v legitimne trgovinske interese določenih javnih ali zasebnih podjetij.

64. člen

Reševanje sporov

1. Določbe XXII. in XXIII. člena GATT 1994, kot so razčlenjene in se uporabljajo v Dogovoru o reševanju sporov, se uporabljajo za posvetovanja in reševanje sporov na podlagi tega sporazuma, razen če je v tem sporazumu izrecno drugače določeno.

2. Prvi (b) in (c) pododstavek XXIII. člena GATT 1994 se ne uporabljata za reševanje sporov na podlagi tega sporazuma za pet let od dneva začetka veljavnosti Sporazuma o WTO.

3. Med obdobjem, na katero se nanaša drugi odstavek, Svet za TRIPS preveri obseg in vrste pritožb, ki jih določata prvi (b) in (c) pododstavek XXIII. člena GATT 1994, ki so dane v skladu s tem sporazumom, in predloži priporočila Ministrski konferenci v sprejem. Katerakoli odločitev Ministrske konference o sprejemu takih priporočil ali podaljšanju obdobja iz drugega odstavka mora biti sprejeta le s konsenzom in sprejeta priporočila začnejo veljati za vse članice brez dodatnega formalnega postopka sprejemanja.

VI. DEL

PREHODNE UREDITVE

65. člen

Prehodne ureditve

1. Pod pogoji določb drugega, tretjega in četrtega odstavka tega člena ni nobena članica dolžna uporabljati določb tega sporazuma pred iztekom splošnega obdobja enega leta od datuma začetka veljavnosti Sporazuma o WTO.

2. Članica država v razvoju ima pravico odložiti datum uporabe, kot je določen v prvem odstavku, določb tega sporazuma za nadaljnja štiri leta z izjemo 3., 4. in 5. člena.

3. Katerakoli druga članica, ki je na prehodu iz centralnoplanskega v tržno gospodarstvo svobodnega podjetništva in strukturno prilagaja svoj sistem intelektualne lastnine in ima specifične probleme pri pripravi in izvajanju zakonov in predpisov o intelektualni lastnini, lahko prav tako uporablja obdobje odložitve, kot je predvideno v drugem odstavku.

4. V obsegu, v katerem je članica država v razvoju v skladu s tem sporazumom dolžna razširiti patentno varstvo izdelkov tudi na področja tehnologije, ki na ozemlju članice na dan veljavnosti tega sporazuma za to članico niso zavarovana tako, kot je določeno v drugem odstavku tega člena, lahko odloži uporabo določb o patentih iz 5. poglavja II. dela na ta področja tehnologije za dodatno obdobje petih let.

5. Članica, ki uporabi prehodno obdobje na podlagi prvega, drugega, tretjega in četrtega odstavka, zagotovi, da katerekoli spremembe v njenih zakonih, predpisih in praksi med tem obdobjem ne poslabšajo usklajenosti z določbami tega sporazuma.

66. člen

Najmanj razvite države članice

1. Zaradi njihovih posebnih potreb in zahtev, gospodarskih, finančnih in upravnih ovir in njihovih potreb po prožnosti pri ustvarjanju trdne tehnološke baze se od najmanj razvitih držav članic ne zahteva, da uporabljajo določbe tega sporazuma, razen 3., 4. in 5. člena, za obdobje 10 let od dneva uporabe, kot je določen na podlagi prvega odstavka 65. člena. Svet za TRIPS na podlagi ustrezno obrazložene zahteve najmanj razvite države članice dovoli podaljšanje tega obdobja.

2. Razvite države članice spodbujajo podjetja in ustanove na njihovem območju k pospeševanju in spodbujanju prenosa tehnologije najmanj razvitim državam članicam, da bi jim omogočile ustvariti trdno tehnološko bazo.

67. člen

Tehnično sodelovanje

Da bi omogočile izvajanje tega sporazuma, razvite države članice na zahtevo in na podlagi medsebojno dogovorjenih pogojev zagotovijo tehnično in finančno sodelovanje v korist članice države v razvoju in najmanj razvitih držav članic. Tako sodelovanje vključuje pomoč pri pripravi zakonov in predpisov o varstvu in uveljavljanju pravic intelektualne lastnine kot tudi o preprečevanju zlorab in vključuje podporo pri ustanavljanju ali okrepitvi domačih uradov in ustreznih agencij, vključno z usposabljanjem osebja.

VII. DEL

INSTITUCIONALNE UREDITVE; KONČNE DOLOČBE

68. člen

Svet za trgovinske vidike pravic intelektualne lastnine

Svet za TRIPS spremlja izvajanje tega sporazuma, zlasti izpolnjevanje obveznosti članic iz tega sporazuma in zagotovi članicam možnost posvetovanja o zadevah v zvezi s trgovinskimi vidiki pravic intelektualne lastnine. Opravlja tudi druge naloge, ki mu jih naložijo članice. Predvsem pa daje kakršnokoli pomoč v postopkih reševanja sporov, za katero ga prosijo članice. Pri opravljanju svojih nalog se lahko Svet posvetuje in išče informacije pri vseh virih, ki se mu zdijo primerni. V posvetovanju z WIPO Svet v enem letu od prvega zasedanja skuša zagotoviti ustrezne dogovore za sodelovanje z organi te organizacije.

69. člen

Mednarodno sodelovanje

Članice se sporazumejo o medsebojnem sodelovanju z namenom odpravljanja kršitev pravic intelektualne lastnine v mednarodni trgovini. V ta namen ustanovijo in sporočijo informacijske centre v njihovih državnih upravah in so pripravljene izmenjati informacije o trgovini z blagom, s katerim se kršijo pravice intelektualne lastnine. Še posebej pospešujejo izmenjavo informacij in sodelovanje med carinskimi organi glede trgovine z blagom s ponarejenimi znamkami in piratskim avtorskim blagom.

70. člen

Varstvo obstoječe vsebine

1. Ta sporazum ne povzroča obveznosti članic v zvezi z dejanji, ki so se zgodila pred datumom uporabe sporazuma za določeno članico.

2. Če v tem sporazumu ni drugače določeno, ta sporazum obvezuje članice v zvezi z vso vsebino, ki je obstajala na dan uporabe tega sporazuma za določeno članico in je na ta dan zavarovana v članici ali izpolnjuje ali začne pozneje izpolnjevati pogoje za varstvo pod pogoji tega sporazuma. V zvezi s tem odstavkom in tretjim in četrtim odstavkom avtorske obveznosti za obstoječa dela izključno določa le 18. člen Bernske konvencije (1971). Tudi obveznosti glede pravic proizvajalcev fonogramov in izvajalcev na teh fonogramih določa izključno 18. člen Bernske konvencije (1971) v smislu šestega odstavka 14. člena tega sporazuma.

3. Za vsebino, ki je na dan uporabe tega sporazuma za določeno članico prešla v javno uporabo, ni treba obnoviti varstva.

4. Glede kakršnihkoli dejanj v zvezi z določenimi predmeti, ki vsebujejo zavarovano vsebino, ki pomenijo kršitev pravice intelektualne lastnine na podlagi zakonodaje in v skladu s tem sporazumom in so se v zvezi z njimi začela ali pa je prišlo do pomembnega vlaganja pred datumom sprejema Sporazuma o WTO za to članico, lahko vsaka članica poskrbi za omejitev sredstev, ki jih ima na voljo imetnik pravice glede nadaljevanja takih dejanj po datumu uporabe tega sporazuma v članici. Vendar mora v takih primerih članica poskrbeti vsaj za plačilo pravične odškodnine.

5. Članica ni dolžna uporabljati določb 11. člena in četrtega odstavka 14. člena glede izvirnikov ali kopij, ki so bile kupljene pred datumom uporabe tega sporazuma za članico.

6. Članice niso dolžne uporabljati 31. člena ali zahteve v prvem odstavku 27. člena, da se lahko patentne pravice uživajo brez diskriminacije glede na tehnološko področje in brez dovoljenja imetnika pravice, če je dovoljenje za tako uporabo dala vlada, preden je datum uporabe tega sporazuma postal znan.

7. V primeru pravic intelektualne lastnine, za katere varstvo je registracija pogoj, se pri vlogah za varstvo, ki se pričakujejo na dan uporabe tega sporazuma za določeno članico, dovoli dopolnitev, da se lahko zahteva kakršnokoli večje varstvo na podlagi določb tega sporazuma. Take dopolnitve ne vključujejo novih predmetov.

8. Če članica z dnem začetka veljavnosti Sporazuma o WTO ne zagotovi patentnega varstva za farmacevtske in kmetijsko-kemične proizvode v skladu z njenimi obveznostmi iz 27. člena, ta članica:

(a) ne glede na določbe VI. dela z dnem začetka veljavnosti Sporazuma o WTO določi načine vlaganja patentnih prijav za take izume;

(b) uporablja za te prijave z dnem uporabe tega sporazuma merila za patentiranje, kot so določena v tem sporazumu, kot da bi se uporabljala na dan vložitve prijave v članici, ali če obstaja prednostna pravica in se ta zahteva, datum prve prijave, in

(c) zagotovi patentno varstvo v skladu s tem sporazumom od podelitve patenta in za preostali čas veljavnosti patenta, računano od dneva vložitve prijave v skladu s 33. členom tega sporazuma za tiste prijave, ki izpolnjujejo merila za varstvo iz pododstavka (b) zgoraj.

9. Če je proizvod predmet patentne prijave v članici v skladu z osmim (a) pododstavkom, se ne glede na določbe VI. dela podelijo izključne pravice za trženje za pet let po pridobitvi dovoljenja za trženje v tej članici ali dokler se patent za proizvod ne podeli ali zavrne v tej članici, odvisno od tega, katero obdobje je krajše, če je bila prijava za patent vložena in je bil patent dodeljen v drugi članici za ta proizvod in je dobil tudi dovoljenje za trženje v tej drugi članici potem, ko je začel veljati Sporazum o WTO.

71. člen
Proučitev in dopolnitev

1. Svet za TRIPS po preteku prehodnega obdobja iz drugega odstavka 65. člena prouči izvajanje tega sporazuma. Svet na podlagi izkušenj pri izvajanju po dveh letih od tega datuma in pozneje v enakih časovnih obdobjih prouči izvajanje tega sporazuma. Svet lahko tudi prouči vsak nov razvoj, ki lahko opravičuje spremembe ali dopolnitve tega sporazuma.

2. Dopolnitve, ki imajo namen le prilagajanje doseženim višjim ravnem varstva pravic intelektualne lastnine in so v veljavi v drugih mnogostranskih sporazumih, ki so jih sprejele vse članice WTO, se lahko pošljejo Ministrski konferenci, da ukrepa v skladu s šestim odstavkom X. člena Sporazuma o WTO na podlagi konsenzualnega predloga Sveta za TRIPS.

72. člen
Pridržki

Pridržki niso možni glede nobene določbe tega sporazuma brez soglasja drugih članic.

73. člen
Varnostne izjeme

Nič v tem sporazumu se ne more razlagati kot:

(a) zahteva članici, da da informacije, za katerih razkritje meni, da je v nasprotju z njenimi bistvenimi varnostnimi interesi, ali

(b) onemogočanje članici, da ukrepa tako, kakor meni, da je potrebno za zaščito njenih bistvenih varnostnih interesov;

(i) v zvezi s fisijskimi materiali ali materiali, ki iz njih izhajajo:

(ii) v zvezi s trgovino orožja, streliva in bojnih sredstev in s trgovino drugega blaga in materiala, ki je posredno ali neposredno namenjeno za preskrbo vojaških ustanov;

(iii)med vojno ali v drugih izrednih razmerah v mednarodnih odnosih ali

(c) preprečevanje članici, da ukrepa na podlagi Ustanovne listine Združenih narodov za ohranjanje mednarodnega miru in varnosti.

ANEKS 2

D O G O V O R
O PRAVILIH IN POSTOPKIH ZA REŠEVANJE SPOROV

Članice se sporazumejo, kot sledi:

1. člen
Obseg in uporaba

1. Pravila in postopki tega dogovora se uporabljajo za spore v zvezi z določbami o posvetovanju in reševanju sporov v sporazumih, navedenih v Dodatku 1 tega dogovora (v nadaljnjem besedilu zajeti sporazumi). Pravila in postopki tega dogovora se uporabljajo tudi za posvetovanja in reševanje sporov med članicami v zvezi z njihovimi pravicami in obveznostmi po določbah Sporazuma o ustanovitvi Svetovne trgovinske organizacije (v nadaljnjem besedilu Sporazum o WTO) in po določbah tega dogovora, samostojno ali v povezavi s katerimkoli drugim zajetim sporazumom.

2. Pravila in postopki tega dogovora se uporabljajo odvisno od posebnih ali dodatnih pravil in postopkov o reševanju sporov v zajetih sporazumih, ki so določeni v Dodatku 2 tega dogovora. Če je razlika med pravili in postopki tega dogovora in posebnimi ali dodatnimi pravili in postopki v Dodatku 2, prevladajo posebna dodatna pravila ali postopki v Dodatku 2. V sporih, ki vključujejo pravila in postopke iz več kot enega zajetega sporazuma, ob nasprotju med posebnimi ali dodatnimi pravili in postopki sporazumov, ki so v postopku proučitve in če se stranke v sporu v 20 dneh od ustanovitve ugotovitvenega sveta ne sporazumejo o pravilih in postopkih, predsedujoči Organa za reševanje sporov iz prvega odstavka 2. člena (v nadaljnjem besedilu DSB) ob posvetovanju s strankami v sporu v 10 dneh po zahtevi katerekoli članice določi pravila in postopke, ki jih je treba upoštevati. Predsedujoči se ravna po načelu, da je treba uporabiti posebna ali dodatna pravila in postopke kjerkoli je mogoče, pravila in postopke, določene v tem dogovoru, pa v obsegu, ki je potreben, da bi se izognili sporu.

2. člen
Upravljanje

1. Ustanovi se Organ za reševanje sporov za uporabo teh pravil in postopkov in, če je v zajetem sporazumu drugače določeno, določb za posvetovanja in reševanje sporov v zajetih sporazumih. V skladu s tem se DSB pooblašča za ustanovitev ugotovitvenih svetov, sprejem poročil ugotovitvenega sveta in Pritožbenega organa, nadzor nad uresničevanjem sklepov in priporočil ter za dovoljeno prekinitev koncesij in drugih obveznosti po zajetih sporazumih. Glede sporov po zajetem sporazumu, ki je večstranski trgovinski sporazum, se izraz "članica", ki se v tem dogovoru uporablja, nanaša le na tiste članice, ki so pogodbenice ustreznega večstranskega trgovinskega sporazuma. Če DSB uporablja določbe za reševanje sporov večstranskega trgovinskega sporazuma, lahko pri odločitvah ali ukrepih, ki jih sprejme DSB v zvezi s tem sporom, sodelujejo samo članice, ki so pogodbenice tega sporazuma.

2. DSB ustrezne svete in odbore WTO obvesti o dogajanjih v zvezi s spori, ki se nanašajo na določbe ustreznih zajetih sporazumov.

3. DSB se za opravljanje svojih dolžnosti sestaja tako pogosto, kot je potrebno, v obdobjih, določenih v tem dogovoru.

4. Če pravila in postopki tega dogovora določajo, da DSB sprejme odločitev, jo sprejme s konsenzom.[1]

3. člen
Splošne določbe

1. Članice potrjujejo svojo zavezanost načelom za obravnavo sporov, ki so se do zdaj uporabljala po XXII. in XXIII. členu GATT 1947, ter pravilom in postopkom, kot so nadalje razčlenjeni in prilagojeni v tem dogovoru.

2. Sistem za reševanje sporov v WTO je osrednja prvina pri zagotavljanju varnosti in predvidljivosti mnogostranskega trgovinskega sistema. Članice priznavajo, da je namenjen ohranjanju pravic in obveznosti članic po zajetih sporazumih ter razjasnjevanju obstoječih določb teh sporazumov v skladu z običajnimi pravili razlage mednarodnega javnega prava. Priporočila in sklepi DSB ne morejo povečati ali zmanjšati pravic in obveznosti, določenih v zajetih sporazumih.

3. Takojšnja rešitev situacije, ko članica meni, da so njene koristi, ki ji po zajetih sporazumih posredno ali nepo-

[1] Šteje se, da DSB v zadevi, ki mu je predložena v obravnavo, odloča s konsenzom, če nobena članica, prisotna na zasedanju DSB ob sprejemu odločitve, formalno ne nasprotuje predlagani odločitvi.

sredno pripadajo, kršene z ukrepi, ki jih je sprejela druga članica, je bistvena za učinkovito delovanje WTO in ohranitev ustreznega ravnovesja med pravicami in dolžnostmi članic.

4. Priporočila ali sklepi, ki jih sprejme DSB, so namenjeni zadovoljivemu reševanju zadeve v skladu s pravicami in obveznostmi po tem dogovoru in po zajetih sporazumih.

5. Vse rešitve zadev, formalno sproženih po določbah za posvetovanje in reševanje sporov v zajetih sporazumih, vključno z arbitražnimi sodbami, morajo biti v skladu s temi sporazumi in ne smejo izničiti ali škodovati koristim, ki članicam pripadajo po teh sporazumih, niti ovirati doseganja kateregakoli cilja teh sporazumov.

6. Medsebojno dogovorjene rešitve zadev, formalno sproženih po določbah za posvetovanje in reševanje sporov v zajetih sporazumih, se sporočijo DSB in ustreznim svetom in odborom, kjer lahko vsaka članica sproži kakršnokoli vprašanje v zvezi s tem.

7. Pred predložitvijo zadeve članica presodi, ali je lahko ukrepanje po teh postopkih uspešno. Namen mehanizma za reševanje sporov je zagotoviti pozitivno rešitev spora. Vsekakor mora imeti prednost rešitev, ki je vzajemno sprejemljiva za stranke v sporu in je v skladu z zajetimi sporazumi. Če vzajemno dogovorjene rešitve ni, je običajno prvi cilj mehanizma za reševanje sporov zagotoviti umik določenih ukrepov, če se ugotovi, da niso v skladu z določbami kateregakoli od zajetih sporazumov. Kompenzacije se uporabijo le, če je takojšnji umik ukrepa neizvedljiv, ter kot začasni ukrep do umika ukrepa, ki ni v skladu z zajetim sporazumom. Zadnje sredstvo, ki ga ta sporazum daje na voljo članici, ki sproži postopke za reševanje spora, je možnost prekinitve uporabe koncesij ali drugih obveznosti po zajetih sporazumih glede druge članice na diskriminacijski podlagi, vendar mora take ukrepe odobriti DSB.

8. V primerih kršitve obveznosti, določenih po zajetem sporazumu, velja, da je to dejanje primer prima facie izničenja ali oškodovanja. To pomeni, da običajno velja domneva, da ima kršitev pravil škodljive učinke za druge članice pogodbenice zajetega sporazuma. V takih primerih je na članici, proti kateri je bila tožba vložena, da tožbo izpodbije.

9. Določbe tega dogovora ne posegajo v pravice članice, da zahteva uradno razlago določb zajetega sporazuma v postopku odločanja po Sporazumu o WTO ali zajetem sporazumu, ki je večstranski trgovinski sporazum.

10. Predpostavlja se, da zahteve po spravi in uporabi postopkov za reševanje sporov niso ali se ne obravnavajo kot sporna ter, če pride do spora, vse članice sodelujejo v teh postopkih v dobri veri z namenom, da spor rešijo. Razume se tudi, da se tožbe in pritožbe v različnih zadevah ne združujejo.

11. Ta dogovor se uporablja le v zvezi z novimi zahtevami za posvetovanja po določbah za posvetovanja v zajetih sporazumih, vloženih na dan začetka veljavnosti Sporazuma o WTO ali pozneje. V zvezi s spori, za katere je bila zahteva za posvetovanja po GATT 1947 ali po kateremkoli drugem sporazumu predhodniku zajetih sporazumov vložena pred dnevom začetka veljavnosti Sporazuma o WTO, se še naprej uporabljajo ustrezna pravila in postopki za reševanje sporov, ki so v veljavi pred dnem začetka veljavnosti Sporazuma o WTO.[2]

12. Če je tožba vložena na temelju kateregakoli zajetega sporazuma s strani članice države v razvoju proti razviti državi članici, ima tožnik ne glede na enajsti odstavek pravico, da uporabi ustrezne določbe Odločitve z dne 15. aprila 1966 (BISD 14S/18) kot možnost izbire med enajstim odstavkom in določbami, vsebovanimi v 4.,5.,6. in 12. členu tega dogovora, razen da se lahko v primeru, ko ugotovitveni svet meni, da obdobje, določeno v sedmem odstavku te odločitve, ne zadošča za zagotovitev njegovega poročila, obdobje ob privolitvi tožnika podaljša. Če gre za razliko med pravili in postopki 4., 5., 6. in 12. člena ter ustreznimi pravili in postopki odločitve, veljajo zadnji.

4. člen

Posvetovanja

1. Članice izražajo svojo odločenost, da krepijo in izboljšujejo učinkovitost postopkov posvetovanja, ki jih uporabljajo.

2. Vsaka članica se zavezuje, da z razumevanjem prouči ter da primerno možnost za posvetovanje v zvezi z vsemi predstavitvami druge članice glede ukrepov, ki so sprejeti na njenem ozemlju glede izvajanja kateregakoli zajetega sporazuma.[3]

3. Če je dana zahteva po zajetem sporazumu, članica, na katero je zahteva naslovljena, odgovori na zahtevo v desetih dneh od datuma prejema in v dobri veri začne posvetovanja v obdobju, ki ni daljše od 30 dni po prejemu zahteve, razen če ni drugače vzajemno dogovorjeno, z namenom, da bi dosegli medsebojno zadovoljivo rešitev. Če članica v 10 dneh po prejemu zahteve ne odgovori ali ne začne posvetovanj v 30 dneh ali v obdobju, za katero so se drugače vzajemno dogovorile po prejemu zahteve, potem lahko članica, ki je zahtevala posvetovanje, neposredno zahteva ustanovitev ugotovitvenega sveta.

4. Vse take zahteve za posvetovanja članica, ki posvetovanja zahteva, sporoči DSB in ustreznim svetom ter odborom. Vsako zahtevo za posvetovanje je treba vložiti pisno in navesti razloge za zahtevo, vključno z opredelitvijo spornih ukrepov, in navesti pravne podlage za tožbo.

5. Med posvetovanji v skladu z določbami zajetega sporazuma naj članice pred nadaljnjim ukrepom po tem dogovoru skušajo doseči zadovoljivo rešitev zadeve.

6. Posvetovanja so zaupna in brez poseganja v pravice katerekoli članice v katerihkoli nadaljnjih postopkih.

7. Če spora s posvetovanji ni mogoče rešiti v 60 dneh po prejemu zahteve za posvetovanja, lahko tožeča stranka zahteva ustanovitev ugotovitvenega sveta. Tožeča stranka lahko zahteva ustanovitev ugotovitvenega sveta med 60-dnevnim obdobjem, če stranke, ki se posvetujejo, skupno menijo, da posvetovanjem ni uspelo rešiti spora.

8. V nujnih primerih, vključno s tistimi, ko gre za pokvarljivo blago, članice začnejo posvetovanja v obdobju, ki ni daljše od 10 dni od dneva prejema zahteve. Če s posvetovanji spora v 20 dneh po prejemu zahteve ni možno rešiti, lahko tožeča stranka zahteva ustanovitev ugotovitvenega sveta.

9. V nujnih primerih, vključno s tistimi, ko gre za pokvarljivo blago, stranke v sporu, ugotovitveni sveti in Pritožbeni organ storijo vse potrebno, da se postopek kar najbolj pospeši.

10. Med posvetovanji naj članice naklonijo posebno pozornost posameznim težavam in interesom članic držav v razvoju.

11. Če članica, ki ni članica, ki se posvetuje, meni, da ima bistven trgovinski interes pri posvetovanjih, ki potekajo v skladu s prvim odstavkom XXII. člena GATT 1994, prvim odstavkom XXII. člena GATS ali ustreznimi določbami v

[2] Ta odstavek se bo uporabljal tudi za spore, o katerih poročila ugotovitvenega sveta niso bila sprejeta ali v celoti uresničena.

[3] Če določbe kateregakoli zajetega sporazuma v zvezi z ukrepi, ki so jih sprejele regionalne ali lokalne vlade ali oblasti na ozemlju članice, vsebujejo določbe, ki so drugačne od določb tega odstavka, veljajo določbe tega drugega zajetega sporazuma.

drugih zajetih sporazumih,[4] lahko taka članica v desetih dneh od dneva razpošiljanja zahteve po posvetovanjih po omenjenem členu obvesti članice, ki se posvetujejo, in DSB, ali se želi vključiti v posvetovanja. Taka članica je vključena v posvetovanja pod pogojem, da se članica, na katero je bila zahteva za posvetovanja naslovljena, strinja, da je uveljavljanje bistvenega interesa dobro utemeljeno. V tem primeru o tem obvestijo DSB. Če zahteva o vključitvi v posvetovanja ni sprejeta, članica prosilka lahko zahteva posvetovanja po prvem odstavku XXII. člena ali prvem odstavku XXIII. člena GATT 1994, prvem odstavku XXII. člena ali prvem odstavku XXIII. člena GATS ali ustreznih določbah v drugih zajetih sporazumih.

5. člen

Dobre usluge, sprava in posredovanje

1. Dobre usluge, sprava in posredovanje so postopki, ki se uporabijo prostovoljno, če se stranke v sporu tako dogovorijo.

2. Postopki dobrih uslug, sprave in posredovanja ter še posebej stališča, ki jih zavzamejo stranke v sporu med temi postopki, so zaupni in ne posegajo v pravice katerekoli stranke v nadaljnjih potekih v teh postopkih.

3. Dobre usluge, spravo in posredovanje lahko kadarkoli zahteva katerakoli stranka v sporu. Lahko se začnejo in končajo kadarkoli. Če se postopki dobrih uslug, sprave in posredovanja končajo, lahko tožeča stranka da zahtevo za ustanovitev ugotovitvenega sveta.

4. Če se dobre usluge, sprava in posredovanje začnejo v 60 dneh po dnevu prejema zahteve za posvetovanja, tožeča stranka dovoli 60-dnevno obdobje po dnevu prejema zahteve za posvetovanja, preden zahteva ustanovitev ugotovitvenega sveta. Tožeča stranka lahko zahteva ustanovitev ugotovitvenega sveta v 60-dnevnem obdobju, če stranke v sporu skupaj menijo, da jim s postopki dobrih uslug, sprave in posredovanja ni uspelo rešiti spora.

5. Če se stranke v sporu s tem strinjajo, se postopki dobrih uslug, sprave ali posredovanj lahko nadaljujejo med potekom postopka ugotovitvenega sveta.

6. Generalni direktor lahko po uradni dolžnosti ponudi dobre usluge, spravo ali posredovanje, da bi članicam pomagal rešiti spor.

6. člen

Ustanovitev ugotovitvenih svetov

1. Če tako zahteva tožeča stranka, se ugotovitveni svet ustanovi najkasneje na zasedanju DSB, po zasedanju, na katerem se zahteva prvič pojavi na dnevnem redu DSB, razen če na tem zasedanju DSB s konsenzom odloči, da ugotovitvenega sveta ne ustanovi.[5]

2. Zahteva za ustanovitev ugotovitvenaga sveta mora biti pisna. Navajati mora, ali so bila posvetovanja opravljena, opredeliti posebne ukrepe, ki so sporni, in predložiti kratek povzetek pravne podlage za tožbo, ki problem jasno prikazuje. Če vlagatelj zahteva ustanovitev ugotovitvenega sveta z drugim mandatom, kot je običajen, pisna zahteva vključuje predlog besedila posebnega mandata.

7. člen

Mandat ugotovitvenih svetov

1. Ugotovitveni sveti imajo naslednje mandate, če se stranke v sporu v 20 dneh od ustanovitve ugotovitvenega sveta ne dogovorijo drugače:

" Ob upoštevanju ustreznih določb /ime zajetega sporazuma (-ov), ki so jih navedle stranke v sporu/ proučiti zadevo, ki jo je /ime stranke/ predložila DSB v dokumentu ... ter sprejeti ugotovitve, ki DSB pomagajo pri sprejemanju priporočil ali sklepov, predvidenih v tem ali teh sporazumih."

2. Ugotovitveni sveti morajo obravnavati ustrezne določbe v kateremkoli zajetem sporazumu ali sporazumih, ki jih navajajo stranke v sporu.

3. Pri ustanavljanju ugotovitvenega sveta lahko DSB pooblasti svojega predsedujočega, da določi mandat ugotovitvenega sveta ob posvetovanju s strankami v sporu pod pogoji določb prvega odstavka. Tako določen mandat se pošlje vsem članicam. Če se dogovorijo o drugačnem mandatu od običajnega, lahko vsaka članica v DSB sproži kakršnokoli vprašanje s tem v zvezi.

8. člen

Sestava ugotovitvenih svetov

1. Ugotovitvene svete sestavljajo visoko kvalificirani vladni in/ali nevladni posamezniki, vključno z osebami, ki so bile članice ugotovitvenega sveta ali so zastopale primer v ugotovitvenem svetu ali so bile predstavnice članice ali pogodbenice GATT 1947 ali predstavnice v svetu ali odboru kateregakoli zajetega sporazuma ali njegovega predhodnika ali v Sekretariatu ali ki so poučevale ali objavljale na področju mednarodenga trgovinskega prava ali politike ali so bile višji uradniki za trgovinsko politiko članice.

2. Člani ugotovitvenega sveta naj bodo izbrani z namenom, da se zagotovi neodvisnost članic z dovolj raznovrstnimi in širokimi izkušnjami.

3. Državljani članic, katerih vlade[6] so stranke v sporu ali tretje strani, kot so določene v drugem odstavku 10. člena, ne smejo sodelovati v ugotovitvenem svetu, ki obravnava ta spor, če se stranke v sporu ne dogovorijo drugače.

4. Da bi pomagal pri izbiri članov ugotovitvenega sveta, Sekretariat vodi indikativni seznam vladnih in nevladnih posameznikov, ki imajo strokovna znanja, začrtana v prvem odstavku, in iz katerega lahko ustrezno izbira člane ugotovitvenega sveta. Seznam vključuje register nevladnih članov ugotovitvenega sveta, sestavljen 30. novembra 1984 (BISD 31S/9), in druge registre in indikativne sezname, sestavljene na podlagi kateregakoli od zajetih sporazumov, ter ohrani imena oseb iz registrov in indikativnih seznamov ob začetku veljavnosti Sporazuma o WTO. Članice lahko občasno predlagajo imena vladnih in nevladnih posameznikov, ki bi jih lahko vključili v indikativni seznam, ter pri tem priskrbijo ustrezne podatke o njihovem poznavanju mednarodne trgovine in drugih področij ali vsebin zajetih sporazumov, ta imena pa se dodajo seznamu po odobritvi DSB. Za vsakega posameznika indikativni seznam navaja njegova posebna področja izkušenj ali strokovno znanje o področjih ali vsebinah zajetih sporazumov.

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[4] Ustrezne določbe o posvetovanjih v zajetih sporazumih so navedene tukaj: Sporazum o kmetijstvu, 19. člen; Sporazum o uporabi sanitarnih in fitosanitarnih ukrepov, prvi odstavek 11. člena; Sporazum o tekstilu in oblačilih, četrti odstavek 8. člena; Sporazum o tehničnih ovirah v trgovini, prvi odstavek 14. člena; Sporazum o ukrepih na področju vlaganj, ki vplivajo na trgovino, 8. člen; Sporazum o izvajanju VI. člena GATT 1994, drugi odstavek 17. člena; Sporazum o izvajanju VII. člena GATT 1994, drugi odstavek 19. člena; Sporazum o predodpremni kontroli, 7. člen; Sporazum o pravilih o poreklu blaga, 7. člen; Sporazum o postopkih za izdajanje uvoznih dovoljenj, 6. člen; Sporazum o subvencijah in izravnalnih ukrepih, 30. člen; Sporazum o posebnih zaščitnih ukrepih, 14. člen; Sporazum o trgovinskih vidikih pravic intelektualne lastnine, 64.1 člen; ter vse ustrezne določbe o posvetovanju v večstranskih trgovinskih sporazumih, kot jih določajo pristojni organi vsakega sporazuma in so sporočeni DSB.

[5] Če to zahteva tožeča stranka, mora biti zasedanje DSB sklicano v ta namen v 15 dneh od zahteve pod pogojem, da je obvestilo o zasedanju dano vsaj 10 dni vnaprej.

[6] Če so stranke v sporu carinske unije ali skupni trgi, velja ta določba za državljane vseh držav članic carinske unije ali skupnih trgov.

5. Ugotovitvene svete sestavljajo trije člani, razen če se stranke v sporu v desetih dnevih od ustanovitve ugotovitvenega sveta dogovorijo, da bo ugotovitveni svet sestavljalo pet članov. Članice morajo biti takoj obveščene o sestavi ugotovitvenega sveta.

6. Sekretariat strankam v sporu predlaga imenovanja v ugotovitveni svet. Stranke v sporu imenovanjem ne smejo nasprotovati, razen iz nujnih razlogov.

7. Če v dvajsetih dneh od ustanovitve ugotovitvenega sveta ni dogovora o članih ugotovitvenega sveta, generalni direktor na zahtevo ene ali druge stranke v sporu v posvetovanju s predsedujočim DSB in predsedujočim ustreznega sveta ali odbora in po posvetovanju s strankami v sporu določi sestavo ugotovitvenega sveta z imenovanjem članov, za katere meni, da so najustreznejši v skladu z vsemi ustreznimi posebnimi ali dodatnimi pravili ali postopki zajetega sporazuma ali zajetih sporazumov, za katere gre v sporu. Predsedujoči DSB obvesti članice o takšni sestavi ugotovitvenega sveta najkasnje v 10 dneh potem, ko predsedujoči prejme to zahtevo.

8. Članice se praviloma zavežejo, da dovolijo njihovim funkcionarjem opravljati dolžnosti članov ugotovitvenega sveta.

9. Člani ugotovitvenega sveta opravljajo svoje naloge v lastnem svojstvu in ne kot vladni predstavniki ali predstavniki katerekoli organizacije. Članice jim zato ne smejo dajati navodil niti ne smejo vplivati nanje kot posamezniki v zadevah, ki se obravnavajo v ugotovitvenem svetu.

10. Če gre za spor med članico državo v razvoju in razvito državo članico, mora biti v ugotovitvenem svetu, če tako zahteva članica država v razvoju, vsaj en član ugotovitvenega sveta iz članice države v razvoju.

11. Stroški članov ugotovitvenega sveta, vključno s potnimi stroški in stroški bivanja, se krijejo iz proračuna WTO v skladu z merili, ki jih sprejme Generalni svet na podlagi priporočil Odbora za proračun, finance in administracijo.

9. člen

Postopki v primeru več tožnikov

1. Če več kot ena članica zahteva ustanovitev ugotovitvenega sveta v isti zadevi, se lahko ob upoštevanju pravic vseh zainteresiranih članic ustanovi en sam ugotovitveni svet za obravnavo teh tožb. Kadarkoli je možno, naj se za obravnavo takih tožb ustanovi en sam ugotovitveni svet.

2. Ta ugotovitveni svet organizira preučevanje in predloži svoje ugotovitve DSB tako, da pravice, ki bi jih imele stranke v sporu, če bi tožbe obravnavali ločeni ugotovitveni sveti, niso na noben način prizadete. Ugotovitveni svet predloži ločena poročila o določenem sporu, če tako zahteva ena od strank v sporu. Pisne vloge vsakega od tožnikov so na voljo drugim tožnikom, vsak tožnik pa ima pravico biti prisoten, kadar katerikoli drugi tožnik predstavlja svoje stališča ugotovitvenemu svetu.

3. Če se ustanovi več kot en ugotovitveni svet za obravnavo tožb, ki se nanašajo na isto zadevo, morajo iste osebe v največjem možnem obsegu opravljati delo članov ugotovitvenega sveta v vsakem od posameznih ugotovitvenih svetov, časovni razpored postopka ugotovitvenega sveta pa mora biti usklajen v takih sporih.

10. člen

Tretje strani

1. Med postopkom ugotovitvenega sveta je treba v največji možni meri upoštevati interese strank v sporu in drugih članic po zajetem sporazumu, za katerega gre v sporu.

2. Katerakoli članica, ki ima bistveni interes v zadevi, ki jo obravnava ugotovitveni svet in je svoj interes sporočila DSB (v nadaljnjem besedilu tretja stran), mora dobiti možnost nastopiti pred ugotovitvenim svetom in da mu predloži pisne vloge. Te vloge morajo biti dane tudi strankam v sporu ter se morajo upoštevati v poročilu ugotovitvenega sveta.

3. Tretje strani morajo dobiti pisne vloge strank v sporu do prvega zasedanja ugotovitvenega sveta.

4. Če tretja stran meni, da ukrep, ki je že v postopku ugotovitvenega sveta, izničuje ali škoduje koristim, ki ji pripadajo po kateremkoli od zajetih sporazumov, se lahko ta članica zateče k normalnim postopkom reševanja sporov po tem dogovoru. Kadarkoli je mogoče, je treba ta spor predložiti prvotnemu ugotovitvenemu svetu.

11. člen

Naloga ugotovitvenih svetov

Naloga ugotovitvenih svetov je pomagati DSB pri opravljanju njegovih dolžnosti po tem dogovoru in zajetih sporazumih. Skladno s tem naj ugotovitveni svet objektivno presodi zadevo, ki jo obravnava, vključno z objektivno presojo dejstev primera, uporabnost in skladnost z ustreznimi zajetimi sporazumi ter sprejme take ugotovitve, ki DSB pomagajo pri sprejemu priporočil ali sklepov, predvidenih v zajetih sporazumih. Ugotovitveni sveti naj se redno posvetujejo s strankami v sporu ter jim omogočijo, da pridejo do skupno zadovoljive rešitve.

12. člen

Postopki ugotovitvenih svetov

1. Ugotovitveni sveti se ravnajo po delovnih postopkih v Dodatku 3, če ugotovitveni svet po posvetovanju s strankami v sporu ne odloči drugače.

2. Postopki ugotovitvenega sveta naj bodo dovolj prožni, da lahko zagotovijo visoko kakovost poročil ugotovitvenih svetov in pri tem brez potrebe ne zavlačujejo postopka.

3. Po posvetovanju s strankami v sporu člani ugotovitvenega sveta, kakor hitro je to izvedljivo in kadarkoli je to mogoče v enem tednu od dogovora o sestavi in mandatu ugotovitvenega sveta določijo časovni razpored postopka ugotovitvenega sveta ob upoštevanju določb devetega odstavka 4. člena, če so ustrezne.

4. Pri določanju časovnega razporeda postopka ugotovitvenega sveta ugotovitveni svet zagotovi dovolj časa, da stranke v sporu pripravijo svoje vloge.

5. Ugotovitveni sveti naj določijo skrajne roke za pisne vloge strank, stranke pa naj spoštujejo te skrajne roke.

6. Vsaka stranka v sporu predloži svoje pisne vloge pri sekretariatu, ki jih takoj pošlje ugotovitvenemu svetu in drugi ali drugim strankam v sporu. Tožeča stranka predloži svojo prvo vlogo pred prvo vlogo tožene stranke, če ugotovitveni svet pri določanju časovnega razporeda, omenjenega v tretjem odstavku, in po posvetovanju s strankami v sporu ne odloči, da stranke predložijo svoje prve vloge sočasno. V primeru dogovora o zaporedni predložitvi vlog ugotovitveni svet postavi rok za sprejem vloge tožene stranke. Vse nadaljnje vloge se predložijo sočasno.

7. Če strankam v sporu ne uspe priti do skupno zadovoljive rešitve, ugotovitveni svet svoje ugotovitve predloži v obliki pisnega poročila DSB. V takih primerih poročilo ugotovitvenega sveta vsebuje ugotovitev dejstev, uporabnost ustreznih določb in temeljno obrazložitev ugotovitev in priporočil. Če stranke v sporu dosežejo poravnavo, se poročilo ugotovitvenega sveta omeji na kratek opis primera in na obvestilo o tem, da je prišlo do rešitve.

8. Da bi bili postopki učinkovitejši, obdobje, v katerem ugotovitveni svet obravnava primer od dneva dogovora o sestavi in mandatu ugotovitvenega sveta do dneva predaje končnega poročila strankam v sporu, praviloma ne sme pre-

segati šest mesecev. V nujnih primerih, vključno s tistimi, ki se nanašajo na pokvarljivo blago, si ugotovitveni svet prizadeva, da strankam v sporu da svoje poročilo v treh mesecih.

9. Če ugotovitveni svet meni, da poročila ne more dati v šestih mesecih ali v treh mesecih v nujnih primerih, pisno obvesti DSB o razlogih za zamudo ter hkrati presodi, v kolikšnem času bo predal svoje poročilo. V nobenem primeru obdobje od ustanovitve ugotovitvenega sveta do predaje poročila članicam ne sme biti daljše od devet mesecev.

10. V okviru posvetovanj o ukrepu, ki ga je sprejela članica država v razvoju, se stranke lahko dogovorijo, da podaljšajo obdobje določeno v sedmem in osmem odstavku 4. člena. Če se po poteku ustreznega obdobja stranke, ki se posvetujejo, ne morejo sporazumeti, da so posvetovanja končana, mora DSB po posvetovanju s strankami odločiti, ali naj podaljša ustrezno obdobje, ter, če ga podaljša, za koliko časa. Poleg tega ugotovitveni svet pri obravnavanju tožbe proti državi v razvoju le-tej da dovolj časa za pripravo in predložitev svoje argumentacije. Določbe prvega odstavka 20. člena in četrtega odstavka 21. člena niso prizadete s kakršnimkoli ukrepom v skladu s tem odstavkom.

11. Če je ena ali več strank članica država v razvoju, poročilo ugotovitvenega sveta izrecno navaja obliko, v kateri so bile upoštevane ustrezne določbe o pristranski in ugodnejši obravnavi članic držav v razvoju, ki so sestavni del zajetih sporazumov, na katere se je sklicevala članica država v razvoju med postopki reševanja sporov.

12. Ugotovitveni svet lahko kadarkoli na zahtevo tožeče stranke prekine svoje delo za obdobje, ki ne sme biti daljše kot 12 mesecev. Ob taki prekinitvi se obdobja, določena v osmem in devetem odstavku tega člena, prvem odstavku 20. člena in četrtem odstavku 21. člena, podaljšajo za čas prekinitve. Če je bilo delo ugotovitvenega sveta prekinjeno za več kot 12 mesecev, poteče pooblastilo za ustanovitev ugotovitvenega sveta.

13. člen

Pravica do informacij

1. Vsak ugotovitveni svet ima pravico zahtevati informacije in tehnične nasvete od kateregakoli posameznika ali organa, za katerega meni, da je ustrezen. Vendar ugotovitveni svet, preden terja informacije ali nasvet pri posamezniku ali organu pod jurisdikcijo članice, o tem obvesti oblasti te članice. Članica naj se takoj in v polni meri odzove zahtevi ugotovitvenega sveta po taki informaciji, ki se ugotovitvenemu svetu zdi potrebna in ustrezna. Če gre za zaupno informacijo, se ta ne sme razkriti brez formalnega pooblastila posameznika, organa ali oblasti članice, ki da informacijo.

2. Ugotovitveni sveti lahko zahtevajo informacije od kateregakoli ustreznega vira ter se lahko posvetujejo s strokovnjaki, da bi dobili njihovo mnenje o določenih vidikih zadeve. V zvezi z vprašanjem dejstev, ki se nanašajo na znastveno ali tehnično zadevo, ki jo je v obravnavo predložila stranka v sporu, lahko ugotovitveni svet zahteva pisno svetovalno poročilo skupine strokovnjakov. Pravila za ustanovitev take skupine in njenih postopkov so določena v Dodatku 4.

14. člen

Zaupnost

1. Razprave ugotovitvenega sveta so zaupne.

2. Poročila ugotovitvenega sveta se pripravijo brez prisotnosti strank v sporu ob upoštevanju pridobljenih informacij in danih izjav.

3. Mnenja, ki so jih v poročilu ugotovitvenega sveta izrazili posamezni člani ugotovitvenega sveta, so anonimna.

15. člen

Vmesna proučitev

1. Po proučitvi vlog z oporekanjem in ustnih argumentov da ugotovitveni svet strankam v sporu opisne (dejanske in argumentirane) dele osnutka svojega poročila. V roku, ki ga določi ugotovitveni svet, stranke predložijo svoje pisne pripombe.

2. Po poteku obdobja, določenega za sprejem pripomb strank v sporu, ugotovitveni svet strankam vroči začasno poročilo, ki vključuje tako opisne dele kot ugotovitve in sklepe ugotovitvenega sveta. V obdobju, ki ga določi ugotovitveni svet, lahko stranka ugotovitvenemu svetu da pisno zahtevo, da prouči določene vidike vmesnega poročila, preden se dokončno poročilo ne pošlje članicam. Na zahtevo stranke ugotovitveni svet na naslednjem sestanku s strankami razpravlja o vprašanjih, določenih v pisnih pripombah. Če v obdobju, predvidenem za pripombe, nobena stranka ne da pripomb, je treba vmesno poročilo šteti za končno poročilo ugotovitvenega sveta in ga takoj poslati članicam.

3. Ugotovitve končnega poročila ugotovitvenega sveta vključujejo razpravo o argumentih, predloženih na vmesni stopnji. Vmesna stopnja proučitve se izvede v obdobju, določenem v osmem odstavku 12. člena.

16. člen

Sprejemanje poročil ugotovitvenega sveta

1. DSB ne obravnava poročil v sprejem 20 dni po dnevu, ko so bila poslana članicam, da bi članicam zagotovili dovolj časa za proučitev poročil ugotovitvenega sveta.

2. Članice, ki nasprotujejo poročilu ugotovitvenega sveta, dajo razloge v pisni obliki za pojasnilo svojih nasprotovanj za razpošiljanje vsaj 10 dni pred zasedanjem DSB, na katerem bodo proučili poročilo ugotovitvenega sveta.

3. Stranke v sporu imajo pravico, da polno sodelujejo pri proučitvi poročila ugotovitvenega sveta v DSB, njihova stališča pa se v celoti zabeležijo.

4. Razen če stranka v sporu formalno obvesti DSB o svoji odločitvi o pritožbi ali pa se DSB s konsenzom odloči, da ne sprejme poročila, mora biti poročilo sprejeto na zasedanju DSB[7] v 60 dneh po dnevu pošiljanja poročila ugotovitvenega sveta članicam. Če je stranka sporočila svojo odločitev o pritožbi, DSB ne prouči sprejema poročila ugotovitvenega sveta do konca pritožbenega postopka. Ta postopek sprejema ne vpliva na pravice članic, da izrazijo svoje mnenje o poročilu ugotovitvenega sveta.

17. člen

Pritožbeni preizkus

Stalni Pritožbeni organ

1. DSB ustanovi stalni Pritožbeni organ. Pritožbeni organ razpravlja o pritožbah glede zadev ugotovitvenega sveta. Sestavlja ga sedem oseb, od katerih trije obravnavajo vsako posamično zadevo. Osebe, ki delujejo v Pritožbenem organu, to delo opravljajo izmenično. Tako kroženje se določi z delovnimi postopki Pritožbenega organa.

2. DSB imenuje osebe v Pritožbeni organ za štiriletno obodbje, vsaka oseba pa je lahko le enkrat ponovno imenovana. Vendar mandat treh od sedmih oseb, imenovanih takoj po začetku veljavnosti Sporazuma o WTO, poteče ob koncu dveletnega obdobja, o čemer odloča žreb. Izpraznjena mesta se zapolnjujejo, kot nastajajo. Oseba, imenovana, da nadomesti drugo osebo, ki ji trajanje imenovanja ni poteklo, opravlja delo v preostalem mandatu predhodnika.

[7] Če zasedanje DSB ni načrtovano v tem obdobju, ki omogoča, da se izpolnijo zahteve prvega in četrtega odstavka 16. člena, je treba v ta namen sklicati zasedanje DSB.

3. Pritožbeni organ sestavljajo osebe s priznano avtoriteto, z izkazanim strokovnim znanjem na področju prava, mednarodne trgovine in vsebine zajetih sporazumov na splošno. Ne smejo biti povezane s katerokoli vlado. Članstvo v Pritožbenem organu mora na široko predstavljati članstvo v WTO. Vse osebe, ki delujejo v Pritožbenem organu, morajo biti vedno na voljo in v kratkem roku ter morajo biti na tekočem z dejavnostmi reševanja sporov in drugimi ustreznimi dejavnostmi WTO. Ne smejo sodelovati pri obravnavanju kakršnihkoli sporov, ki bi ustvarjali posredno ali neposredno nasprotje interesov.

4. Pritožbo na poročilo ugotovitvenega sveta lahko vložijo le stranke v sporu, ne pa tretje strani. Tretje strani, ki so DSB obvestile o bistvenem interesu v zadevi v skladu z drugim odstavkom 10. člena, lahko predložijo pisne vloge in imajo možnost nastopiti pred Pritožbenim organom.

5. Praviloma postopki ne smejo preseči 60 dni od dneva, ko je stranka v sporu formalno sporočila svojo odločitev o pritožbi, do dneva, ko pritožbeni organ pošlje svoje poročilo. Pri določanju svojega časovnega razporeda Pritožbeni organ upošteva določbe devetega odstavka 4. člena, če so ustrezne. Kadar Pritožbeni organ meni, da svojega poročila ne more zagotoviti v 60 dneh, mora DSB pisno obvestiti o razlogih za zamudo skupaj s presojo, v kakšnem obdobju bo dal svoje poročilo. V nobenem primeru postopki ne smejo preseči 90 dni.

6. Pritožba mora biti omejena na pravna vprašanja, ki jih vsebuje poročilo ugotovitvenega sveta, in pravne razlage, ki jih je sprejel ugotovitveni svet.

7. Pritožbenemu organu mora biti zagotovljena zahtevana ustrezna administrativna in pravna podpora.

8. Stroški oseb, ki delujejo v pritožbenem organu, vključno s potnimi stroški in stroški bivanja, se pokrijejo iz proračuna WTO v skladu z merili, ki jih sprejme Generalni svet, ter temeljijo na priporočilih Odbora za proračun, finance in administracijo.

Postopki za pritožbeni preizkus

9. Delovne postopke določi Pritožbeni organ ob posvetovanju s predsedujočim DSB in generalnim direktorjem in o njih obvesti članice.

10. Postopki Pritožbenega organa so zaupni. Poročila Pritožbenega organa se pripravijo brez strank v sporu in ob upoštevanju danih informacij in izjav.

11. Mnenja, ki jih v poročilu Pritožbenega organa izražajo posamezniki, ki delujejo v Pritožbenem organu, so anonimna.

12. Pritožbeni organ med pritožbenim postopkom obravnava vsako od zastavljenih vprašanj v skladu s šestim odstavkom.

13. Pritožbeni organ lahko potrdi, spremeni ali razveljavi pravne ugotovitve in sklepe ugotovitvenega sveta.

Sprejemanje poročil Pritožbenega organa

14. Poročilo Pritožbenega organa sprejme DSB, stranke v sporu pa ga morajo brezpogojno sprejeti, razen če DSB v 30 dneh po razdelitvi poročila Pritožbenega organa članicam s konsenzom odloči, da ga ne sprejme.[8] Ta postopek sprejemanja ne posega v pravice članic, da izrazijo svoje poglede na poročilo Pritožbenega organa.

18. člen

Stiki z ugotovitvenim svetom ali Pritožbenim organom

1. V zadevah, ki jih proučuje ugotovitveni svet ali Pritožbeni organ, ne sme biti ex parte stikov z ugotovitvenim svetom ali Pritožbenim organom.

2. Pisne vloge ugotovitvenemu svetu ali Pritožbenemu organu je treba obravnavati kot zaupne, vendar morajo biti dane na razpolago strankam v sporu. Nič v tem dogovoru ne preprečuje stranki v sporu, da razkrije svoja stališča javnosti. Članice obravnavajo informacijo, ki jo druga članica da ugotovitvenemu svetu ali pritožbenemu organu in jo je kot tako označila, kot zaupno. Stranka v sporu na zahtevo članice zagotovi povzetek informacij, ki ni zaupen, ki jih vsebujejo njene pisne vloge in so lahko razkrite javnosti.

19. člen

Priporočila ugotovitvenega sveta in Pritožbenega organa

1. Če ugotovitveni svet ali pritožbeni organ ugotovi, da ukrep ni v skladu z zajetim sporazumom, priporoči določeni članici,[9] da uskladi ukrep s tem sporazumom.[10] Poleg svojih priporočil ugotovitveni svet ali Pritožbeni organ lahko določeni članici predlaga načine izvajanja priporočil.

2. V skladu z drugim odstavkom 3. člena ugotovitveni svet in Pritožbeni organ s svojimi ugotovitvami in priporočili ne moreta povečevati ali zmanjševati pravic in obveznosti, določenih v zajetih sporazumih.

20. člen

Časovni razpored za odločitve DSB

Razen če se stranke v sporu ne sporazumejo drugače, obdobje od dneva, ko DSB ustanovi ugotovitveni svet, do dneva, ko DSB prouči sprejem poročila ugotovitvenega sveta ali Pritožbenega organa, praviloma ne sme presegati devet mesecev, če na poročilo ugotovitvenega sveta ni pritožbe, ali 12 mesecev, če je k poročilu vložena pritožba. Če je bodisi ugotovitveni svet ali Pritožbeni organ v skladu z devetim odstavkom 12. člena ali petim odstavkom 17. člena podaljšal čas za pripravo svojega poročila, je treba navedena obdobja podaljšati za enako obdobje.

21. člen

Nadzorovanje izvajanja priporočil in sklepov

1. Pravočasno ravnanje v skladu s priporočili ali sklepi DSB je bistveno za zagotovitev učinkovitega reševanja sporov v korist vseh članic.

2. Posebno pozornost je treba nameniti zadevam, ki vplivajo na interese članic držav v razvoju v zvezi z ukrepi, ki so bili predmet reševanja sporov.

3. Na zasedanju DSB v 30 dneh[11] po dnevu sprejema poročila ugotovitvenega sveta ali Pritožbenega organa določena članica obvesti DSB o svojih namenih v zvezi z izvajanjem priporočil in sklepov DSB. Če pravočasno izpolnjevanje priporočil in sklepov ni izvedljivo, je treba za določeno članico določiti razumno obdobje, v katerem jih izvede. Razumno obdobje je:

(a) obdobje, ki ga predlaga določena članica, pod pogojem, da ga odobri DSB, ali kadar take odobritve ni,

(b) obdobje, o katerem so se sporazumele stranke v sporu v 45 dneh od dneva sprejema priporočil in sklepov, ali če takega sporazuma ni,

(c) obdobje, ki ga določi zavezujoča arbitraža v 90 dneh po sprejemu priporočil in sklepov.[12] V taki arbitraži naj bo razsodniku[13] dana smernica, da razumni rok za izvajanje

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[8] Če zasedanje DSB v tem obdobju ni predvideno, se zasedanje DSB skliče v ta namen.

[9] Določena članica je stranka v sporu, na katero je naslovljeno priporočilo ugotovitvenega sveta ali Pritožbenega organa.

[10] V zvezi s priporočili v primerih, ko ne gre za kršitev GATT 1994 ali nekega drugega zajetega sporazuma, glej 26. člen.

[11] Če zasedanje DSB v tem obdobju ni predvideno, se DSB sestane v ta namen.

[12] Če se stranke ne morejo dogovoriti o razsodniku v 10 dneh, odkar je bila zadeva napotena na arbitražo, razsodnika imenuje generalni direktor v 10 dneh po posvetovanju s strankami.

[13] Izraz "razsodnik" je treba razlagati, kot da se nanaša ali na posameznika ali na skupino.

priporočil ugotovitvenega sveta ali Pritožbenega organa ne presega 15 mesecev od dneva sprejema poročila ugotovitvenega sveta ali Pritožbenega organa. Vendar je ta čas lahko tudi krajši ali daljši, odvisno od posebnih okoliščin.

4. Razen če je ugotovitveni svet ali Pritožbeni organ v skladu z devetim odstavkom 12. člena ali petim odstavkom 17. člena podaljšal čas za pripravo svojega poročila, obdobje od dneva, ko DSB ustanovi ugotovitveni svet, do dneva določitve razumnega roka ne sme preseči 15 mesecev, razen če se stranke v sporu drugače dogovorijo. Če je bodisi ugotovitveni svet ali Pritožbeni organ podaljšal čas za pripravo poročila, je treba ta dodatni čas prišteti 15-mesečnemu obdobju, pod pogojem, da skupno obdobje ne sme presegati 18 mesecev, razen če se stranke v sporu sporazumejo, da gre za izjemne okoliščine.

5. Če ni soglasja glede obstoja ali skladnosti z zajetimi sporazumi v zvezi s sprejetimi ukrepi za izpolnjevanje priporočil in sklepov, je treba o takem sporu odločati s pomočjo teh postopkov reševanja sporov, kadarkoli je mogoče pa tudi s pomočjo prvotnega ugotovitvenega sveta. Ugotovitveni svet razpošlje svoje poročilo v 90 dneh od dneva, ko mu je bila zadeva predložena. Ko ugotovitveni svet meni, da v tem času poročila ne more pripraviti, DSB pisno obvesti o razlogih za zamudo skupaj s presojo obdobja, v katerem bo predložil svoje poročilo.

6. DSB stalno nadzoruje izvajanje sprejetih priporočil ali sklepov. Vsaka članica lahko pri DSB sproži vprašanje izvajanja priporočil ali sklepov kadarkoli po njihovem sprejemu. Razen če DSB drugače odloči, je treba vprašanje o izvajanju priporočil ali sklepov dati na dnevni red zasedanja DSB po šestih mesecih od dneva določitve razumnega obdobja v skladu s tretjim odstavkom ter ostane na dnevnem redu DSB, dokler ni razrešena. Vsaj 10 dni pred vsakim zasedanjem DSB določena članica DSB dostavi pisno statusno poročilo o svojem napredovanju pri izvajanju priporočil ali sklepov.

7. Če je zadevo sprožila članica država v razvoju, DSB prouči, katere nadaljnje ukrepe, ki bi ustrezali okoliščinam, lahko sprejme.

8. Če zadevo sproži članica država v razvoju, DSB pri proučitvi, katere ustrezne ukrepe bi lahko sprejel, upošteva ne le obseg trgovine, na katere se nanašajo ukrepi, zoper katere se pritožuje, temveč tudi njihov vpliv na gospodarstvo članic držav v razvoju.

22. člen

Kompenzacija in prekinitev koncesij

1. Kompenzacija in prekinitev koncesij ali drugih obveznosti sta začasna ukrepa, ki sta na voljo, če priporočila in sklepi niso uresničeni v razumnem obdobju. Vendar pa niti kompenzacija niti prekinitev koncesij ali drugih obveznosti nimata prednosti pred popolnim izvajanjem priporočila za uskladitev ukrepa z zajetimi sporazumi. Kompenzacija je prostovoljna in če je dana, mora biti v skladu z zajetimi sporazumi.

2. Če določeni članici ne uspe ukrepa, za katerega se ugotovi, da ni v skladu z zajetim sporazumom, uskladiti z njim, ali drugače ne spoštuje priporočil ali sklepov v razumnem roku, določenem v skladu s tretjim odstavkom 21. člena, taka članica, če se to od nje zahteva, in najkasneje po poteku razumnega obdobja začne pogajanja z vsako stranjo, ki je sprožila postopke za reševanje spora, z namenom, da pripravi medsebojno sprejemljivo kompenzacijo. Če se v 20 dneh po poteku razumnega obdobja niso sporazumeli o zadovoljivi kompenzaciji, lahko vsaka stran, ki je sprožila postopke za reševanje sporov, zahteva, da DSB določeni članici dovoli prekinitev uporabe koncesij ali drugih obveznosti po zajetih sporazumih.

3. Pri odločanju, katere koncesije ali druge obveznosti naj se prekinejo, tožeča stranka uporabi ta načela in postopke:

(a) praviloma naj tožeča stranka najprej skuša prekiniti koncesije ali druge obveznosti v istih sektorjih, kot je v njih ugotovitveni svet ali Pritožbeni organ ugotovil kršitev ali drugačno izničenje ali zmanjšanje;

(b) če ta stranka meni, da ni izvedljivo ali da ni učinkovito prekiniti koncesij ali drugih obveznosti v istih sektorjih, lahko poskuša prekiniti koncesije ali druge obveznosti v drugih sektorjih po istem sporazumu;

(c) če ta stranka meni, da ni izvedljivo ali da ni učinkovito prekiniti koncesij ali drugih obveznosti v drugih sektorjih po istem sporazumu ter da so okoliščine dovolj resne, lahko poskuša prekiniti koncesije ali druge obveznosti po drugem zajetem sporazumu;

(d) pri uporabi navedenih načel ta stranka upošteva:

(i) trgovino v sektorju ali po sporazumu, po katerem je ugotovitveni svet ali Pritožbeni organ ugotovil kršitev ali drugačno izničenje ali zmanjšanje, ter pomembnost te trgovine za to stranko;

(ii) širše gospodarske elemente, povezane z izničenjem ali zmanjšanjem, ter širše gospodarske posledice prekinitve koncesij ali drugih obveznosti;

(e) če se ta stranka odloči zahtevati dovoljenje za prekinitev koncesij ali obveznosti v skladu s pododstavkom (b) ali (c), mora svojo zahtevo obrazložiti. Sočasno ko je zahteva dana DSB, mora biti tudi dana ustreznim svetom ter v primeru zahteve v skladu s pododstavkom (b) tudi ustreznim sektorskim organom;

(f) za namene tega odstavka "sektor" pomeni:

(i) glede blaga vse vrste blaga;

(ii) glede storitev poglavitni sektor, kot je določen v tekočem "Razvrstitvenem seznamu sektorskih storitev", ki te sektorje določa;[14]

(iii) glede pravic intelektualne lastnine, povezanih s trgovino, vsako od kategorij pravic intelektualne lastnine, zajetih v 1., 2., 3., 4., 5., 6. ali 7. poglavju II. dela ali obveznosti po III. ali IV. delu Sporazuma o TRIPS;

(g) za namene tega odstavka "sporazum" pomeni:

(i) glede blaga sporazumi, navedeni v Aneksu 1 A Sporazuma o WTO, upoštevani kot celota, kakor tudi večstranski trgovinski sporazumi, če so stranke v sporu pogodbenice teh sporazumov;

(ii) glede storitev GATS;

(iii) glede pravic intelektualne lastnine Sporazum o TRIPS.

4. Raven prekinitve koncesij ali drugih obveznosti, ki jo dovoli DSB, mora biti enakovredna ravni izničenja ali zmanjšanja.

5. DSB ne sme dovoliti prekinitve koncesij ali drugih obveznosti, če zajeti sporazum prepoveduje tako prekinitev.

6. Če nastane situacija, opisana v drugem odstavku, DSB na zahtevo da dovoljenje za prekinitev koncesij ali drugih obveznosti v 30 dneh od poteka razumnega obdobja, razen če se DSB s konsenzom ne odloči, da zahtevo zavrne. Vendar pa, če določena članica nasprotuje predlagani ravni prekinitve ali trdi, da niso bila upoštevana načela ali postopki, določeni v tretjem odstavku, ko je tožeča stranka zahtevala prekinitev koncesij ali drugih obveznosti v skladu s tretjim (b) ali (c) odstavkom, je treba zadevo predložiti v arbitražo. Tako arbitražo opravi prvotni ugotovitveni svet, če so člani na voljo, ali razsodnik,[15] ki ga imenuje generalni direktor, ter

[14] Seznam v dokumentu MTN.GNS/W/120 določa enajst sektorjev.

[15] Izraz "razsodnik" je treba razlagati tako, da se nanaša na posameznika ali skupino.

mora biti končana v 60 dneh po dnevu poteka razumnega obdobja. Med potekom arbitraže koncesije ali druge obveznosti ne smejo biti prekinjene.

7. Razsodnik,[16] ki deluje v skladu s šestim odstavkom, ne proučuje narave koncesij ali drugih obveznosti, ki jih je treba prekiniti, temveč določi, ali je raven take prekinitve enakovredna ravni izničenja ali zmanjšanja. Razsodnik lahko tudi določi, ali je predlagana prekinitev koncesij ali drugih obveznosti po zajetem sporazumu dovoljena. Vendar če zadeva, ki je bila predložena arbitraži, vključuje trditev, da načela in postopki, določeni v tretjem odstavku niso bili upoštevani, razsodnik ta zahtevek prouči. Če razsodnik ugotovi, da ta načela in postopki niso bili spoštovani, jih mora tožeča stranka uporabiti v skladu s tretjim odstavkom. Stranke morajo sprejeti odločitev razsodnika kot dokončno, stranke, na katere se zadeva nanaša, pa ne smejo zahtevati ponovne arbitraže. DSB mora biti o odločitvi razsodnika takoj obveščen ter mora na zahtevo odobriti prekinitev koncesij ali drugih obveznosti, kadar je zahteva v skladu z odločitvijo razsodnika, razen če se DSB s konsenzom odloči, da zahtevo zavrne.

8. Prekinitev koncesij ali drugih obveznosti je začasna ter se uporablja le, dokler ukrep, za katerega je bilo ugotovljeno, da ni v skladu z zajetim sporazumom, ni ukinjen, ali dokler članica, ki mora uresničiti priporočila ali sklepe, ne zagotovi rešitev glede izničenja ali zmanjšanja koristi, ali se doseže vzajemno zadovoljiva rešitev. V skladu s šestim odstavkom 21. člena DSB še naprej nadzoruje izvajanje sprejetih priporočil ali sklepov, vključno v zadevah, ko je bila dana kompenzacija ali so bile prekinjene koncesije ali druge obveznosti, niso pa bila uresničena priporočila za uskladitev ukrepa z zajetimi sporazumi.

9. Glede ukrepov, ki jih sprejemajo regionalne ali lokalne vlade ali oblasti na ozemlju članice in se nanašajo na izpolnjevanje zajetih sporazumov, se lahko uporabljajo določbe za reševanje sporov v zajetih sporazumih. Če DSB odloči, da določba zajetega sporazuma ni izpolnjena, mora odgovorna članica sprejeti take razumne ukrepe, ki so ji na voljo, da zagotovi njeno izpolnitev. Določbe zajetega sporazuma in tega dogovora, ki se nanašajo na kompenzacijo in prekinitev koncesij ali drugih obveznosti, se uporabljajo, če take izpolnitve ni možno zagotoviti.[17]

23. člen

Krepitev mnogostranskega sistema

1. Če si članice prizadevajo odpraviti kršitve obveznosti ali drugo izničenje ali zmanjšanje koristi po zajetih sporazumih ali oviranje doseganja katerihkoli ciljev zajetih sporazumov, imajo možnosti zateči se k pravilom in postopkom tega dogovora in se po njih ravnati.

2. V takih primerih članice:

(a) ne sprejemajo odločitev, da je prišlo do kršitve zaradi izničenja ali zmanjšanja koristi ali ker je bilo ovirano doseganje nekega cilja v zajetih sporazumih, razen na podlagi reševanja sporov v skladu s pravili in postopki tega dogovora, vsaka taka odločitev pa mora biti v skladu z ugotovitvami, vsebovanimi v poročilu ugotovitvenega sveta ali Pritožbenega organa, ki ga je sprejel DSB, ali arbitražno sodbo, izdano po tem dogovoru;

(b) sledijo postopkom, določenim v 21. členu, ter članici določijo razumno obdobje za izvedbo priporočil in sklepov ter

(c) sledijo postopkom, določenim v 22. členu, za ugotovitev ravni prekinitve koncesij ali drugih obveznosti, ter pridobijo dovoljenje DSB v skladu s temi postopki, preden koncesije ali druge obveznosti po zajetih sporazumih prekinejo kot odgovor na neizpolnitev priporočil in sklepov določene članice v tem razumnem obdobju.

24. člen

Posebni postopki v zvezi z najmanj razvitimi državami članicami

1. Na vseh stopnjah določanja vzrokov za spor in postopkov za reševanje sporov v zvezi z najmanj razvitimi državami članicami je treba posebej proučiti posebne razmere najmanj razvitih držav članic. V tem smislu članice pokažejo primerno vzdržanost pri obravnavanju zadev po postopkih, ko se nanašajo na najmanj razvite države članice. Če je izničenje ali zmanjšanje posledica ukrepa, ki ga je sprejela najmanj razvita država članica, morajo tožeče stranke pokazati primerno vzdržanost pri zahtevi za kompenzacijo ali dovoljenje za prekinitev uporabe koncesij ali drugih obveznosti v skladu s temi postopki.

2. Pri reševanju sporov, ki se nanašajo na najmanj razvite države članice, generalni direktor ali predsedujoči DSB, če ni zadovoljive rešitve med posvetovanji, na zahtevo najmanj razvite države članice ponudi pomoč dobre usluge, spravo in posredovanje z namenom, da bi stranke rešile spor pred predložitvijo zahteve pri ugotovitvenem svetu. Generalni direktor ali predsedujoči DSB se lahko posvetuje s katerimkoli virom, ki se mu zdi primeren.

25. člen

Arbitraža

1. Hitra arbitraža v WTO lahko kot izbiren način reševanja sporov olajša reševanje določenih sporov v zvezi z vprašanji, ki jih obe strani jasno določita.

2. Če ta dogovor ne določa drugače, je zatekanje k arbitraži predmet medsebojnega sporazuma strank, ki se sporazumejo o postopkih, ki jih bodo uporabile. Sporazume o zatekanju k arbitraži je treba sporočiti vsem članicam dovolj vnaprej pred dejanskim začetkom arbitražnega postopka.

3. Druge članice lahko postanejo stranka arbitražnega postopka le ob soglasju strank, ki so se sporazumele, da se zatečejo k arbitraži. Udeleženke postopka se zavežejo, da se bodo ravnale po arbitražni sodbi. Arbitražne sodbe je treba sporočiti DSB in svetu ali odboru kateregakoli ustreznega sporazuma, glede katerega lahko članica sproži kakršnokoli vprašanje.

4. 21. in 22. člen tega dogovora se uporabljata mutatis mutandis za arbitražne sodbe.

26. člen

1. *Tožbe, določene v prvem (b) odstavku XXIII. člena GATT 1994, ki se ne nanašajo na kršitve*

Če se za zajeti sporazum uporabljajo določbe prvega (b) odstavka XXIII. člena GATT 1994, lahko ugotovitveni svet ali Pritožbeni organ sprejme sklepe ali priporočila le, če stranka v sporu meni, da je korist, ki ji posredno ali neposredno pripada po ustreznem zajetem sporazumu, izničena ali zmanjšana, ali pa je doseganje cilja tega sporazuma ovirano zaradi uporabe kateregakoli ukrepa članice, ne glede na to ali je ukrep v nasprotju z določbami tega sporazuma ali ne. Če in toliko, kolikor stranka meni, ugotovitveni svet ali Pritožbeni organ pa potrdi, da gre v tem primeru za ukrep, ki ni v

[16] Izraz "razsodnik" je treba razlagati tako, da se nanaša na posameznika ali skupino ali na člane prvotnega ugotovitvenega sveta, kadar opravljajo nalogo razsodnika.

[17] Če določbe kateregakoli zajetega sporazuma v zvezi z ukrepi, ki so jih sprejeli regionalne ali lokalne vlade ali oblasti na ozemlju članice, vsebujejo določbe, ki se razlikujejo od določb v tem odstavku, prevladajo določbe takšnega zajetega sporazuma.

nasprotju z določbami zajetega sporazuma, za katerega se uporabljajo določbe prvega (b) odstavka XXIII. člena GATT 1994, se uporabljajo postopki tega dogovora pod temi pogoji:

(a) tožeča stranka predloži podrobno utemeljitev v podporo kakršnikoli tožbi, ki se nanaša na ukrep, ki ni v nasprotju z ustreznim zajetim sporazumom;

(b) če je bilo ugotovljeno, da ukrep izničuje ali zmanjšuje koristi ali preprečuje doseganje ciljev ustreznega zajetega sporazuma, ne da bi ga kršil, ne obstaja obveznost ukrep umakniti. Vendar v takih primerih ugotovitveni svet ali Pritožbeni organ priporoči, da določena članica pripravi obojestransko zadovoljivo prilagoditev;

(c) ne glede na določbe 21. člena lahko arbitraža, določena v tretjem odstavku 21. člena, na zahtevo ene ali druge stranke vključuje ugotovitev ravni koristi, ki so bile izničene ali zmanjšane ter lahko tudi predlaga načine in sredstva za doseganje vzajemno zadovoljive prilagoditve. Taki predlogi za stranke v sporu niso obvezni;

(d) ne glede na določbe prvega odstavka 22. člena je lahko kompenzacija del vzajemno zadovoljive prilagoditve kot dokončne rešitve spora.

2. *Tožbe, določene v prvem (c) odstavku XXIII. člena GATT 1994*

Če se določbe odstavka prvega (c) XXIII. člena GATTT 1994 uporabljajo za zajeti sporazum, lahko ugotovitveni svet pripravi sklepe in priporočila le, če stranka meni, da je izničena ali zmanjšana korist, ki ji posredno ali neposredno pripada po ustreznem zajetem sporazumu, ali pa je doseganje nekega cilja tega sporazuma ovirano kot posledica položaja, ki je drugačen od položaja, za katerega se uporabljajo določbe prvega (a) in (b) XXIII. člena GATT 1994. Če in toliko, kolikor stranka meni, ugotovitveni svet pa odloči, da ta odstavek zajema to zadevo, se postopki tega dogovora uporabljajo le do takrat in v tistem obsegu obravnave, ko je bilo poročilo poslano članicam. Pravila in postopki za reševanje sporov, ki jih vsebuje Odločitev z dne 12. aprila 1989 (BISD 36S/61-67), se uporabljajo za proučitev sprejema, nadzora in izvajanje priporočil in sklepov. Velja tudi, da:

(a) tožeča stranka predloži podrobno utemeljitev v podporo vsakemu argumentu v zvezi z vprašanji, ki jih ta odstavek zajema;

(b) v primerih, ko gre za zadeve, ki jih ta odstavek zajema, če ugotovitveni svet ugotovi, da gre tudi za reševanje sporov, ki pa so drugačni od tistih, ki jih ta odstavek zajema, ugotovitveni svet pošlje DSB poročilo, v katerem obravnava take zadeve, ter ločeno poročilo o zadevah, ki spadajo pod ta odstavek.

27. člen

Odgovornosti Sekretariata

1. Sekretariat je odgovoren za pomoč ugotovitvenim svetom, posebej glede pravnih, zgodovinskih in postopkovnih vidikov obravnavanih zadev, ter za zagotovitev administrativne in tehnične podpore.

2. Medtem ko Sekretariat članicam na njihovo zahtevo pomaga v zvezi s reševanjem sporov, pride lahko tudi do potrebe za zagotovitev dodatnih pravnih nasvetov in pomoči državam članicam v razvoju v zvezi z reševanjem sporov. V ta namen Sekretariat vsaki državi članici v razvoju, ki tako zahteva, da na razpolago kvalificiranega pravnega strokovnjaka iz služb tehničnega sodelovanja WTO. Ta strokovnjak državi članici v razvoju pomaga na način, ki zagotavlja nepristranost Sekretariata.

3. Sekretariat vodi posebne tečaje usposabljanja za zainteresirane članice v zvezi s postopki in prakso reševanja sporov, tako da strokovnjakom članic omogoča boljšo obveščenost na tem področju.

DODATEK 1

SPORAZUMI, NA KATERE SE NANAŠA TA DOGOVOR

(A) Sporazum o ustanovitvi Svetovne trgovinske organizacije

(B) Mnogostranski trgovinski sporazumi

Aneks 1 A:

Mnogostranski sporazumi o trgovini z blagom

Aneks 1 B:

Splošni sporazum o trgovini s storitvami

Aneks 1 C:

Sporazum o trgovinskih vidikih pravic intelektualne lastnine

Aneks 2:

Dogovor o pravilih in postopkih za reševanje sporov

(C) Večstranski trgovinski sporazumi

Aneks 4:

Sporazum o trgovini na področju civilnega letalstva

Sporazum o vladnih nabavah

Mednarodni sporazum o mleku

Mednarodni sporazum o govejem mesu

Uporaba tega dogovora za večstranske trgovinske sporazume je odvisna od tega, ali pogodbenice vsakega sporazuma sprejmejo odločitev, ki določa pogoje za uporabo dogovora za posamezni sporazum, vključno z vsemi posebnimi ali dodatnimi pravili ali postopki za vključitev v Dodatek 2, kot je bilo sporočeno DSB.

DODATEK 2

POSEBNA ALI DODATNA PRAVILA IN POSTOPKI, KI JIH VSEBUJEJO ZAJETI SPORAZUMI

Sporazum	*Pravila in postopki*
Sporazum o uporabi sanitarnih in fitosanitarnih ukrepov	11.2
Sporazum o tekstilu in oblačilih	2.14, 2.21, 4.4, 5.2, 5.4, 5.6, 6.9, 6.10, 6.11, 8.1 do 8.12
Sporazum o tehničnih ovirah v trgovini	14.2 do 14.4, Priloga 2
Sporazum o izvajanju VI. člena GATT 1994	17.4 do 17.7
Sporazum o izvajanju VII. člena GATT 1994	19.3 do 19.5, Priloga II.2(f), 3,9,21
Sporazum o subvencijah in izravnalnih ukrepih	4.2 do 4.12, 6.6, 7.2 do 7.10, 8.5, opomba pod črto 35, 24.4, 27.7, Priloga V
Splošni sporazum o trgovini s storitvami	XXII:3, XXIII:3
Priloga o finančnih storitvah	4
Priloga o storitvah zračnega prevoza	4
Odločitev o določenih postopkih reševanja sporov za GATS	1 do 5

Seznam pravil in postopkov v tem dodatku vsebuje določbe, v katerih je lahko v tej zvezi ustrezen le del določbe.

Katerakoli posebna ali dodatna pravila ali postopki v večstranskih trgovinskih sporazumih, kot jih določijo pristojni organi vsakega sporazuma in kot je sporočeno DSB.

DODATEK 3

DELOVNI POSTOPKI

1. Pri svojem obravnavanju ugotovitveni svet upošteva ustrezne določbe tega dogovora. Poleg tega veljajo naslednji delovni postopki.

2. Ugotovitveni svet se sestaja na zaprtih zasedanjih. Stranke v sporu ter zainteresirane strani smejo biti prisotne na zasedanjih le, če jih povabi ugotovitveni svet.

3. Razprave v ugotovitvenem svetu in dokumentacija, ki mu je predložena, so zaupne. Nič v tem dogovoru ne preprečuje stranki v sporu, da ne razkriva svojega mnenja javnosti. Članice informacijo, označeno kot zaupno, ki jo je dala ugotovitvenemu svetu druga članica, obravnavajo kot tako. Če stranka v sporu da zaupno inačico svojih pisnih vlog ugotovitvenemu svetu, mora tudi na zahtevo članice zagotoviti povzetek informacij, ki ni zaupen, ki jih vsebujejo njene vloge in so lahko razkrite javnosti.

4. Pred prvim vsebinskim zasedanjem ugotovitvenega sveta s strankami stranke v sporu predajo pisne vloge, v katerih predstavijo dejstva o primeru in svoje argumente.

5. Na prvem vsebinskem zasedanju s strankami ugotovitveni svet pozove stranko, ki je tožbo vložila, da predstavi svojo zadevo. Zatem, še vedno pa na istem zasedanju, stranka, proti kateri je bila tožba vložena, predstavi svoje poglede.

6. Vse tretje strani, ki so DSB sporočile svoj namen, se pisno povabijo, da predstavijo svoje poglede na seji prvega vsebinskega srečanja ugotovitvenega sveta, ki je sklican v ta namen. Vse tretje strani so lahko ves čas prisotne na seji.

7. Formalne zavrnitve tožb se dajo na drugem vsebinskem zasedanju ugotovitvenega sveta. Tožena stranka ima pravico, da nastopi prva, sledi ji tožeča stranka. Stranke pred tem zasedanjem ugotovitvenemu svetu dajo pisne zavrnitve.

8. Ugotovitveni svet lahko strankam kadarkoli zastavi vprašanja in jih prosi za pojasnila, bodisi med zasedanjem s strankami ali pisno.

9. Stranke v sporu in tretje strani, pozvane, da predstavijo svoje poglede v skladu z 10. členom, ugotovitvenemu svetu dajo na razpolago pisno inačico svojih ustnih izjav.

10. Zaradi popolne preglednosti morajo biti predstavitve vlog, zavrnitve in izjave, omenjene od petega do devetega odstavka, opravljene v prisotnosti strank. Dodatno k temu, mora biti vsaka pisna vloga stranke, vključno s pripombami k opisnemu delu poročila in odgovorom na vprašanja, ki jih je zastavil ugotovitveni svet, na razpolago drugi strani ali stranem.

11. Vsi dodatni postopki, specifični za ugotovitveni svet.

12. Predlagani časovni razpored za delo ugotovitvenega sveta:

(a) Prejem prvih pisnih vlog strank:	
(1) tožeča stranka:	3-6 tednov
(2) tožena stranka:	2-3 tedne
(b) Datum, čas in kraj prvega vsebinskega zasedanja s strankami; seja s tretjimi stranmi:	1-2 tedna
(c) Prejem pisnih zavrnitev strank:	2-3 tedne
(d) Datum, čas in kraj drugega vsebinskega zasedanja s strankami:	1-2 tedna
(e) Vročitev opisnega dela poročila strankam:	2-4 tedne
(f) Prejem pripomb strank k opisnemu delu poročila:	2 tedna
(g) Vročitev vmesnega poročila za stranke, vključno z ugotovitvami in sklepi:	2-4 tedne
(h) Končni rok za zahtevo stranke za proučitev dela(-ov) poročila:	1 teden
(i) Obdobje proučitve ugotovitvenega sveta, vključno z možnimi dodatnimi zasedanji s strankami:	2 tedna
(j) Vročitev končnega poročila strankam v sporu:	2 tedna
(k) Pošiljanje končnega poročila članicam:	3 tedne

Gornji časovni razpored se lahko spremeni zaradi nepredvidenih dogodkov. Če je potrebno, se določijo dodatna zasedanja s strankami.

DODATEK 4

SKUPINE STROKOVNJAKOV

Ta pravila in postopke uporabljajo skupine strokovnjakov v skladu z določbami drugega odstavka 13. člena.

1. Skupine strokovnjakov so pod pristojnostjo ugotovitvenega sveta. O njihovih mandatih in podrobnih delovnih postopkih odloča ugotovitveni svet in mu poročajo.

2. Sodelovanje v skupinah strokovnjakov je omejeno na osebe s poklicnim ugledom in izkušnjami na obravnavanem področju.

3. Državljani strank v sporu ne smejo brez soglasja strank v sporu sodelovati v skupini strokovnjakov, razen v izjemnih okoliščinah, če ugotovitveni svet meni, da drugače ni mogoče zadostiti potrebi po posebnem znanstvenem znanju. Vladni uradniki strank v sporu ne smejo sodelovati v skupini strokovnjakov. Člani skupin strokovnjakov delujejo v lastnem svojstvu in ne kot vladni predstavniki, niti ne kot predstavniki katerekoli organizacije. Vlade ali organizacije jim zaradi tega ne smejo dajati navodil v zvezi z zadevo, ki jo obravnavajo skupine strokovnjakov.

4. Skupine strokovnjakov se lahko posvetujejo in poiščejo informacije iz kateregakoli vira, ki se jim zdi ustrezen. Preden skupina strokovnjakov poišče tako informacijo ali nasvet iz vira, ki je pod jurisdikcijo članice, o tem obvesti vlado te članice. Vsaka članica mora nemudoma in v celoti izpolniti zahtevo za informacijo skupine strokovnjakov, za katero ta skupina meni, da je potrebna in primerna.

5. Stranke v sporu imajo dostop do vseh ustreznih informacij, danih skupini strokovnjakov, razen če so zaupne. Zaupne informacije, dane skupini strokovnjakov, ne smejo biti razkrite brez formalnega dovoljenja vlade, organizacije ali osebe, ki je dala informacijo. Če tako informacijo zahteva skupina strokovnjakov, skupina pa ne dobi dovoljenja za razkritje, mora vlada, organizacija ali oseba, ki informacijo daje, priskrbeti povzetek informacije, ki ni zaupen.

6. Skupina strokovnjakov da osnutek poročila strankam v sporu z namenom, da pridobi njihove pripombe in jih primerno upošteva v končnem poročilu, ki ga prav tako da strankam v sporu, ko je predloženo ugotovitvenemu svetu. Končno poročilo skupine strokovnjakov je le svetovalno.

ANEKS 3

MEHANIZEM ZA PROUČITEV TRGOVINSKE POLITIKE

Članice se sporazumejo, kot sledi:

A. *Cilji*

(i) Namen mehanizma za proučitev trgovinske politike (Trade Policy Review Mechanism, v nadaljnjem besedilu TPRM) je prispevati k boljšemu izvajanju pravil, disciplin in obvez vseh članic na podlagi mnogostranskih trgovinskih sporazumov in, če je primerno, večstranskih trgovinskih sporazumov in k učinkovitejšemu delovanju mnogostranskega trgovinskega sistema z doseganjem večje preglednosti in razumevanja trgovinske politike in prakse članic. Temu primerno proučitveni mehanizem omogoča redno skupno ugotavljanje in presojo celotne trgovinske politike in prakse posameznih članic in njunega vpliva na delovanje mnogostranskega trgovinskega sistema. Toda ni namen, da je podlaga za uveljavitev določenih obveznosti na podlagi sporazumov ali v zvezi s postopki reševanja sporov ali da se uvedejo nove obveze članic v zvezi s trgovinsko politiko.

(ii) Presoja, ki se opravlja na podlagi proučitvenega mehanizma, se opravi v ustrezni meri glede na ozadje širših gospodarskih in razvojnih potreb, politike in ciljev določene članice kakor tudi v zvezi z zunanjim okoljem. Toda naloga proučitvenega mehanizma je proučiti vpliv trgovinske politike in prakse članice na mnogostranski trgovinski sistem.

B. *Domača preglednost*

Članice priznavajo nedvomno vrednost domače preglednosti vladnega odločanja o zadevah trgovinske politike glede na gospodarstvo članic in mnogostranski trgovinski sistem in soglašajo s spodbujanjem in razvojem večje preglednosti v njihovem lastnem sistemu in priznavajo, da mora biti izvajanje domače preglednosti prostovoljno ob upoštevanju pravnega in političnega sistema vsake članice.

C. *Postopki proučitve*

(i) Ustanovi se Organ za proučitev trgovinske politike (Trade Policy Review Body, v nadaljnjem besedilu TPRB) z namenom proučevanja trgovinske politike.

(ii) Trgovinska politika in praksa vseh članic sta predmet občasne proučitve. Vpliv posameznih članic na delovanje mnogostranskega trgovinskega sistema, ki je določen na podlagi njihovega deleža v svetovni trgovini v preteklem obdobju, je prevladujoči dejavnik pri odločitvi o pogostosti takih proučitev. Prvi štirje trgovinski subjekti, ki se na ta način določijo (pri čemer se Evropska skupnost šteje kot en subjekt) so predmet proučitve vsaki dve leti. Naslednjih šestnajst je predmet proučitve vsaka štiri leta. Druge članice se proučijo vsakih šest let, razen najmanj razvitih držav članic, za katere se lahko določi daljše obdobje. Razume se, da proučitev subjektov, ki imajo skupno zunanjo politiko, ki se nanaša na več kot eno članico, obravnava vse elemente politike, ki vplivajo na trgovino, vključno z ustrezno politiko in prakso posameznih članic. Izjemoma lahko ob spremembah v trgovinski politiki članice ali praksi, ki bi znatno vplivala na njene trgovinske partnerice, TPRB od določene članice po posvetovanju zahteva, da predčasno opravi naslednjo proučitev.

(iii) Razprave na sestankih TPRB so v skladu s cilji, ki so določeni v odstavku A. Bistvo teh razprav je trgovinska politika in praksa članic, ki so predmet presoje na podlagi proučitvenega mehanizma.

(iv) TPRM oblikuje temeljni načrt za izvedbo proučitev. Lahko tudi razpravlja in upošteva popravljena poročila članic. TPRB sprejme program proučitev za vsako leto v posvetovanju z neposredno prizadetimi članicami. V posvetovanju s članico ali članicami v postopku proučevanja lahko predsedujoči izbere razpravljavce, ki pričnejo razprave v TPRB, razpravljajo pa v svojem imenu.

(v) Delo TPRB temelji na teh dokumentih:

(a) celovitem poročilu, na katero se nanaša odstavek D, ki ga predloži članica ali članice v postopku proučevanja;

(b) poročilu, ki ga sestavi Sekretariat na svojo odgovornost na podlagi informacij, ki so mu na razpolago, in na podlagi tistih, ki jih je dala določena članica ali članice. Sekretariat zahteva pojasnila od določene članice ali članic v zvezi s trgovinsko politiko in prakso.

(vi) Poročila članice v postopku proučitve in Sekretariata skupaj z zapisniki ustreznih zasedanj TPRB se objavijo takoj po proučitvi.

(vii) Ti dokumenti se pošljejo Ministrski konferenci, da se seznani z njimi.

D. *Poročanje*

Z namenom, da bi dosegli največjo možno stopnjo preglednosti, vsaka članica redno pošilja poročila TPRB. Celovita poročila morajo opisati trgovinsko politiko in prakso določene članice ali članic na podlagi dogovorjene oblike, o kateri odloča TPRB. Ta oblika mora najprej temeljiti na Modelu za poročila držav, ki ga je določil Sklep z dne 19. julija 1989 (BISD 36S/406-409), dopolnjen tako, da zajema tudi sporazume iz Aneksa 1 in, če je primerno, tudi večstranske trgovinske sporazume. To obliko poročanja lahko TPRB spremeni glede na pridobljene izkušnje. Med proučitvami članice predložijo kratka poročila, če znatno spremenijo trgovinsko politiko; letna poročila o statističnih podatkih se predložijo v dogovorjeni obliki. Posebej se upoštevajo težave članic najmanj razvitih držav pri pripravi teh poročil. Sekretariat zagotovi tehnično pomoč na zahtevo članic držav v razvoju, še zlasti članicam najmanj razvitih držav. Informacije, ki jih vsebujejo poročila morajo biti čim bolj usklajene z notifikacijami na podlagi določb mnogostranskih trgovinskih sporazumov in, če je primerno, z večstranskimi trgovinskimi sporazumi.

E. *Razmerje z določbami GATT 1994 in GATS, ki se nanašajo na plačilnobilančne določbe*

Članice priznavajo potrebo, da čim bolj zmanjšajo breme vlad v zvezi s posvetovanji o plačilnobilančnih določbah GATT 1994 ali GATS. S tem namenom predsedujoči TPRB v soglasju s prizadeto članico ali članicami in predsedujočim Odbora za plačilnobilančne omejitve oblikuje upravne rešitve, ki bodo uskladile običajen potek proučevanj trgovinske politike s časovno razporeditvijo plačilnobilančnih posvetovanj, ki pa ne odlagajo proučitev trgovinske politike za več kot 12 mesecev.

F. *Presoja mehanizma*

TPRB opravi presojo delovanja TPRM najpozneje v petih letih od začetka veljavnosti Sporazuma o ustanovitvi WTO. Rezultati presoje se predložijo Ministrski konferenci. Pozneje lahko TPRM opravi presojo v časovnih presledkih, ki jih določi sam ali zahteva Ministrska konferenca.

G. *Pregled razvoja v mednarodnem trgovinskem okolju*

TPRB letno pregleda razvoj mednarodnega trgovinskega okolja, ki vpliva na mnogostranski trgovinski sistem. V podporo temu pregledu je letno poročilo generalnega direktorja, ki vsebuje poglavitne dejavnosti WTO in poudarja pomembnejša vprašanja politike, ki vplivajo na trgovinski sistem.

3. člen

Za izvajanje obveznosti, ki jih za članice Svetovne trgovinske organizacije določajo aneksi iz 1. člena tega zakona, in za izvajanje drugih obveznosti, ki izhajajo iz ali nastanejo na podlagi članstva Republike Slovenije v Svetovni trgovinski organizaciji, splošno skrbi Ministrstvo za ekonomske odnose in razvoj. Pri tem sodeluje in usklajuje svoje delo z drugimi pristojnimi državnimi organi, ki imajo posebne obveznosti na podlagi teh sporazumov.

Za izvajanje posebnih obveznosti po spodaj navedenih sporazumih, ki jih vsebujejo aneksi iz 1. člena tega zakona, skrbijo naslednji državni organi:

1) splošni sporazum o carinah in trgovini 1994:
Ministrstvo za ekonomske odnose in razvoj, in sicer za vse pravne akte, ki so sestavni deli tega sporazuma, razen za dogovor o plačilnobilančnih določbah splošnega sporazuma o carinah in trgovini 1994, za katerega skrbi Ministrstvo za finance, v sodelovanju z Banko Slovenije;

2) sporazum o kmetijstvu:
Ministrstvo za kmetijstvo, gozdarstvo in prehrano v sodelovanju z Ministrstvom za ekonomske odnose in razvoj;

3) sporazum o uporabi sanitarnih in fitosanitarnih ukrepov:
Ministrstvo za kmetijstvo, gozdarstvo in prehrano
– Veterinarska uprava Republike Slovenije
– Inšpektorat Republike Slovenije za kmetijstvo, gozdarstvo, lovstvo in ribištvo
Ministrstvo za zdravstvo
– Zdravstveni inšpektorat Republike Slovenije.
Na podlagi tega sporazuma se ustanovi skupen informacijski center;

4) sporazum o tekstilu in oblačilih:
Ministrstvo za ekonomske odnose in razvoj;

5) sporazum o tehničnih ovirah v trgovini:
Ministrstvo za znanost in tehnologijo
– Urad Republike Slovenije za standardizacijo in meroslovje.
Na podlagi tega sporazuma se v okviru Urada Republike Slovenije za standardizacijo in meroslovje ustanovi informacijski center za področje standardov in tehničnih predpisov v Republiki Sloveniji;

6) sporazum o ukrepih na področju vlaganj, ki vplivajo na trgovino:
Ministrstvo za ekonomske odnose in razvoj;

7) sporazum o izvajanju VI. člena splošnega sporazuma o carinah in trgovini 1994:
Ministrstvo za ekonomske odnose in razvoj
– Urad Republike Slovenije za varstvo konkurence;

8) sporazum o izvajanju VII. člena splošnega sporazuma o carinah in trgovini 1994:
Ministrstvo za finance
– Carinska uprava Republike Slovenije;

9) sporazum o pravilih o poreklu blaga:
Ministrstvo za finance;

10) sporazum o postopkih za izdajanje uvoznih dovoljenj:
Ministrstvo za ekonomske odnose in razvoj;

11) sporazum o subvencijah in izravnalnih ukrepih:
Ministrstvo za ekonomske odnose in razvoj
– Urad Republike Slovenije za varstvo konkurence v sodelovanju z drugimi pristojnimi državnimi organi, ki subvencionirajo določene dejavnosti s svojega področja;

12) sporazum o posebnih zaščitnih ukrepih:
Ministrstvo za ekonomske odnose in razvoj v sodelovanju z Ministrstvom za finance;

13) splošni sporazum o trgovini s storitvami:
Ministrstvo za ekonomske odnose in razvoj v sodelovanju z državnimi organi, ki so pristojni za storitve in vprašanja, povezana s ponudbo storitev na določenih področjih.
Ministrstvo za ekonomske odnose in razvoj ustanovi informacijski center za področje storitev;

14) sporazum o trgovinskih vidikih pravic intelektualne lastnine:
Ministrstvo za znanost in tehnologijo
– Urad Republike Slovenije za intelektualno lastnino.

4. člen

Ta zakon začne veljati naslednji dan po objavi v Uradnem listu Republike Slovenije – Mednarodne pogodbe.

Št. 311-04/95-21/1
Ljubljana, dne 20. junija 1995

Predsednik
Državnega zbora
Republike Slovenije
Jožef Školč l. r.

VSEBINA

Izdaja Časopisni zavod Uradni list RS – Direktor in odgovorni urednik Marko Polutnik – Tiska tiskarna SET, d.o.o., Vevče