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ΤΗΣ ΕΛΛΗΝΙΚΗΣ ΔΗΜΟΚΡΑΤΙΑΣ

ΤΕΥΧΟΣ ΠΡΩΤΟ Αρ. Φύλλου **28**

9 Φεβρουαρίου 1995

ΝΟΜΟΣ ΥΠ' ΑΡΙΘ. 2290

Κύρωση της Τελικής Πράξης που περιλαμβάνει τα αποτελέσματα των πολυμερών εμπορικών διαπραγματεύσεων στο πλαίσιο του Γύρου Ουρουγουάης

Ο ΠΡΟΕΔΡΟΣ
ΤΗΣ ΕΛΛΗΝΙΚΗΣ ΔΗΜΟΚΡΑΤΙΑΣ

Εκδίδομε τον ακόλουθο νόμο που ψήφισε η Βουλή:

Άρθρο πρώτο

Κυρώνεται και έχει την ισχύ, που ορίζει το άρθρο 28 παρ. 1 του Συντάγματος, η Τελική Πράξη που περιλαμβάνει τα αποτελέσματα των πολυμερών εμπορικών διαπραγματεύσεων στο πλαίσιο του Γύρου της Ουρουγουάης, που υπογράφηκε στο Μαρακές την 15η Απριλίου 1994, της οποίας το κείμενο σε πρωτότυπο στην αγγλική γλώσσα και σε μετάφραση στην ελληνική έχει ως εξής:

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 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.

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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.

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.

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

[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.

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 these 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 procédures 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.

2. *Explanatory Notes*

(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.

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.

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.

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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.

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 case of certain essential products, exclude or limit the application of surcharges applied across the board

[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.

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.

[The agreed schedules of participants will be annexed to the Marrakesh Protocol in the treaty copy of the WTO Agreement.]

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 constituent data and methodology used in the tables of supporting material incorporated by reference in Part IV of the Member's Schedule;

(i) "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

[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[3] 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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[3]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[4];

(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

[4] "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[6]

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.

[5 & 6]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.

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.

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:

[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.[2] 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.

[2]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.

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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.

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 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[4]

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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[4]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.

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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.

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:

(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

(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.

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

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.

[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

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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.

shall encompass products from each of the following four groups: tops and yarns, fabrics, made-up textile products, and clothing.

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

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

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.

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:

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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.

(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;

(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 15 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 (other 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

HS No.	Product Description
5205.25	Cotton yarn, > / = 85 %, single, combed, < 125 dtex, not put up for retail sale
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, not 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 = to 200g/m =, 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

HS No.	Product Description
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
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

HS No.	Product Description
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
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	Texturd yarn nes, of nylon/oth polyamides fi, < / = 50tex/s.y.,not put up
5402.32	Texturd 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

HS No.	Product Description
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
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

HS No.	Product Description
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
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 artificl 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

HS No.	Product Description
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
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

HS No.	Product Description
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
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 nettg of twine/cordage/rope, and oth made up nets of m-m tex mat
5608.90	Knottd nettg 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

HS No.	Product Description
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.**
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 metallisd 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

HS No.	Product Description
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	Lineoleum, whether or not cut to shape
5904.91	Floor coverings, other than 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, ctd, cov nes; paintd 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 crochetd 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/crochetd 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

HS No.	Product Description
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
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

HS No.	Product Description
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
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, knittd
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, knittd
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, knittd
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 knittd 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 knittd
6115.12	Panty hose&tights, of synthetic fib yarns >/=67 dtex/single yarn knittd
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 knittd
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

HS No.	Product Description
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, knittd
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
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&similar 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

HS No.	Product Description
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
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

HS No.	Product Description
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
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

HS No.	Product Description
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/bd 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 crochetd
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
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 mattresses, of cotton
6306.49	Pneumatic mattresses, 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}	{

HS No.	Product Description
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
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[1] 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.

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[1] "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.

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 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.

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[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.

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.

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.

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

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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.

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 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

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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.

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[19] 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.

[19]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.[20] 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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[20]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.[24]

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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[24]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.

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.

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 verification has taken place, preshipment inspection entities immediately inform exporters in writing

[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".

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 intellectual property fees, and services rendered as part of the contract if these are not

[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.

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.

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 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.

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[3] 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;

[3]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 XXIII 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.

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.

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[6] At the same time, consideration shall be given to arrangements concerning the settlement of disputes relating to customs classification.

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[7] 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 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.

[7]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.

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.

[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.

[7]Originally circulated as GATT 1947 document L/3515 of 23 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.[8]

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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[8]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 independently 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[33] 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.[34]

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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[33]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.

[34]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

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[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 c··toms 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.[44]

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

[44] 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[48] 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

[48]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[49] 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 using the best information available. In such cases, definitive duties may be levied in accordance with

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[49]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.

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.

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,

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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.

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.[52] 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[53], 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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[52]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.

[53]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[54], 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 duty actions taken within the preceding six months. The semi-annual reports shall be submitted on an agreed standard form.

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[54]The Committee shall establish a Working Party to review the contents and form of the questionnaire as contained in BISD 9S/193-194.

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.

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[55], 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 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

[55]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.

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.[56]

32.2 Reservations may not be entered in respect of any of the provisions of this Agreement without the consent of the other Members.

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[56]This paragraph is not intended to preclude action under other relevant provisions of GATT 1994, where appropriate.

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.

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[58] 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[58] 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[58] in excess of those levied on imported inputs that are consumed in the production of the exported product (making normal allowanee 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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[60]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)[62]

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[63] sales in the most recent 12-month period, for which sales data is available, preceding the period in which the subsidy is granted.[64]

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.[65]

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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[62] 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.

[63] The recipient firm is a firm in the territory of the subsidizing Member.

[64] 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.

[65] 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[68]: 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.

[68]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.

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(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

PART I SCOPE AND DEFINITION

Article I Scope and Definition

PART II GENERAL OBLIGATIONS AND DISCIPLINES

Article II Most-Favoured-Nation Treatment
Article III Transparency
Article III *bis* Disclosure of Confidential Information
Article IV Increasing Participation of Developing Countries
Article V Economic Integration
Article V *bis* Labour Markets Integration Agreements
Article VI Domestic Regulation
Article VII Recognition
Article VIII Monopolies and Exclusive Service Suppliers
Article IX Business Practices
Article X Emergency Safeguard Measures
Article XI Payments and Transfers
Article XII Restrictions to Safeguard the Balance of Payments
Article XIII Government Procurement
Article XIV General Exceptions
Article XIV *bis* Security Exceptions
Article XV Subsidies

PART III SPECIFIC COMMITMENTS

Article XVI Market Access
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PART IV PROGRESSIVE LIBERALIZATION

Article XIX Negotiation of Specific Commitments
Article XX Schedules of Specific Commitments
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PART V INSTITUTIONAL PROVISIONS

Article XXII Consultation
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PART VI FINAL PROVISIONS

Article XXVII Denial of Benefits
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Article XXIX Annexes

Annex on Article II Exemptions
Annex on Movement of Natural Persons Supplying Services under the Agreement
Annex on Air Transport Services
Annex on Financial Services
Second Annex on Financial Services
Annex on Negotiations on Maritime Transport Services
Annex on Telecommunications
Annex on Negotiations on Basic Telecommunications

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 I

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.

[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[2] 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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[2]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 envisaged 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:

(a) necessary to protect public morals or to maintain public order;[5]

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[4]It is understood that the procedures under paragraph 5 shall be the same as the GATT 1994 procedures.

[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.

(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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[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.

[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.[11] The Council shall refer the matter to arbitration. The decision of the arbitrator shall be final and binding on the Members.

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[11] 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 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.

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;[12]

(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

(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

[12]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.

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"

[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).[2]

(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.

(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

[2]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".

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.

ANNEX 1C

AGREEMENT ON TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS

PART I GENERAL PROVISIONS AND BASIC PRINCIPLES

PART II STANDARDS CONCERNING THE AVAILABILITY, SCOPE AND USE OF INTELLECTUAL PROPERTY RIGHTS

1. Copyright and Related Rights
2. Trademarks
3. Geographical Indications
4. Industrial Designs
5. Patents
6. Layout-Designs (Topographies) of Integrated Circuits
7. Protection of Undisclosed Information
8. Control of Anti-Competitive Practices in Contractual Licences

PART III ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

1. General Obligations
2. Civil and Administrative Procedures and Remedies
3. Provisional Measures
4. Special Requirements Related to Border Measures
5. Criminal Procedures

PART IV ACQUISITION AND MAINTENANCE OF INTELLECTUAL PROPERTY RIGHTS AND RELATED *INTER-PARTES* PROCEDURES

PART V DISPUTE PREVENTION AND SETTLEMENT

PART VI TRANSITIONAL ARRANGEMENTS

PART VII INSTITUTIONAL ARRANGEMENTS; FINAL PROVISIONS

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.[4]

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.

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.

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[4]Notwithstanding the first sentence of Article 42, Members may, with respect to these obligations, instead provide for enforcement by administrative action.

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:

(a) diagnostic, therapeutic and surgical methods for the treatment of humans or animals;

[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.

(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 unreasonably prejudice the legitimate interests of the patent owner, taking account of the legitimate interests of third parties.

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[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.

Article 31

Other Use Without Authorization of the Right Holder

Where the law of a Member allows for other use[7] 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;

(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;

[7] "Other use" refers to use other than that allowed under Article 30.

(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:[9] 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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[9]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[11] 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 against such use to payment of remuneration in accordance with subparagraph (h) of Article 31. In

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[11] For the purpose of this Part, the term "right holder" includes federations and associations having legal standing to assert such rights.

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. The provision of compensation should be resorted to only if the immediate withdrawal of the measure

[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.

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.[2]

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.

[2]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;

(ii) with respect to services, the GATS;

[14]The list in document MTN.GNS/W/120 identifies eleven sectors.

(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

[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 and mediation with a view to assisting the parties to settle the dispute, before a request for a panel

[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.

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.

ANNEX 4

PLURILATERAL TRADE AGREEMENTS

AGREEMENT ON TRADE IN CIVIL AIRCRAFT

The Agreement on Trade in Civil Aircraft, done at Geneva on 12 April 1979 (BISD 26S/162), as subsequently modified, rectified or amended.

AGREEMENT ON GOVERNMENT PROCUREMENT

The Agreement on Government Procurement done at Marrakesh on 15 April 1994.

INTERNATIONAL DAIRY AGREEMENT

The International Dairy Agreement done at Marrakesh on 15 April 1994.

INTERNATIONAL BOVINE MEAT AGREEMENT

The International Bovine Meat Agreement done at Marrakesh on 15 April 1994.

DECISION ON MEASURES IN FAVOUR OF LEAST-DEVELOPED COUNTRIES

Ministers,

Recognizing the plight of the least-developed countries and the need to ensure their effective participation in the world trading system, and to take further measures to improve their trading opportunities:

Recognizing the specific needs of the least-developed countries in the area of market access where continued preferential access remains an essential means for improving their trading opportunities;

Reaffirming their commitment to implement fully the provisions concerning the least-developed countries contained in paragraphs 2(*d*), 6 and 8 of the Decision of 28 November 1979 on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries;

Having regard to the commitment of the participants as set out in Section B (vii) of Part I of the Punta del Este Ministerial Declaration;

1. *Decide* that, if not already provided for in the instruments negotiated in the course of the Uruguay Round, notwithstanding their acceptance of these instruments, the least-developed countries, and for so long as they remain in that category, while complying with the general rules set out in the aforesaid instruments, 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. The least-developed countries shall be given additional time of one year from 15 April 1994 to submit their schedules as required in Article XI of the Agreement Establishing the World Trade Organization.

2. *Agree* that:

(i) Expeditious implementation of all special and differential measures taken in favour of least-developed countries including those taken within the context of the Uruguay Round shall be ensured through, *inter alia*, regular reviews.

(ii) To the extent possible, MFN concessions on tariff and non-tariff measures agreed in the Uruguay Round on products of export interest to the least-developed countries may be implemented autonomously, in advance and without staging. Consideration shall be given to further improve GSP and other schemes for products of particular export interest to least-developed countries.

(iii) The rules set out in the various agreements and instruments and the transitional provisions in the Uruguay Round should be applied in a flexible and supportive manner for the least-developed countries. To this effect, sympathetic consideration shall be given to specific and motivated concerns raised by the least-developed countries in the appropriate Councils and Committees.

(iv) In the application of import relief measures and other measures referred to in paragraph 3(*c*) of Article XXXVII of GATT 1947 and the corresponding provision of GATT 1994, special consideration shall be given to the export interests of least-developed countries.

(v) Least-developed countries shall be accorded substantially increased technical assistance in the development, strengthening and diversification of their production and export bases including those of services, as well as in trade promotion, to enable them to maximize the benefits from liberalized access to markets.

3. *Agree* to keep under review the specific needs of the least-developed countries and to continue to seek the adoption of positive measures which facilitate the expansion of trading opportunities in favour of these countries.

DECLARATION ON THE CONTRIBUTION OF THE WORLD TRADE ORGANIZATION TO ACHIEVING GREATER COHERENCE IN GLOBAL ECONOMIC POLICYMAKING

1. *Ministers recognize* that the globalization of the world economy has led to ever-growing interactions between the economic policies pursued by individual countries, including interactions between the structural, macroeconomic, trade, financial and development aspects of economic policymaking. The task of achieving harmony between these policies falls primarily on governments at the national level, but their coherence internationally is an important and valuable element in increasing the effectiveness of these policies at national level. The Agreements reached in the Uruguay Round show that all the participating governments recognize the contribution that liberal trading policies can make to the healthy growth and development of their own economies and of the world economy as a whole.

2. Successful cooperation in each area of economic policy contributes to progress in other areas. Greater exchange rate stability, based on more orderly underlying economic and financial conditions, should contribute towards the expansion of trade, sustainable growth and development, and the correction of external imbalances. There is also a need for an adequate and timely flow of concessional and non-concessional financial and real investment resources to developing countries and for further efforts to address debt problems, to help ensure economic growth and development. Trade liberalization forms an increasingly important component in the success of the adjustment programmes that many countries are undertaking, often involving significant transitional social costs. In this connection, Ministers note the role of the World Bank and the IMF in supporting adjustment to trade liberalization, including support to net food-importing developing countries facing short-term costs arising from agricultural trade reforms.

3. The positive outcome of the Uruguay Round is a major contribution towards more coherent and complementary international economic policies. The results of the Uruguay Round ensure an expansion of market access to the benefit of all countries, as well as a framework of strengthened multilateral disciplines for trade. They also guarantee that trade policy will be conducted in a more transparent manner and with greater awareness of the benefits for domestic competitiveness of an open trading environment. The strengthened multilateral trading system emerging from the Uruguay Round has the capacity to provide an improved forum for liberalization, to contribute to more effective surveillance, and to ensure strict observance of multilaterally agreed rules and disciplines. These improvements mean that trade policy can in the future play a more substantial role in ensuring the coherence of global economic policymaking.

4. *Ministers recognize*, however, that difficulties the origins of which lie outside the trade field cannot be redressed through measures taken in the trade field alone. This underscores the importance of efforts to improve other elements of global economic policymaking to complement the effective implementation of the results achieved in the Uruguay Round.

5. The interlinkages between the different aspects of economic policy require that the international institutions with responsibilities in each of these areas follow consistent and mutually supportive policies. The World Trade Organization should therefore pursue and develop cooperation with the international organizations responsible for monetary and financial matters, while respecting the mandate, the confidentiality requirements and the necessary autonomy in decision-making procedures of each institution, and avoiding the imposition on governments of cross-conditionality or additional conditions. Ministers further invite the Director-General of the WTO to review with the Managing Director of the International Monetary Fund and the President of the World Bank, the implications of the WTO's responsibilities for its cooperation with the Bretton Woods institutions, as well as the forms such cooperation might take, with a view to achieving greater coherence in global economic policymaking.

DECISION ON NOTIFICATION PROCEDURES

Ministers decide to recommend adoption by the Ministerial Conference of the decision on improvement and review of notification procedures set out below.

Members,

Desiring to improve the operation of notification procedures under the Agreement Establishing the World Trade Organization (hereinafter referred to as the "WTO Agreement"), and thereby to contribute to the transparency of Members' trade policies and to the effectiveness of surveillance arrangements established to that end;

Recalling obligations under the WTO Agreement to publish and notify, including obligations assumed under the terms of specific protocols of accession, waivers, and other agreements entered into by Members;

Agree as follows:

I. *General obligation to notify*

Members affirm their commitment to obligations under the Multilateral Trade Agreements and, where applicable, the Plurilateral Trade Agreements, regarding publication and notification.

Members recall their undertakings set out in the Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance adopted on 28 November 1979 (BISD 26S/210). With regard to their undertaking therein to notify, to the maximum extent possible, their adoption of trade measures affecting the operation of GATT 1994, such notification itself being without prejudice to views on the consistency of measures with or their relevance to rights and obligations under the Multilateral Trade Agreements and, where applicable, the Plurilateral Trade Agreements, Members agree to be guided, as appropriate, by the annexed list of measures. Members therefore agree that the introduction or modification of such measures is subject to the notification requirements of the 1979 Understanding.

II. *Central registry of notifications*

A central registry of notifications shall be established under the responsibility of the Secretariat. While Members will continue to follow existing notification procedures, the Secretariat shall ensure that the central registry records such elements of the information provided on the measure by the Member concerned as its purpose, its trade coverage, and the requirement under which it has been notified. The central registry shall cross-reference its records of notifications by Member and obligation.

The central registry shall inform each Member annually of the regular notification obligations to which that Member will be expected to respond in the course of the following year.

The central registry shall draw the attention of individual Members to regular notification requirements which remain unfulfilled.

Information in the central registry regarding individual notifications shall be made available on request to any Member entitled to receive the notification concerned.

III. *Review of notification obligations and procedures*

The Council for Trade in Goods will undertake a review of notification obligations and procedures under the Agreements in Annex 1A of the WTO Agreement. The review will be carried out by a working group, membership in which will be open to all Members. The group will be established immediately after the date of entry into force of the WTO Agreement.

The terms of reference of the working group will be:

— to undertake a thorough review of all existing notification obligations of Members established under the Agreements in Annex 1A of the WTO Agreement, with a view to simplifying, standardizing and consolidating these obligations to the greatest extent practicable, as well as to improving compliance with these obligations, bearing in mind the overall objective of improving the transparency of the trade policies of Members and the effectiveness of surveillance arrangements established to this end, and also bearing in mind the possible need of some developing country Members for assistance in meeting their notification obligations;

— to make recommendations to the Council for Trade in Goods not later than two years after the entry into force of the WTO Agreement.

ANNEX

INDICATIVE LIST[1] OF NOTIFIABLE MEASURES

Tariffs (including range and scope of bindings, GSP provisions, rates applied to members of free-trade areas/customs unions, other preferences)

Tariff quotas and surcharges

Quantitative restrictions, including voluntary export restraints and orderly marketing arrangements affecting imports

Other non-tariff measures such as licensing and mixing requirements; variable levies

Customs valuation

Rules of origin

Government procurement

Technical barriers

Safeguard actions

Anti-dumping actions

Countervailing actions

Export taxes

[1]This list does not alter existing notification requirements in the Multilateral Trade Agreements in Annex 1A to the WTO Agreement or, where applicable, the Plurilateral Trade Agreements in Annex 4 of the WTO Agreement.

Export subsidies, tax exemptions and concessionary export financing

Free-trade zones, including in-bond manufacturing

Export restrictions, including voluntary export restraints and orderly marketing arrangements

Other government assistance, including subsidies, tax exemptions

Role of state-trading enterprises

Foreign exchange controls related to imports and exports

Government-mandated countertrade

Any other measure covered by the Multilateral Trade Agreements in Annex 1A to the WTO Agreement

DECLARATION ON THE RELATIONSHIP OF THE WORLD TRADE ORGANIZATION WITH THE INTERNATIONAL MONETARY FUND

Ministers,

Noting the close relationship between the CONTRACTING PARTIES to the GATT 1947 and the International Monetary Fund, and the provisions of the GATT 1947 governing that relationship, in particular Article XV of the GATT 1947;

Recognizing the desire of participants to base the relationship of the World Trade Organization with the International Monetary Fund, with regard to the areas covered by the Multilateral Trade Agreements in Annex 1A of the WTO Agreement, on the provisions that have governed the relationship of the CONTRACTING PARTIES to the GATT 1947 with the International Monetary Fund;

Hereby *reaffirm* that, unless otherwise provided for in the Final Act, the relationship of the WTO with the International Monetary Fund, with regard to the areas covered by the Multilateral Trade Agreements in Annex 1A of the WTO Agreement, will be based on the provisions that have governed the relationship of the CONTRACTING PARTIES to the GATT 1947 with the International Monetary Fund.

DECISION ON MEASURES CONCERNING THE POSSIBLE NEGATIVE EFFECTS OF THE REFORM PROGRAMME ON LEAST-DEVELOPED AND NET FOOD-IMPORTING DEVELOPING COUNTRIES

1. *Ministers recognize* that the progressive implementation of the results of the Uruguay Round as a whole will generate increasing opportunities for trade expansion and economic growth to the benefit of all participants.

2. *Ministers recognize* that during the reform programme leading to greater liberalization of trade in agriculture least-developed and net food-importing developing countries may experience negative effects in terms of the availability of adequate supplies of basic foodstuffs from external sources on reasonable terms and conditions, including short-term difficulties in financing normal levels of commercial imports of basic foodstuffs.

3. *Ministers* accordingly *agree* to establish appropriate mechanisms to ensure that the implementation of the results of the Uruguay Round on trade in agriculture does not adversely affect the availability of food aid at a level which is sufficient to continue to provide assistance in meeting the food needs of developing countries, especially least-developed and net food-importing developing countries. To this end *Ministers agree*:

(i) to review the level of food aid established periodically by the Committee on Food Aid under the Food Aid Convention 1986 and to initiate negotiations in the appropriate forum to establish a level of food aid commitments sufficient to meet the legitimate needs of developing countries during the reform programme;

(ii) to adopt guidelines to ensure that an increasing proportion of basic foodstuffs is provided to least-developed and net food-importing developing countries in fully grant form and/or on appropriate concessional terms in line with Article IV of the Food Aid Convention 1986;

(iii) to give full consideration in the context of their aid programmes to requests for the provision of technical and financial assistance to least-developed and net food-importing developing countries to improve their agricultural productivity and infrastructure.

4. *Ministers* further *agree* to ensure that any agreement relating to agricultural export credits makes appropriate provision for differential treatment in favour of least-developed and net food-importing developing countries.

5. *Ministers recognize* that as a result of the Uruguay Round certain developing countries may experience short-term difficulties in financing normal levels of commercial imports and that these countries may be eligible to draw on the resources of international financial institutions under existing facilities, or such facilities as may be established, in the context of adjustment programmes, in order to address such financing difficulties. In this regard Ministers take note of paragraph 37 of the report of the Director-General to the CONTRACTING PARTIES to GATT 1947 on his consultations with the Managing Director of the International Monetary Fund and the President of the World Bank (MTN.GNG/NG14/W/35).

6. The provisions of this Decision will be subject to regular review by the Ministerial Conference, and the follow-up to this Decision shall be monitored, as appropriate, by the Committee on Agriculture.

DECISION ON NOTIFICATION OF FIRST INTEGRATION UNDER ARTICLE 2.6 OF THE AGREEMENT ON TEXTILES AND CLOTHING

Ministers agree that the participants maintaining restrictions falling under paragraph 1 of Article 2 of the Agreement on Textiles and Clothing shall notify full details of the actions to be taken pursuant to paragraph 6 of Article 2 of that Agreement to the GATT Secretariat not later than 1 October 1994. The GATT Secretariat shall promptly circulate these notifications to the other participants for information. These notifications will be made available to the Textiles Monitoring Body, when established, for the purposes of paragraph 21 of Article 2 of the Agreement on Textiles and Clothing.

DECISION ON PROPOSED UNDERSTANDING ON WTO-ISO STANDARDS INFORMATION SYSTEM

Ministers decide to recommend that the Secretariat of the World Trade Organization reach an understanding with the International Organization for Standardization ("ISO") to establish an information system under which:

1. ISONET members shall transmit to the ISO/IEC Information Centre in Geneva the notifications referred to in paragraphs C and J of the Code of Good Practice for the Preparation, Adoption and Application of Standards in Annex 3 to the Agreement on Technical Barriers to Trade, in the manner indicated there;

2. the following (alpha)numeric classification systems shall be used in the work programmes referred to in paragraph J:

   (a) *a standards classification system* which would allow standardizing bodies to give for each standard mentioned in the work programme an (alpha)numeric indication of the subject matter;

   (b) *a stage code system* which would allow standardizing bodies to give for each standard mentioned in the work programme an (alpha)numeric indication of the stage of development of the standard; for this purpose, at least five stages of development should be distinguished: (*1*) the stage at which the decision to develop a standard has been taken, but technical work has not yet begun; (*2*) the stage at which technical work has begun, but the period for the submission of comments has not yet started; (*3*) the stage at which the period for the submission of comments has started, but has not yet been completed; (*4*) the stage at which the period for the submission of comments has been completed, but the standard has not yet been adopted; and (*5*) the stage at which the standard has been adopted;

   (c) *an identification system* covering all international standards which would allow standardizing bodies to give for each standard mentioned in the work programme an (alpha)numeric indication of the international standard(s) used as a basis;

3. the ISO/IEC Information Centre shall promptly convey to the Secretariat copies of any notifications referred to in paragraph C of the Code of Good Practice;

4. the ISO/IEC Information Centre shall regularly publish the information received in the notifications made to it under paragraphs C and J of the Code of Good Practice; this publication, for which a reasonable fee may be charged, shall be available to ISONET members and through the Secretariat to the Members of the WTO.

DECISION ON REVIEW OF THE ISO/IEC INFORMATION CENTRE PUBLICATION

Ministers decide that in conformity with paragraph 1 of Article 13 of the Agreement on Technical Barriers to Trade in Annex 1A of the Agreement Establishing the World Trade Organization, the Committee on Technical Barriers to Trade established thereunder shall, without prejudice to provisions on consultation and dispute settlement, at least once a year review the publication provided by the ISO/IEC Information Centre on information received according to the Code of Good Practice for the Preparation, Adoption and Application of Standards in Annex 3 of the Agreement, for the purpose of affording Members opportunity of discussing any matters relating to the operation of that Code.

In order to facilitate this discussion, the Secretariat shall provide a list by Member of all standardizing bodies that have accepted the Code, as well as a list of those standardizing bodies that have accepted or withdrawn from the Code since the previous review.

The Secretariat shall also distribute promptly to the Members copies of the notifications it receives from the ISO/IEC Information Centre.

DECISION ON ANTI-CIRCUMVENTION

Ministers,

Noting that while the problem of circumvention of anti-dumping duty measures formed part of the negotiations which preceded the Agreement on Implementation of Article VI of GATT 1994, negotiators were unable to agree on specific text,

Mindful of the desirability of the applicability of uniform rules in this area as soon as possible,

Decide to refer this matter to the Committee on Anti-Dumping Practices established under that Agreement for resolution.

DECISION ON REVIEW OF ARTICLE 17.6 OF THE AGREEMENT ON IMPLEMENTATION OF ARTICLE VI OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE 1994

Ministers decide as follows:

The standard of review in paragraph 6 of Article 17 of the Agreement on Implementation of Article VI of GATT 1994 shall be reviewed after a period of three years with a view to considering the question of whether it is capable of general application.

DECLARATION ON DISPUTE SETTLEMENT PURSUANT TO THE AGREEMENT ON IMPLEMENTATION OF ARTICLE VI OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE 1994 OR PART V OF THE AGREEMENT ON SUBSIDIES AND COUNTERVAILING MEASURES

Ministers recognize, with respect to dispute settlement pursuant to the Agreement on Implementation of Article VI of GATT 1994 or Part V of the Agreement on Subsidies and Countervailing Measures, the need for the consistent resolution of disputes arising from anti-dumping and countervailing duty measures.

DECISION REGARDING CASES WHERE CUSTOMS ADMINISTRATIONS HAVE REASONS TO DOUBT THE TRUTH OR ACCURACY OF THE DECLARED VALUE

Ministers invite the Committee on Customs Valuation established under the Agreement on Implementation of Article VII of GATT 1994 to take the following decision:

The Committee on Customs Valuation,

Reaffirming that the transaction value is the primary basis of valuation under the Agreement on Implementation of Article VII of GATT 1994 (hereinafter referred to as the "Agreement");

Recognizing that the customs administration may have to address cases where it has reason to doubt the truth or accuracy of the particulars or of documents produced by traders in support of a declared value;

Emphasizing that in so doing the customs administration should not prejudice the legitimate commercial interests of traders;

Taking into account Article 17 of the Agreement, paragraph 6 of Annex III to the Agreement, and the relevant decisions of the Technical Committee on Customs Valuation;

Decides as follows:

1. When a declaration has been presented and where the customs administration has reason to doubt the truth or accuracy of the particulars or of documents produced in support of this declaration, the customs administration may ask the importer to provide further explanation, including documents or other evidence, that the declared value represents the total amount actually paid or payable for the imported goods, adjusted in accordance with the provisions of Article 8. If, after receiving further information, or in the absence of a response, the customs administration still has reasonable doubts about the truth or accuracy of the declared value, it may, bearing in mind the provisions of Article 11, be deemed that the customs value of the imported goods cannot be determined under the provisions of Article 1. Before taking a final decision, the customs administration shall communicate to the importer, in writing if requested, its grounds for doubting the truth or accuracy of the particulars or documents produced and the importer shall be given a reasonable opportunity to respond. When a final decision is made, the customs administration shall communicate to the importer in writing its decision and the grounds therefor.

2. It is entirely appropriate in applying the Agreement for one Member to assist another Member on mutually agreed terms.

DECISION ON TEXTS RELATING TO MINIMUM VALUES AND IMPORTS BY SOLE AGENTS, SOLE DISTRIBUTORS AND SOLE CONCESSIONAIRES

Ministers decide to refer the following texts to the Committee on Customs Valuation established under the Agreement on Implementation of Article VII of GATT 1994, for adoption.

I

Where a developing country makes a reservation to retain officially established minimum values within the terms of paragraph 2 of Annex III and shows good cause, the Committee shall give the request for the reservation sympathetic consideration.

Where a reservation is consented to, the terms and conditions referred to in paragraph 2 of Annex III shall take full account of the development, financial and trade needs of the developing country concerned.

II

1. A number of developing countries have a concern that problems may exist in the valuation of imports by sole agents, sole distributors and sole concessionaires. Under paragraph 1 of Article 20, developing country Members have a period of delay of up to five years prior to the application of the Agreement. In this context, developing country Members availing themselves of this provision could use the period to conduct appropriate studies and to take such other actions as are necessary to facilitate application.

2. In consideration of this, the Committee recommends that the Customs Co-operation Council assist developing country Members, in accordance with the provisions of Annex II, to formulate and conduct studies in areas identified as being of potential concern, including those relating to importations by sole agents, sole distributors and sole concessionaires.

DECISION ON INSTITUTIONAL ARRANGEMENTS FOR THE GENERAL AGREEMENT ON TRADE IN SERVICES

Ministers decide to recommend that the Council for Trade in Services at its first meeting adopt the decision on subsidiary bodies set out below.

The Council for Trade in Services,

Acting pursuant to Article XXIV with a view to facilitating the operation and furthering the objectives of the General Agreement on Trade in Services,

Decides as follows:

1. Any subsidiary bodies that the Council may establish shall report to the Council annually or more often as necessary. Each such body shall establish its own rules of procedure, and may set up its own subsidiary bodies as appropriate.

2. Any sectoral committee shall carry out responsibilities as assigned to it by the Council, and shall afford Members the opportunity to consult on any matters relating to trade in services in the sector concerned and the operation of the sectoral annex to which it may pertain. Such responsibilities shall include:

(a) to keep under continuous review and surveillance the application of the Agreement with respect to the sector concerned;

(b) to formulate proposals or recommendations for consideration by the Council in connection with any matter relating to trade in the sector concerned;

(c) if there is an annex pertaining to the sector, to consider proposals for amendment of that sectoral annex, and to make appropriate recommendations to the Council;

(d) to provide a forum for technical discussions, to conduct studies on measures of Members and to conduct examinations of any other technical matters affecting trade in services in the sector concerned;

(e) to provide technical assistance to developing country Members and developing countries negotiating accession to the Agreement Establishing the World Trade Organization in respect of the application of obligations or other matters affecting trade in services in the sector concerned; and

(f) to cooperate with any other subsidiary bodies established under the General Agreement on Trade in Services or any international organizations active in any sector concerned.

3. There is hereby established a Committee on Trade in Financial Services which will have the responsibilities listed in paragraph 2.

DECISION ON CERTAIN DISPUTE SETTLEMENT PROCEDURES FOR THE GENERAL AGREEMENT ON TRADE IN SERVICES

Ministers decide to recommend that the Council for Trade in Services at its first meeting adopt the decision set out below.

The Council for Trade in Services,

Taking into account the specific nature of the obligations and specific commitments of the Agreement, and of trade in services, with respect to dispute settlement under Articles XXII and XXIII,

Decides as follows:

1. A roster of panelists shall be established to assist in the selection of panelists.

2. To this end, Members may suggest names of individuals possessing the qualifications referred to in paragraph 3 for inclusion on the roster, and shall provide a curriculum vitae of their qualifications including, if applicable, indication of sector-specific expertise.

3. Panels shall be composed of well-qualified governmental and/or non-governmental individuals who have experience in issues related to the General Agreement on Trade in Services and/or trade in services, including associated regulatory matters. Panelists shall serve in their individual capacities and not as representatives of any government or organisation.

4. Panels for disputes regarding sectoral matters shall have the necessary expertise relevant to the specific services sectors which the dispute concerns.

5. The Secretariat shall maintain the roster and shall develop procedures for its administration in consultation with the Chairman of the Council.

DECISION ON TRADE IN SERVICES AND THE ENVIRONMENT

Ministers decide to recommend that the Council for Trade in Services at its first meeting adopt the decision set out below.

The Council for Trade in Services,

Acknowledging that measures necessary to protect the environment may conflict with the provisions of the Agreement; and

Noting that since measures necessary to protect the environment typically have as their objective the protection of human, animal or plant life or health, it is not clear that there is a need to provide for more than is contained in paragraph (b) of Article XIV;

Decides as follows:

1. In order to determine whether any modification of Article XIV of the Agreement is required to take account of such measures, to request the Committee on Trade and Environment to examine and report, with recommendations if any, on the relationship between services trade and the environment including the issue of sustainable development. The Committee shall also examine the relevance of inter-governmental agreements on the environment and their relationship to the Agreement.

2. The Committee shall report the results of its work to the first biennial meeting of the Ministerial Conference after the entry into force of the Agreement Establishing the World Trade Organization.

DECISION ON NEGOTIATIONS ON MOVEMENT OF NATURAL PERSONS

Ministers,

Noting the commitments resulting from the Uruguay Round negotiations on the movement of natural persons for the purpose of supplying services;

Mindful of the objectives of the General Agreement on Trade in Services, including the increasing participation of developing countries in trade in services and the expansion of their service exports;

Recognizing the importance of achieving higher levels of commitments on the movement of natural persons, in order to provide for a balance of benefits under the General Agreement on Trade in Services;.

Decide as follows:

1. Negotiations on further liberalization of movement of natural persons for the purpose of supplying services shall continue beyond the conclusion of the Uruguay Round, with a view to allowing the achievement of higher levels of commitments by participants under the General Agreement on Trade in Services.

2. A Negotiating Group on Movement of Natural Persons is established to carry out the negotiations. The group shall establish its own procedures and shall report periodically to the Council on Trade in Services.

3. The negotiating group shall hold its first negotiating session no later than 16 May 1994. It shall conclude these negotiations and produce a final report no later than six months after the entry into force of the Agreement Establishing the World Trade Organization.

4. Commitments resulting from these negotiations shall be inscribed in Members' Schedules of specific commitments.

DECISION ON FINANCIAL SERVICES

Ministers,

Noting that commitments scheduled by participants on financial services at the conclusion of the Uruguay Round shall enter into force on an MFN basis at the same time as the Agreement Establishing the World Trade Organization (hereinafter referred to as the "WTO Agreement"),

Decide as follows:

1. At the conclusion of a period ending no later than six months after the date of entry into force of the WTO Agreement, Members shall be free to improve, modify or withdraw all or part of their commitments in this sector without offering compensation, notwithstanding the provisions of Article XXI of the General Agreement on Trade in Services. At the same time Members shall finalize their positions relating to MFN exemptions in this sector, notwithstanding the provisions of the Annex on Article II Exemptions. From the date of entry into force of the WTO Agreement and until the end of the period referred to above, exemptions listed in the Annex on Article II Exemptions which are conditional upon the level of commitments undertaken by other participants or upon exemptions by other participants will not be applied.

2. The Committee on Trade in Financial Services shall monitor the progress of any negotiations undertaken under the terms of this Decision and shall report thereon to the Council for Trade in Services no later than four months after the date of entry into force of the WTO Agreement.

DECISION ON NEGOTIATIONS ON MARITIME TRANSPORT SERVICES

Ministers,

Noting that commitments scheduled by participants on maritime transport services at the conclusion of the Uruguay Round shall enter into force on an MFN basis at the same time as the Agreement Establishing the World Trade Organization (hereinafter referred to as the "WTO Agreement"),

Decide as follows:

1. Negotiations shall be entered into on a voluntary basis in the sector of maritime transport services within the framework of the General Agreement on Trade in Services. The negotiations shall be comprehensive in scope, aiming at commitments in international shipping, auxiliary services and access to and use of port facilities, leading to the elimination of restrictions within a fixed time scale.

2. A Negotiating Group on Maritime Transport Services (hereinafter referred to as the "NGMTS") is established to carry out this mandate. The NGMTS shall report periodically on the progress of these negotiations.

3. The negotiations in the NGMTS shall be open to all governments and the European Communities which announce their intention to participate. To date, the following have announced their intention to take part in the negotiations:

> Argentina, Canada, European Communities and their member States, Finland, Hong Kong, Iceland, Indonesia, Korea, Malaysia, Mexico, New Zealand, Norway, Philippines, Poland, Romania, Singapore, Sweden, Switzerland, Thailand, Turkey, United States.

Further notifications of intention to participate shall be addressed to the depositary of the WTO Agreement.

4. The NGMTS shall hold its first negotiating session no later than 16 May 1994. It shall conclude these negotiations and make a final report no later than June 1996. The final report of the NGMTS shall include a date for the implementation of results of these negotiations.

5. Until the conclusion of the negotiations Article II and paragraphs 1 and 2 of the Annex on Article II Exemptions are suspended in their application to this sector, and it is not necessary to list MFN exemptions. At the conclusion of the negotiations, Members shall be free to improve, modify or withdraw any commitments made in this sector during the Uruguay Round without offering compensation, notwithstanding the provisions of Article XXI of the Agreement. At the same time Members shall finalize their positions relating to MFN exemptions in this sector, notwithstanding the provisions of the Annex on Article II Exemptions. Should negotiations not succeed, the Council for Trade in Services shall decide whether to continue the negotiations in accordance with this mandate.

6. Any commitments resulting from the negotiations, including the date of their entry into force, shall be inscribed in the Schedules annexed to the General Agreement on Trade in Services and be subject to all the provisions of the Agreement.

7. Commencing immediately and continuing until the implementation date to be determined under paragraph 4, it is understood that participants shall not apply any measure affecting trade in maritime transport services except in response to measures applied by other countries and with a view to maintaining or improving the freedom of provision of maritime transport services, nor in such a manner as would improve their negotiating position and leverage.

8. The implementation of paragraph 7 shall be subject to surveillance in the NGMTS. Any participant may bring to the attention of the NGMTS any action or omission which it believes to be relevant to the fulfilment of paragraph 7. Such notifications shall be deemed to have been submitted to the NGMTS upon their receipt by the Secretariat.

DECISION ON NEGOTIATIONS ON BASIC TELECOMMUNICATIONS

Ministers decide as follows:

1. Negotiations shall be entered into on a voluntary basis with a view to the progressive liberalization of trade in telecommunications transport networks and services (hereinafter referred to as "basic telecommunications") within the framework of the General Agreement on Trade in Services.

2. Without prejudice to their outcome, the negotiations shall be comprehensive in scope, with no basic telecommunications excluded *a priori*.

3. A Negotiating Group on Basic Telecommunications (hereinafter referred to as the "NGBT") is established to carry out this mandate. The NGBT shall report periodically on the progress of these negotiations.

4. The negotiations in the NGBT shall be open to all governments and the European Communities which announce their intention to participate. To date, the following have announced their intention to take part in the negotiations:

> Australia, Austria, Canada, Chile, Cyprus, European Communities and their member States, Finland, Hong Kong, Hungary, Japan, Korea, Mexico, New Zealand, Norway, Slovak Republic, Sweden, Switzerland, Turkey, United States.

Further notifications of intention to participate shall be addressed to the depositary of the Agreement Establishing the World Trade Organization.

5. The NGBT shall hold its first negotiating session no later than 16 May 1994. It shall conclude these negotiations and make a final report no later than 30 April 1996. The final report of the NGBT shall include a date for the implementation of results of these negotiations.

6. Any commitments resulting from the negotiations, including the date of their entry into force, shall be inscribed in the Schedules annexed to the General Agreement on Trade in Services and shall be subject to all the provisions of the Agreement.

7. Commencing immediately and continuing until the implementation date to be determined under paragraph 5, it is understood that no participant shall apply any measure affecting trade in basic telecommunications in such a manner as would improve its negotiating position and leverage. It is understood that this provision shall not prevent the pursuit of commercial and governmental arrangements regarding the provision of basic telecommunications services.

8. The implementation of paragraph 7 shall be subject to surveillance in the NGBT. Any participant may bring to the attention of the NGBT any action or omission which it believes to be relevant to the fulfilment of paragraph 7. Such notifications shall be deemed to have been submitted to the NGBT upon their receipt by the Secretariat.

DECISION ON PROFESSIONAL SERVICES

Ministers decide to recommend that the Council for Trade in Services at its first meeting adopt the decision set out below.

The Council for Trade in Services,

Recognizing the impact of regulatory measures relating to professional qualifications, technical standards and licensing on the expansion of trade in professional services;

Desiring to establish multilateral disciplines with a view to ensuring that, when specific commitments are undertaken, such regulatory measures do not constitute unnecessary barriers to the supply of professional services;

Decides as follows:

1. The work programme foreseen in paragraph 4 of Article VI on Domestic Regulation should be put into effect immediately. To this end, a Working Party on Professional Services shall be established to examine and report, with recommendations, on the disciplines necessary to ensure that measures relating to qualification requirements and procedures, technical standards and licensing requirements in the field of professional services do not constitute unnecessary barriers to trade.

2. As a matter of priority, the Working Party shall make recommendations for the elaboration of multilateral disciplines in the accountancy sector, so as to give operational effect to specific commitments. In making these recommendations, the Working Party shall concentrate on:

(a) developing multilateral disciplines relating to market access so as to ensure that domestic regulatory requirements are: (*i*) based on objective and transparent criteria, such as competence and the ability to supply the service; (*ii*) not more burdensome than necessary to ensure the quality of the service, thereby facilitating the effective liberalization of accountancy services;

(b) the use of international standards and, in doing so, it shall encourage the cooperation with the relevant international organizations as defined under paragraph 5(b) of Article VI, so as to give full effect to paragraph 5 of Article VII;

(c) facilitating the effective application of paragraph 6 of Article VI of the Agreement by establishing guidelines for the recognition of qualifications.

In elaborating these disciplines, the Working Party shall take account of the importance of the governmental and non-governmental bodies regulating professional services.

DECISION ON ACCESSION TO THE AGREEMENT ON GOVERNMENT PROCUREMENT

1. *Ministers invite* the Committee on Government Procurement established under the Agreement on Government Procurement in Annex 4(b) of the Agreement Establishing the World Trade Organization to clarify that:

(a) a Member interested in accession according to paragraph 2 of Article XXIV of the Agreement on Government Procurement would communicate its interest to the Director-General of the WTO, submitting relevant information, including a coverage offer for incorporation in Appendix I having regard to the relevant provisions of the Agreement, in particular Article I and, where appropriate, Article V;

(b) the communication would be circulated to Parties to the Agreement;

(c) the Member interested in accession would hold consultations with the Parties on the terms for its accession to the Agreement;

(d) with a view to facilitating accession, the Committee would establish a working party if the Member in question, or any of the Parties to the Agreement, so requests. The working party should examine: (*i*) the coverage offer made by the applicant Member; and (*ii*) relevant information pertaining to export opportunities in the markets of the Parties, taking into account the existing and potential export capabilities of the applicant Member and export opportunities for the Parties in the market of the applicant Member;

(e) upon a decision by the Committee agreeing to the terms of accession including the coverage lists of the acceding Member, the acceding Member would deposit with the Director-General of the WTO an instrument of accession which states the terms so agreed. The acceding Member's coverage lists in English, French and Spanish would be appended to the Agreement;

(f) prior to the date of entry into force of the WTO Agreement, the above procedures would apply *mutatis mutandis* to contracting parties to the GATT 1947 interested in accession, and the tasks assigned to the Director-General of the WTO would be carried out by the Director-General to the CONTRACTING PARTIES to the GATT 1947.

2. It is noted that Committee decisions are arrived at on the basis of consensus. It is also noted that the non-application clause of paragraph 11 of Article XXIV is available to any Party.

DECISION ON THE APPLICATION AND REVIEW OF THE UNDERSTANDING ON RULES AND PROCEDURES GOVERNING THE SETTLEMENT OF DISPUTES

Ministers,

Recalling the Decision of 22 February 1994 that existing rules and procedures of GATT 1947 in the field of dispute settlement shall remain in effect until the date of entry into force of the Agreement Establishing the World Trade Organization,

Invite the relevant Councils and Committees to decide that they shall remain in operation for the purpose of dealing with any dispute for which the request for consultation was made before that date;

Invite the Ministerial Conference to complete a full review of dispute settlement rules and procedures under the World Trade Organization within four years after the entry into force of the Agreement Establishing the World Trade Organization, and to take a decision on the occasion of its first meeting after the completion of the review, whether to continue, modify or terminate such dispute settlement rules and procedures.

UNDERSTANDING ON COMMITMENTS IN FINANCIAL SERVICES

Participants in the Uruguay Round have been enabled to take on specific commitments with respect to financial services under the General Agreement on Trade in Services (hereinafter referred to as the "Agreement") on the basis of an alternative approach to that covered by the provisions of Part III of the Agreement. It was agreed that this approach could be applied subject to the following understanding:

(i) it does not conflict with the provisions of the Agreement;

(ii) it does not prejudice the right of any Member to schedule its specific commitments in accordance with the approach under Part III of the Agreement;

(iii) resulting specific commitments shall apply on a most-favoured-nation basis;

(iv) no presumption has been created as to the degree of liberalization to which a Member is committing itself under the Agreement.

Interested Members, on the basis of negotiations, and subject to conditions and qualifications where specified, have inscribed in their schedule specific commitments conforming to the approach set out below.

A. *Standstill*

Any conditions, limitations and qualifications to the commitments noted below shall be limited to existing non-conforming measures.

B. *Market Access*

Monopoly Rights

1. In addition to Article VIII of the Agreement, the following shall apply:

Each Member shall list in its schedule pertaining to financial services existing monopoly rights and shall endeavour to eliminate them or reduce their scope. Notwithstanding subparagraph 1(b) of the Annex on Financial Services, this paragraph applies to the activities referred to in subparagraph 1(b)(iii) of the Annex.

Financial Services purchased by Public Entities

2. Notwithstanding Article XIII of the Agreement, each Member shall ensure that financial service suppliers of any other Member established in its territory are accorded most-favoured-nation treatment and national treatment as regards the purchase or acquisition of financial services by public entities of the Member in its territory.

Cross-border Trade

3. Each Member shall permit non-resident suppliers of financial services to supply, as a principal, through an intermediary or as an intermediary, and under terms and conditions that accord national treatment, the following services:

(a) insurance of risks relating to:

(i) maritime shipping and commercial aviation and space launching and freight (including satellites), 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

(ii) goods in international transit;

(b) reinsurance and retrocession and the services auxiliary to insurance as referred to in subparagraph 5(a)(iv) of the Annex;

(c) provision and transfer of financial information and financial data processing as referred to in subparagraph 5(a)(xv) of the Annex and advisory and other auxiliary services, excluding intermediation, relating to banking and other financial services as referred to in subparagraph 5(a)(xvi) of the Annex.

4. Each Member shall permit its residents to purchase in the territory of any other Member the financial services indicated in:

(a) subparagraph 3(a);

(b) subparagraph 3(b); and

(c) subparagraphs 5(a)(v) to (xvi) of the Annex.

Commercial Presence

5. Each Member shall grant financial service suppliers of any other Member the right to establish or expand within its territory, including through the acquisition of existing enterprises, a commercial presence.

6. A Member may impose terms, conditions and procedures for authorization of the establishment and expansion of a commercial presence in so far as they do not circumvent the Member's obligation under paragraph 5 and they are consistent with the other obligations of the Agreement.

New Financial Services

7. A Member shall permit financial service suppliers of any other Member established in its territory to offer in its territory any new financial service.

Transfers of Information and Processing of Information

8. No Member shall take measures that prevent transfers of information or the processing of financial information, including transfers of data by electronic means, or that, subject to importation rules consistent with international agreements, prevent transfers of equipment, where such transfers of information, processing of financial information or transfers of equipment are necessary for the conduct of the ordinary business of a financial service supplier. Nothing in this paragraph restricts the right of a Member to protect personal data, personal privacy and the confidentiality of individual records and accounts so long as such right is not used to circumvent the provisions of the Agreement.

Temporary Entry of Personnel

9. (a) Each Member shall permit temporary entry into its territory of the following personnel of a financial service supplier of any other Member that is establishing or has established a commercial presence in the territory of the Member:

(i) senior managerial personnel possessing proprietary information essential to the establishment, control and operation of the services of the financial service supplier; and

(ii) specialists in the operation of the financial service supplier.

(b) Each Member shall permit, subject to the availability of qualified personnel in its territory, temporary entry into its territory of the following personnel associated with a commercial presence of a financial service supplier of any other Member:

(i) specialists in computer services, telecommunication services and accounts of the financial service supplier; and

(ii) actuarial and legal specialists.

Non-discriminatory Measures

10. Each Member shall endeavour to remove or to limit any significant adverse effects on financial service suppliers of any other Member of:

(a) non-discriminatory measures that prevent financial service suppliers from offering in the Member's territory, in the form determined by the Member, all the financial services permitted by the Member;

(b) non-discriminatory measures that limit the expansion of the activities of financial service suppliers into the entire territory of the Member;

(c) measures of a Member, when such a Member applies the same measures to the supply of both banking and securities services, and a financial service supplier of any other Member concentrates its activities in the provision of securities services; and

(d) other measures that, although respecting the provisions of the Agreement, affect adversely the ability of financial service suppliers of any other Member to operate, compete or enter the Member's market;

provided that any action taken under this paragraph would not unfairly discriminate against financial service suppliers of the Member taking such action.

11. With respect to the non-discriminatory measures referred to in subparagraphs 10(a) and (b), a Member shall endeavour not to limit or restrict the present degree of market opportunities nor the benefits already enjoyed by financial service suppliers of all other Members as a class in the territory of the Member, provided that this commitment does not result in unfair discrimination against financial service suppliers of the Member applying such measures.

C. *National Treatment*

1. Under terms and conditions that accord national treatment, each Member shall grant to financial service suppliers of any other Member established in its territory access to payment and clearing systems operated by public entities, and to official funding and refinancing facilities available in the normal course of ordinary business. This paragraph is not intended to confer access to the Member's lender of last resort facilities.

2. When membership or participation in, or access to, any self-regulatory body, securities or futures exchange or market, clearing agency, or any other organization or association, is required by a Member in order for financial service suppliers of any other Member to supply financial services on an equal basis with financial service suppliers of the Member, or when the Member provides directly or indirectly such entities, privileges or advantages in supplying financial services, the Member shall ensure that such entities accord national treatment to financial service suppliers of any other Member resident in the territory of the Member.

D. *Definitions*

For the purposes of this approach:

1. A non-resident supplier of financial services is a financial service supplier of a Member which supplies a financial service into the territory of another Member from an establishment located in the territory of another Member, regardless of whether such a financial service supplier has or has not a commercial presence in the territory of the Member in which the financial service is supplied.

2. "Commercial presence" means an enterprise within a Member's territory for the supply of financial services and includes wholly- or partly-owned subsidiaries, joint ventures, partnerships, sole proprietorships, franchising operations, branches, agencies, representative offices or other organizations.

3. A new financial service is a service of a financial nature, including services related to existing and new products or the manner in which a product is delivered, that is not supplied by any financial service supplier in the territory of a particular Member but which is supplied in the territory of another Member.

ΤΕΛΙΚΗ ΠΡΑΞΗ ΠΟΥ ΠΕΡΙΛΑΜΒΑΝΕΙ ΤΑ ΑΠΟΤΕΛΕΣΜΑΤΑ ΤΩΝ ΠΟΛΥΜΕΡΩΝ ΕΜΠΟΡΙΚΩΝ ΔΙΑΠΡΑΓΜΑΤΕΥΣΕΩΝ ΣΤΟ ΠΛΑΙΣΙΟ ΤΟΥ ΓΥΡΟΥ ΤΗΣ ΟΥΡΟΥΓΟΥΑΗΣ

1. Κατά τη συνάντησή τους για την ολοκλήρωση των πολυμερών εμπορικών διαπραγματεύσεων στο πλαίσιο του Γύρου της ουρουγουάης, εκπρόσωποι των κυβερνήσεων και των Ευρωπαϊκών Κοινοτήτων, μέλη της επιτροπής εμπορικών διαπραγματεύσεων *συμφωνούν* ότι η Συμφωνία για τη θέσπιση του Παγκόσμιου οργανισμού Εμπορίου (ΠΟΕ), καλούμενη στην παρούσα Τελική Πράξη "συμφωνία για τον ΠΟΕ" και οι υπουργικές δηλώσεις και αποφάσεις, που περιέχονται στα παραρτήματα που επισυνάπτονται, περιλαμβάνουν τα αποτελέσματα των διαπραγματεύσεων που αυτοί διενήργησαν και αποτελούν αναπόσπαστο μέρος της παρούσας Τελικής Πράξης.

2. Υπογράφοντας την παρούσα Τελική Πράξη, οι εκπρόσωποι *συμφωνούν*:

(α) να υποβάλουν, με τον κατάλληλο τρόπο, προς εξέταση στις αντίστοιχες αρμόδιες αρχές τους τη συμφωνία για τον ΠΟΕ επιδιώκοντας την έγκριση της συμφωνίας με βάση τις ισχύουσες σ'αυτά διαδικασίες, και

(β) να υιοθετήσουν τις υπουργικές δηλώσεις και αποφάσεις.

3. Οι εκπρόσωποι *συμφωνούν* ότι αποτελεί επιθυμία όλων η αποδοχή της συμφωνίας για τον ΠΟΕ από όλους τους συμμετέχοντες στις πολυμερείς εμπορικές διαπραγματεύσεις στο πλαίσιο του Γύρου της ουρουγουάης (καλούμενους στην παρούσα Τελική Πράξη "συμμετέχοντες") και η θέση της σε ισχύ την 1η Ιανουαρίου 1995 ή το ταχύτερο δυνατό μετά την εν λόγω ημερομηνία. Όχι αργότερα από το τέλος του 1994 οι Υπουργοί θα συναντηθούν σύμφωνα με την τελευταία παράγραφο της Υπουργικής Δήλωσης της Punta del Este, για να ρυθμίσουν τα θέματα σχετικά με την εφαρμογή των αποτελεσμάτων σε διεθνές επίπεδο καθώς και το χρονοδιάγραμμα για τη θέση τους σε ισχύ.

4. Οι εκπρόσωποι *συμφωνούν* ότι η συμφωνία για τον ΠΟΕ υποβάλλεται προς αποδοχή στο σύνολό της, με υπογραφή ή άλλο τρόπο, εκ μέρους όλων των συμμετεχόντων σύμφωνα με το άρθρο XIV. Η αποδοχή και η θέση σε ισχύ πολυμερούς εμπορικής συμφωνίας, που περιλαμβάνεται στο παράρτημα 4 της συμφωνίας για τον ΠΟΕ, διέπονται από τις διατάξεις της εκάστοτε πλειομερούς εμπορικής συμφωνίας.

5. Προτού αποδεχθούν τη συμφωνία για τον ΠΟΕ, οι συμμετέχοντες που δεν αποτελούν συμβαλλόμενα μέρη της Γενικής Συμφωνίας Δασμών και Εμπορίου υποχρεούνται να έχουν πρώτα ολοκληρώσει τις διαπραγματεύσεις για την προσχώρησή τους στη Γενική Συμφωνία και να έχουν γίνει συμβαλλόμενα μέρη αυτής. Όσον αφορά τους συμμετέχοντες οι οποίοι δεν αποτελούν συμβαλλόμενα μέρη της Γενικής Συμφωνίας κατά την ημερομηνία υπογραφής της Τελικής Πράξης, οι πίνακες δεν είναι οριστικοί και θα συμπληρωθούν αργότερα με σκοπό την προσχώρησή τους στη Γενική Συμφωνία και την αποδοχή της συμφωνίας για τον ΠΟΕ.

6. Η παρούσα Τελική Πράξη και τα κείμενα που περιέχουν τα συνημμένα σ'αυτή παραρτήματα κατατίθενται στο Γενικό Διευθυντή των ΣΥΜΒΑΛΛΟΜΕΝΩΝ ΜΕΡΩΝ της Γενικής Συμφωνίας Δασμών και Εμπορίου, ο οποίος διαβιβάζει χωρίς καθυστέρηση, σε κάθε συμμετέχοντα κυρωμένο αντίγραφο αυτών.

ΕΓΙΝΕ στο Μαρακές στις δεκαπέντε Απριλίου χίλια εννιακόσια ενενήντα τέσσερα σε ένα μόνον αντίτυπο, στην αγγλική, γαλλική και ισπανική γλώσσα, και όλα τα κείμενα είναι εξίσου αυθεντικά.

(Κατάλογος υπογραφών που πρέπει να περιληφθούν στο αντίγραφο της Τελικής Πράξης προς υπογραφή)

ΣΥΜΦΩΝΙΑ ΓΙΑ ΤΗΝ ΙΔΡΥΣΗ ΤΟΥ ΠΑΓΚΟΣΜΙΟΥ ΟΡΓΑΝΙΣΜΟΥ ΕΜΠΟΡΙΟΥ

Τα *μέρη* της παρούσας συμφωνίας,

Αναγνωρίζοντας ότι οι σχέσεις τους στον εμπορικό και τον οικονομικό τομέα είναι ανάγκη να διαμορφώνονται με απώτερο σκοπό την άνοδο του βιοτικού επιπέδου, την εξασφάλιση πλήρους απασχόλησης και υψηλού, συνεχώς αυξανόμενου, επιπέδου πραγματικού εισοδήματος και πραγματικής ζήτησης, καθώς και την επέκταση της παραγωγής και του εμπορίου στους τομείς των εμπορευμάτων και των υπηρεσιών, επιτρέποντας ταυτόχρονα την άριστη χρήση των πόρων σε παγκόσμιο επίπεδο σύμφωνα με τους στόχους της διαρκούς ανάπτυξης, επιδιώκοντας τόσο την προστασία και τη διατήρηση του περιβάλλοντος όσο και την αύξηση των μέσων για την επίτευξη αυτού του στόχου κατά τρόπο που να συμβιβάζεται με τις αντίστοιχες ανάγκες και ανησυχίες τους στα διάφορα επίπεδα της οικονομικής ανάπτυξης,

Αναγνωρίζοντας ακόμη, ότι είναι αναγκαία η ανάληψη θετικών προσπαθειών, ώστε να διασφαλιστεί ότι οι αναπτυσσόμενες χώρες και ιδιαίτερα οι λιγότερο ανεπτυγμένες από αυτές, θα εξασφαλίζουν κάποιο μερίδιο από την αύξηση του διεθνούς εμπορίου ανάλογο με τις ανάγκες της οικονομικής τους ανάπτυξης,

Επιθυμώντας να συμβάλουν στην επίτευξη αυτών των στόχων προβαίνοντας σε αμοιβαίες και ευνοϊκές για όλα τα μέρη διευθετήσεις με σκοπό την ουσιαστική μείωση των δασμών και άλλων φραγμών στο εμπόριο και την κατάργηση της διακριτικής μεταχείρισης στις διεθνείς εμπορικές σχέσεις,

Εχοντας αποφασίσει συνεπώς, να αναπτύξουν ένα ολοκληρωμένο, εφαρμόσιμο και μονιμότερο πολυμερές εμπορικό σύστημα που να περιλαμβάνει τη Γενική Συμφωνία Δασμών και Εμπορίου, τα αποτελέσματα των παλαιότερων προσπαθειών απελευθέρωσης του εμπορίου και όλα τα αποτελέσματα των πολυμερών εμπορικών διαπραγματεύσεων στο πλαίσιο του Γύρου της Ουρουγουάης,

Εχοντας αποφασίσει να διατηρήσουν τις βασικές αρχές και να προωθήσουν τους στόχους που διακρίνουν το παρόν πολυμερές εμπορικό σύστημα,

Συμφωνούν τα ακόλουθα:

Άρθρο I
Ίδρυση του Οργανισμού

Με την παρούσα συμφωνία ιδρύεται ο Παγκόσμιος Οργανισμός Εμπορίου (καλούμενος εφεξής "ΠΟΕ").

Άρθρο II
Πεδίο δράσης του ΠΟΕ

1. Ο ΠΟΕ παρέχει το κοινό θεσμικό πλαίσιο για τη διαχείριση των εμπορικών σχέσεων μεταξύ των μερών, όσον αφορά θέματα σχετικά με τις συμφωνίες και τις συναφείς νομικές πράξεις που περιλαμβάνονται στα παραρτήματα της παρούσας συμφωνίας.

2. Οι συμφωνίες και οι συναφείς νομικές πράξεις που περιλαμβάνονται στα παραρτήματα 1, 2 και 3 (καλούμενες εφεξής "πολυμερείς εμπορικές συμφωνίες") αποτελούν αναπόσπαστο μέρος της παρούσας συμφωνίας και δεσμεύουν όλα τα μέρη.

3. Οι συμφωνίες και οι συναφείς νομικές πράξεις που περιλαμβάνονται στο παράρτημα 4 (καλούμενες εφεξής "πλειομερείς εμπορικές συμφωνίες") αποτελούν επίσης μέρος της παρούσας συμφωνίας για εκείνα από τα μέρη που τις έχουν αποδεχθεί και δεσμεύουν αυτά τα μέρη. Οι πλειομερείς εμπορικές συμφωνίες δεν δημιουργούν ούτε υποχρεώσεις ούτε δικαιώματα για τα μέρη που δεν τις έχουν αποδεχθεί.

4. Η Γενική Συμφωνία Δασμών και Εμπορίου του 1994, όπως ορίζεται στο παράρτημα 1Α (καλούμενη εφεξής "GATT του 1994") διαφέρει από νομικής πλευράς από τη Γενική Συμφωνία Δασμών και Εμπορίου, της 30ης Οκτωβρίου 1947, η οποία επισυνάπτεται στην Τελική Πράξη που εγκρίθηκε κατά την ολοκλήρωση της δεύτερης συνόδου της προπαρασκευαστικής επιτροπής της Συνδιάσκεψης των Ηνωμένων Εθνών για το Εμπόριο και την Απασχόληση, όπως αναθεωρήθηκε ή τροποποιήθηκε στη συνέχεια (καλούμενη εφεξής "GATT του 1947").

Άρθρο III
Αρμοδιότητες του ΠΟΕ

1. Ο ΠΟΕ διευκολύνει την εφαρμογή, τη διαχείριση και τη λειτουργία, καθώς και την επίτευξη των στόχων της παρούσας συμφωνίας και των πολυμερών εμπορικών συμφωνιών, παρέχει δε, επίσης, το πλαίσιο για την εφαρμογή, τη διαχείριση και τη λειτουργία των πλειομερών εμπορικών συμφωνιών.

2. Ο ΠΟΕ αποτελεί το χώρο για τη διεξαγωγή διαπραγματεύσεων μεταξύ των μερών του, όσον αφορά τις πολυμερείς εμπορικές τους σχέσεις επί θεμάτων τα οποία ρυθμίζουν οι συμφωνίες που περιλαμβάνονται στα παραρτήματα της παρούσας συμφωνίας. Ο ΠΟΕ μπορεί επίσης να παρέχει το χώρο για περαιτέρω διαπραγματεύσεις μεταξύ των μερών του σχετικά με τις πολυμερείς εμπορικές τους σχέσεις και το πλαίσιο για την εφαρμογή των αποτελεσμάτων τέτοιων διαπραγματεύσεων, όπως είναι δυνατό να αποφασιστεί από την υπουργική συνδιάσκεψη.

3. Ο ΠΟΕ διαχειρίζεται το μνημόνιο συμφωνίας σχετικά με τους κανόνες και τις διαδικασίες που διέπουν την επίλυση των διαφορών (καλούμενο εφεξής "συμφωνία για την επίλυση των διαφορών" ή "ΣΕΔ") στο παράρτημα 2 της παρούσας συμφωνίας.

4. Ο ΠΟΕ επιβλέπει την εφαρμογή του Μηχανισμού Ελέγχου Εμπορικών Πολιτικών (καλούμενου εφεξής "ΜΕΕΠ"), που προβλέπεται στο παράρτημα 3 της παρούσας συμφωνίας.

5. Επιδιώκοντας την επίτευξη μεγαλύτερης συνοχής κατά τη χάραξη της παγκόσμιας οικονομικής πολιτικής, ο ΠΟΕ συνεργάζεται με τον κατάλληλο τρόπο με το Διεθνές Νομισματικό Ταμείο και τη Διεθνή Τράπεζα για την Ανασυγκρότηση και την Ανάπτυξη καθώς και με τους συνδεδεμένους οργανισμούς τους.

Άρθρο IV
Δομή του ΠΟΕ

1. Θεσπίζεται Υπουργική Συνδιάσκεψη, αποτελούμενη από εκπροσώπους όλων των μερών, η οποία συνέρχεται μια τουλάχιστον φορά κάθε δύο έτη.

Η υπουργική συνδιάσκεψη φέρει εις πέρας τις αρμοδιότητες του ΠΟΕ και αναλαμβάνει την απαιτούμενη για το σκοπό αυτό δράση. Η υπουργική συνδιάσκεψη είναι αρμόδια για τη λήψη αποφάσεων επί όλων των θεμάτων τα οποία εντάσσονται στο πλαίσιο των πολυμερών εμπορικών συμφωνιών, εφόσον διατυπωθεί σχετικό αίτημα από κάποιο μέλος, σύμφωνα με τις ειδικές απαιτήσεις για τη λήψη των αποφάσεων που περιέχονται στην παρούσα συμφωνία και στη σχετική πολυμερή εμπορική συμφωνία.

2. Θεσπίζεται Γενικό Συμβούλιο αποτελούμενο από εκπροσώπους όλων των μερών, το οποίο συνεδριάζει με τον κατάλληλο τρόπο. Στα διαστήματα μεταξύ των συνόδων της υπουργικής συνδιάσκεψης, τις αρμοδιότητες αυτής αναλαμβάνει το Γενικό Συμβούλιο. Το Γενικό Συμβούλιο επιτελεί επίσης το έργο του που ανατίθεται βάσει της παρούσας συμφωνίας. Το Γενικό Συμβούλιο θεσπίζει τους διαδικαστικούς του κανόνες και εγκρίνει τους διαδικαστικούς κανόνες για τις επιτροπές που προβλέπονται στην παράγραφο 7.

3. Το Γενικό Συμβούλιο συνέρχεται με τον κατάλληλο τρόπο για να ορίσει τα καθήκοντα του οργάνου Επίλυσης των Διαφορών, που προβλέπεται στο μνημόνιο συμφωνίας για την Επίλυση των Διαφορών. Το όργανο Επίλυσης των Διαφορών μπορεί να έχει δικό του πρόεδρο και θεσπίζει τους διαδικαστικούς κανόνες που θεωρεί αναγκαίους για την εκτέλεση αυτών των καθηκόντων.

4. Το Γενικό Συμβούλιο συνέρχεται με τον κατάλληλο τρόπο για να ορίσει τα καθήκοντα του οργάνου Ελέγχου Εμπορικών Πολιτικών που προβλέπεται στο πλαίσιο του ΜΕΕΠ. Το όργανο Ελέγχου Εμπορικών Πολιτικών μπορεί να έχει δικό του πρόεδρο και θεσπίζει τους διαδικαστικούς κανόνες που θεωρεί αναγκαίους για την εκτέλεση αυτών των καθηκόντων.

5. Θεσπίζεται Συμβούλιο Εμπορευματικών Συναλλαγών, συμβούλιο για τις συναλλαγές στον τομέα των υπηρεσιών και συμβούλιο για τα δικαιώματα πνευματικής ιδιοκτησίας στον τομέα του εμπορίου (καλούμενο εφεξής "συμβούλιο για τα TRIP"), τα οποία λειτουργούν υπό την εποπτεία του Γενικού Συμβουλίου. Το Συμβούλιο Εμπορευματικών Συναλλαγών επιβλέπει τη λειτουργία των πολυμερών εμπορικών συμφωνιών που περιλαμβάνονται στο παράρτημα 1Α. Το συμβούλιο για τις συναλλαγές στον τομέα των υπηρεσιών επιβλέπει τη λειτουργία της Γενικής Συμφωνίας για τις συναλλαγές στον τομέα των υπηρεσιών (καλούμενης εφεξής "GATS"). Το συμβούλιο για τα TRIP επιβλέπει την εφαρμογή της συμφωνίας για τα δικαιώματα πνευματικής ιδιοκτησίας στον τομέα του εμπορίου (η οποία καλείται εφεξής "συμφωνία για τα TRIP"). Τα εν λόγω συμβούλια αναλαμβάνουν τις αρμοδιότητες που τους αναθέτουν οι αντίστοιχες συμφωνίες και το Γενικό Συμβούλιο. Θεσπίζουν τους δικούς τους διαδικαστικούς κανόνες υπό την αίρεση της έγκρισής τους από το Γενικό Συμβούλιο. Η συμμετοχή στα συμβούλια αυτά επιτρέπεται σε εκπροσώπους όλων των μερών. Τα συγκεκριμένα συμβούλια συνέρχονται με τον κατάλληλο τρόπο για την εκπλήρωση των αρμοδιοτήτων τους.

6. Το Συμβούλιο Εμπορευματικών Συναλλαγών, το συμβούλιο για τις συναλλαγές στον τομέα των υπηρεσιών και το συμβούλιο για τα TRIP προβαίνουν, ανάλογα με τις ανάγκες, στη σύσταση επικουρικών οργάνων. Τα εν λόγω επικουρικά όργανα θεσπίζουν τους δικούς τους διαδικαστικούς κανόνες υπό την αίρεση της έγκρισής τους από τα αντίστοιχα συμβούλια.

7. Η υπουργική συνδιάσκεψη προβαίνει στη σύσταση Επιτροπής για το Εμπόριο και την Ανάπτυξη, Επιτροπής για τους περιορισμούς του ισοζυγίου πληρωμών και Επιτροπής για τον Προϋπολογισμό, τα Οικονομικά και τη Διοίκηση, οι οποίες φέρουν εις πέρας τα καθήκοντα που τους αναθέτει η

παρούσα συμφωνία και οι πολυμερείς εμπορικές συμφωνίες, καθώς και κάθε άλλη αρμοδιότητα που τους αναθέτει το Γενικό Συμβούλιο, έχει δε την ευχέρεια να συστήνει και άλλες επιτροπές με τέτοιες αρμοδιότητες, εφόσον το κρίνει αναγκαίο. Στο πλαίσιο των αρμοδιοτήτων της, η Επιτροπή για το Εμπόριο και την Ανάπτυξη επανεξετάζει σε τακτά διαστήματα τις ειδικές διατάξεις που περιλαμβάνουν οι πολυμερείς εμπορικές συμφωνίες υπέρ των λιγότερο ανεπτυγμένων χωρών-μελών και ενημερώνει το Γενικό Συμβούλιο, ώστε αυτό να αναλαμβάνει την κατάλληλη δράση. Η συμμετοχή στις επιτροπές αυτές είναι δυνατή για εκπροσώπους όλων των μελών.

8. Τα όργανα που προβλέπονται στο πλαίσιο των πολυμερών εμπορικών συμφωνιών εκτελούν τις αρμοδιότητες που τους έχουν ανατεθεί στο πλαίσιο των συμφωνιών αυτών και ενεργούν εντός του θεσμικού πλαισίου του ΠΟΕ. Τα όργανα αυτά ενημερώνουν τακτικά το Γενικό Συμβούλιο για τις δραστηριότητές τους.

Άρθρο V
Σχέσεις με άλλους οργανισμούς

1. Το Γενικό Συμβούλιο προβαίνει στις κατάλληλες διευθετήσεις για την καθιέρωση αποτελεσματικής συνεργασίας με άλλους διακυβερνητικούς οργανισμούς που έχουν αρμοδιότητες σχετικές με αυτές του ΠΟΕ.

2. Το Γενικό Συμβούλιο προβαίνει στις κατάλληλες διευθετήσεις για τη διενέργεια διαβουλεύσεων και την καθιέρωση συνεργασίας με μη κυβερνητικές οργανώσεις, οι οποίες ασχολούνται με θέματα σχετικά με αυτά που αποτελούν το αντικείμενο της δραστηριότητας του ΠΟΕ.

Άρθρο VI
Γραμματεία

1. Ιδρύεται Γραμματεία του ΠΟΕ (καλούμενη εφεξής "η Γραμματεία") με επικεφαλής Γενικό Διευθυντή.

2. Η υπουργική συνδιάσκεψη ορίζει το Γενικό Διευθυντή και θεσπίζει τους κανόνες που καθορίζουν τις εξουσίες του, τα καθήκοντά του, τις συνθήκες παροχής υπηρεσιών εκ μέρους του και τη λήξη της θητείας του.

3. Ο Γενικός Διευθυντής ορίζει τα μέλη του προσωπικού της Γραμματείας και προσδιορίζει τα καθήκοντά τους και τις συνθήκες παροχής υπηρεσιών εκ μέρους τους σύμφωνα με τους κανόνες που έχει θεσπίσει η υπουργική συνδιάσκεψη.

4. Οι αρμοδιότητες του Γενικού Διευθυντή και του προσωπικού της Γραμματείας έχουν αποκλειστικά διεθνή χαρακτήρα. Κατά την άσκηση των καθηκόντων τους, ο Γενικός Διευθυντής και το προσωπικό της Γραμματείας δεν επιδιώκουν ούτε αποδέχονται υποδείξεις από οποιαδήποτε κυβέρνηση ή αρχή εκτός του ΠΟΕ. Απέχουν από την ανάληψη κάθε δράσης αντίθετης προς τη θέση τους ως διεθνών υπαλλήλων. Τα μέλη του ΠΟΕ σέβονται το διεθνή χαρακτήρα των αρμοδιοτήτων του Γενικού Διευθυντή και του προσωπικού της Γραμματείας και δεν προσπαθούν να τους επηρεάσουν κατά την άσκηση των καθηκόντων τους.

Άρθρο VII
Προϋπολογισμός και συνεισφορές

1. Ο Γενικός Διευθυντής υποβάλλει στην επιτροπή για τον προϋπολογισμό, τα οικονομικά και τη διοίκηση την ετήσια πρόβλεψη του προϋπολογισμού και τη δημοσιονομική έκθεση του ΠΟΕ. Η Επιτροπή για τον προϋπολογισμό,

τα οικονομικά και τη διοίκηση εξετάζει την ετήσια πρόβλεψη του προϋπολογισμού και τη δημοσιονομική έκθεση που υποβάλλει ο Γενικός Διευθυντής και προβαίνει στη διατύπωση σχετικών συστάσεων προς το Γενικό Συμβούλιο. Η ετήσια πρόβλεψη του προϋπολογισμού εγκρίνεται από το Γενικό Συμβούλιο.

2. Η Επιτροπή για τον προϋπολογισμό, τα οικονομικά και τη διοίκηση προτείνει στο Γενικό Συμβούλιο τη θέσπιση δημοσιονομικών ρυθμίσεων, οι οποίες περιλαμβάνουν διατάξεις που καθορίζουν:

(α) την κλίμακα των συνεισφορών που αντιστοιχούν στην κατανομή των δαπανών του ΠΟΕ μεταξύ των μελών του· και

(β) τα μέτρα που λαμβάνονται έναντι των μελών που καθυστερούν την καταβολή της εν λόγω συνεισφοράς·

οι δημοσιονομικές ρυθμίσεις βασίζονται, στο βαθμό που αυτό είναι δυνατό, στις ρυθμίσεις και τις πρακτικές της GATT του 1947.

3. Το Γενικό Συμβούλιο εγκρίνει το δημοσιονομικό κανονισμό και την ετήσια πρόβλεψη του προϋπολογισμού με πλειοψηφία των δύο τρίτων, η οποία περιλαμβάνει περισσότερα από τα μισά μέλη του ΠΟΕ.

4. Κάθε μέλος καταβάλλει αμέσως στον ΠΟΕ το μέρος των δαπανών του ΠΟΕ που του αναλογεί, σύμφωνα με το δημοσιονομικό κανονισμό που έχει εγκρίνει το Γενικό Συμβούλιο.

Άρθρο VIII
Καθεστώς του ΠΟΕ

1. Ο ΠΟΕ είναι νομικό πρόσωπο. Κάθε μέλος παρέχει σ'αυτόν την ικανότητα δικαίου που απαιτείται για την άσκηση των αρμοδιοτήτων του.

2. Κάθε μέλος του ΠΟΕ παρέχει σ'αυτόν τα προνόμια και τις ασυλίες που απαιτούνται για την άσκηση των αρμοδιοτήτων του.

3. Κάθε μέλος του ΠΟΕ παρέχει στους υπαλλήλους αυτού και στους εκπροσώπους των μελών του τα προνόμια και τις ασυλίες που απαιτούνται για την ανεξάρτητη άσκηση των καθηκόντων τους στο πλαίσιο του ΠΟΕ.

4. Τα προνόμια και οι ασυλίες είναι ανάγκη να παρέχονται από τα μέλη στον ΠΟΕ, τους υπαλλήλους του και τους εκπροσώπους των μελών του ομοιάζουν με τα προνόμια και τις ασυλίες που καθορίζονται στη σύμβαση για τα προνόμια και τις ασυλίες των ειδικευμένων υπηρεσιών, που εγκρίθηκε από τη Γενική Συνέλευση των Ηνωμένων Εθνών στις 21 Νοεμβρίου 1947.

5. Ο ΠΟΕ μπορεί να συνάψει συμφωνία για την έδρα του οργανισμού.

Άρθρο IX
Λήψη των αποφάσεων

1. Ο ΠΟΕ εφαρμόζει την πρακτική της λήψης αποφάσεων με συναίνεση την οποία καθιέρωσε η GATT του 1947[1]. Αν δεν προβλέπεται άλλως, σε περίπτωση που δεν είναι δυνατό να ληφθεί απόφαση με συναίνεση, το όργανο αποφασίζει επί του θέματος με ψηφοφορία. Στις συνεδριάσεις της υπουργικής συνδιάσκεψης και του Γενικού Συμβουλίου, σε κάθε μέλος του ΠΟΕ αναλογεί μια ψήφος. Όταν οι Ευρωπαϊκές Κοινότητες ασκούν το δικαίωμα ψήφου, αντιστοιχεί σ'αυτές αριθμός ψήφων ίσος με τον αριθμό των κρατών μελών τους[2] που αποτελούν μέλη του ΠΟΕ. Οι αποφάσεις της υπουργικής συνδιάσκεψης και του Γενικού Συμβουλίου λαμβάνονται με πλειοψηφία των ψηφισάντων μελών, εκτός αν προβλέπεται άλλως στην παρούσα συμφωνία ή στη σχετική πολυμερή εμπορική συμφωνία[3].

2. Μόνον η υπουργική συνδιάσκεψη και το Γενικό Συμβούλιο έχουν εξουσία να προβαίνουν σε ερμηνεία της παρούσας συμφωνίας και των πολυμερών εμπορικών συμφωνιών. Σε περίπτωση ερμηνείας πολυμερούς εμπορικής συμφωνίας που περιλαμβάνεται στο παράρτημα 1, ασκούν την εξουσία αυτή βάσει σύστασης του Συμβουλίου το οποίο εποπτεύει τη λειτουργία της σχετικής συμφωνίας. Η απόφαση για τη διατύπωση ερμηνείας λαμβάνεται με πλειοψηφία των τριών τετάρτων των μελών. Η παρούσα παράγραφος εφαρμόζεται κατά τρόπο που δεν θίγει τις διατάξεις του άρθρου X για τις τροποποιήσεις.

3. Σε εξαιρετικές περιπτώσεις, η υπουργική συνδιάσκεψη μπορεί να αποφασίζει την απαλλαγή μέλους από υποχρέωση που επιβάλλεται από την παρούσα συμφωνία ή από οποιαδήποτε άλλη πολυμερή εμπορική συμφωνία, υπό την προϋπόθεση ότι η σχετική απόφαση λαμβάνεται από τα τρία τέταρτα[4] των μελών- εκτός αν προβλέπεται άλλως στην παρούσα παράγραφο.

(α) Αίτηση για απαλλαγή σχετικά με την παρούσα συμφωνία υποβάλλεται στην υπουργική συνδιάσκεψη προς εξέταση σύμφωνα με τη διαδικασία λήψης αποφάσεων με συναίνεση. Η υπουργική συνδιάσκεψη τάσσει προθεσμία η οποία δεν υπερβαίνει τις 90 ημέρες, εντός της οποίας εξετάζεται η αίτηση. Αν, εντός της προθεσμίας αυτής, δεν επιτευχθεί συναίνεση, η απόφαση για παραχώρηση απαλλαγής λαμβάνεται από τα τρία τέταρτα των μελών[4].

(β) Αίτηση για απαλλαγή σχετικά με τις πολυμερείς εμπορικές συμφωνίες που περιλαμβάνονται στα παραρτήματα 1Α, 1Β ή 1Γ και

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1 Το εκάστοτε όργανο θεωρείται ότι αποφασίζει με συναίνεση για κάποιο θέμα που υποβάλλεται σ'αυτό προς εξέταση, αν κανένα μέλος παρόν στη συνεδρίαση κατά την οποία λαμβάνεται η απόφαση δεν αντιτίθεται επίσημα στην προτεινόμενη απόφαση.

2 Ο αριθμός ψήφων των Ευρωπαϊκών Κοινοτήτων και των κρατών μελών τους δεν υπερβαίνει σε καμία περίπτωση τον αριθμό των κρατών μελών των Ευρωπαϊκών Κοινοτήτων.

3 Οι αποφάσεις του Γενικού Συμβουλίου, όταν αυτό λειτουργεί ως όργανο επίλυσης των διαφορών, λαμβάνονται σύμφωνα μόνο με τις διατάξεις του άρθρου 2, παράγραφος 4 του μνημονίου συμφωνίας για την επίλυση των διαφορών.

4 Η απόφαση για την παραχώρηση απαλλαγής από υποχρέωση που συνοδεύεται από μεταβατική περίοδο ή περίοδο σταδιακής εφαρμογής, την οποία δεν έχει τηρήσει το ενδιαφερόμενο μέλος κατά το πέρας της σχετικής περιόδου, λαμβάνεται μόνο με συναίνεση.

τα παραρτήματά τους, υποβάλλεται αρχικά στο Συμβούλιο Εμπορευματικών Συναλλαγών, το συμβούλιο για τις συναλλαγές στον τομέα των υπηρεσιών ή το συμβούλιο για τα TRIP, αντίστοιχα, για να εξεταστεί κατά τη διάρκεια προθεσμίας που δεν υπερβαίνει τις 90 ημέρες. Κατά τη λήξη της προθεσμίας, το σχετικό συμβούλιο υποβάλλει έκθεση στην υπουργική συνδιάσκεψη.

4. Κάθε απόφαση της υπουργικής συνδιάσκεψης που παραχωρεί απαλλαγή αναφέρει τις εξαιρετικές περιστάσεις που δικαιολογούν την απόφαση, τους γενικούς και ειδικούς όρους που διέπουν την εφαρμογή της απαλλαγής, καθώς και την ημερομηνία κατά την οποία λήγει η απαλλαγή. Κάθε απαλλαγή που παραχωρείται για περίοδο μεγαλύτερη του ενός έτους επανεξετάζεται από την υπουργική συνδιάσκεψη το αργότερο ένα έτος μετά την παραχώρησή της και στη συνέχεια μια φορά κατ'έτος μέχρις ότου παύσει να ισχύει. Σε κάθε επανεξέταση, η υπουργική συνδιάσκεψη εξετάζει, αν εξακολουθούν να υφίστανται οι εξαιρετικές περιστάσεις που δικαιολογούν την απαλλαγή και αν πληρούνται οι γενικοί και ειδικοί όροι που συνοδεύουν την παραχώρησή της. Η υπουργική συνδιάσκεψη μπορεί, στο πλαίσιο της ετήσιας επανεξέτασης, να παρατείνει, να τροποποιήσει ή να επιφέρει τη λήξη απαλλαγής.

5. Οι αποφάσεις που λαμβάνονται στο πλαίσιο πλειομερούς εμπορικής συμφωνίας, συμπεριλαμβανομένων των αποφάσεων που αφορούν ερμηνεία των διατάξεων ή απαλλαγές, διέπονται από τις διατάξεις της εκάστοτε συμφωνίας.

Άρθρο X
Τροποποιήσεις

1. Οποιοδήποτε μέλος του ΠΟΕ μπορεί να διατυπώσει, ενώπιον της υπουργικής συνδιάσκεψης, πρόταση για τροποποίηση των διατάξεων της παρούσας συμφωνίας ή των πολυμερών εμπορικών συμφωνιών που περιλαμβάνονται στο παράρτημα 1. Τα Συμβούλια που αναφέρονται στο άρθρο IV, παράγραφος 5 δύνανται επίσης να υποβάλουν στην υπουργική συνδιάσκεψη προτάσεις για τροποποίηση των διατάξεων των αντίστοιχων πολυμερών εμπορικών συμφωνιών που περιλαμβάνονται στο παράρτημα 1 και των οποίων την εφαρμογή αυτά εποπτεύουν. Οι αποφάσεις της υπουργικής συνδιάσκεψης για υποβολή της προτεινόμενης τροποποίησης στα μέλη προς αποδοχή λαμβάνεται με συναίνεση εντός 90 ημερών μετά την επίσημη διατύπωση της πρότασης ενώπιον της υπουργικής συνδιάσκεψης, εκτός αν η τελευταία αποφασίσει την πάροδο μεγαλύτερης περιόδου. Η απόφαση αυτή καθορίζει αν εφαρμόζονται οι διατάξεις των παραγράφων 3 ή 4, εκτός από την περίπτωση εφαρμογής των διατάξεων των παραγράφων 2, 5 και 6. Αν επιτευχθεί συναίνεση, η υπουργική συνδιάσκεψη υποβάλλει στη συνέχεια την προτεινόμενη τροποποίηση στα μέλη προς αποδοχή. Αν δεν επιτευχθεί συναίνεση κατά τη διάρκεια συνεδρίασης της υπουργικής συνδιάσκεψης εντός της ταχθείσας προθεσμίας, η υπουργική συνδιάσκεψη αποφασίζει με πλειοψηφία των δύο τρίτων των μελών αν θα υποβάλει την προτεινόμενη τροποποίηση στα μέλη προς αποδοχή. Με εξαίρεση τα προβλεπόμενα στις παραγράφους 2, 5 και 6, οι διατάξεις της παραγράφου 3 εφαρμόζονται στην προτεινόμενη τροποποίηση, εκτός αν η υπουργική συνδιάσκεψη αποφασίσει με πλειοψηφία των τριών τετάρτων των μελών, ότι ισχύουν οι διατάξεις της παραγράφου 4.

2. Οι τροποποιήσεις των διατάξεων του παρόντος άρθρου και των διατάξεων των άρθρων που αναφέρονται στη συνέχεια αρχίζουν να ισχύουν μόνον αφού γίνουν αποδεκτές από όλα τα μέλη:

Άρθρο IX της παρούσας συμφωνίας,
Άρθρα I και II της GATT του 1994,
Άρθρο II, παράγραφος 1 της GATS,
Άρθρο 4 της συμφωνίας για τα TRIP.

3. Τροποποιήσεις των διατάξεων της παρούσας συμφωνίας ή των πολυμερών εμπορικών συμφωνιών που περιλαμβάνονται στα παραρτήματα 1Α και 1Γ, εκτός από αυτές που απαριθμούνται στις παραγράφους 2 και 6, χαρακτήρα τέτοιου που θα μπορούσε να αλλάξει τα δικαιώματα και τις υποχρεώσεις των μελών, ισχύουν για τα μέλη που τις έχουν αποδεχθεί, εφόσον αυτά έχουν λάβει σχετική απόφαση με πλειοψηφία των δύο τρίτων των μελών καθώς και για κάθε άλλο μέλος που τις αποδέχεται. Η υπουργική συνδιάσκεψη μπορεί να αποφασίσει με πλειοψηφία των τριών τετάρτων των μελών ότι κάθε τροποποίηση που αρχίζει να ισχύει βάσει της παρούσας παραγράφου συνεπάγεται ότι κάθε μέλος που δεν την αποδέχθηκε εντός της προθεσμίας που όρισε η υπουργική συνδιάσκεψη για κάθε περίπτωση, είναι ελεύθερο να αποχωρήσει από τον ΠΟΕ ή να παραμείνει μέλος με τη συγκατάθεση της υπουργικής συνδιάσκεψης.

4. Τροποποιήσεις των διατάξεων της παρούσας συμφωνίας ή των πολυμερών εμπορικών συμφωνιών που περιλαμβάνονται στα παραρτήματα 1Α και 1Γ, εκτός από αυτές που αναφέρονται στις παραγράφους 2 και 6, που δεν μεταβάλλουν τα δικαιωμάτα και τις υποχρεώσεις των μελών, αρχίζουν να ισχύουν για όλα τα μέλη, εφόσον τις αποδεχθούν τα δύο τρίτα των μελών.

5. Με εξαίρεση τα προβλεπόμενα στην προαναφερθείσα παράγραφο 2, οι τροποποιήσεις των μερών I, II και III της GATS και των σχετικών παραρτημάτων ισχύουν για τα μέλη που τις αποδέχθηκαν με πλειοψηφία των δύο τρίτων των μελών καθώς και για τα μέλη που τις αποδέχονται. Η υπουργική συνδιάσκεψη μπορεί να αποφασίσει με πλειοψηφία των τριών τετάρτων των μελών, ότι κάθε τροποποίηση που άρχισε να ισχύει σύμφωνα με την προηγούμενη διάταξη συνεπάγεται ότι οποιοδήποτε μέλος δεν την αποδέχθηκε εντός της προθεσμίας που έχει ορίσει η υπουργική συνδιάσκεψη για κάθε περίπτωση, είναι ελεύθερο να αποχωρήσει από τον ΠΟΕ ή να παραμείνει μέλος με τη συγκατάθεση της υπουργικής συνδιάσκεψης. Οι τροποποιήσεις των μερών IV, V και VI της GATS και των σχετικών παραρτημάτων ισχύουν για όλα τα μέλη αφού γίνουν αποδεκτές από τα δύο τρίτα των μελών.

6. Με την επιφύλαξη των λοιπών διατάξεων του παρόντος άρθρου, οι τροποποιήσεις των διατάξεων της συμφωνίας για τα TRIP που ανταποκρίνονται στις απαιτήσεις του άρθρου 71, παράγραφος 2 είναι δυνατό να γίνουν αποδεκτές από την υπουργική συνδιάσκεψη χωρίς περαιτέρω τυπική διαδικασία αποδοχής.

7. Τα μέλη που αποδέχονται οποιαδήποτε τροποποίηση της παρούσας συμφωνίας ή πολυμερούς εμπορικής συμφωνίας που περιλαμβάνεται στο παράρτημα 1, καταθέτουν πράξη αποδοχής στο Γενικό Γραμματέα του ΠΟΕ εντός της προθεσμίας αποδοχής που έχει οριστεί από την υπουργική συνδιάσκεψη.

8. Οποιοδήποτε μέλος του ΠΟΕ μπορεί να υποβάλει στην υπουργική συνδιάσκεψη πρόταση για τροποποίηση των διατάξεων των πολυμερών εμπορικών συμφωνιών που περιλαμβάνονται στα παραρτήματα 2 και 3. Η απόφαση έγκρισης των τροποποιήσεων των διατάξεων πολυμερούς εμπορικής συμφωνίας που περιλαμβάνεται στο παράρτημα 2 λαμβάνεται με συναίνεση και οι εν λόγω τροποποιήσεις ισχύουν για όλα τα μέλη μετά την αποδοχή τους από την υπουργική συνδιάσκεψη. Οι αποφάσεις που εγκρίνουν τροποποιήσεις της πολυμερούς εμπορικής συμφωνίας που περιλαμβάνεται στο παράρτημα 3 ισχύουν έναντι όλων των μελών, αφού γίνουν αποδεκτές από την υπουργική συνδιάσκεψη.

9. Η υπουργική συνδιάσκεψη, μετά από αίτηση των μελών που αποτελούν συμβαλλόμενα μέρη εμπορικής συμφωνίας, είναι δυνατό να αποφασίζει, αποκλειστικά με συναίνεση, για την προσθήκη της συμφωνίας αυτής στο παράρτημα 4. Η υπουργική συνδιάσκεψη μπορεί, μετά από αίτηση των συμβαλλομένων μερών της πλειομερούς εμπορικής συμφωνίας, να αποφασίσει τη διαγραφή της συμφωνίας αυτής από το παράρτημα 4.

10. Οι τροποποιήσεις πλειομερούς εμπορικής συμφωνίας διέπονται από τις διατάξεις της εκάστοτε συμφωνίας.

Άρθρο XI
Ιδρυτικά μέλη

1. Τα συμβαλλόμενα μέρη της GATT του 1947 κατά την ημερομηνία θέσης σε ισχύ της παρούσας συμφωνίας καθώς και οι Ευρωπαϊκές Κοινότητες, που αποδέχονται την παρούσα συμφωνία και τις πολυμερείς εμπορικές συμφωνίες και για τις οποίες επισυνάπτονται πίνακες παραχωρήσεων και υποχρεώσεων στην GATT του 1994 και πίνακες ειδικών υποχρεώσεων στην GATS, καθίστανται ιδρυτικά μέλη του ΠΟΕ.

2. Από τις λιγότερο ανεπτυγμένες χώρες, που αναγνωρίζονται ως τέτοιες από τον Οργανισμό Ηνωμένων Εθνών, θα ζητηθεί να αναλάβουν υποχρεώσεις και να προβούν σε παραχωρήσεις στο βαθμό που αυτές συμβιβάζονται με την ανάπτυξή τους, τις χρηματοδοτικές και εμπορικές ανάγκες τους ή τις διοικητικές και θεσμικές τους ικανότητες.

Άρθρο XII
Προσχώρηση

1. Οποιοδήποτε κράτος ή χωριστό τελωνειακό έδαφος που διαθέτει πλήρη αυτονομία για το χειρισμό των εξωτερικών εμπορικών του σχέσεων και των λοιπών θεμάτων που προβλέπονται στην παρούσα συμφωνία και στις πολυμερείς εμπορικές συμφωνίες, έχει τη δυνατότητα να προσχωρήσει στην παρούσα συμφωνία υπό τους όρους που πρόκειται να συμφωνηθούν μεταξύ αυτού και του ΠΟΕ. Η προσχώρηση αυτή ισχύει για την παρούσα συμφωνία.

2. Οι αποφάσεις για την προσχώρηση λαμβάνονται από την υπουργική συνδιάσκεψη. Η υπουργική συνδιάσκεψη εγκρίνει τη συμφωνία για προσχώρηση με πλειοψηφία των δύο τρίτων των μελών του ΠΟΕ.

3. Η προσχώρηση σε πλειομερή εμπορική συμφωνία διέπεται από τις διατάξεις της εκάστοτε συμφωνίας.

Άρθρο XIII
Μη εφαρμογή των πολυμερών εμπορικών συμφωνιών μεταξύ συγκεκριμένων μελών

1. Η παρούσα συμφωνία και οι πολυμερείς εμπορικές συμφωνίες που περιλαμβάνονται στα παραρτήματα 1 και 2 δεν εφαρμόζονται μεταξύ δύο μελών αν οποιοδήποτε από τα δύο δηλώσει, κατά τη στιγμή που γίνεται μέλος, ότι δεν συμφωνεί με την εν λόγω εφαρμογή.

2. Μπορεί να γίνει επίκληση της παραγράφου 1 μεταξύ ιδρυτικών μελών του ΠΟΕ, τα οποία ήταν συμβαλλόμενα μέρη της GATT του 1947, μόνον εφόσον τα συμβαλλόμενα αυτά μέρη είχαν επικαλεστεί νωρίτερα το άρθρο XXXV της συμφωνίας αυτής, το οποίο ίσχυε μεταξύ τους κατά τη στιγμή θέσης σε ισχύ έναντι αυτών της παρούσας συμφωνίας.

3. Η παράγραφος 1 εφαρμόζεται μεταξύ ενός μέλους και ενός άλλου μέλους το οποίο προσχώρησε βάσει του άρθρου XII μόνον εφόσον το μέλος που δεν συμφωνεί με την εφαρμογή ενημέρωσε την υπουργική συνδιάσκεψη σχετικά προτού αυτή εγκρίνει τη συμφωνία για τους όρους προσχώρησης.

4. Η υπουργική συνδιάσκεψη μπορεί να επανεξετάσει τη λειτουργία του παρόντος άρθρου σε συγκεκριμένες περιπτώσεις μετά από αίτηση οποιουδήποτε μέλους και να προβεί στη διατύπωση των κατάλληλων συστάσεων.

5. Η μη εφαρμογή πλειομερούς εμπορικής συμφωνίας μεταξύ συμβαλλομένων μερών της εν λόγω συμφωνίας διέπεται από τις διατάξεις αυτής.

Άρθρο XIV
Αποδοχή, θέση σε ισχύ και κατάθεση

1. Η παρούσα συμφωνία προσφέρεται προς αποδοχή, με υπογραφή ή άλλο τρόπο, εκ μέρους των συμβαλλομένων μερών της GATT του 1947 και των Ευρωπαϊκών Κοινοτήτων, που είναι δυνατό να γίνουν ιδρυτικά μέλη του ΠΟΕ σύμφωνα με το άρθρο XI της παρούσας συμφωνίας. Η αποδοχή αυτή ισχύει όσον αφορά την παρούσα συμφωνία και τις πολυμερείς εμπορικές συμφωνίες που επισυνάπτονται σ'αυτή. Η παρούσα συμφωνία και οι πολυμερείς εμπορικές συμφωνίες που επισυνάπτονται σ'αυτή τίθενται σε ισχύ την ημερομηνία που καθορίζεται από τους Υπουργούς, σύμφωνα με την παράγραφο 3 της Τελικής Πράξης η οποία περιλαμβάνει τα αποτελέσματα των πολυμερών εμπορικών διαπραγματεύσεων στο πλαίσιο του Γύρου της Ουρουγουάης· η αποδοχή αυτών θα είναι δυνατή για χρονικό διάστημα δύο ετών μετά την εν λόγω ημερομηνία, εκτός αν οι Υπουργοί λάβουν διαφορετική απόφαση. Αποδοχή μετά τη θέση σε ισχύ της παρούσας συμφωνίας θα αρχίσει να ισχύει την 30η ημέρα μετά την ημερομηνία της αποδοχής αυτής.

2. Το μέλος που αποδέχεται την παρούσα συμφωνία μετά τη θέση της σε ισχύ εφαρμόζει τις παραχωρήσεις και τις υποχρεώσεις που περιλαμβάνονται στις πολυμερείς εμπορικές συμφωνίες και οι οποίες πρόκειται να εφαρμοστούν κατά τη διάρκεια περιόδου που αρχίζει με τη θέση σε ισχύ της παρούσας συμφωνίας, σαν να είχε αποδεχθεί την παρούσα συμφωνία την ημερομηνία έναρξης της ισχύος της.

3. Μέχρις ότου η παρούσα συμφωνία τεθεί σε ισχύ, το κείμενο αυτής καθώς και εκείνο των πολυμερών εμπορικών συμφωνιών κατατίθενται στο Γενικό Γραμματέα των ΣΥΜΒΑΛΛΟΜΕΝΩΝ ΜΕΡΩΝ της GATT του 1947. Ο Γενικός Γραμματέας παρέχει αμέσως πιστό επικυρωμένο αντίγραφο της παρούσας συμφωνίας και των πολυμερών εμπορικών συμφωνιών, καθώς και γνωστοποίηση της αποδοχής καθεμιάς από αυτές, σε κάθε κυβέρνηση των Ευρωπαϊκών Κοινοτήτων που έχει αποδεχθεί την παρούσα συμφωνία. Η παρούσα συμφωνία και οι πολυμερείς εμπορικές συμφωνίες, καθώς και οι τροποποιήσεις τους, κατατίθενται, κατά τη θέση σε ισχύ της παρούσας συμφωνίας, στο Γενικό Γραμματέα του ΠΟΕ.

4. Η αποδοχή και η θέση σε ισχύ πλειομερούς εμπορικής συμφωνίας διέπονται από τις διατάξεις της εκάστοτε συμφωνίας. Συμφωνίες αυτής της μορφής κατατίθενται στο Γενικό Γραμματέα των ΣΥΜΒΑΛΛΟΜΕΝΩΝ ΜΕΡΩΝ ΤΗΣ GATT του 1947. Μετά τη θέση σε ισχύ της παρούσας συμφωνίας τέτοιες συμφωνίες κατατίθενται στο Γενικό Γραμματέα του ΠΟΕ.

Άρθρο XV
Αποχώρηση

1. Κάθε μέλος μπορεί να αποχωρήσει από την παρούσα συμφωνία. Μια τέτοια αποχώρηση ισχύει τόσο για την παρούσα συμφωνία όσο και για τις πολυμερείς εμπορικές συμφωνίες και αρχίζει να ισχύει μετά την πάροδο έξι μηνών από την ημερομηνία κατά την οποία γραπτή γνωστοποίηση της αποχώρησης παραλαμβάνεται από το Γενικό Γραμματέα του ΠΟΕ.

2. Η αποχώρηση από πλειομερή εμπορική συμφωνία διέπεται από τις διατάξεις της εκάστοτε συμφωνίας.

Άρθρο XVI
Διάφορες διατάξεις

1. Με εξαίρεση τις περιπτώσεις όπου η παρούσα συμφωνία ή οι πολυμερείς εμπορικές συμφωνίες ορίζουν άλλως, ο ΠΟΕ διέπεται από τις αποφάσεις, τις διαδικασίες και τις συνήθεις πρακτικές των ΣΥΜΒΑΛΛΟΜΕΝΩΝ ΜΕΡΩΝ της GATT του 1947 και των οργάνων που είχαν θεσπιστεί στο πλαίσιο της GATT του 1947.

2. Στον επιτρεπόμενο βαθμό, η Γραμματεία της GATT του 1947 γίνεται Γραμματεία του ΠΟΕ και ο Γενικός Διευθυντής των ΣΥΜΒΑΛΛΟΜΕΝΩΝ ΜΕΡΩΝ της GATT του 1947 εκτελεί χρέη Γενικού Διευθυντή του ΠΟΕ, μέχρις ότου η υπουργική συνδιάσκεψη ορίσει Γενικό Διευθυντή σύμφωνα με το άρθρο VI, παράγραφος 2 της παρούσας συμφωνίας.

3. Σε περίπτωση σύγκρουσης μεταξύ διατάξεων της παρούσας συμφωνίας και διατάξεων κάθε άλλης πολυμερούς εμπορικής συμφωνίας, υπερισχύει η διάταξη της παρούσας συμφωνίας στο βαθμό που το απαιτεί η σύγκρουση.

4. Κάθε κράτος μέλος υποχρεούται να διασφαλίζει ότι οι νόμοι, οι ρυθμίσεις και οι διοικητικές του διαδικασίες συμβαδίζουν με τις υποχρεώσεις του, όπως αυτές προβλέπονται στις επισυναπτόμενες συμφωνίες.

5. Δεν επιτρέπεται η διατύπωση επιφυλάξεων για καμία διάταξη της παρούσας συμφωνίας. Επιφυλάξεις για οποιαδήποτε από τις διατάξεις των πολυμερών εμπορικών συμφωνιών είναι δυνατό να διατυπωθούν μόνο στο βαθμό που αυτό προβλέπεται στις εν λόγω συμφωνίες. Οι επιφυλάξεις όσον αφορά διάταξη πλειομερούς εμπορικής συμφωνίας διέπονται από τις διατάξεις της εκάστοτε συμφωνίας.

6. Η παρούσα συμφωνία καταχωρείται σύμφωνα με τις διατάξεις του άρθρου 102 του Χάρτη του Οργανισμού των Ηνωμένων Εθνών.

ΕΓΙΝΕ στο Μαρακές, στις δεκαπέντε Απριλίου χίλια εννιακόσια ενενήντα τέσσερα, σε ένα μόνο αντίτυπο, στην αγγλική, γαλλική και ισπανική γλώσσα και όλα τα κείμενα είναι εξίσου αυθεντικά.

Επεξηγηματικές σημειώσεις:

Οι όροι "χώρα" ή "χώρες" όπως χρησιμοποιούνται στην παρούσα συμφωνία και τις πολυμερείς εμπορικές συμφωνίες θεωρείται ότι περιλαμβάνουν κάθε χωριστό τελωνειακό έδαφος που αποτελεί μέλος του ΠΟΕ.

Στην περίπτωση χωριστού τελωνειακού εδάφους που αποτελεί μέλος του ΠΟΕ, όπου κάποια έκφραση της παρούσας συμφωνίας και των πολυμερών εμπορικών συμφωνιών συνοδεύεται από τον όρο "εθνικός", θεωρείται ότι η έκφραση αυτή αναφέρεται στο εν λόγω τελωνειακό έδαφος εκτός αν ορίζεται άλλως.

ΓΕΝΙΚΗ ΣΥΜΦΩΝΙΑ ΔΑΣΜΩΝ ΚΑΙ ΕΜΠΟΡΙΟΥ ΤΟΥ 1994

1. Η Γενική Συμφωνία Δασμών και Εμπορίου του 1994 (καλούμενη εφεξής "GATT του 1994") περιλαμβάνει:

(α) τις διατάξεις της Γενικής Συμφωνίας Δασμών και Εμπορίου της 30ης Οκτωβρίου 1947, που επισυνάπτεται στην Τελική Πράξη που εγκρίθηκε κατά την ολοκλήρωση της δεύτερης συνόδου της προπαρασκευαστικής επιτροπής της Συνδιάσκεψης των Ηνωμένων Εθνών για το Εμπόριο και την Απασχόληση (εκτός από το πρωτόκολλο προσωρινής εφαρμογής), όπως διορθώθηκε, τροποποιήθηκε ή αναθεωρήθηκε μέσω των νομικών πράξεων που τέθηκαν σε ισχύ πριν από την έναρξη ισχύος της συμφωνίας για τον ΠΟΕ,

(β) τις διατάξεις των νομικών πράξεων που παρατίθενται στη συνέχεια οι οποίες τέθηκαν σε ισχύ στο πλαίσιο της GATT του 1947 πριν από την έναρξη ισχύος της συμφωνίας για τον ΠΟΕ:

(i) πρωτόκολλα και βεβαιώσεις που αφορούν δασμολογικές παραχωρήσεις, και

(ii) πρωτόκολλα προσχώρησης (εκτός από τις διατάξεις α) που αφορούν προσωρινή εφαρμογή και παραίτηση από προσωρινή εφαρμογή και β) που προβλέπουν ότι το μέρος II της GATT του 1947 εφαρμόζεται προσωρινά στο βαθμό που δεν συγκρούεται με την ισχύουσα νομοθεσία κατά την ημερομηνία του πρωτοκόλλου),

(iii) αποφάσεις για απαλλαγές που έχουν παραχωρηθεί βάσει του άρθρου XXV της GATT του 1947 και εξακολουθούν να ισχύουν κατά την ημερομηνία θέσης σε ισχύ της συμφωνίας για τον ΠΟΕ[1],

(iv) άλλες αποφάσεις των ΣΥΜΒΑΛΛΟΜΕΝΩΝ ΜΕΡΩΝ της GATT του 1947.

(γ) τα παρακάτω μνημόνια συμφωνιών:

(i) Μνημόνιο συμφωνίας για την ερμηνεία του άρθρου II, παράγραφος 1, στοιχείο (β) της Γενικής Συμφωνίας Δασμών και Εμπορίου του 1994,

(ii) Μνημόνιο συμφωνίας για την ερμηνεία του άρθρου XVII της Γενικής Συμφωνίας Δασμών και Εμπορίου του 1994,

(iii) Μνημόνιο συμφωνίας για τις διατάξεις περί ισοζυγίου πληρωμών της Γενικής Συμφωνίας Δασμών και Εμπορίου του 1994,

(iv) Μνημόνιο συμφωνίας για την ερμηνεία του άρθρου XXIV της Γενικής Συμφωνίας Δασμών και Εμπορίου του 1994,

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1 Οι απαλλαγές τις οποίες καλύπτει η παρούσα διάταξη απαριθμούνται στην υποσημείωση 7 των σελίδων 11 και 12 του μέρους II του εγγράφου για την Τελική Πράξη (MTN/FA), της 15ης Δεκεμβρίου 1993. Η υπουργική συνδιάσκεψη καταρτίζει στην πρώτη της σύνοδο αναθεωρημένη κατάσταση των απαλλαγών που καλύπτονται από την παρούσα διάταξη, στην οποία περιλαμβάνονται και οι απαλλαγές που χορηγήθηκαν βάσει της GATT του 1947 μετά τις 15 Δεκεμβρίου 1993 και πριν από τη θέση σε ισχύ της συμφωνίας για τον ΠΟΕ και καταργεί τις απαλλαγές που στο μεταξύ έχουν παύσει να ισχύουν.

(v) Μνημόνιο συμφωνίας για τις απαλλαγές από υποχρεώσεις στο πλαίσιο της Γενικής Συμφωνίας Δασμών και Εμπορίου του 1994,

(vi) Μνημόνιο συμφωνίας για την ερμηνεία του άρθρου XXVIII της Γενικής Συμφωνίας Δασμών και Εμπορίου του 1994,

(δ) το πρωτόκολλο του Μαρακές που προσαρτάται στην GATT του 1994.

2. *Επεξηγηματικές σημειώσεις:*

(α) Η έκφραση "συμβαλλόμενο μέρος" στις διατάξεις της GATT του 1994 θεωρείται ότι αναφέρεται σε "μέλος". Τα "λιγότερο ανεπτυγμένα συμβαλλόμενα μέρη" και "ανεπτυγμένα συμβαλλόμενα μέρη" θεωρείται ότι αναφέρονται σε "αναπτυσσόμενες χώρες μέλη" και "ανεπτυγμένες χώρες μέλη". Ο "Εκτελεστικός Γραμματέας" θεωρείται ότι αναφέρεται στο "Γενικό Γραμματέα του ΠΟΕ".

(β) Οι αναφορές στα ΣΥΜΒΑΛΛΟΜΕΝΑ ΜΕΡΗ που ενεργούν από κοινού στα άρθρα XV, παράγραφος 1, XV, παράγραφος 2, XV, παράγραφος 8, XXXVIII και οι σημειώσεις για τα άρθρα XII και XVIII, καθώς και οι διατάξεις για τις συμφωνίες ειδικών συναλλαγών στα άρθρα XV, παράγραφος 2, XV, παράγραφος 3, XV, παράγραφος 6, XV, παράγραφος 7 και XV, παράγραφος 9 της GATT του 1994 θεωρείται ότι αφορούν τον ΠΟΕ. Οι λοιπές αρμοδιότητες που αναθέτει η GATT του 1994 στα ΣΥΜΒΑΛΛΟΜΕΝΑ ΜΕΡΗ που ενεργούν από κοινού κατανέμονται από την υπουργική συνδιάσκεψη.

(γ) (i) Το κείμενο της GATT του 1994 είναι αυθεντικό στην αγγλική, γαλλική και ισπανική γλώσσα.

(ii) Οι όροι του κειμένου της GATT του 1994 στη γαλλική γλώσσα διορθώνονται σύμφωνα με το παράρτημα Α του εγγράφου MTN.TNC/41.

(iii) Το αυθεντικό κείμενο της GATT του 1994 στην ισπανική γλώσσα είναι το κείμενο που περιλαμβάνεται στον τόμο IV της σειράς BISD (Basic Instruments and Selected Documents), υπό την προϋπόθεση διόρθωσης των όρων σύμφωνα με το παράρτημα Β του εγγράφου MTN.TNC/41.

3. (α) Οι διατάξεις του Μέρους II της GATT του 1994 δεν εφαρμόζονται σε μέτρα που έχουν ληφθεί από κάποιο μέλος βάσει ειδικής υποχρεωτικής νομοθεσίας, που θεσπίστηκε από το εν λόγω μέλος προτού αυτό γίνει συμβαλλόμενο μέρος της GATT του 1947, και η οποία απαγορεύει τη χρησιμοποίηση, την πώληση ή τη μίσθωση σκαφών, που έχουν κατασκευαστεί ή επισκευαστεί εκτός του εδάφους του, σε εμπορικές εφαρμογές μεταξύ σημείων στα εθνικά ύδατα ή στα ύδατα αποκλειστικής οικονομικής ζώνης. Η εξαίρεση αυτή ισχύει για: α)τη συνέχιση ή την ταχεία ανανέωση μη συμβατής διάταξης αυτής της νομοθεσίας και β)την τροποποίηση μη συμβατής διάταξης της εν λόγω νομοθεσίας, εφόσον η τροποποίηση δεν μειώνει τη συμφωνία της διάταξης με το μέρος II της GATT του 1947. Η εξαίρεση αυτή περιορίζεται σε μέτρα που λαμβάνονται στο πλαίσιο της προαναφερθείσας νομοθεσίας, η οποία γνωστοποιείται και διευκρινίζεται πριν από την ημερομηνία θέσης σε ισχύ της συμφωνίας για τον ΠΟΕ. Σε περίπτωση που η νομοθεσία αυτή τροποποιείται στη συνέχεια με αποτέλεσμα να μη συμφωνεί πλήρως με το μέρος II της GATT του 1994, δεν καλύπτεται πλέον από την παρούσα παράγραφο.

(β) Η υπουργική συνδιάσκεψη επανεξετάζει την εξαίρεση αυτή το αργότερο πέντε έτη μετά την ημερομηνία θέσης σε ισχύ της συμφωνίας για τον ΠΟΕ και στη συνέχεια κάθε δύο έτη για όσο χρονικό διάστημα ισχύει η εξαίρεση με σκοπό να εξετάζεται αν εξακολουθούν να ισχύουν οι συνθήκες που δημιούργησαν την ανάγκη για την εξαίρεση.

(γ) Το μέλος, τα μέτρα του οποίου καλύπτονται από την εξαίρεση αυτή υποβάλλει μια φορά κατ'έτος λεπτομερή στατιστικά στοιχεία για την κίνηση, σε πενταετή βάση, των πραγματικών και αναμενόμενων προμηθειών των σχετικών σκαφών καθώς και συμπληρωματικά στοιχεία για τη χρησιμοποίηση, την αγορά, τη μίσθωση ή την επισκευή σκαφών που καλύπτονται από αυτή την εξαίρεση.

(δ) Το μέλος που θεωρεί ότι η εξαίρεση αυτή λειτουργεί κατά τέτοιο τρόπο, ώστε να δικαιολογεί τον αμοιβαίο και ανάλογο περιορισμό της χρησιμοποίησης, της πώλησης, της μίσθωσης ή της επισκευής σκαφών που κατασκευάστηκαν στο έδαφος του μέλους που επικαλείται την εξαίρεση έχει το δικαίωμα να θεσπίσει τέτοιους περιορισμούς υπό την προϋπόθεση ότι θα ενημερώσει προηγουμένως την υπουργική συνδιάσκεψη.

(ε) Η εξαίρεση αυτή εφαρμόζεται με την επιφύλαξη λύσεων, όσον αφορά ειδικά νομοθετικά ζητήματα που καλύπτονται από την εξαίρεση αυτή, οι οποίες αποτελούν το αντικείμενο διαπραγματεύσεων για τη σύναψη επιμέρους συμφωνιών ή σε άλλο πλαίσιο.

ΜΝΗΜΟΝΙΟ ΣΥΜΦΩΝΙΑΣ ΓΙΑ ΤΗΝ ΕΡΜΗΝΕΙΑ ΤΟΥ ΑΡΘΡΟΥ II, ΠΑΡΑΓΡΑΦΟΣ 1, ΣΤΟΙΧΕΙΟ (β) ΤΗΣ ΓΕΝΙΚΗΣ ΣΥΜΦΩΝΙΑΣ ΔΑΣΜΩΝ ΚΑΙ ΕΜΠΟΡΙΟΥ ΤΟΥ 1994

Τα μέλη *συμφωνούν* τα ακόλουθα:

1. Για να εξασφαλιστεί η διαφάνεια των νομικών δικαιωμάτων και υποχρεώσεων που απορρέουν από το άρθρο II, παράγραφος 1, στοιχείο (β), η φύση και το επίπεδο των "δασμών και λοιπών φόρων" που εισπράττονται για παγιοποιημένες δασμολογικές κλάσεις, που αναφέρονται στην εν λόγω διάταξη, αναγράφονται στους Πίνακες Παραχωρήσεων που επισυνάπτονται στην GATT του 1994 απέναντι από τη δασμολογική κλάση για την οποία ισχύουν. Εννοείται ότι η αναγραφή αυτή δεν αλλάζει το νομικό χαρακτήρα των "δασμών και λοιπών φόρων".

2. Η ημερομηνία κατά την οποία παγιοποιούνται οι "δασμοί και λοιποί φόροι" είναι η 15η Απριλίου 1994. Οι "δασμοί και λοιποί φόροι" λοιπόν, αναγράφονται στους πίνακες στο ύψος που έχουν την ημερομηνία αυτή. Σε κάθε μεταγενέστερη επαναδιαπραγμάτευση παραχώρησης ή διαπραγμάτευση νέας παραχώρησης, η ημερομηνία εφαρμογής όσον αφορά τη σχετική δασμολογική κλάση είναι η ημερομηνία προσθήκης της νέας παραχώρησης στον κατάλληλο πίνακα. Ωστόσο, η ημερομηνία της πράξης μέσω της οποίας κάποια παραχώρηση για συγκεκριμένη δασμολογική κλάση ενσωματώθηκε για πρώτη φορά στην GATT του 1947 ή του 1994 εξακολουθεί να περιλαμβάνεται στη στήλη 6 των πινάκων με κινητά φύλλα.

3. Για όλες τις παγιοποιήσεις δασμών καταχωρούνται "δασμοί και λοιποί φόροι".

4. Σε περίπτωση που κάποια δασμολογική κλάση αποτέλεσε το αντικείμενο προηγούμενης παραχώρησης, το ύψος των "δασμών και λοιπών φόρων" που αναγράφεται στον κατάλληλο πίνακα δεν επιτρέπεται να υπερβαίνει το ύψος της πρώτης αναγραφής της παραχώρησης στον εν λόγω πίνακα. Κάθε μέλος έχει τη δυνατότητα να αμφισβητήσει την ύπαρξη "δασμών και λοιπών φόρων" με βάση το γεγονός ότι δεν υπήρχαν τέτοιοι "δασμοί και λοιποί φόροι" κατά την αρχική παγιοποίηση της σχετικής δασμολογικής κλάσης, καθώς και την αντιστοιχία του εγγεγραμμένου ύψους των "δασμών και λοιπών φόρων" με το ύψος που είχε παγιοποιηθεί παλαιότερα· η αμφισβήτηση αυτή μπορεί να διατυπωθεί κατά τη διάρκεια τριετούς περιόδου μετά τη θέση σε ισχύ της συμφωνίας για τον ΠΟΕ ή τριετούς περιόδου μετά την ημερομηνία κατάθεσης στο Γενικό Γραμματέα του ΠΟΕ της πράξης που ενσωματώνει τον εν λόγω πίνακα στην GATT του 1994, εφόσον η ημερομηνία αυτή είναι μεταγενέστερη.

5. Η αναγραφή "δασμών και άλλων φόρων" στους πίνακες πραγματοποιείται με την επιφύλαξη της συμφωνίας τους με τα δικαιώματα και τις υποχρεώσεις που απορρέουν από την GATT του 1994, εκτός από αυτά που αφορά η παράγραφος 4. Όλα τα μέλη διατηρούν το δικαίωμα να αμφισβητήσουν ανά πάσα στιγμή τη συμφωνία "δασμών ή λοιπών φόρων" με τις υποχρεώσεις αυτές.

6. Για τους σκοπούς του παρόντος μνημονίου συμφωνίας εφαρμόζονται οι διατάξεις των άρθρων XXII και XXIII της GATT του 1994, όπως τροποποιήθηκαν και εφαρμόζονται από το μνημόνιο συμφωνίας για την επίλυση των διαφορών.

7. Οι "δασμοί και λοιποί φόροι" που δεν περιλαμβάνονταν στον πίνακα κατά τη στιγμή κατάθεσης της πράξης που ενσωματώνει τον εν λόγω πίνακα στην GATT του 1994 στο Γενικό Γραμματέα των ΣΥΜΒΑΛΛΟΜΕΝΩΝ ΜΕΡΩΝ, όσον αφορά την GATT του 1947, μέχρι την ημερομηνία έναρξης της ισχύος της συμφωνίας για τον ΠΟΕ ή, μετά την ημερομηνία αυτή, στο Γενικό Γραμματέα του ΠΟΕ, δεν προστίθενται στη συνέχεια σ'αυτόν· οι αναγραφόμενοι "δασμοί και λοιποί φόροι" με ύψος χαμηλότερο από εκείνο που ισχύει κατά την ημερομηνία εφαρμογής αποκαθίστανται στο αναγκαίο ύψος μόνον αν οι σχετικές αλλαγές ή προσθήκες πραγματοποιηθούν εντός έξι μηνών από την ημερομηνία κατάθεσης της πράξης.

8. Η απόφαση που αναφέρεται στην παράγραφο 2, σχετικά με την ημερομηνία που ισχύει για κάθε παραχώρηση για την εφαρμογή του άρθρου II, παράγραφος 1, στοιχείο (β) της GATT του 1994, αντικαθιστά την απόφαση σχετικά με την ημερομηνία εφαρμογής η οποία λήφθηκε στις 26 Μαρτίου 1980. (BISD 27S/24).

ΜΝΗΜΟΝΙΟ ΣΥΜΦΩΝΙΑΣ ΓΙΑ ΤΗΝ ΕΡΜΗΝΕΙΑ ΤΟΥ ΑΡΘΡΟΥ XVII ΤΗΣ ΓΕΝΙΚΗΣ ΣΥΜΦΩΝΙΑΣ ΔΑΣΜΩΝ ΚΑΙ ΕΜΠΟΡΙΟΥ ΤΟΥ 1994

Τα μέλη,

Έχοντας υπόψη ότι το άρθρο XVII προβλέπει τις υποχρεώσεις των μελών, όσον αφορά τις δραστηριότητες των κρατικών εμπορικών επιχειρήσεων που αναφέρονται στο άρθρο XVII, παράγραφος 1, οι οποίες απαιτείται να είναι σύμφωνες με τις γενικές αρχές της μη διακριτικής μεταχείρισης που περιγράφεται στην GATT του 1994 για τα κυβερνητικά μέτρα που επηρεάζουν τις εισαγωγές ή τις εξαγωγές από ιδιωτικές επιχειρήσεις,

Έχοντας επίσης υπόψη ότι τα μέλη υπόκεινται στις υποχρεώσεις που απορρέουν από την GATT του 1994 όσον αφορά τα κυβερνητικά μέτρα που έχουν συνέπειες για τις κρατικές εμπορικές επιχειρήσεις,

Αναγνωρίζοντας ότι το παρόν μνημόνιο συμφωνίας πραγματοποιείται με την επιφύλαξη των ουσιαστικών ρυθμίσεων του άρθρου XVII,

Συμφωνούν τα ακόλουθα:

1. Για να εξασφαλιστεί η διαφάνεια των δραστηριοτήτων των κρατικών εμπορικών επιχειρήσεων, τα μέλη γνωστοποιούν τη δημιουργία τέτοιων επιχειρήσεων στο Συμβούλιο Εμπορευματικών Συναλλαγών, ώστε κάθε περίπτωση να εξετάζεται από την ομάδα εργασίας που θα συσταθεί με βάση την παράγραφο 5, σύμφωνα με τον παρακάτω ορισμό:

> "Κρατικές και μη κρατικές επιχειρήσεις, συμπεριλαμβανομένων των φορέων εμπορίας, στις οποίες έχουν παραχωρηθεί αποκλειστικά ή ειδικά δικαιώματα ή προνόμια, συμπεριλαμβανομένων των εξουσιών που απορρέουν από νομικές ή συμβατικές πράξεις, κατά την άσκηση των οποίων επηρεάζουν, μέσω των αγορών ή των πωλήσεών τους, το επίπεδο ή το περιεχόμενο των εισαγωγών ή των εξαγωγών."

Αυτή η υποχρέωση γνωστοποίησης δεν ισχύει για τις εισαγωγές προϊόντων που προορίζονται για άμεση ή τελική κατανάλωση στο δημόσιο τομέα ή από επιχείρηση όπως αυτή που περιγράφεται παραπάνω και δεν χρησιμοποιούνται με άλλο τρόπο ούτε μεταπωλούνται ή χρησιμοποιούνται για την παραγωγή εμπορευμάτων που προορίζονται να πωληθούν.

2. Κάθε μέλος επανεξετάζει την πολιτική του, όσον αφορά την υποβολή των γνωστοποιήσεων για τις κρατικές εμπορικές επιχειρήσεις στο Συμβούλιο Εμπορευματικών Συναλλαγών, λαμβάνοντας υπόψη τις διατάξεις του παρόντος μνημονίου συμφωνίας. Κατά την επανεξέταση αυτή κάθε μέλος είναι σκόπιμο να εξασφαλίζει τη μέγιστη δυνατή διαφάνεια στις γνωστοποιήσεις του, ώστε να επιτρέπει τη σαφή αξιολόγηση του τρόπου λειτουργίας των επιχειρήσεων, τις οποίες αφορούν οι γνωστοποιήσεις, και της επίδρασης των δραστηριοτήτων τους στο διεθνές εμπόριο.

3. Οι γνωστοποιήσεις πραγματοποιούνται σύμφωνα με το ερωτηματολόγιο για το κρατικό εμπόριο που εκδόθηκε στις 24 Μαΐου 1960 (BISD, 9S/184-185)· τα μέλη γνωστοποιούν την ύπαρξη των επιχειρήσεων σύμφωνα με την παράγραφο 1 ανεξάρτητα από το αν έχουν πράγματι διενεργηθεί εισαγωγές ή εξαγωγές.

4. Αν κάποιο μέλος έχει λόγους να πιστεύει ότι κάποιο άλλο μέλος δεν ανταποκρίθηκε σωστά στην υποχρέωση γνωστοποίησης, έχει το δικαίωμα να συζητήσει το θέμα με το ενδιαφερόμενο μέλος. Σε περίπτωση που το ζήτημα δεν διευθετηθεί ικανοποιητικά, το μέλος αυτό μπορεί να προβεί σε αντικοινοποίηση στο Συμβούλιο Εμπορευματικών Συναλλαγών και να υποβάλει αίτημα εξέτασης του θέματος από την ομάδα εργασίας που συστήνεται σύμφωνα με την παράγραφο 5, ενημερώνοντας ταυτόχρονα το ενδιαφερόμενο μέλος.

5. Συστήνεται ομάδα εργασίας, που εκπροσωπεί το Συμβούλιο Εμπορευματικών Συναλλαγών, αρμόδια για την εξέταση των γνωστοποιήσεων και των αντικοινοποιήσεων. Στο πλαίσιο αυτής της εξέτασης και με την επιφύλαξη του άρθρου XVII, παράγραφος 4, στοιχείο γ), το Συμβούλιο Εμπορευματικών Συναλλαγών μπορεί να προβαίνει στη διατύπωση συστάσεων αποβλέποντας στην ορθή υποβολή των γνωστοποιήσεων και την ανάγκη για περισσότερες πληροφορίες. Η ομάδα εργασίας εξετάζει επίσης με βάση τις λαμβανόμενες πληροφορίες, την καταλληλότητα του προαναφερθέντος ερωτηματολογίου για το κρατικό εμπόριο και την κάλυψη των κρατικών εμπορικών επιχειρήσεων στων οποίων γνωστοποιείται η δημιουργία σύμφωνα με την παράγραφο 1. Αυτή καταρτίζει επίσης επεξηγηματικό πίνακα με τα είδη των σχέσεων μεταξύ κυβερνήσεων και επιχειρήσεων, και τα είδη των δραστηριοτήτων, που αναλαμβάνουν οι εν λόγω επιχειρήσεις, οι οποίες είναι δυνατό να έχουν σχέση με τους σκοπούς του άρθρου XVII. Η Γραμματεία παρέχει στην ομάδα εργασίας έγγραφο με το ιστορικό των δραστηριοτήτων των κρατικών εμπορικών επιχειρήσεων και τη θέση τους στο διεθνές εμπόριο. Στην ομάδα εργασίας συμμετέχουν όλα τα μέλη που εκφράζουν σχετική επιθυμία. Η ομάδα συνέρχεται εντός έτους από τη θέση σε ισχύ της συμφωνίας για τον ΠΟΕ και στη συνέχεια μια τουλάχιστον φορά το έτος. Υποβάλλει ετήσια έκθεση για τις δραστηριότητές της στο Συμβούλιο Εμπορευματικών Συναλλαγών.[1]

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1 Οι δραστηριότητες της εν λόγω ομάδας εργασίας συνδυάζονται με τις δραστηριότητες της ομάδας εργασίας που προβλέπεται στο τμήμα III της Υπουργική Απόφασης για τις Διαδικασίες Γνωστοποίησης, που εκδόθηκε στις 15 Απριλίου 1994.

ΜΝΗΜΟΝΙΟ ΣΥΜΦΩΝΙΑΣ ΓΙΑ ΤΙΣ ΔΙΑΤΑΞΕΙΣ ΤΗΣ ΓΕΝΙΚΗΣ ΣΥΜΦΩΝΙΑΣ ΔΑΣΜΩΝ ΚΑΙ ΕΜΠΟΡΙΟΥ ΤΟΥ 1994 ΠΟΥ ΑΦΟΡΟΥΝ ΤΟ ΙΣΟΖΥΓΙΟ ΠΛΗΡΩΜΩΝ

Τα μέλη,

Αναγνωρίζοντας τις διατάξεις των άρθρων XII και XVIII:B της GATT του 1994 και της δήλωσης για τα εμπορικά μέτρα που λαμβάνονται για σκοπούς σχετικούς με το ισοζύγιο πληρωμών (που εκδόθηκε στις 28 Νοεμβρίου 1979 (BISD 26S/205-209, που στο παρόν μνημόνιο συμφωνίας αναφέρεται ως "δήλωση του 1979") και με σκοπό τη διευκρίνηση αυτών των διατάξεων[1],

Συμφωνούν τα ακόλουθα:

Εφαρμογή μέτρων

1. Τα μέλη επιβεβαιώνουν τη δέσμευσή τους να ανακοινώνουν δημοσίως, το ταχύτερο δυνατό, χρονοδιαγράμματα για την κατάργηση περιοριστικών μέτρων κατά την εισαγωγή που λαμβάνονται για λόγους που εξυπηρετούν το ισοζύγιο πληρωμών. Εννοείται ότι τα χρονοδιαγράμματα αυτά είναι δυνατό να τροποποιούνται με τον κατάλληλο τρόπο, ώστε να λαμβάνουν υπόψη τις αλλαγές της κατάστασης του ισοζυγίου πληρωμών. Σε περίπτωση που δεν ανακοινώνεται δημοσίως χρονοδιάγραμμα εκ μέρους κάποιου μέλους, το μέλος αυτό υποχρεούται να αναφέρει τους λόγους και να προσκομίζει τις αναγκαίες αποδείξεις.

2. Τα μέλη επιβεβαιώνουν τη δέσμευσή τους να προτιμούν την εφαρμογή μέτρων, τα οποία αποδιοργανώνουν στο μικρότερο βαθμό το εμπόριο. Τέτοια μέτρα (που στο παρόν μνημόνιο συμφωνίας αναφέρονται ως "μέτρα που βασίζονται στις τιμές") θεωρείται ότι περιλαμβάνουν πρόσθετες επιβαρύνσεις ή κατάθεση εγγυήσεων κατά την εισαγωγή ή άλλα ισοδύναμα εμπορικά μέτρα με επιπτώσεις στις τιμές των εισαγόμενων εμπορευμάτων. Με την επιφύλαξη των διατάξεων του άρθρου II, εννοείται ότι τα μέτρα που βασίζονται στις τιμές και λαμβάνονται για λόγους που εξυπηρετούν το ισοζύγιο πληρωμών είναι δυνατό να εφαρμόζονται από κάποιο μέλος καθ'υπέρβαση των δασμών που αναγράφονται στον πίνακα του σχετικού μέλους. Ακόμη, το εν λόγω μέλος υποχρεούται να αναφέρει με ακρίβεια και σαφήνεια το ποσό κατά το οποίο το μέτρο που βασίζεται στις τιμές υπερβαίνει τον παγιοποιημένο δασμό στο πλαίσιο των διαδικασιών γνωστοποίησης που ορίζονται στο παρόν μνημόνιο συμφωνίας.

3. Τα μέλη υποχρεούνται να καταβάλλουν προσπάθεια για την αποφυγή επιβολής νέων ποσοτικών περιορισμών για λόγους που εξυπηρετούν το ισοζύγιο πληρωμών εκτός αν, λόγω κρίσιμης κατάστασης του ισοζυγίου πληρωμών, τα μέτρα που βασίζονται στις τιμές δεν είναι δυνατό να σταματήσουν την έντονη επιδείνωση της κατάστασης των εξωτερικών πληρωμών. Στις περιπτώσεις που κάποιο μέλος εφαρμόζει ποσοτικούς περιορισμούς, αυτό υποχρεούται να αιτιολογεί, προσκομίζοντας τα σχετικά

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1 Καμία διάταξη του παρόντος μνημονίου συμφωνίας δεν τροποποιεί τα δικαιώματα και τις υποχρεώσεις των μελών βάσει των άρθρων XII ή XVIII:B της GATT του 1994. Είναι δυνατό να γίνει επίκληση των διατάξεων των άρθρων XXII και XXIII της GATT του 1994, όπως διαμορφώθηκαν και εφαρμόζονται στο πλαίσιο του μνημονίου συμφωνίας για την επίλυση των διαφορών όσον αφορά τα θέματα που προκύπτουν από την εφαρμογή περιοριστικών μέτρων κατά την εισαγωγή για σκοπούς που εξυπηρετούν το ισοζύγιο πληρωμών.

αποδεικτικά στοιχεία, γιατί τα μέτρα που βασίζονται στις τιμές δεν αποτελούν το κατάλληλο μέσο για τη διευθέτηση της κατάστασης του ισοζυγίου πληρωμών. Το μέλος που εξακολουθεί να διατηρεί ποσοτικούς περιορισμούς υποχρεούται να αναφέρει στο πλαίσιο διαδοχικών διαβουλεύσεων την πρόοδο που σημειώνεται όσον αφορά τη σημαντική μείωση των επιπτώσεων και των περιοριστικών αποτελεσμάτων τέτοιων μέτρων. Εννοείται ότι στο ίδιο προϊόν μπορεί να εφαρμοστεί μόνο ένα είδος περιοριστικών μέτρων κατά την εισαγωγή για λόγους που εξυπηρετούν το ισοζύγιο πληρωμών.

4. Τα μέλη επιβεβαιώνουν ότι τα περιοριστικά μέτρα κατά την εισαγωγή που λαμβάνονται για λόγους που εξυπηρετούν το ισοζύγιο πληρωμών είναι δυνατό να εφαρμόζονται μόνο με σκοπό τον έλεγχο του γενικού επιπέδου των εισαγωγών και δεν είναι δυνατό να υπερβαίνουν το βαθμό που απαιτείται για την αντιμετώπιση της κατάστασης του ισοζυγίου πληρωμών. Για να μειωθούν στο ελάχιστο οποιεσδήποτε συνέπειες προστατευτικού χαρακτήρα, τα μέλη αποφασίζουν την επιβολή περιορισμών με διαφανείς διαδικασίες. Οι αρχές του μέλους εισαγωγής υποχρεούνται να παρέχουν επαρκείς αποδείξεις για τα κριτήρια που οδήγησαν στον προσδιορισμό των προϊόντων που υποβάλλονται σε περιορισμούς. Όπως προβλέπεται στο άρθρο XII, παράγραφος 3 και στο άρθρο XVIII, παράγραφος 10, τα μέλη έχουν τη δυνατότητα, στην περίπτωση ορισμένων ουσιωδών προϊόντων, να αποκλείσουν ή να περιορίσουν τις πρόσθετες επιβαρύνσεις που επιβάλλονται στα σύνορα ή άλλα μέτρα που εφαρμόζονται για λόγους που εξυπηρετούν το ισοζύγιο πληρωμών. Ο όρος "ουσιώδη προϊόντα" θεωρείται ότι περιλαμβάνει τα προϊόντα που εξυπηρετούν βασικές καταναλωτικές ανάγκες ή τα οποία συμβάλλουν στην προσπάθεια του μέλους να βελτιώσει την κατάσταση του ισοζυγίου πληρωμών του, όπως κεφαλαιουχικά αγαθά ή συντελεστές παραγωγής που απαιτούνται για τον παραγωγικό κλάδο. Κατά τον καθορισμό ποσοτικών περιορισμών, τα μέλη προβαίνουν σε διακριτική έκδοση αδειών μόνο όταν αυτό είναι αναπόφευκτο, προσπαθώντας να την καταργήσουν σταδιακά. Απαιτείται η προσκόμιση των κατάλληλων αποδεικτικών στοιχείων όσον αφορά τα κριτήρια στα οποία βασίζεται ο καθορισμός των επιτρεπόμενων εισαγόμενων ποσοτήτων ή των αξιών.

Διαδικασίες για τη διενέργεια διαβουλεύσεων σχετικά με το ισοζύγιο πληρωμών

5. Η Επιτροπή για τους περιορισμούς που έχουν σχέση με το ισοζύγιο πληρωμών (καλούμενη στο παρόν μνημόνιο συμφωνίας "επιτροπή") διενεργεί διαβουλεύσεις για να εξετάζει όλα τα περιοριστικά μέτρα κατά την εισαγωγή που λαμβάνονται με σκοπό την εξυπηρέτηση του ισοζυγίου πληρωμών. Η συμμετοχή στην επιτροπή είναι δυνατή για όλα τα μέλη που εκφράζουν σχετική επιθυμία. Η επιτροπή ακολουθεί τις διαδικασίες διαβουλεύσεων για τους περιορισμούς που έχουν σχέση με το ισοζύγιο πληρωμών οι οποίες εγκρίθηκαν στις 28 Απριλίου 1970 (BISD 18S/48-53, και καλούνται στο παρόν μνημόνιο συμφωνίας "πλήρεις διαδικασίες διαβουλεύσεων"), με βάση τις ακόλουθες διατάξεις.

6. Το μέλος που εφαρμόζει νέους περιορισμούς ή αυξάνει το γενικό επίπεδο των περιορισμών που ήδη ισχύουν με ουσιαστική εντατικοποίηση των μέτρων διενεργεί διαβουλεύσεις με την επιτροπή εντός τεσσάρων μηνών από τη θέσπιση τέτοιων μέτρων. Το μέλος που θεσπίζει τέτοια μέτρα μπορεί να ζητεί να διενεργούνται οι διαβουλεύσεις σύμφωνα με το άρθρο XII, παράγραφος 4, στοιχείο α) ή το άρθρο XVIII, παράγραφος 12, στοιχείο α) κατά περίπτωση. Αν δεν υποβληθεί τέτοιο αίτημα, ο πρόεδρος της επιτροπής καλεί το μέλος να διενεργήσει αυτές τις διαβουλεύσεις. Οι παράγοντες που είναι δυνατό να εξετάζονται κατά τη διάρκεια των διαβουλεύσεων είναι, μεταξύ άλλων, η εφαρμογή νέων ειδών περιοριστικών

μέτρων για σκοπούς που εξυπηρετούν το ισοζύγιο πληρωμών ή η αύξηση του επιπέδου των περιορισμών ή του αριθμού των σχετικών προϊόντων.

7. Όλοι οι περιορισμοί που εφαρμόζονται για λόγους που εξυπηρετούν το ισοζύγιο πληρωμών υποβάλλονται σε περιοδική εξέταση στο πλαίσιο της επιτροπής βάσει του άρθρου XII, παράγραφος 4, στοιχείο β) ή βάσει του άρθρου XVIII, παράγραφος 12, στοιχείο β), υπό την προϋπόθεση ότι υπάρχει η δυνατότητα αλλαγής της περιοδικότητας των διαβουλεύσεων με τη σύμφωνη γνώμη του μέλους που ζητεί τη διενέργειά τους ή σύμφωνα με τη διαδικασία εξέτασης που προτείνει, ενδεχομένως, το Γενικό Συμβούλιο.

8. Είναι επίσης δυνατό να διεξάγονται διαβουλεύσεις στο πλαίσιο των απλουστευμένων διαδικασιών που εγκρίθηκαν στις 19 Δεκεμβρίου 1972 (BISD 20S/47/49, που καλούνται στο παρόν μνημόνιο συμφωνίας "απλουστευμένες διαδικασίες διαβουλεύσεων") στην περίπτωση λιγότερο ανεπτυγμένης χώρας μέλους ή στην περίπτωση αναπτυσσόμενης χώρας μέλους που καταβάλλει προσπάθεια απελευθέρωσης σύμφωνα με το χρονοδιάγραμμα που υπέβαλε στην επιτροπή κατά τη διενέργεια προηγούμενων διαβουλεύσεων. Οι απλουστευμένες διαδικασίες διαβουλεύσεων είναι επίσης δυνατό να εφαρμοστούν αν η εξέταση της εμπορικής πολιτικής αναπτυσσόμενης χώρας μέλους έχει προγραμματιστεί για το ίδιο ημερολογιακό έτος που έχει οριστεί και για τις διαβουλεύσεις. Σε τέτοιες περιπτώσεις η απόφαση για το αν πρέπει να χρησιμοποιηθούν πλήρεις διαδικασίες διαβουλεύσεων λαμβάνεται βάσει των παραγόντων που απαριθμούνται στην παράγραφο 8 της δήλωσης του 1979. Με εξαίρεση την περίπτωση λιγότερο ανεπτυγμένης χώρας μέλους, είναι δυνατό να διενεργηθούν δύο μόνο διαδοχικές διαβουλεύσεις βάσει απλουστευμένων διαδικασιών διαβουλεύσεων.

Γνωστοποίηση και τεκμηρίωση

9. Τα μέλη ανακοινώνουν στο Γενικό Συμβούλιο τη θέσπιση νέων περιοριστικών μέτρων κατά την εισαγωγή που λαμβάνονται για λόγους που εξυπηρετούν το ισοζύγιο πληρωμών ή τις αλλαγές που επέρχονται όσον αφορά την εφαρμογή τους, καθώς και τις τροποποιήσεις στα χρονοδιαγράμματα για την κατάργηση τέτοιων μέτρων που αναφέρονται στην παράγραφο 1. Οι σημαντικές αλλαγές γνωστοποιούνται στο Γενικό Συμβούλιο το αργότερο 30 ημέρες μετά τη θέσπισή τους. Κάθε μέλος παρέχει μια φορά το έτος στη Γραμματεία συγκεντρωτικές πληροφορίες, στις οποίες περιλαμβάνονται όλες οι αλλαγές νόμων, ρυθμίσεων, πολιτικής ή δημόσιων ανακοινώσεων, τις οποίες καλούνται να εξετάσουν τα μέλη. Οι γνωστοποιήσεις περιλαμβάνουν λεπτομερείς πληροφορίες, στο μεγαλύτερο δυνατό βαθμό, για τη δασμολογική κλάση, το είδος των εφαρμοζόμενων μέτρων, τα κριτήρια που εφαρμόζονται για τη θέσπισή τους, τα προϊόντα και τα εμπορικά ρεύματα επί των οποίων υπάρχουν επιπτώσεις.

10. Κατ'αίτηση οποιουδήποτε μέλους, οι γνωστοποιήσεις είναι δυνατό να εξετάζονται από την επιτροπή. Η εξέταση αυτή είναι σκόπιμο να περιορίζεται στη διευκρίνιση ειδικών θεμάτων που προκύπτουν από την γνωστοποίηση ή στην εξέταση του ερωτήματος αν απαιτείται η διενέργεια διαβουλεύσεων βάσει του άρθρου XII, παράγραφος 4, στοιχείο α) ή του άρθρου XVIII, παράγραφος 12, στοιχείο α). Τα μέλη που έχουν λόγους να πιστεύουν ότι κάποιο περιοριστικό μέτρο κατά την εισαγωγή που εφαρμόζει άλλο μέλος ληφθηκε για λόγους που εξυπηρετούν το ισοζύγιο πληρωμών, μπορεί να θέσει το θέμα υπόψη της επιτροπής. Ο πρόεδρος της επιτροπής ζητεί πληροφορίες για το μέτρο αυτό, τις οποίες ανακοινώνει σε όλα τα μέλη. Με την επιφύλαξη του δικαιώματος κάθε μέλους της επιτροπής για την αναζήτηση των κατάλληλων διευκρινήσεων κατά τη διάρκεια των διαβουλεύσεων, τα προβλήματα είναι δυνατό να υποβάλλονται εκ των

προτέρων και να εξετάζονται από το μέλος το οποίο καλείται να συμμετάσχει στις διαβουλεύσεις.

11. Το μέλος που συμμετέχει σε διαβουλεύσεις συντάσσει ένα βασικό έγγραφο για τις διαβουλεύσεις το οποίο, εκτός από κάθε θεωρούμενη ως σχετική πληροφορία, είναι σκόπιμο να περιλαμβάνει: α) επισκόπηση της κατάστασης του ισοζυγίου πληρωμών και των προοπτικών, καθώς και εξέταση των εσωτερικών και εξωτερικών παραγόντων, που επηρεάζουν την κατάσταση του ισοζυγίου των πληρωμών, και μέτρα εσωτερικής πολιτικής που λαμβάνονται για την αποκατάσταση της ισορροπίας σε υγιή και διαρκή βάση· β) πλήρη περιγραφή των περιορισμών που εφαρμόζονται για λόγους που εξυπηρετούν το ισοζύγιο πληρωμών, τη νομική τους βάση και τις ενέργειες που γίνονται για τη μείωση των παρεπόμενων προστατευτικών αποτελεσμάτων· γ) τα μέτρα που λήφθηκαν από τις τελευταίες διαβουλεύσεις για την απελευθέρωση των περιορισμών κατά την εισαγωγή, στο πλαίσιο των συμπερασμάτων της επιτροπής· δ) ένα σχέδιο για την κατάργηση και την προοδευτική χαλάρωση των εναπομενόντων περιορισμών. Όταν υπάρχει ανάγκη, είναι δυνατό να χρησιμοποιούνται πληροφορίες που περιέχονται σε άλλες γνωστοποιήσεις ή εκθέσεις που υποβάλλονται στον ΠΟΕ. Στο πλαίσιο των απλουστευμένων διαδικασιών διαβουλεύσεων, το μέλος που συμμετέχει σε διαβουλεύσεις υποβάλλει γραπτή αναφορά με τις ουσιώδεις πληροφορίες για τα στοιχεία που καλύπτονται από το βασικό έγγραφο.

12. Για να διευκολύνει τις διαβουλεύσεις στο πλαίσιο της επιτροπής, η Γραμματεία ετοιμάζει έγγραφο με το ιστορικό, στο οποίο περιέχονται οι διάφορες πτυχές του σχεδίου διαβουλεύσεων. Στην περίπτωση αναπτυσσομένης χώρας μέλους, το έγγραφο της Γραμματείας περιλαμβάνει τα σχετικά ιστορικά και αναλυτικά στοιχεία για τις επιπτώσεις του εξωτερικού εμπορίου στην κατάσταση του ισοζυγίου πληρωμών και τις προοπτικές όσον αφορά το μέλος που συμμετέχει στις διαβουλεύσεις. Οι υπηρεσίες τεχνικής βοήθειας της Γραμματείας παρέχουν επίσης, μετά από σχετική αίτηση αναπτυσσομένης χώρας μέλους, βοήθεια για την προετοιμασία του υλικού τεκμηρίωσης για τις διαβουλεύσεις.

Συμπεράσματα των διαβουλεύσεων για το ισοζύγιο πληρωμών

13. Η επιτροπή υποβάλλει έκθεση με τα συμπεράσματά της στο Γενικό Συμβούλιο. Αν έχουν εφαρμοστεί πλήρεις διαδικασίες διαβουλεύσεων, η έκθεση είναι σκόπιμο να αναφέρει τα συμπεράσματα της επιτροπής για τα διάφορα στοιχεία του σχεδίου διαβουλεύσεων, καθώς και τα πραγματικά περιστατικά και τους λόγους στους οποίους αυτά βασίζονται. Η επιτροπή καταβάλλει προσπάθεια να συμπεριλάβει στα συμπεράσματά της προτάσεις για συστάσεις που αποσκοπούν στην προώθηση της εφαρμογής των άρθρων XII και XVIII:B, της δήλωσης του 1979 και του παρόντος μνημονίου συμφωνίας. Σ'αυτές τις περιπτώσεις κατά τις οποίες υποβλήθηκε χρονοδιάγραμμα για την κατάργηση των περιοριστικών μέτρων που λήφθηκαν για λόγους που εξυπηρετούν το ισοζύγιο πληρωμών, το Γενικό Συμβούλιο μπορεί να υποβάλει σύσταση σύμφωνα με την οποία κάποιο μέλος, υιοθετώντας ένα τέτοιο χρονοδιάγραμμα, θεωρείται ότι συμμορφώνεται με τις υποχρεώσεις του βάσει της GATT του 1994. Όταν το Γενικό Συμβούλιο διατυπώνει συγκεκριμένες συστάσεις, τα δικαιώματα και οι υποχρεώσεις των μελών εκτιμώνται στο πλαίσιο αυτών των συστάσεων. Αν δεν διατυπωθούν συγκεκριμένες προτάσεις για συστάσεις εκ μέρους του Γενικού Συμβουλίου, τα συμπεράσματα της επιτροπής περιλαμβάνουν τις διάφορες απόψεις που εκφράζονται στην επιτροπή. Εφόσον εφαρμόζονται απλουστευμένες διαδικασίες διαβουλεύσεων, η έκθεση είναι ανάγκη να περιλαμβάνει περίληψη των κύριων στοιχείων που συζητήθηκαν από την επιτροπή και απόφαση για το άν χρειάζονται πλήρεις διαδικασίες διαβουλεύσεων.

ΜΝΗΜΟΝΙΟ ΣΥΜΦΩΝΙΑΣ ΓΙΑ ΤΗΝ ΕΡΜΗΝΕΙΑ ΤΟΥ ΑΡΘΡΟΥ XXIV ΤΗΣ ΓΕΝΙΚΗΣ ΣΥΜΦΩΝΙΑΣ ΔΑΣΜΩΝ ΚΑΙ ΕΜΠΟΡΙΟΥ ΤΟΥ 1994

Τα μέλη,

Έχοντας υπόψη τις διατάξεις του άρθρου XXIV της GATT του 1994·

Αναγνωρίζοντας ότι οι τελωνειακές ενώσεις και οι ζώνες ελεύθερων συναλλαγών έχουν σημειώσει μεγάλη αύξηση σε αριθμό και σημασία από τη σύναψη της GATT του 1947 και καλύπτουν σήμερα σημαντικό τμήμα του παγκόσμιου εμπορίου·

Αναγνωρίζοντας τη συμβολή της μεγαλύτερης προσέγγισης των οικονομιών των συμβαλλομένων μερών αυτών των συμφωνιών στην επέκταση του παγκόσμιου εμπορίου·

Αναγνωρίζοντας επίσης, ότι η συμβολή αυτή θα αυξηθεί αν καταργηθούν οι δασμοί και οι λοιπές περιοριστικές εμπορικές ρυθμίσεις που εφαρμόζονται σε όλες τις εμπορικές συναλλαγές μεταξύ των εδαφών που τις αποτελούν, ενώ αντίθετα θα μειωθεί σε περίπτωση που εξαιρεθεί κάποιος σημαντικός εμπορικός τομέας·

Επιβεβαιώνοντας εκ νέου ότι ο σκοπός αυτών των συμφωνιών συνίσταται στη διευκόλυνση του εμπορίου μεταξύ των εδαφών που αποτελούν αυτές τις τελωνειακές ενώσεις και τις ζώνες ελευθέρων συναλλαγών και όχι στην παρεμβολή εμποδίων στο εμπόριο μεταξύ άλλων μελών και αυτών των εδαφών· και ότι κατά τη διαμόρφωση ή την επέκτασή τους τα μέρη που συμμετέχουν σ'αυτές είναι σκόπιμο να αποφεύγουν, στο μεγαλύτερο δυνατό βαθμό, την πρόκληση δυσμενών αποτελεσμάτων για το εμπόριο των λοιπών μελών,

Πεπεισμένα επίσης, ότι υπάρχει ανάγκη για ενίσχυση του ρόλου του Συμβουλίου Εμπορευματικών Συναλλαγών, όσον αφορά την εξέταση συμφωνιών που γνωστοποιούνται στο πλαίσιο του άρθρου XXIV, με διευκρίνηση των κριτηρίων και των διαδικασιών για την εκτίμηση των νέων ή των διευρυμένων συμφωνιών, καθώς και τη βελτίωση της διαφάνειας όλων των συμφωνιών του άρθρου XXIV,

Αναγνωρίζοντας την ανάγκη για κοινή αντιμετώπιση των υποχρεώσεων των μελών βάσει του άρθρου XXIV, παράγραφος 12,

Συμφωνούν τα ακόλουθα :

1. Προκειμένου οι τελωνειακές ενώσεις, οι ζώνες ελευθέρων συναλλαγών και οι ενδιάμεσες συμφωνίες, που έχουν ως αποτέλεσμα τη δημιουργία τελωνειακών ενώσεων ή ζωνών ελευθέρων συναλλαγών να είναι σύμφωνες με το άρθρο XXIV, είναι ανάγκη να συμφωνούν, μεταξύ άλλων, με τις διατάξεις των παραγράφων 5,6,7 και 8 του εν λόγω άρθρου.

Άρθρο XXIV, παράγραφος 5

2. Η εκτίμηση, βάσει του άρθρου XXIV, παράγραφος 5, στοιχείο α), των γενικών επιπτώσεων των δασμών και άλλων εμπορικών ρυθμίσεων που εφαρμόζονται πριν και μετά τη δημιουργία τελωνειακής ένωσης βασίζεται, όσον αφορά τους δασμούς και τις επιβαρύνσεις, σε γενική εκτίμηση των μέσων σταθμισμένων δασμολογικών συντελεστών και των εισπραττόμενων δασμών. Η εκτίμηση αυτή βασίζεται στα στατιστικά στοιχεία κατά τις

εισαγωγές για προηγούμενη αντιπροσωπευτική περίοδο που παρέχει η τελωνειακή ένωση, ανά δασμολογική κλάση, κατ'αξία και κατ' όγκο, κατανεμημένα ανά χώρα καταγωγής μέλος του ΠΟΕ. Η Γραμματεία υπολογίζει τους μέσους σταθμισμένους δασμολογικούς συντελεστές και τους εισπραχθέντες δασμούς σύμφωνα με τη μέθοδο που χρησιμοποιήθηκε για την εκτίμηση των προσφερθέντων δασμών κατά τη διάρκεια των πολυμερών διαπραγματεύσεων στο πλαίσιο του Γύρου της Ουρουγουάης. Για το σκοπό αυτό, οι δασμοί και οι επιβαρύνσεις που πρέπει να λαμβάνονται υπόψη είναι οι εφαρμοζόμενοι δασμολογικοί συντελεστές. Αναγνωρίζεται ότι για το συνολικό υπολογισμό των επιπτώσεων των λοιπών εμπορικών ρυθμίσεων, οι οποίες είναι δύσκολο να ποσοτικοποιηθούν και να συγκεντρωθούν, μπορεί να ζητηθεί η εξέταση μεμονωμένων μέτρων, ρυθμίσεων, καλυπτόμενων προϊόντων και επηρεαζόμενων εμπορικών ρευμάτων.

3. Το "εύλογο χρονικό διάστημα" που αναφέρεται στο άρθρο XXIV, παράγραφος 5, στοιχείο γ) είναι σκόπιμο να υπερβαίνει τα δέκα έτη μόνο σε εξαιρετικές περιπτώσεις. Στις περιπτώσεις που τα μέλη που αποτελούν συμβαλλόμενα μέρη ενδιάμεσης συμφωνίας πιστεύουν ότι τα δέκα έτη δεν αρκούν υποστηρίζουν, παρέχοντας πλήρεις εξηγήσεις στο Συμβούλιο Εμπορευματικών Συναλλαγών, την ανάγκη έγκρισης μεγαλύτερης περιόδου.

Άρθρο XXIV, παράγραφος 6

4. Το άρθρο XXIV, παράγραφος 6 ορίζει τη διαδικασία που πρέπει να ακολουθείται όταν κάποιο μέλος που αποτελεί τελωνειακή ένωση προτείνει την αύξηση παγιοποιημένου δασμολογικού συντελεστή. Τα μέλη επιβεβαιώνουν σχετικά ότι η διαδικασία που καθορίζεται στο άρθρο XXVIII, όπως διαμορφώθηκε στις κατευθυντήριες γραμμές που εγκρίθηκαν στις 10 Νοεμβρίου 1980 (BISD 27S/26-28) και στο μνημόνιο συμφωνίας για την ερμηνεία του άρθρου XXVIII της GATT του 1994, είναι αναγκαίο να έχει αρχίσει προτού να τροποποιηθούν ή να ανακληθούν οι δασμολογικές παραχωρήσεις στο πλαίσιο της δημιουργίας τελωνειακής ένωσης ή της σύναψης ενδιάμεσης συμφωνίας που οδηγεί στη δημιουργία τελωνειακής ένωσης.

5. Οι διαπραγματεύσεις αυτές διέπονται από καλή πίστη, ώστε να επιτυγχάνονται αμοιβαία ικανοποιητικά αντισταθμιστικά ανταλλάγματα. Στις διαπραγματεύσεις αυτές λαμβάνονται υπόψη, όπως προβλέπεται στο άρθρο XXIV, παράγραφος 6, οι μειώσεις δασμών στην ίδια δασμολογική κλάση, τις οποίες προσέφεραν άλλα μέλη της τελωνειακής ένωσης κατά τη δημιουργία της. Σε περίπτωση που οι μειώσεις αυτές δεν επαρκούν για την εξασφάλιση των αναγκαίων αντισταθμιστικών ανταλλαγμάτων, η τελωνειακή ένωση είναι σκόπιμο να προσφέρει αντισταθμίσεις, οι οποίες είναι δυνατό να λάβουν τη μορφή μειώσεων δασμών σε άλλες δασμολογικές κλάσεις. Τέτοιες προσφορές είναι ανάγκη να λαμβάνονται υπόψη από τα μέλη που έχουν το δικαίωμα να διαπραγματεύονται την τροποποίηση ή την κατάργηση του παγιοποιημένου δασμού. Αν οι αντισταθμιστικές ρυθμίσεις εξακολουθούν να είναι απαράδεκτες, οι διαπραγματεύσεις είναι σκόπιμο να συνεχίζονται. Αν, παρά τις προσπάθειες αυτές, δεν είναι δυνατό να επιτευχθεί συμφωνία κατά τις διαπραγματεύσεις για αντισταθμιστικά ανταλλάγματα σύμφωνα με το άρθρο XXVIII, όπως διαμορφώθηκε στο μνημόνιο συμφωνίας για την ερμηνεία του άρθρου XXVIII της GATT του 1994, εντός εύλογου χρονικού διαστήματος από την έναρξη των διαπραγματεύσεων, η τελωνειακή ένωση είναι ελεύθερη να τροποποιήσει ή να αποσύρει τις παραχωρήσεις· τα θιγόμενα μέλη έχουν την ευχέρεια να αποσύρουν ουσιαστικά ισοδύναμες παραχωρήσεις, σύμφωνα με το άρθρο XXVIII.

6. Η GATT του 1994 δεν επιβάλλει υποχρεώσεις στα μέλη που απολαύουν μείωσης των δασμών λόγω της δημιουργίας τελωνειακής ένωσης ή της

σύναψης ενδιάμεσης συμφωνίας που οδηγεί στη δημιουργία τελωνειακής ένωσης, να παραχωρούν αντισταθμιστικά ανταλλάγματα στα μέλη που την αποτελούν.

Έλεγχος τελωνειακών ενώσεων και ζωνών ελευθέρων συναλλαγών

7. Όλες οι πληροφορίες που παρέχονται σύμφωνα με το άρθρο XXIV, παράγραφος 7, στοιχείο α) εξετάζονται από ομάδα εργασίας στο πλαίσιο των σχετικών διατάξεων της GATT του 1994 και της παραγράφου 1 του παρόντος μνημονίου. Η ομάδα εργασίας υποβάλλει έκθεση στο Συμβούλιο Εμπορευματικών Συναλλαγών, που περιλαμβάνει τις σχετικές διαπιστώσεις της. Το Συμβούλιο Εμπορευματικών Συναλλαγών έχει την ευχέρεια να διατυπώνει συστάσεις στα μέλη, όταν το κρίνει απαραίτητο.

8. Όσον αφορά τις ενδιάμεσες συμφωνίες, η ομάδα εργασίας μπορεί να διατυπώνει στην έκθεσή της τις κατάλληλες συστάσεις για το προτεινόμενο χρονοδιάγραμμα και τα μέτρα που απαιτούνται για την ολοκλήρωση της δημιουργίας τελωνειακής ένωσης ή ζώνης ελευθέρων συναλλαγών. Είναι δυνατό, εφόσον χρειάζεται, να επιτρέπει την επανεξέταση της συμφωνίας.

9. Τα μέλη, που αποτελούν συμβαλλόμενα μέρη ενδιάμεσων συμφωνιών, ανακοινώνουν τις σημαντικές αλλαγές των σχεδίων και των προγραμμάτων που περιλαμβάνονται στη σχετική συμφωνία, στο Συμβούλιο Εμπορευματικών Συναλλαγών και, εφόσον χρειάζεται, το Συμβούλιο εξετάζει τις αλλαγές.

10. Σε περίπτωση που η ενδιάμεση συμφωνία που γνωστοποιείται σύμφωνα με το άρθρο XXIV, παράγραφος 7, στοιχείο α) δεν περιλαμβάνει σχέδιο και πρόγραμμα, σε αντίθεση προς το άρθρο XXIV, παράγραφος 5, στοιχείο γ), η ομάδα εργασίας προτείνει στην έκθεσή της ένα τέτοιο σχέδιο και πρόγραμμα. Τα μέρη δεν διατηρούν ούτε θέτουν σε ισχύ, ανάλογα με την περίπτωση, τέτοια συμφωνία αν δεν είναι διατεθειμένα να την τροποποιήσουν σύμφωνα με τις εν λόγω συστάσεις. Προβλέπεται η μεταγενέστερη εξέταση της εφαρμογής των συστάσεων.

11. Οι τελωνειακές ενώσεις και τα μέλη ζωνών ελευθέρων συναλλαγών υποχρεούνται να υποβάλλουν σε τακτικά χρονικά διαστήματα έκθεση στο Συμβούλιο Εμπορευματικών Συναλλαγών για τη λειτουργία της σχετικής συμφωνίας, όπως προβλεπόταν για τα ΣΥΜΒΑΛΛΟΜΕΝΑ ΜΕΡΗ της GATT του 1947 στο πλαίσιο των οδηγιών που δόθηκαν στο Συμβούλιο της GATT του 1947 σχετικά με τις εκθέσεις για τις περιφερειακές συμφωνίες (BISD 18S/38). Οποιαδήποτε σημαντική αλλαγή ή/και εξέλιξη όσον αφορά τις συμφωνίες είναι ανάγκη να γνωστοποιείται αμέσως.

Επίλυση των διαφορών

12. Οι διατάξεις των άρθρων XXII και XXIII της GATT του 1994, όπως διαμορφώθηκαν και εφαρμόζονται από το μνημόνιο συμφωνίας για την επίλυση των διαφορών είναι δυνατόν να εφαρμόζονται σε περίπτωση που προκύπτουν προβλήματα από την εφαρμογή των διατάξεων του άρθρου XXIV για τις τελωνειακές ενώσεις, τις ζώνες ελευθέρων συναλλαγών ή για ενδιάμεσες συμφωνίες που οδηγούν στη δημιουργία τέτοιων τελωνειακών ενώσεων ή ζωνών ελευθέρων συναλλαγών.

Άρθρο XXIV, παράγραφος 12

13. Κάθε μέλος φέρει την πλήρη ευθύνη στο πλαίσιο της GATT του 1994 για την τήρηση όλων των διατάξεων της GATT του 1994 και υποχρεούται να λαμβάνει εύλογα μέτρα, στο βαθμό που κάτι τέτοιο είναι δυνατό, ώστε να εξασφαλίζει την εφαρμογή τους εκ μέρους των περιφερειακών και τοπικών διοικήσεων και αρχών στο έδαφός του.

14. Οι διατάξεις των άρθρων XXII και XXIII της GATT του 1994, όπως διαμορφώθηκαν και εφαρμόζονται από το μνημόνιο συμφωνίας για την επίλυση των διαφορών είναι δυνατό να εφαρμόζονται όσον αφορά τα μέτρα που επηρεάζουν την τήρησή τους, τα οποία λαμβάνουν περιφερειακές ή τοπικές κυβερνήσεις ή αρχές στο έδαφος κάποιο μέλους. Όταν το όργανο επίλυσης των διαφορών αποφασίσει ότι δεν τηρήθηκε διάταξη της GATT του 1994, το μέλος που έχει τη σχετική ευθύνη υποχρεούται να λάβει τα αναγκαία εύλογα μέτρα για να εξασφαλίσει την τήρησή της. Οι διατάξεις που αφορούν την παροχή αντισταθμιστικών ανταλλαγμάτων και την αναστολή παραχωρήσεων ή άλλων υποχρεώσεων εφαρμόζονται στις περιπτώσεις που δεν κατέστη δυνατή η εξασφάλιση αυτής της τήρησης.

15. Κάθε μέλος αναλαμβάνει την υποχρέωση να εξετάζει με κατανόηση τα διαβήματα, στα οποία ενδεχομένως προβαίνει κάποιο μέλος και να δέχεται να διενεργεί διαβουλεύσεις με τους αντιπροσώπους του, όταν πρόκειται για μέτρα που επηρεάζουν τη λειτουργία της GATT του 1994 τα οποία έχουν ληφθεί στο έδαφός του.

ΜΝΗΜΟΝΙΟ ΣΥΜΦΩΝΙΑΣ ΓΙΑ ΤΗΝ ΤΗΡΗΣΗ ΤΩΝ ΑΠΑΛΛΑΓΩΝ ΑΠΟ ΥΠΟΧΡΕΩΣΕΙΣ ΣΤΟ ΠΛΑΙΣΙΟ ΤΗΣ ΓΕΝΙΚΗΣ ΣΥΜΦΩΝΙΑΣ ΔΑΣΜΩΝ ΚΑΙ ΕΜΠΟΡΙΟΥ ΤΟΥ 1994

Τα *μέλη συμφωνούν* τα ακόλουθα:

1. Η αίτηση για την έγκριση απαλλαγής ή για την παράταση ισχύουσας έγκρισης απαλλαγής περιγράφει τα μέτρα, τα οποία προτίθεται να λάβει το μέλος, τους συγκεκριμένους στόχους πολιτικής τους οποίους επιθυμεί να επιτύχει το μέλος και τους λόγους που εμποδίζουν το μέλος να επιτύχει τους στόχους της πολιτικής του, μέσω μέτρων σύμφωνων προς τις υποχρεώσεις του που απορρέουν από την GATT του 1994.

2. Κάθε απαλλαγή που ισχύει κατά την ημερομηνία θέσης σε ισχύ της συμφωνίας για τον ΠΟΕ λήγει, εκτός αν παραταθεί σύμφωνα με τις προαναφερθείσες διαδικασίες καθώς και τις διαδικασίες του άρθρου IX της συμφωνίας για τον ΠΟΕ, κατά την ημερομηνία λήξης της ισχύος της ή δύο έτη μετά την ημερομηνία θέσης σε ισχύ της συμφωνίας για τον ΠΟΕ, εφόσον αυτή είναι πλησιέστερη.

3. Κάθε μέλος που θεωρεί ότι κάποιο όφελος που απορρέει υπέρ αυτού από την GATT του 1994 αναιρείται εν όλω ή εν μέρει λόγω

α) της αδυναμίας του μέλους, στο οποίο παρέχεται η απαλλαγή, να τηρήσει τους γενικούς και ειδικούς όρους της απαλλαγής, ή

β) της εφαρμογής μέτρου σύμφωνου προς τους γενικούς και ειδικούς όρους της απαλλαγής

μπορεί να εφαρμόσει τις διατάξεις του άρθρου XXIII της GATT του 1994 όπως διαμορφώθηκαν και ισχύουν στο πλαίσιο του μνημονίου συμφωνίας για την επίλυση των διαφορών.

ΜΝΗΜΟΝΙΟ ΣΥΜΦΩΝΙΑΣ ΓΙΑ ΤΗΝ ΕΡΜΗΝΕΙΑ ΤΟΥ ΑΡΘΡΟΥ XXVIII ΤΗΣ ΓΕΝΙΚΗΣ ΣΥΜΦΩΝΙΑΣ ΔΑΣΜΩΝ ΚΑΙ ΕΜΠΟΡΙΟΥ ΤΟΥ 1994

Τα μέλη συμφωνούν τα ακόλουθα:

1. Για την τροποποίηση ή την ανάκληση παραχώρησης, το μέλος για το οποίο η σχέση μεταξύ των εξαγωγών που επηρεάζονται από την παραχώρηση (π.χ., εξαγωγές του προϊόντος στην αγορά του μέλους που τροποποιεί ή αποσύρει την παραχώρηση) και των συνολικών εξαγωγών είναι η μεγαλύτερη θεωρείται ότι έχει ενδιαφέρον κυρίου προμηθευτή αν δεν έχει ήδη το αρχικό διαπραγματευτικό δικαίωμα ή ενδιαφέρον κυρίου προμηθευτή κατά την έννοια του άρθρου XXVIII, παράγραφος 1. Συμφωνείται, ωστόσο, ότι η παρούσα παράγραφος θα επανεξεταστεί από το Συμβούλιο Εμπορευματικών Συναλλαγών πέντε έτη μετά την ημερομηνία θέσης σε ισχύ της συμφωνίας για τον ΠΟΕ, με σκοπό τη λήψη απόφασης σχετικά με το κατά πόσον το κριτήριο αυτό λειτούργησε ικανοποιητικά, όσον αφορά την εξασφάλιση της ανακατανομής των διαπραγματευτικών δικαιωμάτων υπέρ των μικρών και μεσαίων μελών που πραγματοποιούν εξαγωγές. Αν αυτό δεν συμβαίνει, θα εξεταστούν ενδεχόμενες βελτιώσεις, που θα περιλαμβάνουν στο πλαίσιο των υφισταμένων κατάλληλων στοιχείων, την υιοθέτηση κριτηρίου βασιζόμενου στη σχέση των εξαγωγών που επηρεάζονται από την παραχώρηση προς τις εξαγωγές του εν λόγω προϊόντος σε όλες τις αγορές.

2. Όταν κάποιο μέλος πιστεύει ότι έχει ενδιαφέρον κυρίου προμηθευτή κατά την έννοια της παραγράφου 1, είναι σκόπιμο να γνωστοποιεί την άποψη αυτή γραπτώς, επισυνάπτοντας αποδεικτικά στοιχεία προς επίρρωση των ισχυρισμών του, στο μέλος που προτείνει την τροποποίηση ή την ανάκληση της παραχώρησης και ταυτόχρονα να ενημερώνει σχετικά τη Γραμματεία. Σε τέτοιες περιπτώσεις εφαρμόζεται η παράγραφος 4 των "διαπραγματευτικών διαδικασιών βάσει του άρθρου XXVIII" που εκρίθηκαν στις 10 Νοεμβρίου 1980 (BISD 27S/26-28).

3. Κατά τον προσδιορισμό των μελών που έχουν ενδιαφέρον κυρίου προμηθευτή (όπως προβλέπεται παραπάνω στην παράγραφο 1 ή στο άρθρο XXVIII παράγραφος 1) ή ουσιώδες ενδιαφέρον, λαμβάνεται υπόψη μόνο το εμπόριο του σχετικού προϊόντος που διενεργήθηκε με βάση τη ρήτρα ΜΕΚ. Ωστόσο, λαμβάνεται επίσης υπόψη το εμπόριο του σχετικού προϊόντος που πραγματοποιήθηκε υπό καθεστώς μη συμβατικών προτιμήσεων, εφόσον το εμπόριο αυτό δεν υπόκειται πλέον σε προτιμησιακή μεταχείριση μετατρεπόμενο κατά συνέπεια σε εμπόριο ΜΕΚ, κατά τη στιγμή των διαπραγματεύσεων για την τροποποίηση ή την ανάκληση της παραχώρησης, ή αυτό θα συμβεί κατά την ολοκλήρωση των εν λόγω διαπραγματεύσεων.

4. Όταν δασμολογική παραχώρηση τροποποιείται ή αποσύρεται, όσον αφορά **ένα νέο προϊόν** (δηλ. ένα προϊόν για το οποίο δεν υπάρχουν τριετή στατιστικά στοιχεία) το μέλος που διαθέτει τα αρχικά διαπραγματευτικά δικαιώματα για τη δασμολογική κλάση, στην οποία υπάγεται ή υπαγόταν το προϊόν, θεωρείται ότι έχει αρχικό διαπραγματευτικό δικαίωμα για τη συγκεκριμένη παραχώρηση. Για τον καθορισμό του ενδιαφέροντος κυρίου προμηθευτού και του ουσιώδους ενδιαφέροντος και για τον υπολογισμό των αντισταθμιστικών ανταλλαγμάτων είναι ανάγκη να λαμβάνονται, μεταξύ άλλων, υπόψη το μέγεθος της παραγωγής και των επενδύσεων, όσον αφορά το εκάστοτε προϊόν στο μέλος εξαγωγής και οι εκτιμήσεις για την αύξηση των εξαγωγών καθώς και οι προβλέψεις για τη ζήτηση του προϊόντος στο μέλος εισαγωγής. Για την εφαρμογή της παρούσας παραγράφου, το "νέο προϊόν" θεωρείται ότι υπάγεται σε δασμολογική διάκριση που προέρχεται από διαίρεση υπάρχουσας δασμολογικής κλάσης.

5. Όταν κάποιο μέλος θεωρεί ότι έχει ενδιαφέρον κύριου προμηθευτή ή ουσιώδες ενδιαφέρον κατά την έννοια της παραγράφου 4, είναι σκόπιμο να γνωστοποιεί το αίτημα του γραπτώς, επισυνάπτοντας τα σχετικά αποδεικτικά στοιχεία, στο μέλος που προτείνει την τροποποίηση ή την ανάκληση παραχώρησης και, ταυτόχρονα, να ενημερώνει σχετικά τη

Γραμματεία. Στις περιπτώσεις αυτές εφαρμόζεται η παράγραφος 4 των "διαπραγματευτικών διαδικασιών βάσει του άρθρου XXVIII".

6. Όταν κάποια απεριόριστη δασμολογική παραχώρηση αντικαθίσταται από δασμολογική ποσόστωση, το μέγεθος του παρεχόμενου αντισταθμιστικού ανταλλάγματος είναι ανάγκη να υπερβαίνει το μέγεθος των εμπορικών συναλλαγών που πράγματι επηρεάζονται από την τροποποίηση της παραχώρησης. Η βάση για τον υπολογισμό του αντισταθμιστικού ανταλλάγματος πρέπει να είναι το ποσό κατά το οποίο οι μελλοντικές προοπτικές του εμπορίου υπερβαίνουν το επίπεδο της ποσόστωσης. Εννοείται ότι ο υπολογισμός των μελλοντικών εμπορικών προοπτικών είναι ανάγκη να βασίζεται κυρίως:

(α) στο μέσο ετήσιο όγκο των συναλλαγών κατά την πλέον πρόσφατη αντιπροσωπευτική τριετή περίοδο, προσαυξημένο κατά το μέσο ετήσιο συντελεστή αύξησης των εισαγωγών κατά την ίδια περίοδο ή κατά 10%, εάν αυτό το αποτέλεσμα είναι μεγαλύτερο, ή

(β) στις εμπορικές συναλλαγές του πλέον πρόσφατου έτους προσαυξημένες κατά 10%.

Η ευθύνη κάθε μέλους για την παροχή αντισταθμιστικού ανταλλάγματος δεν υπερβαίνει σε καμία περίπτωση την ευθύνη που θα προέκυπτε από την ολοσχερή ανάκληση της παραχώρησης.

7. Στο μέλος που έχει ενδιαφέρον κύριου προμηθευτή, όπως προβλέπεται παραπάνω στην παράγραφο 1 ή στο άρθρο XXVIII, παράγραφος 1, όσον αφορά παραχώρηση, η οποία τροποποιείται ή αποσύρεται παρέχεται δικαίωμα αρχικού διαπραγματευτή, όσον αφορά τις παραχωρήσεις αντισταθμιστικού χαρακτήρα, εκτός αν συμφωνηθεί η παροχή άλλης μορφής αντισταθμιστικού ανταλλάγματος από τα ενδιαφερόμενα μέλη.

ΠΡΩΤΟΚΟΛΛΟ ΤΟΥ ΜΑΡΑΚΕΣ ΠΟΥ ΠΡΟΣΑΡΤΑΤΑΙ ΣΤΗ ΓΕΝΙΚΗ ΣΥΜΦΩΝΙΑ ΔΑΣΜΩΝ ΚΑΙ ΕΜΠΟΡΙΟΥ ΤΟΥ 1994

Τα μέλη

Αφού διενήργησαν διαβουλεύσεις στο πλαίσιο της GATT του 1947, σύμφωνα με την υπουργική δήλωση για το Γύρο της Ουρουγουάης,

Συμφωνούν τα ακόλουθα:

1. Ο πίνακας μέλους που επισυνάπτεται στο παρόν πρωτόκολλο γίνεται πίνακας του μέλους αυτού που επισυνάπτεται στην GATT του 1994 την ημερομηνία που αρχίζει να ισχύει η συμφωνία για τον ΠΟΕ έναντι του εν λόγω μέλους. Οποιοσδήποτε πίνακας υποβληθεί σύμφωνα με την υπουργική απόφαση για τα μέτρα υπέρ των λιγότερο ανεπτυγμένων χωρών θεωρείται ότι αποτελεί παράρτημα του παρόντος πρωτοκόλλου.

2. Οι δασμολογικές μειώσεις που έχει συμφωνηθεί να παραχωρηθούν από κάθε μέλος πραγματοποιούνται σε πέντε ισομερείς δόσεις, εκτός αν ορίστεί διαφορετικά στον πίνακα κάποιου μέλους. Η πρώτη τέτοια μείωση υλοποιείται την ημερομηνία θέσης σε ισχύ της συμφωνίας για τον ΠΟΕ· η καθεμιά από τις επόμενες μειώσεις πραγματοποιείται την 1 Ιανουαρίου καθενός από τα επόμενα έτη ενώ η τελευταία μείωση όχι αργότερα από τέσσερα χρόνια μετά τη θέση σε ισχύ της συμφωνίας για τον ΠΟΕ, εκτός αν ορίζεται διαφορετικά στον πίνακα του εν λόγω μέλους. Με εξαίρεση την περίπτωση κατά την οποία ορίζεται διαφορετικά στον πίνακά του, κάποιο μέλος, που αποδέχεται τη συμφωνία για τον ΠΟΕ μετά τη θέση της σε ισχύ, υποχρεούται κατά την ημερομηνία που η συμφωνία αυτή αρχίζει να ισχύει έναντι αυτού, να πραγματοποιήσει όλες τις μειώσεις που έχουν ήδη διενεργηθεί καθώς και τις μειώσεις που θα ήταν υποχρεωμένο να πραγματοποιήσει, σύμφωνα με την προηγούμενη πρόταση, την 1η Ιανουαρίου του επόμενου έτους και να υλοποιήσει όλες τις εναπομένουσες μειώσεις

συντελεστών σύμφωνα με το χρονοδιάγραμμα που καθορίζεται στην προηγούμενη πρόταση. Ο μειωμένος συντελεστής στρογγυλοποιείται σε κάθε στάδιο στο πρώτο δεκαδικό ψηφίο. Για τα γεωργικά προϊόντα, σύμφωνα με το άρθρο 2 της συμφωνίας για τη γεωργία, οι σταδιακές μειώσεις εφαρμόζονται με τον τρόπο που περιγράφεται στα σχετικά τμήματα των πινάκων.

3. Η πραγματοποίηση των παραχωρήσεων και των αναλήψεων υποχρεώσεων που περιέχονται στους πίνακες που επισυνάπτονται στο παρόν πρωτόκολλο υποβάλλεται, μετά σχετική αίτηση, σε πολυμερή εξέταση εκ μέρους των μελών. Αυτό συμβαίνει με την επιφύλαξη των δικαιωμάτων και των υποχρεώσεων των μελών που απορρέουν από τις συμφωνίες που περιλαμβάνονται στο παράρτημα 1Α της συμφωνίας για τον ΠΟΕ.

4. Μόλις πίνακας μέλους που επισυνάπτεται στο παρόν πρωτόκολλο γίνει πίνακας της GATT του 1994 σύμφωνα με τις διατάξεις της παραγράφου 1, το εν λόγω μέλος είναι ελεύθερο ανά πάσα στιγμή να αναστείλει ή να αποσύρει, εν όλω ή εν μέρει, την παραχώρηση που περιέχεται στον πίνακα αυτό και αφορά προϊόν ο κύριος προμηθευτής του οποίου συμμετείχε στο Γύρο της Ουρουγουάης αλλά ο πίνακάς του δεν έχει ακόμη γίνει πίνακας της GATT του 1994. Τούτο, ωστόσο, μπορεί να συμβεί μόνον μετά γραπτή γνωστοποίηση τέτοιας αναστολής ή ανάκλησης παραχώρησης προς το Συμβούλιο Εμπορευματικών Συναλλαγών και μετά τη διενέργεια διαβουλεύσεων, αφού διατυπωθεί σχετικό αίτημα, με οποιοδήποτε μέλος, του οποίου ο σχετικός πίνακας έχει γίνει πίνακας της GATT του 1994 και και το οποίο έχει ουσιώδες ενδιαφέρον στο εν λόγω προϊόν. Οιεσδήποτε παραχωρήσεις ανασταλούν ή αποσυρθούν τοιουτοτρόπως, θα τεθούν σε εφαρμογή από την ημερομηνία κατά την οποία ο πίνακας του μέλους, το οποίο έχει ενδιαφέρον κυρίου προμηθευτή, γίνει πίνακας της GATT του 1994.

5. (α) Με την επιφύλαξη των διατάξεων της παραγράφου 2 του άρθρου 4 της Συμφωνίας γιά την Γεωργία, γιά το σκοπό της αναφοράς στις παραγράφους 1:(β) και 1:(γ) του άρθρου II της GATT του 1994 στην ημερομηνία της εν λόγω Συμφωνίας, η εν θέματι ημερομηνία εφαρμογής γιά κάθε προιόν, το οποίο είναι αντικείμενο παραχώρησης που προβλέπεται σε πίνακα παραχωρήσεων, ο οποίος επισυνάπτεται στο παρόν Πρωτόκολλο θα αποτελεί την ημερομηνία του παρόντος Πρωτοκόλλου.

(β) Για το σκοπό της αναφοράς στη παράγραφο 6(α) του άρθρου II της GATT του 1994 στην ημερομηνία της εν λόγω Συμφωνίας, η εν θέματι ημερομηνία εφαρμογής βάσει του πίνακα παραχωρήσεων, ο οποίος επισυνάπτεται στο παρόν Πρωτόκολλο θα αποτελεί την ημερομηνία του παρόντος Πρωτοκόλλου.

6. Σε περίπτωση τροποποίησης ή απόσυρσης των παραχωρήσεων που αφορούν σε μη δασμολογικά μέτρα όπως αυτά περιέχονται στο Μέρος III των πινάκων, οι διατάξεις του άρθρου XXVIII της GATT του 1994 και οι "Διαδικασίες Διαπραγματεύσεων σύμφωνα με το άρθρο XXVIII" που υιοθετήθηκαν στις 10 Νοεμβρίου 1980 (BISD 27/S/26-28) θα έχει εφαρμογή.
Αυτό συμβαίνει με την επιφύλαξη των δικαιωμάτων και των υποχρεώσεων των μελών που απορρέουν από την GATT του 1994.

7. Σε κάθε περίπτωση στην οποία από πίνακα, ο οποίος επισυνάπτεται στο παρόν Πρωτόκολλο έχει ως αποτέλεσμα την λιγότερο ευνοική μεταχείριση γιά κάποιο προιόν απ'ότι προεβλέπετο γιά το εν λόγω προιόν στους πίνακες της GATT του 1947 πριν από την ημερομηνία εφαρμογής της Συμφωνίας γιά τον Παγκόσμιο Οργανισμό Εμπορίου, το μέλος στο οποίο αναφέρεται ο πίνακας θα θεωρείται ότι έχει αναλάβει κατάλληλη δράση, η οποία διαφορετικά θα ήταν απαραίτητη σύμφωνα με τις σχετικές διατάξεις του άρθρου XXVIII της GATT του 1947 ή του 1994.
Οι διατάξεις αυτής της παραγράφου θα έχουν εφαρμογή μόνο για την Αίγυπτο, το Περού, τη Νότια Αφρική και την Ουρουγουάη.

8. Οι πίνακες οι οποίοι επισυνάπτονται στο παρόν είναι πρωτότυπα στην αγγλική, γαλλική ή ισπανική γλώσσα όπως καθορίζεται σε κάθε πίνακα.

9. Η ημερομηνία του παρόντος Πρωτοκόλλου είναι 15 Απριλίου 1994.

(Οι συμφωνημένοι πίνακες των συμμετεχόντων θα επισυναφθουν στο Πρωτόκολλο του Μαρακές στο αντίγραφο της Συνθήκης της Συμφωνίας γιά τον Παγκόσμιο Οργανισμό Εμπορίου.

ΣΥΜΦΩΝΙΑ ΓΙΑ ΤΗ ΓΕΩΡΓΙΑ

Τα μέλη,

Εχοντας αποφασίσει να δημιουργήσουν τις προϋποθέσεις για την έναρξη διαδικασίας μεταρρύθμισης του εμπορίου στον τομέα της γεωργίας, σύμφωνα με τους στόχους των διαπραγματεύσεων όπως ορίζονται στη Δήλωση της Πούντα ντελ Εστε·

Υπενθυμίζοντας ότι ο μακροπρόθεσμος στόχος τους, όπως αποφασίσθηκε κατά την ενδιάμεση επανεξέταση του Γύρου της Ουρουγουάης, συνίσταται στη "θέσπιση δικαίου και βασισμένου στην αγορά συστήματος για το εμπόριο στον τομέα της γεωργίας και ότι η διαδικασία μεταρρύθμισης είναι σκόπιμο να τεθεί σε εφαρμογή μέσω της διαπραγμάτευσης υποχρεώσεων για τις ενισχύσεις και την προστασία και μέσω της καθιέρωσης ενισχυμένων και αποτελεσματικότερων από λειτουργικής απόψεως κανόνων και ρυθμίσεων της GATT."

Υπενθυμίζοντας, επιπλέον, ότι "ο προαναφερόμενος μακροπρόθεσμος στόχος συνίσταται στην εξασφάλιση σημαντικών προοδευτικών μειώσεων των ενισχύσεων και των μέτρων προστασίας στον τομέα της γεωργίας, εντός συμφωνηθέντος χρονικού διαστήματος, οι οποίες θα έχουν ως αποτέλεσμα τη διόρθωση και πρόληψη των περιορισμών και στρεβλώσεων στις παγκόσμιες γεωργικές αγορές·"

Αποφασισμένα να αναλάβουν συγκεκριμένες δεσμευτικές υποχρεώσεις σε έκαστο των ακολούθων τομέων: πρόσβαση στην αγορά, εσωτερικές ενισχύσεις και ανταγωνισμός στις εξαγωγές, και να έλθουν σε συμφωνία επί των υγειονομικών και φυτοϋγειονομικών θεμάτων·

Εχοντας συμφωνήσει ότι, κατά την εφαρμογή των υποχρεώσεων που έχουν αναλάβει όσον αφορά την πρόσβαση στην αγορά, οι ανεπτυγμένες χώρες μέλη πρέπει να λαμβάνουν δεόντως υπόψη τις συγκεκριμένες ανάγκες και συνθήκες των αναπτυσσομένων χωρών μελών, παρέχοντας αυξημένες δυνατότητες και βελτιωμένους όρους πρόσβασης για γεωργικά προϊόντα ιδιαιτέρου ενδιαφέροντος για τα εν λόγω μέλη, συμπεριλαμβανομένης της πλήρους απελευθέρωσης του εμπορίου των τροπικών γεωργικών προϊόντων, όπως συμφωνήθηκε κατά την ενδιάμεση επανεξέταση, καθώς και για προϊόντα που έχουν ιδιαίτερη σημασία για τη διαφοροποίηση της παραγωγής και την αντικατάσταση παράνομων καλλιεργειών φυτών με ναρκωτική δράση από άλλες καλλιέργειες·

Σημειώνοντας ότι οι υποχρεώσεις που αναλαμβάνονται στο πλαίσιο του προγράμματος μεταρρυθμίσεων επιβάλλεται να κατανέμονται ισομερώς μεταξύ όλων των μελών, αφού ληφθούν υπόψη παράγοντες μη εμπορικού χαρακτήρα, όπως η επισιτιστική ασφάλεια και η ανάγκη προστασίας του περιβάλλοντος· έχοντας υπόψη τη συμφωνία ότι η ειδική και διακριτική μεταχείριση των αναπτυσσομένων χωρών αποτελεί αναπόσπαστο μέρος των διαπραγματεύσεων και λαμβάνοντας υπόψη τις πιθανές αρνητικές επιπτώσεις της εφαρμογής του προγράμματος μεταρρύθμισης στις λιγότερο ανεπτυγμένες και αναπτυσσόμενες χώρες που εισάγουν αποκλειστικά είδη διατροφής:

Συμφωνούν τα ακόλουθα:

Μέρος I

Άρθρο 1

Ορισμοί

Στην παρούσα συμφωνία, εκτός εάν τα εκάστοτε συμφραζόμενα απαιτούν διαφορετική έννοια:

(α) Ως "Αθροιστική Μέτρηση Ενισχύσεων" ή "ΑΜΕ" νοούνται οι ετήσιες ενισχύσεις, εκφραζόμενες σε νόμισμα, που παρέχονται για ένα γεωργικό προϊόν στους παραγωγούς του βασικού γεωργικού προϊόντος ή οι ενισχύσεις που δεν αφορούν συγκεκριμένα προϊόντα και παρέχονται σε παραγωγούς γεωργικών προϊόντων εν γένει, εκτός αυτών, οι οποίες παρέχονται στο πλαίσιο προγραμμάτων που πληρούν τις προϋποθέσεις εξαίρεσης από την επιβολή μειώσεων, βάσει του παραρτήματος 2 της παρούσας συμφωνίας, οι οποίες :

(i) όσον αφορά τις ενισχύσεις που παρέχονται κατά την περίοδο βάσης, καθορίζονται ειδικώς, στους σχετικούς πίνακες επεξηγηματικών στοιχείων, που ενσωματώνονται δια παραπομπής στο μέρος IV του πίνακα ενός μέλους και

(ii) όσον αφορά τις ενισχύσεις που παρέχονται κατά τη διάρκεια οποιουδήποτε έτους της περιόδου εφαρμογής και εφεξής, υπολογίζονται σύμφωνα με τις διατάξεις του παραρτήματος 3 της παρούσας συμφωνίας, αφού ληφθούν υπόψη τα σχετικά στοιχεία και η μεθοδολογία που περιλαμβάνονται στους πίνακες επεξηγηματικών στοιχείων που ενσωματώνονται δια παραπομπής στο Μέρος IV του συγκεκριμένου μέλους·

(β) Ως "βασικό γεωργικό προϊόν", όσον αφορά τις υποχρεώσεις για τις εσωτερικές ενισχύσεις, ορίζεται το προϊόν το οποίο βρίσκεται όσον το δυνατόν πλησιέστερα στο σημείο της πρώτης πώλησης, όπως καθορίζεται στον πίνακα ενός μέλους και στα σχετικά επεξηγηματικά στοιχεία·

(γ) Οι "δημοσιονομικές δαπάνες" ή "δαπάνες" περιλαμβάνουν τα διαφυγόντα δημοσιονομικά έσοδα·

(δ) Ως "Μέτρηση Ενισχύσεων Ισοδυνάμου Χαρακτήρα" νοείται το ετήσιο επίπεδο ενισχύσεων, εκφραζόμενο σε νόμισμα, που παρέχεται σε παραγωγούς βασικών γεωργικών προϊόντων μέσω της εφαρμογής ενός ή περισσότερων μέτρων, ο υπολογισμός των οποίων σύμφωνα με τη μεθοδολογία ΑΜΕ είναι πρακτικώς αδύνατος, εκτός των ενισχύσεων που παρέχονται στο πλαίσιο προγραμμάτων που πληρούν τις προϋποθέσεις εξαίρεσης από την επιβολή μειώσεων, βάσει του παραρτήματος 2 της παρούσας συμφωνίας και οι οποίες:

(i) όσον αφορά τις ενισχύσεις που παρέχονται κατά την περίοδο βάσης, καθορίζονται ειδικώς στους σχετικούς πίνακες επεξηγηματικών στοιχείων, που ενσωματώνονται δια παραπομπής στο μέρος IV του πίνακα ενός μέλους και

(ii) όσον αφορά τις ενισχύσεις που παρέχονται κατά τη διάρκεια οποιουδήποτε έτους της περιόδου εφαρμογής και εφεξής, υπολογίζονται σύμφωνα με τις διατάξεις του παραρτήματος 4 της παρούσας συμφωνίας, αφού ληφθούν υπόψη τα σχετικά στοιχεία και η μεθοδολογία που περιλαμβάνονται στους πίνακες επεξηγηματικών στοιχείων, οι οποίοι ενσωματώνονται δια παραπομπής στο μέρος IV του πίνακα του συγκεκριμένου μέλους·

(ε) Ο όρος "εξαγωγικές επιδοτήσεις" αναφέρεται σε επιδοτήσεις που εξαρτώνται από τις εξαγωγικές επιδόσεις, συμπεριλαμβανομένων των εξαγωγικών επιδοτήσεων που περιλαμβάνονται στο άρθρο 9 της παρούσας συμφωνίας.

(στ) Ως "περίοδος εφαρμογής" νοείται το χρονικό διάστημα έξι ετών που αρχίζει το 1995. Ωστόσο, για τους σκοπούς του άρθρου 13, έτσι ορίζεται το χρονικό διάστημα εννέα ετών που αρχίζει το 1995.

(ζ) Οι "παραχωρήσεις που αφορούν την πρόσβαση στην αγορά" περιλαμβάνουν το σύνολο των υποχρεώσεων για την πρόσβαση στην αγορά που αναλαμβάνονται κατ' εφαρμογή της παρούσας συμφωνίας.

(η) Ως "Συνολική Αθροιστική Μέτρηση Ενισχύσεων" ή "Συνολική ΑΜΕ" νοείται το άθροισμα όλων των εσωτερικών ενισχύσεων που παρέχονται προς όφελος των παραγωγών γεωργικών προϊόντων, το οποίο υπολογίζεται ως το άθροισμα των συνολικών μετρήσεων ενισχύσεων για τα βασικά γεωργικά προϊόντα, των συνολικών μετρήσεων που δεν αφορούν συγκεκριμένα προϊόντα και των συνολικών μετρήσεων ενισχύσεων για γεωργικά προϊόντα ισοδύναμου χαρακτήρα, το οποίο:

(i) όσον αφορά τις ενισχύσεις που παρέχονται κατά την περίοδο βάσης (π.χ. τη "Βασική Συνολική ΑΜΕ") και το ανώτατο όριο ενισχύσεων που είναι δυνατόν να παρέχεται κατά τη διάρκεια οποιουδήποτε έτους της περιόδου εφαρμογής ή μετέπειτα (π.χ. τα "Ετήσια και Τελικά Παγιοποιημένα Επίπεδα Υποχρεώσεων"), καθορίζεται ειδικά στο μέρος IV του πίνακα ενός μέλους, και

(ii) όσον αφορά το επίπεδο ενισχύσεων που παρέχονται στην πράξη κατά τη διάρκεια οποιουδήποτε έτους της περιόδου εφαρμογής και εφεξής (δηλαδή η "Τρέχουσα Συνολική ΑΜΕ"), υπολογίζεται σύμφωνα με τις διατάξεις της παρούσας συμφωνίας, συμπεριλαμβανομένου του άρθρου 6, και βάσει των στοιχείων και της μεθοδολογίας που χρησιμοποιούνται στους πίνακες επεξηγηματικών στοιχείων, που ενσωματώνονται δια παραπομπής στο μέρος IV του πίνακα ενός μέλους·

(i) Ως "έτος" στην ανωτέρω παράγραφο (στ) και σε σχέση με τις συγκεκριμένες υποχρεώσεις ενός μέλους νοείται το ημερολογιακό, οικονομικό έτος ή έτος εμπορίας, όπως ορίζονται στον πίνακα του εν λόγω μέλους.

Άρθρο 2

Προϊόντα που καλύπτονται από τη συμφωνία

Η παρούσα συμφωνία εφαρμόζεται στα προϊόντα που αναφέρονται στο παράρτημα 1 αυτής, τα οποία στο εξής καλούνται γεωργικά προϊόντα.

Μέρος ΙΙ

Άρθρο 3

Ενσωμάτωση Παραχωρήσεων και Υποχρεώσεων

1. Οι υποχρεώσεις όσον αφορά τις εσωτερικές ενισχύσεις και τις εξαγωγικές επιδοτήσεις που περιλαμβάνονται στο μέρος IV του πίνακα κάθε μέλους συνιστούν υποχρεώσεις περιορισμού των επιδοτήσεων και αποτελούν αναπόσπαστο μέρος της GATT του 1994.

2. Με την επιφύλαξη των διατάξεων του άρθρου 6, τα μέλη δεν παρέχουν στήριξη υπέρ των εθνικών παραγωγών ανώτερη από τα επίπεδα υποχρεώσεων που ορίζονται στο τμήμα I του μέρους IV του πίνακά του.

3. Με την επιφύλαξη των διατάξεων του άρθρου 9, παράγραφοι 2, στοιχείο β) και 4 τα μέλη δεν παρέχουν εξαγωγικές επιδοτήσεις που απαριθμούνται στο άρθρο 9, παράγραφος 1, σχετικά με τα γεωργικά προϊόντα ή ομάδες προϊόντων, που καθορίζονται στο τμήμα II του μέρους IV του πίνακά τους, ανώτερες από τα καθορισμένα επίπεδα υποχρεώσεων, όσον αφορά τις δημοσιονομικές δαπάνες και τις ποσότητες, και δεν παρέχουν τέτοιου είδους επιδοτήσεις για γεωργικά προϊόντα που δεν αναφέρονται στο σχετικό τμήμα του πίνακά τους.

Μέρος III

Άρθρο 4

Πρόσβαση στην αγορά

1. Οι παραχωρήσεις σχετικά με την πρόσβαση στην αγορά, που περιλαμβάνονται στους πίνακες, αφορούν παγιοποιήσεις και μειώσεις δασμών και άλλες υποχρεώσεις σχετικές με την πρόσβαση στην αγορά, που ορίζονται στους εν λόγω πίνακες.

2. Τα μέλη δεν εξακολουθούν να εφαρμόζουν μέτρα τα οποία θα έπρεπε να είχαν μετατραπεί σε συνήθεις δασμούς[1], ούτε προσφεύγουν ή επανέρχονται σε τέτοια μέτρα, εκτός αν προβλέπεται διαφορετικά στο άρθρο 5 και στο παράρτημα 5.

Άρθρο 5

Ειδικές διατάξεις διασφάλισης

1. Κατά παρέκκλιση των διατάξεων του άρθρου II, παράγραφος 1, στοιχείο β) της GATT του 1994, κάθε μέλος δύναται να επικαλεσθεί τις διατάξεις των κατωτέρω παραγράφων 4 και 5 όσον αφορά την εισαγωγή γεωργικού προϊόντος, σε σχέση με το οποίο τα μέτρα που αναφέρονται στο άρθρο 4, παράγραφος 2 της παρούσας συμφωνίας έχουν μετατραπεί σε συνήθη δασμό και το οποίο προσδιορίζεται στον πίνακά του με το σύμβολο "ΕΔΔ" δεδομένου ότι αποτελεί αντικείμενο παραχώρησης σχετικά με την οποία δύναται να γίνει επίκληση των διατάξεων του παρόντος άρθρου:

(α) εάν το ύψος των εισαγωγών του εν λόγω προϊόντος, το οποίο εισέρχεται στο τελωνειακό έδαφος του μέλους που παρέχει την παραχώρηση, κατά τη διάρκεια οποιουδήποτε έτους, υπερβαίνει ένα επίπεδο ενεργοποίησης που συνδέεται με την υπάρχουσα δυνατότητα πρόσβασης στην αγορά, όπως ορίζεται στην παράγραφο 4, ή, αλλά όχι συγχρόνως:

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1 Τα μέτρα αυτά περιλαμβάνουν ποσοτικούς περιορισμούς επί των εισαγωγών, κυμαινόμενες εισφορές κατά την εισαγωγή, ελάχιστες τιμές εισαγωγών, διακριτική έκδοση αδειών εισαγωγής, μη δασμολογικά μέτρα που διατηρούν δημόσιες εμπορικές επιχειρήσεις, εκούσιους περιορισμούς των εξαγωγών και παρεμφερή μέτρα που λαμβάνονται στα σύνορα, εκτός των συνήθων δασμών, ανεξάρτητα από το αν τα μέτρα αυτά διατηρούνται βάσει συγκεκριμένων για κάθε χώρα παρεκκλίσεων από τις διατάξεις της GATT του 1947. Δεν περιλαμβάνονται μέτρα, τα οποία εφαρμόζονται βάσει διατάξεων του ισοζυγίου πληρωμών ή βάσει άλλων γενικών διατάξεων της GATT του 1994 που δεν αφορούν συγκεκριμένα τη γεωργία ή βάσει διατάξεων των λοιπών πολυμερών εμπορικών συμφωνιών που παρατίθενται στο παράρτημα ΙΑ της συμφωνίας για τον ΠΟΕ.

(β) εάν η τιμή με την οποία οι εισαγωγές του υπό εξέταση προϊόντος δύνανται να εισέλθουν στο τελωνειακό έδαφος του μέλους που παρέχει την παραχώρηση, όπως καθορίζεται βάσει της τιμής εισαγωγής CIF του συγκεκριμένου φορτίου αποτιμημένης στο εγχώριο νόμισμα, είναι κατώτερη της τιμής ενεργοποίησης που ισούται με τη μέση τιμή αναφοράς[2] των ετών 1986 έως 1988 για το υπό εξέταση προϊόν.

2. Προκειμένου να καθορισθεί ο όγκος των εισαγωγών που απαιτείται για την εφαρμογή των διατάξεων της παραγράφου 1, στοιχείο α) και της παραγράφου 4, λαμβάνονται υπόψη οι εισαγωγές στο πλαίσιο των υποχρεώσεων της ισχύουσας και ελάχιστης πρόσβασης. Ωστόσο, οι εισαγωγές βάσει των εν λόγω υποχρεώσεων δεν θίγονται από πρόσθετους δασμούς που επιβάλλονται είτε βάσει της παραγράφου 1 στοιχείο α) και της παραγράφου 4 είτε βάσει της παραγράφου 1, στοιχείο β) και της παραγράφου 5 κατωτέρω.

3. Οι αποστολές του υπό εξέταση προϊόντος, οι οποίες ήταν καθ'οδόν βάσει σύμβασης που αποτέλεσε αντικείμενο ρύθμισης πριν από την επιβολή του πρόσθετου δασμού, σύμφωνα με την παράγραφο 1, σημείο α) και την παράγραφο 4, απαλλάσσονται από το σχετικό πρόσθετο δασμό, υπό την προϋπόθεση ότι είναι δυνατόν να προστεθούν στον όγκο των εισαγωγών του υπό εξέταση προϊόντος κατά τη διάρκεια του επομένου έτους με στόχο την ενεργοποίηση των διατάξεων της παραγράφου 1, στοιχείο α) κατά το εν λόγω έτος.

4. Κάθε πρόσθετος δασμός που επιβάλλεται βάσει της παραγράφου 1, στοιχείο α) διατηρείται μόνο έως το τέλος του έτους για το οποίο έχει επιβληθεί, και είναι δυνατόν να καθορίζεται μόνο σε επίπεδο που δεν υπερβαίνει το ένα τρίτο του ύψους του συνήθους δασμού που ισχύει κατά το έτος που λαμβάνεται το μέτρο. Το επίπεδο ενεργοποίησης καθορίζεται σύμφωνα με το ακόλουθο διάγραμμα, το οποίο βασίζεται στις δυνατότητες πρόσβασης στην αγορά, εκφραζόμενες ως το ποσοστό των εισαγωγών που αντιστοιχεί στην εγχώρια κατανάλωση[3] κατά τη διάρκεια των τριών προηγουμένων ετών για τα οποία υπάρχουν διαθέσιμα στοιχεία:

(α) στις περιπτώσεις που οι δυνατότητες πρόσβασης στην αγορά για ένα προϊόν είναι κατώτερες ή ίσες με 10%, το βασικό επίπεδο ενεργοποίησης ισούται με 125%,

(β) στις περιπτώσεις που οι δυνατότητες πρόσβασης στην αγορά για ένα προϊόν είναι ανώτερες από 10%, αλλά κατώτερες ή ίσες με 30%, το βασικό επίπεδο ενεργοποίησης ισούται με 110%,

(γ) στις περιπτώσεις που οι δυνατότητες πρόσβασης στην αγορά για ένα προϊόν υπερβαίνουν το 30%, το βασικό επίπεδο ενεργοποίησης ισούται με 105%.

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2 Η τιμή αναφοράς που χρησιμοποιείται για την εφαρμογή των διατάξεων του παρόντος εδαφίου είναι, κατά γενικό κανόνα, η μέση κατά μονάδα αξία CIF του υπό εξέταση προϊόντος ή αλλοιώς μία κατάλληλη τιμή από την άποψη της ποιότητας του προϊόντος και του σταδίου επεξεργασίας. Σε συνέχεια της αρχικής της χρήσης, καθορίζεται και γνωστοποιείται δημοσίως στο μέτρο που απαιτείται προκειμένου τα λοιπά μέρη να είναι σε θέση να εκτιμήσουν τον πρόσθετο δασμό που δύναται να επιβληθεί.

(3) Στις περιπτώσεις που δεν λαμβάνεται υπόψη η εγχώρια κατανάλωση, εφαρμόζεται το βασικό επίπεδο ενεργοποίησης βάσει της παραγράφου 4, στοιχείο α).

Σε όλες τις περιπτώσεις, ο πρόσθετος δασμός είναι δυνατόν να επιβληθεί σε οποιοδήποτε έτος, κατά τη διάρκεια του οποίου το απόλυτο μέγεθος των εισαγωγών του υπό εξέταση προϊόντος, που εισέρχεται στο τελωνειακό έδαφος του μέλους που χορηγεί τη παραχώρηση υπερβαίνει το άθροισμα του ανωτέρω βασικού επιπέδου ενεργοποίησης πολλαπλασιαζόμενου με τη μέση ποσότητα εισαγωγών κατά τη διάρκεια των τριών προηγουμένων ετών για τα οποία υπάρχουν διαθέσιμα στοιχεία (x) και του απόλυτου μεγέθους της μεταβολής στην εγχώρια κατανάλωση του υπό εξέταση προϊόντος κατά το πλέον πρόσφατο έτος για το οποίο υπάρχουν διαθέσιμα στοιχεία σε σύγκριση με το προηγούμενο έτος (y), υπό την προϋπόθεση ότι το επίπεδο ενεργοποίησης δεν είναι κατώτερο του 105% της μέσης ποσότητας εισαγωγών, όπως εκτιμάται στο στοιχείο (x) ανωτέρω.

5. Ο πρόσθετος δασμός που επιβάλλεται βάσει της παραγράφου 1, στοιχείο β) καθορίζεται ως ακολούθως:

(α) εάν η διαφορά μεταξύ της τιμής εισαγωγής CIF της αποστολής αποτιμούμενης σε εγχώριο νόμισμα (η οποία στο εξής καλείται "τιμή εισαγωγής") και της τιμής ενεργοποίησης, όπως καθορίζεται στο ανωτέρω εδάφιο είναι μικρότερη ή ίση με το 10% της τιμής ενεργοποίησης, δεν επιβάλλεται πρόσθετος δασμός.

(β) εάν η διαφορά μεταξύ της τιμής εισαγωγής και της τιμής ενεργοποίησης (που στο εξής καλείται "διαφορά") είναι ανώτερη του 10% αλλά κατώτερη ή ίση με το 40% της τιμής ενεργοποίησης, ο πρόσθετος δασμός ισούται με το 30% του ποσού κατά το οποίο η διαφορά υπερβαίνει το 10%.

(γ) εάν η διαφορά είναι μεγαλύτερη από 40% αλλά κατώτερη ή ίση με το 60% της τιμής ενεργοποίησης, ο πρόσθετος δασμός ισούται με το 50% του ποσού κατά το οποίο η διαφορά υπερβαίνει το 40%, συν τον πρόσθετο δασμό που επιβάλλεται βάσει του στοιχείου β).

(δ) εάν η διαφορά είναι μεγαλύτερη από 60% αλλά μικρότερη ή ίση με 75%, ο πρόσθετος δασμός ισούται με το 70% του ποσού κατά το οποίο η διαφορά υπερβαίνει το 60% της τιμής ενεργοποίησης συν τους πρόσθετους δασμούς που επιβάλλονται βάσει των στοιχείων β) και γ).

(ε) εάν η διαφορά είναι μεγαλύτερη από το 75% της τιμής ενεργοποίησης, ο πρόσθετος δασμός ισούται με το 90% του ποσού κατά το οποίο η διαφορά υπερβαίνει το 75% της τιμής συν τους πρόσθετους δασμούς που επιβάλλονται βάσει των στοιχείων β), γ), και δ).

6. Όσον αφορά τα ευπαθή και εποχιακά προϊόντα, εφαρμόζονται οι όροι που καθορίζονται ανωτέρω κατά τρόπο ώστε να λαμβάνονται υπόψη τα ιδιαίτερα χαρακτηριστικά των σχετικών προϊόντων. Ειδικότερα, είναι δυνατό να χρησιμοποιούνται μικρότερα χρονικά διαστήματα βάσει της παραγράφου 1, στοιχείο α) και της παραγράφου 4, όσον αφορά τα αντίστοιχα χρονικά διαστήματα κατά την περίοδο βάσης. Επίσης, βάσει της παραγράφου 1, στοιχείο β), είναι δυνατό να χρησιμοποιούνται διαφορετικές τιμές αναφοράς για διαφορετικά χρονικά διαστήματα.

7. Η λειτουργία της ειδικής ρήτρας διασφάλισης πραγματοποιείται κατά διαφανή τρόπο. Κάθε μέλος που λαμβάνει μέτρα βάσει της παραγράφου 1, στοιχείο α), ανωτέρω, ενημερώνει γραπτώς, υποβάλλοντας όλα τα σχετικά στοιχεία, την Επιτροπή Γεωργίας, όσο το δυνατό νωρίτερα και, εν πάση περιπτώσει, εντός 10 ημερών από την ημερομηνία εφαρμογής των εν λόγω μέτρων. Σε περιπτώσεις που οι μεταβολές στα μεγέθη κατανάλωσης πρέπει να κατανεμηθούν μεταξύ διαφορετικών δασμολογικών κλάσεων που αποτελούν αντικείμενο των δράσεων που περιγράφονται στην παράγραφο 4, στα σχετικά στοιχεία περιλαμβάνονται οι πληροφορίες και οι μέθοδοι που χρησιμοποιούνται για την κατανομή αυτών των μεταβολών. Οποιοδήποτε μέλος που λαμβάνει μέρος βάσει της παραγράφου 4 παρέχει στα ενδιαφερόμενα μέλη την ευκαιρία να έρθουν σε συνεννόηση μαζί του σχετικά με τους όρους εφαρμογής των εν λόγω μέτρων. Κάθε μέλος που λαμβάνει μέτρα στο πλαίσιο της ανωτέρω παραγράφου 1, στοιχείο β), ενημερώνει γραπτώς, υποβάλλοντας όλα τα σχετικά στοιχεία, την Επιτροπή Γεωργίας εντός 10 ημερών από την εφαρμογή του πρώτου σχετικού μέτρου ή, όσον αφορά τα ευπαθή και εποχιακά προϊόντα, του πρώτου μέτρου σε οποιοδήποτε χρονικό διάστημα. Τα μέλη αναλαμβάνουν, στο μέτρο του δυνατού, την υποχρέωση να μην επικαλούνται τις διατάξεις της παραγράφου 1, στοιχείο β) σε περίπτωση που μειώνεται ο όγκος των εισαγωγών των εν λόγω προϊόντων. Και στις δύο περιπτώσεις, ένα μέλος που λαμβάνει τέτοιου είδους μέτρα παρέχει στα ενδιαφερόμενα μέλη την ευκαιρία να έρθουν σε συνεννόηση μαζί του σχετικά με τους όρους εφαρμογής των εν λόγω μέτρων.

8. Σε περίπτωση που τα μέτρα λαμβάνονται σύμφωνα με τις ανωτέρω παραγράφους 1 έως 7, τα μέλη αναλαμβάνουν την υποχρέωση να μην προσφεύγουν, όσον αφορά τα εν λόγω μέτρα, στις διατάξεις του άρθρου XIX παράγραφοι 1, στοιχείο α) και 3 της GATT του 1994 ή του άρθρου 8 παράγραφος 2 της συμφωνίας για τα μέτρα διασφάλισης.

9. Οι διατάξεις του παρόντος άρθρου παραμένουν σε ισχύ κατά τη διάρκεια της διαδικασίας μεταρρυθμίσεων, όπως ορίζεται στο άρθρο 20.

Μέρος IV

Άρθρο 6

Υποχρεώσεις σχετικές με τις εσωτερικές ενισχύσεις

1. Οι υποχρεώσεις όσον αφορά τη μείωση των εσωτερικών ενισχύσεων κάθε μέλους που περιλαμβάνονται στο μέρος IV του πίνακα εφαρμόζονται στο σύνολο των μέτρων εσωτερικών ενισχύσεων υπέρ των παραγωγών γεωργικών προϊόντων, με εξαίρεση τα εγχώρια μέτρα που δεν υπόκεινται σε μείωση βάσει των κριτηρίων που καθορίζονται στο παρόν άρθρο καθώς και στο παράρτημα 2 της παρούσας συμφωνίας. Οι αναλήψεις υποχρεώσεων εκφράζονται βάσει της Συνολικής Αθροιστικής Μέτρησης Ενισχύσεων και των "Ετησίων και Τελικών Επιπέδων Παγιοποιημένων Υποχρεώσεων".

2. Σύμφωνα με τις αποφάσεις που ελήφθησαν κατά την ενδιάμεση επανεξέταση, ήτοι ότι τα κρατικά μέτρα ενισχύσεων, άμεσα ή έμμεσα, για την ενθάρρυνση της γεωργικής και αγροτικής ανάπτυξης αποτελούν αναπόσπαστο μέρος των αναπτυξιακών προγραμμάτων των αναπτυσσομένων χωρών, οι επιδοτήσεις επενδύσεων που διατίθενται εν γένει, για τον τομέα της γεωργίας στις αναπτυσσόμενες χώρες μέλη και οι επιδοτήσεις γεωργικών εισροών που διατίθενται, γενικά, σε παραγωγούς με χαμηλό εισόδημα ή με περιορισμένους πόρους σε αναπτυσσόμενες χώρες μέλη απαλλάσσονται από τις υποχρεώσεις μείωσης των εσωτερικών ενισχύσεων που θα εφαρμόζονταν διαφορετικά για τα εν λόγω μέτρα. Το ίδιο ισχύει για τις εσωτερικές ενισχύσεις που παρέχονται στους παραγωγούς

αναπτυσσομένων χωρών μελών προκειμένου να ενθαρρυνθεί η αντικατάσταση της παράνομης καλλιέργειας φυτών με ναρκωτική δράση από άλλη καλλιέργεια. Οι εσωτερικές ενισχύσεις που πληρούν τα κριτήρια της παρούσας παραγράφου δεν απαιτείται να συμπεριληφθούν στον υπολογισμό της τρέχουσας συνολικής αθροιστικής μέτρησης ενισχύσεων ενός μέλους.

3. Κάποιο μέλος θεωρείται ότι τηρεί τις υποχρεώσεις του όσον αφορά τη μείωση των εσωτερικών ενισχύσεων κατά τη διάρκεια οποιουδήποτε έτους στο οποίο οι εσωτερικές ενισχύσεις που χορηγεί σε παραγωγούς γεωργικών προϊόντων, αποτιμημένες σε τρέχουσα συνολική **ΑΜΣ**, δεν υπερβαίνουν το αντίστοιχο ετήσιο ή τελικό επίπεδο παγιοποιημένων υποχρεώσεων, που καθορίζεται στο μέρος IV του πίνακα του εν λόγω μέλους.

4. (α) Ένα μέλος δεν υποχρεούται να συμπεριλάβει στον υπολογισμό της τρέχουσας συνολικής **ΑΜΣ** ούτε να μειώσει :

(i) τις εσωτερικές ενισχύσεις κατά προϊόν που θα απαιτείτο διαφορετικά να συμπεριληφθούν στον υπολογισμό της τρέχουσας αθροιστικής μέτρησης ενισχύσεων ενός μέλους, όταν οι εν λόγω ενισχύσεις δεν υπερβαίνουν το 5% της συνολικής αξίας παραγωγής ενός βασικού γεωργικού προϊόντος του εν λόγω μέλους, κατά τη διάρκεια του σχετικού έτους, και

(ii) τις εσωτερικές ενισχύσεις που δεν αφορούν ένα συγκεκριμένο προϊόν και που θα απαιτείτο διαφορετικά να συμπεριληφθούν στον υπολογισμό της τρέχουσας **ΑΜΣ** ενός μέλους, όταν οι σχετικές ενισχύσεις δεν υπερβαίνουν το 5% της αξίας της συνολικής γεωργικής παραγωγής του εν λόγω μέλους.

(β) Για αναπτυσσόμενες χώρες μέλη, το ελάχιστο ποσοστό βάσει της παρούσας παραγράφου ανέρχεται σε 10%.

5. (α) Οι άμεσες πληρωμές, στο πλαίσιο προγραμμάτων περιορισμού της παραγωγής, δεν υπόκεινται στην υποχρέωση μείωσης των εσωτερικών ενισχύσεων εάν:

(i) οι σχετικές πληρωμές βασίζονται σε καθορισμένες εκτάσεις και αποδόσεις, ή

(ii) οι σχετικές πληρωμές πραγματοποιούνται σε ποσοστό 85% το πολύ του βασικού επιπέδου παραγωγής, ή

(iii) οι πληρωμές που αφορούν το ζωϊκό κεφάλαιο πραγματοποιούνται βάσει καθορισμένου αριθμού κεφαλών.

(β) Η απαλλαγή από την υποχρέωση μείωσης για άμεσες πληρωμές που πληρούν τα ανωτέρω κριτήρια εκφράζεται με την εξαίρεση της αξίας των άμεσων αυτών πληρωμών από τον υπολογισμό της τρέχουσας συνολικής **ΑΜΣ** ενός μέλους.

Άρθρο 7

Γενικές ρυθμίσεις σχετικές με τις εσωτερικές ενισχύσεις

1. Κάθε μέλος εξασφαλίζει ότι τα μέτρα εσωτερικών ενισχύσεων υπέρ των παραγωγών γεωργικών προϊόντων που δεν υπόκεινται σε υποχρεώσεις μείωσης, δεδομένου ότι πληρούν τα κριτήρια που περιλαμβάνονται στο

παράρτημα 2 της παρούσας συμφωνίας, εξακολουθούν να ισχύουν σύμφωνα με το εν λόγω παράρτημα.

2. (α) Τα μέτρα εσωτερικών ενισχύσεων υπέρ των παραγωγών γεωργικών προϊόντων συμπεριλαμβανομένων των τροποποιήσεων των σχετικών μέτρων, και τα μέτρα που εισάγονται σε μεταγενέστερο στάδιο και για τα οποία δεν μπορεί να αποδειχθεί ότι πληρούν τα κριτήρια του παραρτήματος 2 της παρούσας συμφωνίας ή ότι δύνανται να εξαιρεθούν από την υποχρέωση μείωσης βάσει των λοιπών διατάξεων της παρούσας συμφωνίας, συμπεριλαμβάνονται στον υπολογισμό της τρέχουσας συνολικής ΑΜΣ του συγκεκριμένου μέλους.

(β) Σε περιπτώσεις που δεν υφίσταται υποχρέωση σχετική με τη συνολική ΑΜΣ στο μέρος IV του πίνακα ενός μέλους, το συγκεκριμένο μέλος δεν παρέχει ενισχύσεις σε παραγωγούς γεωργικών προϊόντων πέραν του σχετικού ελάχιστου επιπέδου που καθορίζεται στο άρθρο 6, παράγραφος 4.

Μέρος V

Άρθρο 8

Υποχρεώσεις σχετικές με τον ανταγωνισμό κατά τις εξαγωγές

Κάθε μέλος αναλαμβάνει την υποχρέωση να παρέχει εξαγωγικές επιδοτήσεις μόνο βάσει της παρούσας συμφωνίας και των αναλήψεων υποχρεώσεων, όπως καθορίζονται στον πίνακά του.

Άρθρο 9

Υποχρεώσεις Εξαγωγικών Επιδοτήσεων

1. Οι ακόλουθες εξαγωγικές επιδοτήσεις αποτελούν αντικείμενο αναλήψεων υποχρεώσεων για μείωση βάσει της παρούσας συμφωνίας:

(α) η χορήγηση από τις δημόσιες αρχές ή τις υπηρεσίες τους άμεσων επιδοτήσεων, συμπεριλαμβανομένων πληρωμών σε είδος, προς επιχείρηση, κλάδο παραγωγής, παραγωγούς ενός γεωργικού προϊόντος, συνεταιρισμό ή άλλη ένωση παραγωγών ή σε φορέα εμπορίας, ανάλογα με τις εξαγωγικές επιδόσεις·

(β) η πώληση ή διάθεση για εξαγωγή από δημόσιες αρχές ή τις υπηρεσίες τους, αποθεμάτων γεωργικών προϊόντων για μη εμπορικούς σκοπούς, σε τιμή χαμηλότερη από την αντίστοιχη τιμή που επιβάλλεται για ομοειδή προϊόντα σε αγοραστές, στην εσωτερική αγορά·

(γ) πληρωμές κατά την εξαγωγή γεωργικού προϊόντος που χρηματοδοτούνται στο πλαίσιο κυβερνητικών δράσεων, οι οποίες είτε αποτελούν δημοσιονομική επιβάρυνση είτε όχι, συμπεριλαμβανομένων των πληρωμών που χρηματοδοτούνται από το προϊόν των εισφορών που επιβάλλονται στο συγκεκριμένο γεωργικό προϊόν ή σε γεωργικό προϊόν από το οποίο προέρχεται το εξαγόμενο προϊόν·

(δ) η παροχή επιδοτήσεων που αποσκοπούν στη μείωση του κόστους εμπορίας εξαγωγών γεωργικών προϊόντων (εκτός των υπηρεσιών προώθησης των εξαγωγών και παροχής συμβουλών που διατίθενται ευρέως), συμπεριλαμβανομένων των δαπανών διαχείρισης,

βελτίωσης της ποιότητας και λοιπών δαπανών μεταποίησης καθώς και των δαπανών διεθνών μεταφορών και ναύλων·

(ε) η κάλυψη εξόδων εσωτερικής μεταφοράς και ναύλων φορτίων που προορίζονται για εξαγωγή, εκ μέρους ή με εντολή του Δημοσίου υπό ευνοϊκότερους όρους από αυτούς που ισχύουν για τα φορτία που προορίζονται για την εσωτερική αγορά·

(στ) επιδοτήσεις για γεωργικά προϊόντα που εξαρτώνται από την ενσωμάτωση των εν λόγω προϊόντων σε εξαγόμενα προϊόντα·

2. (α) Με εξαίρεση τις διατάξεις του στοιχείου (β) ανωτέρω, τα επίπεδα αναλήψεων υποχρεώσεων που αφορούν τις εξαγωγικές επιδοτήσεις, για κάθε έτος της περιόδου εφαρμογής, όπως καθορίζονται στον πίνακα μέλους, αντιπροσωπεύουν όσον αφορά τις εξαγωγικές επιδοτήσεις που απαριθμούνται στην παράγραφο 1 του παρόντος άρθρου:

(i) στην περίπτωση αναλήψεων υποχρεώσεων για μείωση των δημοσιονομικών δαπανών, το ανώτατο επίπεδο δαπανών για τις σχετικές επιδοτήσεις που είναι δυνατόν να προβλεφθούν ή να πραγματοποιηθούν κατά το συγκεκριμένο έτος, σε σχέση με το υπό εξέταση γεωργικό προϊόν ή ομάδα προϊόντων· και

(ii) στην περίπτωση αναλήψεων υποχρεώσεων για μείωση της ποσότητας των εξαγωγών, την ανώτατη ποσότητα ενός γεωργικού προϊόντος ή ομάδας προϊόντων σε σχέση με την οποία είναι δυνατόν να χορηγηθούν οι εν λόγω εξαγωγικές επιδοτήσεις κατά τη διάρκεια του συγκεκριμένου έτους.

(β) Κατά τη διάρκεια οποιουδήποτε έτους της περιόδου εφαρμογής, από το δεύτερο έως το πέμπτο, ένα μέλος δύναται να χορηγεί, εντός δεδομένου έτους, εξαγωγικές επιδοτήσεις ανώτερες από τα αντίστοιχα ετήσια επίπεδα αναλήψεων υποχρεώσεων, όσον αφορά τα προϊόντα ή τις ομάδες προϊόντων που καθορίζονται στο μέρος IV του πίνακα του εν λόγω μέλους, υπό την προϋπόθεση ότι:

(i) τα συγκεντρωτικά ποσά των δημοσιονομικών δαπανών για τις εν λόγω επιδοτήσεις, από την αρχή της περιόδου υλοποίησης έως το υπό εξέταση έτος, δεν υπερβαίνουν τα συγκεντρωτικά ποσά που θα ήταν δυνατόν να προκύψουν από την απόλυτη τήρηση των σχετικών ετησίων επιπέδων αναλήψεων υποχρεώσεων για τις δαπάνες που καθορίζονται στον πίνακα του μέλους σε ποσοστό ανώτερο του 3% των σχετικών δημοσιονομικών δαπανών, κατά την περίοδο βάσης·

(ii) οι συνολικές ποσότητες που υπάγονται στο ευνοϊκό καθεστώς των σχετικών εξαγωγικών επιδοτήσεων, από την αρχή της περιόδου εφαρμογής έως το υπό εξέταση έτος, δεν υπερβαίνουν τις συνολικές ποσότητες που θα ήταν δυνατόν να προκύψουν από την πλήρη τήρηση των σχετικών ετησίων επιπέδων αναλήψεων υποχρεώσεων για τις ποσότητες που καθορίζονται στον πίνακα του μέλους σε ποσοστό ανώτερο του 1,75% των ποσοτήτων κατά την περίοδο βάσης·

(iii) τα συνολικά αθροιστικά ποσά των δημοσιονομικών δαπανών για τις σχετικές εξαγωγικές επιδοτήσεις και οι ποσότητες που απολαύουν των εν λόγω επιδοτήσεων κατά τη διάρκεια της συνολικής περιόδου εφαρμογής δεν υπερβαίνουν τα συνολικά ποσά που θα προέκυπταν αν υπήρχε πλήρης συμμόρφωση με τα σχετικά επίπεδα των ετησίων αναλήψεων υποχρεώσεων που καθορίζονται στον πίνακα του συγκεκριμένου μέλους, και

(iv) οι δημοσιονομικές δαπάνες του συγκεκριμένου μέλους για εξαγωγικές επιδοτήσεις και οι ποσότητες που απολαύουν των σχετικών επιδοτήσεων κατά τη λήξη της περιόδου εφαρμογής, δεν υπερβαίνουν αντίστοιχα το 64% και το 79% των επιπέδων της περιόδου βάσης, από το 1986 έως το 1990. Όσον αφορά τις αναπτυσσόμενες χώρες μέλη, τα ποσοστά αυτά ανέρχονται σε 76 και 86%, αντίστοιχα.

3. Οι αναλήψεις υποχρεώσεων σχετικά με τους περιορισμούς όσον αφορά τη διεύρυνση του πεδίου εφαρμογής των εξαγωγικών επιδοτήσεων είναι αυτές που ορίζονται στους πίνακες.

4. Κατά τη διάρκεια της περιόδου εφαρμογής, οι αναπτυσσόμενες χώρες μέλη δεν υποχρεούνται να αναλαμβάνουν υποχρεώσεις σχετικές με τις εξαγωγικές επιδοτήσεις που απαριθμούνται στην παράγραφο 1, στοιχεία (δ) και (ε), υπό την προϋπόθεση ότι οι εν λόγω επιδοτήσεις δεν εφαρμόζονται έτσι ώστε να καταστρατηγούνται οι αναλήψεις υποχρεώσεων για μείωση.

Άρθρο 10

Πρόληψη της καταστρατήγησης των αναλήψεων υποχρεώσεων όσον αφορά τις εξαγωγικές επιδοτήσεις

1. Οι εξαγωγικές επιδοτήσεις που δεν αναφέρονται στο άρθρο 9, παράγραφος 1 δεν εφαρμόζονται κατά τρόπο ώστε να προκαλούν ή να υπάρχει κίνδυνος να προκαλέσουν την καταστρατήγηση των αναλήψεων υποχρεώσεων, όσον αφορά τις εξαγωγικές επιδοτήσεις. Επίσης, δεν χρησιμοποιούνται συναλλαγές μη εμπορικού χαρακτήρα για την καταστρατήγηση των εν λόγω αναλήψεων υποχρεώσεων.

2. Τα μέλη αναλαμβάνουν την υποχρέωση να καταβάλλουν προσπάθειες για τη θέσπιση ρυθμίσεων σε διεθνές επίπεδο, οι οποίες θα διέπουν την παροχή εξαγωγικών πιστώσεων, εγγυήσεων εξαγωγικών πιστώσεων ή τα προγράμματα ασφάλισης και, εφόσον επιτευχθεί συμφωνία σχετική με τις εν λόγω ρυθμίσεις, να παρέχουν εξαγωγικές πιστώσεις, εγγυήσεις εξαγωγικών πιστώσεων ή προγράμματα ασφάλισης, μόνο σύμφωνα με αυτές.

3. Κάθε μέλος που ισχυρίζεται ότι δεν έχει επιδοτηθεί οποιαδήποτε ποσότητα εξαγωγών καθ'υπέρβαση του επιπέδου αναλήψεων υποχρεώσεων για μείωση, οφείλει να αποδείξει ότι δεν έχει χορηγηθεί εξαγωγική επιδότηση σχετικά με την εν λόγω ποσότητα εξαγωγών, ανεξάρτητα από το αν αυτή αναφέρεται ή όχι στο άρθρο 9.

4. Τα μέλη, τα οποία είναι χορηγοί διεθνούς επισιτιστικής βοήθειας εξασφαλίζουν:

(α) ότι η παροχή διεθνούς επισιτιστικής βοήθειας δεν συνδέεται άμεσα ή έμμεσα με εμπορικές εξαγωγές γεωργικών προϊόντων σε δικαιούχες χώρες·

(β) ότι οι συναλλαγές που αφορούν τη διεθνή επισιτιστική βοήθεια, συμπεριλαμβανομένης της διμερούς επισιτιστικής βοήθειας εκφραζόμενης σε χρηματικά ποσά, πραγματοποιούνται σύμφωνα με τις "Αρχές του ΦΑΟ επί θεμάτων διάθεσης των πλεονασμάτων και των συμβουλευτικών υποχρεώσεων", συμπεριλαμβανομένου, κατά περίπτωση του συστήματος των συνήθων απαιτήσεων εμπορίας (ΣΑΕ), και

(γ) ότι η σχετική βοήθεια παρέχεται, στο μέτρο του δυνατού, υπό μορφή μη επιστρεπτέας χορήγησης ή υπό όρους όχι λιγότερο ευνοϊκούς από αυτούς που προβλέπονται στο άρθρο IV της Σύμβασης Επισιτιστικής Βοήθειας του 1986.

Άρθρο 11

Ενσωματωμένα Προϊόντα

Σε καμία περίπτωση η κατά μονάδα επιδότηση, που χορηγείται σε ενσωματωμένο γεωργικό πρωτογενές προϊόν, δεν δύναται να υπερβαίνει την κατά μονάδα εξαγωγική επιδότηση που θα ήταν δυνατόν να χορηγηθεί για τις εξαγωγές του πρωτογενούς προϊόντος.

Μέρος VI

Άρθρο 12

Ρυθμίσεις για τις απαγορεύσεις και τους περιορισμούς των εξαγωγών

1. Σε περίπτωση που ένα μέλος επιβάλλει νέα απαγόρευση ή περιορισμό επί των εξαγωγών όσον αφορά τα είδη διατροφής, σύμφωνα με το άρθρο XI, παράγραφος 2, στοιχείο α) της GATT του 1994, το μέλος αυτό τηρεί τις ακόλουθες διατάξεις:

(α) το μέλος που επιβάλλει την απαγόρευση ή τον περιορισμό επί των εξαγωγών λαμβάνει δεόντως υπόψη τις επιπτώσεις της σχετικής απαγόρευσης ή περιορισμού στην επισιτιστική ασφάλεια των μελών εισαγωγέων·

(β) προτού οποιοδήποτε μέλος επιβάλει απαγόρευση ή περιορισμό στις εξαγωγές, υποβάλλει το συντομότερο δυνατό γραπτή ανακοίνωση στην Επιτροπή Γεωργίας, στην οποία περιλαμβάνονται πληροφορίες σχετικές με τη φύση και τη διάρκεια του εν λόγω μέτρου και, όταν του ζητηθεί, διενεργεί διαβουλεύσεις με κάθε άλλο μέλος το οποίο, ως εισαγωγέας, έχει ουσιαστικό ενδιαφέρον για θέματα που αφορούν το συγκεκριμένο μέτρο. Το μέλος το οποίο επιβάλλει τη σχετική απαγόρευση ή περιορισμό στις εξαγωγές παρέχει, κατόπιν αιτήσεως, στο εν λόγω μέλος όλες τις αναγκαίες πληροφορίες.

2. Οι διατάξεις του παρόντος άρθρου δεν εφαρμόζονται σε αναπτυσσόμενες χώρες μέλη, εκτός αν το μέτρο λαμβάνεται από αναπτυσσόμενη χώρα μέλος η οποία εισάγει αποκλειστικά το συγκεκριμένο προϊόν διατροφής.

Μέρος VII

Άρθρο 13

Δέουσα μετριοπάθεια

Κατά τη διάρκεια της περιόδου εφαρμογής, κατά παρέκκλιση των διατάξεων της GATT του 1994 και της Συμφωνίας για τις Επιδοτήσεις και

τα Αντισταθμιστικά Μέτρα (που καλείται στο παρόν άρθρο "συμφωνία για τις επιδοτήσεις"):

(α) τα μέτρα εσωτερικών ενισχύσεων που βρίσκονται σε πλήρη συμφωνία με τις διατάξεις του παραρτήματος 2 της παρούσας συμφωνίας :

(i) συνιστούν επιδοτήσεις για τις οποίες δεν είναι δυνατόν να ζητηθεί έννομη προστασία με στόχο την εφαρμογή των αντισταθμιστικών δασμών[4],

(ii) εξαιρούνται από δράσεις που βασίζονται στο άρθρο XVI της GATT του 1994 και στο μέρος III της συμφωνίας για τις επιδοτήσεις, και

(iii) εξαιρούνται από δράσεις που βασίζονται στην ολική ή μερική αναίρεση, χωρίς παραβίαση, των οφελών που αφορούν δασμολογικές παραχωρήσεις που ισχύουν για άλλο μέλος, βάσει του άρθρου II της GATT του 1994, κατά την έννοια του άρθρου XXIII παράγραφος 1, στοιχείο β) της GATT του 1994·

(β) τα μέτρα εσωτερικών ενισχύσεων, που βρίσκονται σε πλήρη συμφωνία με τις διατάξεις του άρθρου 6 της παρούσας συμφωνίας, συμπεριλαμβανομένων των άμεσων πληρωμών που πληρούν τους όρους της παραγράφου 5 του παρόντος άρθρου, όπως εμφανίζονται στον πίνακα κάθε μέλους, καθώς και οι εσωτερικές ενισχύσεις εντός των ελαχίστων ορίων και σύμφωνα με το άρθρο 6, παράγραφος 2:

(i) εξαιρούνται από την επιβολή αντισταθμιστικών δασμών εκτός εάν διαπιστωθεί σοβαρή ζημία ή κίνδυνος πρόκλησης σοβαρής ζημίας, σύμφωνα με το άρθρο VI της GATT του 1994 και το μέρος V της συμφωνίας για τις επιδοτήσεις. Οσον αφορά, την έναρξη έρευνας για τους αντισταθμιστικούς δασμούς θα πρέπει να επιδεικνύεται μετριοπάθεια,

(ii) εξαιρούνται από δράσεις που βασίζονται στο άρθρο XVI, παράγραφος 1 της GATT του 1994 ή στα άρθρα 5 και 6 της συμφωνίας για τις επιδοτήσεις, υπό την προϋπόθεση ότι στο πλαίσιο των εν λόγω μέτρων δεν χορηγούνται ενισχύσεις σε συγκεκριμένο εμπόρευμα ανώτερες από το επίπεδο που αποφασίσθηκε κατά τη διάρκεια του έτους εμπορίας 1992,

(iii) εξαιρούνται από δράσεις που βασίζονται στην ολική ή μερική αναίρεση, χωρίς παραβίαση, των οφελών που αφορούν δασμολογικές παραχωρήσεις υπέρ άλλου μέλους βάσει του άρθρου II της GATT του 1994, κατά την έννοια του άρθρου XXIII, παράγραφος 1, στοιχείο β) της GATT του 1994, υπό την προϋπόθεση ότι στο πλαίσιο των εν λόγω μέτρων δεν χορηγούνται ενισχύσεις σε συγκεκριμένο εμπόρευμα ανώτερες από το επίπεδο που αποφασίσθηκε κατά τη διάρκεια του έτους εμπορίας 1992.

4 Ως "Αντισταθμιστικοί δασμοί" όπου αναφέρονται στο παρόν άρθρο, νοούνται οι δασμοί που περιλαμβάνονται στο άρθρο VI της GATT 1994 και στο μέρος V της Συμφωνίας για τις Επιδοτήσεις και τα Αντισταθμιστικά Μέτρα.

(γ) οι εξαγωγικές επιδοτήσεις που βρίσκονται σε πλήρη συμφωνία με τις διατάξεις του μέρους V της παρούσας συμφωνίας, που περιλαμβάνεται στον πίνακα κάθε μέλους :

(i) υπόκεινται στην επιβολή αντισταθμιστικών δασμών μόνον κατά τη διαπίστωση σοβαρής ζημίας ή κινδύνου πρόκλησης σοβαρής ζημίας, βάσει του μεγέθους, των επιπτώσεων στις τιμές ή της συνεπαγόμενης επίδρασης σύμφωνα με το άρθρο VI της GATT του 1994 και του μέρους V της συμφωνίας για τις επιδοτήσεις, ενώ για την έναρξη έρευνας σχετικής με τους αντισταθμιστικούς δασμούς θα πρέπει να επιδεικνύεται μετριοπάθεια, και

(ii) εξαιρούνται από δράσεις που βασίζονται στο άρθρο XVI της GATT του 1994 ή στα άρθρα 3, 5 και 6 της συμφωνίας για τις επιδοτήσεις.

Μέρος VIII

Άρθρο 14

Υγειονομικά και φυτουγειονομικά μέτρα

Τα μέλη συμφωνούν να θέσουν σε ισχύ τη συμφωνία για την εφαρμογή υγειονομικών και φυτοϋγειονομικών μέτρων.

Μέρος IX

Άρθρο 15

Ειδική και διακριτική μεταχείριση

1. Λαμβάνοντας υπόψη την παραδοχή ότι η διακριτική και ευνοϊκότερη μεταχείριση των αναπτυσσομένων χωρών μελών αποτελεί αναπόσπαστο μέρος της διαπραγμάτευσης, παρέχεται ειδική και διακριτική μεταχείριση, όσον αφορά τις αναλήψεις υποχρεώσεων, σύμφωνα με τις σχετικές διατάξεις της παρούσας συμφωνίας και τους πίνακες παραχωρήσεων και αναλήψεων υποχρεώσεων.

2. Οι αναπτυσσόμενες χώρες μέλη έχουν τη δυνατότητα να υλοποιήσουν τις αναλήψεις υποχρεώσεων για μειώσεις εντός προθεσμίας έως και 10 ετών. Δεν απαιτείται από τις λιγότερο ανεπτυγμένες χώρες μέλη να αναλάβουν υποχρεώσεις για μειώσεις.

Μέρος X

Άρθρο 16

Λιγότερο ανεπτυγμένες και αναπτυσσόμενες χώρες που εισάγουν αποκλειστικά είδη διατροφής

1. Οι ανεπτυγμένες χώρες μέλη προβαίνουν στις ενέργειες που προβλέπονται στο πλαίσιο της απόφασης για τα μέτρα που αφορούν τις πιθανές αρνητικές επιπτώσεις του προγράμματος μεταρρυθμίσεων για τις λιγότερο ανεπτυγμένες χώρες και τις αναπτυσσόμενες χώρες που εισάγουν αποκλειστικά είδη διατροφής.

2. Η επιτροπή γεωργίας παρακολουθεί, όπως αρμόζει, τη συνέχεια που δίνεται σ'αυτήν την απόφαση.

Μέρος XI

Άρθρο 17

Επιτροπή Γεωργίας

Συστήνεται επιτροπή γεωργίας.

Άρθρο 18

Επανεξέταση της εφαρμογής των αναλήψεων υποχρεώσεων

1. Η επιτροπή γεωργίας εξετάζει την πρόοδο εφαρμογής των αναλήψεων υποχρεώσεων που αποτέλεσαν το αντικείμενο διαπραγματεύσεων, στο πλαίσιο του προγράμματος μεταρρυθμίσεων του Γύρου της Ουρουγουάης.

2. Η διαδικασία επανεξέτασης διεξάγεται βάσει γνωστοποιήσεων που υποβάλλονται από μέλη σχετικά με τα εν λόγω θέματα και σε χρονικά διαστήματα που θα καθορισθούν καθώς και βάσει της τεκμηρίωσης που ενδέχεται να ζητηθεί από τη Γραμματεία, προκειμένου να διευκολυνθεί η διαδικασία επανεξέτασης.

3. Εκτός από τις γνωστοποιήσεις που υποβάλλονται βάσει της παραγράφου 2, γνωστοποιούνται εγκαίρως τυχόν νέα μέτρα εσωτερικών ενισχύσεων ή τροποποιήσεις υφιστάμενων μέτρων, για τα οποία ζητείται εξαίρεση από την επιβολή μειώσεων. Στη γνωστοποίηση αυτή περιλαμβάνονται στοιχεία σχετικά με τα νέα ή τα τροποποιημένα μέτρα καθώς και με τη συμβατότητα αυτών με τα συμφωνηθέντα κριτήρια, όπως ορίζονται στο άρθρο 6 ή στο παράρτημα 2.

4. Κατά τη διαδικασία επανεξέτασης, τα μέλη λαμβάνουν δεόντως υπόψη την επίδραση των εξαιρετικά υψηλών ποσοστών πληθωρισμού στη δυνατότητα των μελών να τηρούν τις υποχρεώσεις τους όσον αφορά τις εσωτερικές ενισχύσεις.

5. Τα μέλη συμφωνούν να προβαίνουν ετησίως σε διαβουλεύσεις στο πλαίσιο της επιτροπής γεωργίας σχετικά με τη συμμετοχή τους στον κανονικό ρυθμό αύξησης του παγκοσμίου εμπορίου γεωργικών προϊόντων στο πλαίσιο των αναλήψεων υποχρεώσεων για τις εξαγωγικές επιδοτήσεις βάσει της παρούσας συμφωνίας.

6. Η διαδικασία επανεξέτασης παρέχει τη δυνατότητα στα μέλη να θίγουν οποιοδήποτε θέμα σχετικό με την εφαρμογή των αναλήψεων υποχρεώσεων, στο πλαίσιο του προγράμματος μεταρρυθμίσεων, όπως ορίζεται στην παρούσα συμφωνία.

7. Κάθε μέλος δύναται να θέσει υπόψη της επιτροπής γεωργίας οποιοδήποτε μέτρο θεωρεί ότι όφειλε να έχει γνωστοποιηθεί από άλλο μέλος.

Άρθρο 19

Διαβουλεύσεις και επίλυση διαφορών

Οι διατάξεις των άρθρων XXII και XXIII της GATT του 1994, όπως διαμορφώθηκαν και εφαρμόζονται βάσει της συμφωνίας σχετικά με την επίλυση διαφορών, ισχύουν για τη διενέργεια διαβουλεύσεων και την επίλυση των διαφορών στο πλαίσιο της παρούσας συμφωνίας.

Μέρος XII

Άρθρο 20

Συνέχιση της διαδικασίας μεταρρυθμίσεων

Αναγνωρίζοντας ότι ο μακροπρόθεσμος στόχος των ουσιαστικών προοδευτικών μειώσεων, όσον αφορά τις ενισχύσεις και την προστασία που συνεπάγονται σημαντικές μεταρρυθμίσεις αποτελεί συνεχιζόμενη διαδικασία, τα μέλη συμφωνούν να αρχίσουν διαπραγματεύσεις για τη συνέχιση της διαδικασίας, ένα έτος πριν από τη λήξη της περιόδου εφαρμογής, λαμβάνοντας υπόψη :

(α) τη μέχρι τότε εμπειρία από την εφαρμογή των αναλήψεων υποχρεώσεων για μείωση·

(β) τις επιπτώσεις των αναλήψεων υποχρεώσεων για μείωση στο διεθνές εμπόριο στον τομέα της γεωργίας·

(γ) θέματα που δεν αφορούν το εμπόριο, την ειδική και διακριτική μεταχείριση των αναπτυσσομένων χωρών μελών και το στόχο καθιέρωσης δίκαιου και βασισμένου στην αγορά καθεστώτος συναλλαγών στον τομέα της γεωργίας, καθώς και τους λοιπούς στόχους και θέματα που αναφέρονται στο προοίμιο της παρούσας συμφωνίας, και

(δ) τις περαιτέρω αναλήψεις υποχρεώσεων που απαιτούνται για την επίτευξη των προαναφερομένων μακροπρόθεσμων στόχων.

Μέρος XIII

Άρθρο 21

Τελικές διατάξεις

1. Εφαρμόζονται οι διατάξεις της GATT του 1994 και άλλων πολυμερών εμπορικών συμφωνιών που περιλαμβάνονται στο παράρτημα ΙΑ της συμφωνίας για τον ΠΟΕ, με την επιφύλαξη των διατάξεων της παρούσας συμφωνίας.

2. Τα παραρτήματα της παρούσας συμφωνίας αποτελούν αναπόσπαστα μέρη αυτής.

ΠΑΡΑΡΤΗΜΑ 1

ΠΡΟΪΟΝΤΑ ΠΟΥ ΚΑΛΥΠΤΕΙ Η ΣΥΜΦΩΝΙΑ

1. Η παρούσα συμφωνία καλύπτει τα εξής προϊόντα :

(i) Κεφάλαια 1 έως 24 του ΕΣ εκτός των ψαριών και των προϊόντων αλιείας, συν*

(ii)	Κωδικός ΕΣ	2905.43	(μαννιτόλη)
	Κωδικός ΕΣ	2905.44	(σορβιτόλη)
	Κλάση ΕΣ	33.01	(αιθέρια έλαια)
	Κλάσεις ΕΣ	35.01 έως 35.05	(λευκοματώδεις ύλες, προϊόντα με βάση τα τροποποιημένα άμυλα, κάθε είδους κόλλες)
	Κωδικός ΕΣ	3809.10	(προϊόντα για το κολλάρισμα ή το τελείωμα)
	Κωδικός ΕΣ	3823.60	(σορβιτόλη άλλη από εκείνη της διάκρισης 2905.44)
	Κλάσεις ΕΣ	41.01 έως 41.03	(δέρματα)
	Κλάση ΕΣ	43.01	(γουνοδέρματα ακατέργαστα)
	Κλάσεις ΕΣ	50.01 έως 50.03	(μετάξι ακατέργαστο και απορρίμματα από μετάξι)
	Κλάσεις ΕΣ	51.01 έως 51.03	(μαλλί και τρίχες)
	Κλάσεις ΕΣ	52.01 έως 52.03	(βαμβάκι ακατέργαστο, απορρίμματα από βαμβάκι, βαμβάκι λαναρισμένο ή χτενισμένο)
	Κλάση ΕΣ	53.01	(λινάρι ακατέργαστο)
	Κλάση ΕΣ	53.02	(κάνναβις ακατέργαστη)

2. Τα ανωτέρω δεν περιορίζουν τον αριθμό προϊόντων που καλύπτονται από τη συμφωνία για την εφαρμογή υγειονομικών και φυτοϋγειονομικών μέτρων.

* οι περιγραφές των προϊόντων εντός των παρενθέσεων είναι ενδεικτικές.

ΠΑΡΑΡΤΗΜΑ 2

ΕΣΩΤΕΡΙΚΕΣ ΕΝΙΣΧΥΣΕΙΣ : Η ΒΑΣΗ ΓΙΑ ΤΗΝ ΕΞΑΙΡΕΣΗ ΑΠΟ ΤΙΣ ΥΠΟΧΡΕΩΣΕΙΣ ΕΠΙΒΟΛΗΣ ΜΕΙΩΣΕΩΝ

1. Τα μέτρα εσωτερικών ενισχύσεων για τα οποία ζητείται εξαίρεση από τις υποχρεώσεις επιβολής μειώσεων πληρούν το βασικό όρο, ήτοι ότι οι επιπτώσεις τους στη στρέβλωση των εμπορικών συναλλαγών ή στην παραγωγή είναι μηδενικές ή, το πολύ, ελάχιστες. Συνεπώς, όλα τα μέτρα για τα οποία ζητείται εξαίρεση πληρούν τα ακόλουθα βασικά κριτήρια :

(α) οι σχετικές ενισχύσεις παρέχονται στο πλαίσιο κυβερνητικού προγράμματος που χρηματοδοτείται από πόρους του δημοσίου (συμπεριλαμβανομένων των διαφυγόντων δημοσιονομικών εσόδων) μη περιλαμβανομένων μεταβιβάσεων από καταναλωτές·

(β) οι σχετικές ενισχύσεις δεν έχουν ως αποτέλεσμα τη στήριξη τιμών υπέρ των παραγωγών.

Επίσης, τα εν λόγω μέτρα πληρούν τα συγκεκριμένα για κάθε πολιτική κριτήρια και όρους που αναφέρονται στη συνέχεια.

Προγράμματα δημοσίων υπηρεσιών

2. Γενικές υπηρεσίες

Οι πολιτικές της συγκεκριμένης κατηγορίας αφορούν δαπάνες (ή διαφυγόντα έσοδα) σχετικά με προγράμματα, στο πλαίσιο των οποίων παρέχονται υπηρεσίες ή οφέλη στον τομέα της γεωργίας ή στους αγρότες. Δεν περιλαμβάνουν άμεσες πληρωμές σε παραγωγούς ή μεταποιητές. Τα εν λόγω προγράμματα, τα οποία περιλαμβάνουν αλλά δεν περιορίζονται στον ακόλουθο κατάλογο, ικανοποιούν τα γενικά κριτήρια της ανωτέρω παραγράφου 1 και, ενδεχομένως, τις συγκεκριμένες προϋποθέσεις για κάθε πολιτική που ορίζονται στη συνέχεια:

α) έρευνα, συμπεριλαμβανομένης της γενικής έρευνας, έρευνα σχετική με περιβαλλοντικά προγράμματα και ερευνητικά προγράμματα που αφορούν συγκεκριμένα προϊόντα·

(β) έλεγχος παρασίτων και νόσων συμπεριλαμβανομένων των γενικών και ειδικών για κάθε προϊόν μέτρων ελέγχου παρασίτων και νόσων, όπως τα συστήματα έγκαιρης διάγνωσης, η θέση σε απομόνωση και εξάλειψη·

(γ) υπηρεσίες κατάρτισης, συμπεριλαμβανομένων των γενικών και εξειδικευμένων προγραμμάτων κατάρτισης·

(δ) υπηρεσίες γενικών εφαρμογών και παροχής συμβουλών συμπεριλαμβανομένης της παροχής μέσων για τη διευκόλυνση της μεταβίβασης πληροφοριών και ερευνητικών αποτελεσμάτων στους παραγωγούς και στους καταναλωτές·

(ε) υπηρεσίες επιθεώρησης περιλαμβανομένων των γενικών υπηρεσιών επιθεώρησης και του ελέγχου συγκεκριμένων προϊόντων για λόγους υγείας, ασφάλειας, ελέγχου της ποιότητας ή τυποποίησης·

(στ) υπηρεσίες εμπορίας και προώθησης, συμπεριλαμβανομένων των πληροφοριών των σχετικών με τις αγορές της παροχής συμβουλών και της προώθησης συγκεκριμένων προϊόντων, αλλά εξαιρουμένων

των δαπανών για μη καθορισμένους λόγους που θα ήταν δυνατό να χρησιμοποιηθούν από τους πωλητές για τη μείωση της τιμής πώλησης ή για την παροχή άμεσου οικονομικού οφέλους σε αγοραστές, και

(ζ) υπηρεσίες υποδομών, συμπεριλαμβανομένων των δικτύων ηλεκτροδότησης, των οδών και άλλων μέσων μεταφοράς των εγκαταστάσεων αγοράς και των λιμενικών εγκαταστάσεων, των δικτύων ύδρευσης, των φραγμάτων και συστημάτων αποχέτευσης, καθώς και έργα υποδομών που συνδέονται με προγράμματα προστασίας του περιβάλλοντος. Σε όλες τις περιπτώσεις, οι δαπάνες προορίζονται μόνο για την παροχή ή κατασκευή βασικού εξοπλισμού και δεν περιλαμβάνουν την επιδοτούμενη παροχή εγκαταστάσεων γεωργικών εκμεταλλεύσεων εκτός αυτών που προορίζονται για τη δικτύωση εγκαταστάσεων κοινής ωφελείας. Δεν περιλαμβάνονται επιδοτήσεις για εισροές ή λειτουργικές δαπάνες, ή η επιβολή προτιμησιακών τελών στους παραγωγούς.

3. Δημόσια αποθέματα για λόγους επισιτιστικής ασφάλειας[5]

Δαπάνες (ή διαφυγόντα έσοδα) σχετικές με τη σώρευση και κατοχή αποθεμάτων προϊόντων που αποτελούν αναπόσπαστο μέρος ενός προγράμματος επισιτιστικής βοήθειας το οποίο καθορίζεται στο πλαίσιο της εθνικής νομοθεσίας. Στο πλαίσιο του εν λόγω προγράμματος, είναι δυνατόν να περιλαμβάνεται η χορήγηση κρατικών ενισχύσεων για την ιδιωτική αποθήκευση προϊόντων.

Ο όγκος και η σώρευση των σχετικών αποθεμάτων αντιστοιχεί σε προκαθορισμένους στόχους, που συνδέονται αποκλειστικά με την επισιτιστική ασφάλεια. Η διαδικασία σώρευσης και διάθεσης αποθεμάτων είναι από χρηματοδοτικής απόψεως, διαφανής. Οι αγορές ειδών διατροφής από δημόσιες αρχές πραγματοποιούνται σε τρέχουσες τιμές αγοράς και οι πωλήσεις από τα αποθέματα επισιτιστικής ασφάλειας, πραγματοποιούνται σε τιμές όχι κατώτερες από τις τιμές που ισχύουν στην εσωτερική αγορά για το υπό εξέταση προϊόν και ποιότητα.

4. Εσωτερική επισιτιστική βοήθεια[6]

Δαπάνες (ή διαφυγόντα έσοδα) σχετικά με τη χορήγηση εσωτερικής επισιτιστικής βοήθειας σε τμήματα του πληθυσμού που βρίσκονται σε ανάγκη.

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5 Για τους σκοπούς της παραγράφου 3 του παρόντος παραρτήματος, κρατικά προγράμματα αποθεμάτων που αποσκοπούν στην εξασφάλιση επισιτιστικής ασφάλειας σε αναπτυσσόμενες χώρες, των οποίων η λειτουργία είναι διαφανής και εξασφαλίζεται σύμφωνα με επίσημα δημοσιευμένα αντικειμενικά κριτήρια ή κατευθυντήριες γραμμές, θεωρούνται ότι εμπίπτουν στις διατάξεις της παρούσας παραγράφου συμπεριλαμβανομένων προγραμμάτων, στο πλαίσιο των οποίων, αποθέματα ειδών διατροφής για σκοπούς επισιτιστικής ασφάλειας, αγοράζονται ή διατίθενται σε προκαθορισμένες τιμές, υπό την προϋπόθεση ότι η διαφορά μεταξύ της τιμής αγοράς και της εξωτερικής τιμής αναφοράς λαμβάνονται υπόψη στην εκτίμηση της ΑΜΣ.

6 Για τους σκοπούς των παραγράφων 3 και 4 του παρόντος παραρτήματος, η παροχή ειδών διατροφής με επιδοτούμενες τιμές με στόχο την ικανοποίηση των επισιτιστικών αναγκών των φτωχών στις αστικές και αγροτικές περιοχές των αναπτυσσομένων χωρών, σε τακτική βάση και σε λογικές τιμές, θεωρείται ότι συμφωνεί με διατάξεις της παρούσας παραγράφου.

Το δικαίωμα απολαβής επισιτιστικής βοήθειας βασίζεται σε σαφώς καθορισμένα κριτήρια που αφορούν τους στόχους διατροφής. Η εν λόγω βοήθεια συνίσταται στην απευθείας χορήγηση τροφίμων στους δικαιούχους ή στην παροχή των αναγκαίων μέσων προκειμένου να καταστεί δυνατό στους αποδέκτες που πληρούν τα κριτήρια να αγοράσουν τρόφιμα σε τιμές αγοράς ή σε επιδοτούμενες τιμές. Οι αγορές τροφίμων από τις δημόσιες αρχές πραγματοποιούνται σε τρέχουσες τιμές αγοράς ενώ η χρηματοδότηση και η διαχείριση της βοήθειας συνιστούν διαφανείς διαδικασίες.

5. Άμεσες πληρωμές σε παραγωγούς

Οι ενισχύσεις που παρέχονται μέσω άμεσων πληρωμών (ή διαφυγόντων εσόδων, συμπεριλαμβανομένων πληρωμών σε είδος) για τις οποίες ζητείται εξαίρεση από την επιβολή μειώσεων ικανοποιούν τα βασικά κριτήρια που αναφέρονται στην ανωτέρω παράγραφο 1, πέραν των συγκεκριμένων κριτηρίων που εφαρμόζονται σε μεμονωμένες κατηγορίες άμεσων πληρωμών, όπως ορίζονται στις κατωτέρω παραγράφους 6 έως 13. Στις περιπτώσεις που ζητείται εξαίρεση από την επιβολή μειώσεων για υφιστάμενες ή νέες άμεσες πληρωμές, εκτός αυτών που αναφέρονται στις παραγράφους 6 έως 13, είναι αναγκαίο να πληρούνται τα κριτήρια (β) έως (ε) της παραγράφου 6, πέρα των γενικών κριτηρίων που καθορίζονται στην παράγραφο 1.

6. Ενίσχυση ανεξάρτητη του εισοδήματος

(α) Η επιλεξιμότητα για τις εν λόγω πληρωμές βασίζεται σε σαφώς καθορισμένα κριτήρια όπως το εισόδημα, η ιδιότητα του δικαιούχου ως παραγωγού ή γαιοκτήμονα, η χρησιμοποίηση των συντελεστών παραγωγής ή το επίπεδο παραγωγής σε καθορισμένη και σταθερή περίοδο βάσης.

(β) Το ύψος των σχετικών πληρωμών, σε ένα δεδομένο έτος, δεν συνδέεται ούτε βασίζεται στον τύπο ή όγκο της παραγωγής (συμπεριλαμβανομένων των κτηνοτροφικών μονάδων) που αναλαμβάνεται από τον παραγωγό σε οποιοδήποτε έτος μετά την περίοδο βάσης.

(γ) Το ύψος των σχετικών πληρωμών, σε οποιοδήποτε έτος, δεν συνδέεται ούτε βασίζεται στις τιμές, εγχώριες ή διεθνείς, που εφαρμόζονται στην παραγωγή προϊόντων, κατά τη διάρκεια οποιουδήποτε έτους μετά την περίοδο βάσης.

(δ) Το ύψος των σχετικών πληρωμών δεν συνδέεται ούτε βασίζεται στους συντελεστές παραγωγής που χρησιμοποιούνται κατά τη διάρκεια οποιουδήποτε έτους μετά την περίοδο βάσης.

(ε) Για την απολαβή των σχετικών πληρωμών δεν απαιτείται η παραγωγή προϊόντων.

7. Χρηματοδοτική συμμετοχή της κυβέρνησης σε προγράμματα εγγύησης των εισοδημάτων και σε προγράμματα τα οποία θεσπίζουν μηχανισμό ασφάλειας των εισοδημάτων.

(α) Η επιλεξιμότητα για τις εν λόγω πληρωμές καθορίζεται βάσει της απώλειας εισοδήματος, λαμβανομένου υπόψη μόνο του εισοδήματος που προέρχεται από τη γεωργία, που υπερβαίνει το 30% του μέσου ακαθάριστου εισοδήματος ή του ισοδύναμου σε όρους καθαρού εισοδήματος (εξαιρουμένων τυχόν πληρωμών από τα ίδια ή παρόμοια προγράμματα) κατά τη διάρκεια των τριών προηγουμένων ετών ή ενός μέσου όρου τριών ετών που εκτιμάται βάσει των προηγουμένων πέντε ετών, αποκλειομένης της

μεγαλύτερης και της μικρότερης τιμής. Όλοι οι παραγωγοί που πληρούν αυτή την προϋπόθεση έχουν δικαίωμα να απολαβής των σχετικών πληρωμών.

(β) Το ποσό των σχετικών πληρωμών αντισταθμίζει σε ποσοστό κατώτερο του 70% την απώλεια εισοδήματος του παραγωγού κατά το έτος για το οποίο ο παραγωγός αποκτά το δικαίωμα απολαβής της σχετικής βοήθειας.

(γ) Το ύψος των σχετικών πληρωμών εξαρτάται αποκλειστικά από το εισόδημα. Δεν συνδέεται με τον τύπο ή τον όγκο παραγωγής (συμπεριλαμβανομένων των κτηνοτροφικών μονάδων) που αναλαμβάνεται από τον παραγωγό ούτε με τις εγχώριες και διεθνείς τιμές που εφαρμόζονται στην εν λόγω παραγωγή ούτε με τους χρησιμοποιούμενους συντελεστές παραγωγής.

(δ) Στην περίπτωση που καταβάλλονται σε ένα παραγωγό, κατά το ίδιο έτος, πληρωμές βάσει τόσο της παρούσας παραγράφου όσο και της παραγράφου 8 (ενισχύσεις για την αντιμετώπιση φυσικών καταστροφών), το ύψος του συνόλου των σχετικών καταβολών επιβάλλεται να είναι κατώτερο από το 100% της συνολικής απώλειας του παραγωγού.

8. Πληρωμές (που πραγματοποιούνται είτε απευθείας είτε μέσω χρηματοδοτικής συμμετοχής του κράτους σε προγράμματα ασφάλειας καλλιεργειών) με στόχο την ανακούφιση από τις φυσικές καταστροφές.

(α) Η επιλεξιμότητα για τις εν λόγω πληρωμές βασίζεται στην επίσημη αναγνώριση από πλευράς των δημοσίων αρχών ότι έχει πραγματοποιηθεί ή πραγματοποιείται φυσική ή παρόμοια καταστροφή (συμπεριλαμβανομένων των επιδημιών, της προσβολής από παράσιτα, των πυρηνικών ατυχημάτων και πολεμικών συγκρούσεων στα εδάφη του συγκεκριμένου μέλους) και καθορίζεται βάσει απώλειας παραγωγής που υπερβαίνει το 30% της μέσης παραγωγής κατά την προηγούμενη τριετή περίοδο ή του μέσου όρου τριών ετών που βασίζεται στην προηγούμενη πενταετή περίοδο, αποκλειομένης της υψηλότερης και χαμηλότερης τιμής.

(β) Η καταβολή πληρωμών ύστερα από μία καταστροφή πραγματοποιείται μόνον όσον αφορά τις απώλειες εισοδήματος, ζωϊκού κεφαλαίου (συμπεριλαμβανομένων των πληρωμών που αφορούν την κτηνιατρική περίθαλψη των ζώων), γης ή άλλων συντελεστών παραγωγής, εξαιτίας της εν λόγω φυσικής καταστροφής.

(γ) Οι πληρωμές δεν παρέχουν αντιστάθμισμα ανώτερο από το συνολικό κόστος αποκατάστασης των σχετικών απωλειών, και δεν απαιτούν ούτε προσδιορίζουν τον τύπο ή την ποσότητα της μελλοντικής παραγωγής.

(δ) Οι πληρωμές που πραγματοποιούνται κατά τη διάρκεια μιας καταστροφής δεν υπερβαίνουν το επίπεδο που απαιτείται για την πρόληψη ή άμβλυνση των περαιτέρω απωλειών όπως ορίζονται στο ανωτέρω κριτήριο (β).

(ε) Σε περίπτωση που καταβάλλονται σε έναν παραγωγό, κατά τη διάρκεια του ίδιου έτους, πληρωμές τόσο βάσει της παρούσας παραγράφου όσο και της παραγράφου 7 (προγράμματα εγγύησης εισοδημάτων και δημιουργίας μηχανισμών προστασίας εισοδημάτων), το σύνολο των εν λόγω πληρωμών επιβάλλεται να είναι κατώτερο του 100% της συνολικής ζημίας του παραγωγού.

9. Ενίσχυση διαρθρωτικών προσαρμογών που παρέχεται μέσω των προγραμμάτων συνταξιοδότησης των παραγωγών.

(α) Η επιλεξιμότητα για τέτοιου είδους πληρωμές καθορίζεται βάσει σαφώς καθορισμένων κριτηρίων, στο πλαίσιο προγραμμάτων που αποσκοπούν στη διευκόλυνση της συνταξιοδότησης ατόμων που απασχολούνται στην παραγωγή γεωργικών προϊόντων για εμπορικούς σκοπούς, ή τη μετακίνησή τους σε μη γεωργικές δραστηριότητες.

(β) Προϋπόθεση της πραγματοποίησης των πληρωμών είναι η ολοκληρωτική και μόνιμη αποχώρηση των δικαιούχων από τη γεωργική παραγωγή για εμπορικούς σκοπούς.

10. Ενίσχυση διαρθρωτικών προσαρμογών που παρέχεται στο πλαίσιο προγραμμάτων απόσυρσης παραγωγικών πόρων

(α) Η επιλεξιμότητα για τις σχετικές πληρωμές καθορίζεται βάσει σαφώς καθορισμένων κριτηρίων, στο πλαίσιο προγραμμάτων που αποσκοπούν στην απόσυρση των γαιών και άλλων πόρων συμπεριλαμβανομένου του ζωϊκού κεφαλαίου, από την παραγωγή γεωργικών προϊόντων για εμπορικούς σκοπούς.

(β) Προϋπόθεση για την πραγματοποιηση των πληρωμών είναι η απόσυρση των γαιών από την γεωργική παραγωγή για εμπορικούς σκοπούς για ελάχιστο διάστημα τριών ετών, και στην περίπτωση του ζωϊκού κεφαλαίου, η σφαγή ή η οριστική διάθεσή του.

(γ) Η πραγματοποίηση των πληρωμών δεν απαιτεί ούτε καθορίζει τυχόν εναλλακτική χρήση των σχετικών εκτάσεων ή άλλων πόρων που χρησιμοποιούνται στην παραγωγή γεωργικών προϊόντων για εμπορικούς σκοπούς.

(δ) Οι πληρωμές δεν συνδέονται με το είδος ή την ποσότητα παραγωγής ούτε με τις τιμές, εγχώριες ή διεθνείς, που ισχύουν για την παραγωγή που πραγματοποιείται με χρήση των εκτάσεων και των λοιπών πόρων που παραμένουν στην παραγωγή.

11. Βοήθεια για διαρθρωτικές προσαρμογές που παρέχεται μέσω ενισχύσεων για τις επενδύσεις

(α) Η επιλεξιμότητα των εν λόγω πληρωμών βασίζεται σε σαφώς καθορισμένα κριτήρια, στο πλαίσιο κυβερνητικών προγραμμάτων, που αποσκοπούν στη χρηματοδοτική ή υλική αναδιάρθρωση των δραστηριοτήτων ενός παραγωγού για την αντιμετώπιση αντικειμενικά αποδεδειγμένων διαρθρωτικών μειονεκτημάτων. Η επιλεξιμότητα για τα εν λογω προγράμματα μπορεί να βασίζεται, επίσης, σε σαφώς καθορισμένο κυβερνητικό πρόγραμμα επανιδιωτικοποίησης των γεωργικών εκτάσεων.

(β) Το ύψος των εν λόγω πληρωμών, σε οποιοδήποτε δεδομένο έτος, δεν συνδέεται ούτε βασίζεται στο είδος ή τον όγκο παραγωγής (συμπεριλαμβανομένων των κτηνοτροφικών μονάδων) που αναλαμβάνεται από τον παραγωγό σε οποιοδήποτε έτος μετά την περίοδο βάσης, με την επιφύλαξη των διατάξεων του κατωτέρω κριτηρίου (ε).

(γ) Το ύψος των εν λόγω πληρωμών, σε οποιοδήποτε δεδομένο έτος, δεν συνδέεται ούτε βασίζεται στις τιμές, εγχώριες ή διεθνείς, που εφαρμόζονται στην παραγωγή οποιουδήποτε έτους μετά την περίοδο βάσης.

(δ) οι πληρωμές πραγματοποιούνται μόνο κατά το χρονικό διάστημα που απαιτείται για την υλοποίηση των επενδύσεων για τις οποίες παρέχονται.

(ε) Για την πραγματοποίηση των πληρωμών δεν επιβάλλονται ούτε ορίζονται σε καμία περίπτωση τα γεωργικά προϊόντα τα οποία οφείλουν να παράγουν οι αποδέκτες, με εξαίρεση την περίπτωση που ζητείται από αυτούς να μην παράγουν κάποιο συγκεκριμένο προϊόν.

(στ) οι πληρωμές περιορίζονται στο ποσό που είναι αναγκαίο για την αντιστάθμιση του διαρθρωτικού μειονεκτήματος.

12. πληρωμές στο πλαίσιο προγραμμάτων προστασίας του περιβάλλοντος

(α) Η επιλεξιμότητα των σχετικών πληρωμών καθορίζεται ως τμήμα σαφώς καθορισμένου κυβερνητικού προγράμματος προστασίας του περιβάλλοντος ή διατήρησης και εξαρτάται από την τήρηση συγκεκριμένων προϋποθέσεων, στο πλαίσιο του κυβερνητικού προγράμματος, συμπεριλαμβανομένων των προϋποθέσεων που αφορούν τις μεθόδους ή τους συντελεστές παραγωγής.

(β) Το ποσό των πληρωμών περιορίζεται στις επιπλέον δαπάνες ή τις απώλειες εισοδήματος που απορρέουν από την τήρηση του κυβερνητικού προγράμματος.

13. πληρωμές στο πλαίσιο προγραμμάτων περιφερειακών ενισχύσεων

(α) Δικαίωμα σε τέτοιου είδους πληρωμές έχουν μόνον οι παραγωγοί μειονεκτικών περιοχών. Κάθε σχετική περιοχή πρέπει να συνιστά ευκρινώς καθορισμένη συνεχόμενη γεωγραφική περιφέρεια με σαφή οικονομική και διοικητική ταυτότητα, η οποία θεωρείται μειονεκτική βάσει ουδέτερων και αντικειμενικών κριτηρίων που ορίζονται σαφώς στους νόμους ή κανονισμούς και τα οποία αποδεικνύουν ότι οι δυσκολίες που αντιμετωπίζουν οι εν λόγω περιοχές δεν οφείλονται μόνο σε προσωρινές συνθήκες.

(β) Το ύψος των σχετικών πληρωμών, σε ένα δεδομένο έτος, δεν συνδέεται ούτε βασίζεται στο είδος ή τον όγκο παραγωγής (συμπεριλαμβανομένων των κτηνοτροφικών μονάδων) που αναλαμβάνεται από τον παραγωγό σε οποιοδήποτε έτος μετά την περίοδο βάσης, εκτός εάν πρόκειται για μείωση της εν λόγω παραγωγής.

(γ) Το ύψος των σχετικών πληρωμών, σε οποιοδήποτε δεδομένο έτος δεν συνδέεται ούτε βασίζεται στις τιμές, εγχώριες ή διεθνείς, που ισχύουν για προϊόντα που παράγονται κατά τη διάρκεια οιουδήποτε έτους μετά την περίοδο βάσης.

(δ) οι πληρωμές διατίθενται αποκλειστικά σε παραγωγούς των επιλέξιμων περιοχών. Ωστόσο, δικαίωμα στις εν λόγω πληρωμές έχει το σύνολο των παραγωγών των σχετικών περιοχών.

(ε) Στις περιπτώσεις που συνδέονται με τους συντελεστές παραγωγής, οι πληρωμές πραγματοποιούνται βάσει προοδευτικά μειούμενου συντελεστή, πέραν του καθορισμένου για το συγκεκριμένο συντελεστή ορίου.

(στ) οι πληρωμές περιορίζονται στις επιπλέον δαπάνες, ή στην απώλεια εισοδήματος κατά την παραγωγή γεωργικών προϊόντων στην καθορισμένη περιοχή.

ΠΑΡΑΡΤΗΜΑ 3

ΕΣΩΤΕΡΙΚΕΣ ΕΝΙΣΧΥΣΕΙΣ: ΥΠΟΛΟΓΙΣΜΟΣ ΑΘΡΟΙΣΤΙΚΗΣ ΜΕΤΡΗΣΗΣ ΕΝΙΣΧΥΣΕΩΝ

1. Με την επιφύλαξη των διατάξεων του άρθρου 6, η Αθροιστική Μέτρηση Ενισχύσεων (ΑΜΕ) υπολογίζεται ξεχωριστά για κάθε βασικό γεωργικό προϊόν που δικαιούται στήριξης της τιμής αγοράς μη εξαιρουμένων των άμεσων πληρωμών ή άλλων επιδοτήσεων που απαλλάσσονται από την επιβολή μειώσεων ("λοιπές μη αποκλειόμενες πολιτικές"). Οι ενισχύσεις που δεν αφορούν συγκεκριμένα ένα προϊόν αθροίζονται σε μία ΑΜΕ, που δεν είναι συγκεκριμένη για κάθε προϊόν, αποτιμώμενη σε συνολικούς νομισματικούς όρους.

2. Οι επιδοτήσεις που αναφέρονται στην παράγραφο 1 περιλαμβάνουν δημοσιονομικές δαπάνες και διαφυγόντα έσοδα από δημόσιες αρχές ή τις υπηρεσίες τους.

3. Περιλαμβάνονται ενισχύσεις σε εθνικό επίπεδο και σε επίπεδο κατώτερο του εθνικού.

4. Αφαιρούνται από την ΑΜΕ οι συγκεκριμένες γεωργικές εισφορές ή τα τέλη που καταβάλλονται από παραγωγούς.

5. Η ΑΜΕ που υπολογίζεται όπως περιγράφεται στη συνέχεια για την περίοδο βάσης αποτελεί τη βάση για την εφαρμογή της ανάληψης υποχρέωσης για μειώσεις.

6. Για κάθε βασικό γεωργικό προϊόν καθορίζεται συγκεκριμένη ΑΜΕ που εκφράζεται σε συνολικούς όρους νομισματικής αξίας.

7. Η ΑΜΕ υπολογίζεται όσο το δυνατόν εγγύτερα στο σημείο της πρώτης πώλησης του υπό εξέταση γεωργικού προϊόντος. Περιλαμβάνονται μέτρα που απευθύνονται σε μεταποιητές γεωργικών προϊόντων στο βαθμό που τα εν λόγω μέτρα ευνοούν τους παραγωγούς των βασικών γεωργικών προϊόντων.

8. Στήριξη των τιμών της αγοράς: Η στήριξη των τιμών της αγοράς υπολογίζεται βάσει της διαφοράς μεταξύ μίας πάγιας εξωτερικής τιμής αναφοράς και της προκαθορισμένης τιμής πολλαπλασιαζόμενης με την ποσότητα παραγωγής που δικαιούται της ισχύουσας προκαθορισμένης τιμής. Οι δημοσιονομικές δαπάνες, που πραγματοποιούνται για τη διατήρηση της εν λόγω διαφοράς, όπως το κόστος αγοράς ή αποθήκευσης δεν περιλαμβάνονται στην ΑΜΕ.

9. Η πάγια εξωτερική τιμή αναφοράς βασίζεται στα έτη 1986 έως 1988 και ισούται γενικά με τη μέση κατά μονάδα αξία FOB για το υπό εξέταση βασικό γεωργικό προϊόν σε μία καθαρά εξαγωγική χώρα και τη μέση κατά μονάδα αξία CIF για το υπό εξέταση γεωργικό προϊόν σε χώρα που αποτελεί καθαρό εισαγωγέα κατά την περίοδο βάσης. Εφόσον χρειασθεί υπάρχει δυνατότητα προσαρμογής της παγίας τιμής αναφοράς, προκειμένου να ληφθούν υπόψη τυχόν διαφορές όσον αφορά την ποιότητα.

10. Μη απαλλασσόμενες άμεσες πληρωμές: οι μη απαλλασσόμενες πληρωμές που εξαρτώνται από τη διαφορά τιμής υπολογίζονται είτε βάσει της διαφοράς μεταξύ της παγίας τιμής αναφοράς και της προκαθορισμένης τιμής πολλαπλασιαζόμενης με την ποσότητα παραγωγής που δικαιούται της προκαθορισμένης τιμής είτε βάσει των δημοσιονομικών δαπανών.

11. Η πάγια τιμή αναφοράς βασίζεται στα έτη 1986 έως 1988 και ισούται, γενικά, με την τρέχουσα τιμή που χρησιμοποιείται για τον καθορισμό των συντελεστών πληρωμών.

12. Οι μη απαλλασσόμενες άμεσες πληρωμές που βασίζονται σε παράγοντες εκτός των τιμών υπολογίζονται βάσει των δημοσιονομικών δαπανών.

13. Λοιπά μη απαλλασσόμενα μέτρα, συμπεριλαμβανομένων των επιδοτήσεων για τις εισροές και άλλα μέτρα, όπως τα μέτρα μείωσης του κόστους εμπορίας. Η αξία των εν λόγω μέτρων υπολογίζεται χρησιμοποιώντας κρατικές δημοσιονομικές δαπάνες, ή όταν η χρήση των δημοσιονομικών δαπανών δεν εκφράζει το συνολικό μέγεθος της σχετικής επιδότησης, η βάση για τον υπολογισμό της επιδότησης συνίσταται στη διαφορά μεταξύ της τιμής του επιδοτουμένου αγαθού ή υπηρεσίας και μίας αντιπροσωπευτικής τιμής αγοράς για ένα παρόμοιο αγαθό ή υπηρεσία πολλαπλασιαζομένης με την ποσότητα του αγαθού ή της υπηρεσίας.

ΠΑΡΑΡΤΗΜΑ 4

ΕΣΩΤΕΡΙΚΕΣ ΕΝΙΣΧΥΣΕΙΣ: ΥΠΟΛΟΓΙΣΜΟΣ ΙΣΟΔΥΝΑΜΗΣ ΜΕΤΡΗΣΗΣ ΕΝΙΣΧΥΣΕΩΝ

1. Με την επιφύλαξη των διατάξεων του άρθρου 6, οι ισοδύναμες μετρήσεις ενισχύσεων υπολογίζονται για όλα τα βασικά γεωργικά προϊόντα για τα οποία υφίσταται στήριξη της τιμής αγοράς, όπως ορίζεται στο παράρτημα 3, αλλά για τα οποία είναι πρακτικώς αδύνατος ο υπολογισμός της συνιστώσας αυτής της ΑΜΣ. Όσον αφορά τα εν λόγω προϊόντα, το επίπεδο βάσης για την εφαρμογή των αναλήψεων υποχρεώσεων για μείωση των εσωτερικών ενισχύσεων συνίσταται, αφενός, στη στήριξη των τιμών αγοράς υπό μορφή ισοδύναμων μέτρων στήριξης βάσει της κατωτέρω παραγράφου 2, και αφετέρου σε μη απαλλασσόμενες άμεσες πληρωμές και λοιπές μη απαλλασσόμενες ενισχύσεις, που εκτιμώνται βάσει των διατάξεων της κατωτέρω παραγράφου. Συμπεριλαμβάνονται οι ενισχύσεις σε εθνικό επίπεδο και σε επίπεδο κατώτερο του εθνικού.

2. Οι ισοδύναμες μετρήσεις ενισχύσεων, που αναφέρονται στην παράγραφο 1, υπολογίζονται για κάθε προϊόν χωριστά, όσον αφορά το σύνολο των βασικών γεωργικών προϊόντων, όσο το δυνατόν πλησιέστερα στο σημείο της πρώτης πώλησης με στήριξη των τιμών αγοράς, για την οποία ο υπολογισμός της συνιστώσας της ΑΜΣ που αφορά τη στήριξη των τιμών αγοράς είναι πρακτικώς αδύνατος. Για τα συγκεκριμένα βασικά γεωργικά προϊόντα πραγματοποιούνται ισοδύναμες μετρήσεις των τιμών αγοράς με εφαρμογή της ισχύουσας προκαθορισμένης τιμής και της ποσότητας παραγωγής που δικαιούται να λάβει τη συγκεκριμένη τιμή, ή, όταν αυτό δεν είναι εφικτό των δημοσιονομικών δαπανών που χρησιμοποιούνται για τη διατήρηση της τιμής αγοράς.

3. Στις περιπτώσεις που τα βασικά γεωργικά προϊόντα που εμπίπτουν στην παράγραφο 1 αποτελούν αντικείμενο μη απαλλασσομένων άμεσων πληρωμών ή άλλων πληρωμών ή λοιπών κατά προϊόν ενισχύσεων που δεν εξαιρούνται από την ανάληψη υποχρέωσης για μείωση, η βάση για τις ισοδύναμες μετρήσεις ενισχύσεων, όσον αφορά τα συγκεκριμένα μέτρα, συνίσταται σε υπολογισμούς, όπως και για τις αντίστοιχες συνιστώσες της ΑΜΣ (που καθορίζονται στις παραγράφους 10 έως 13 του παραρτήματος 3).

4. Οι ισοδύναμες μετρήσεις ενισχύσεων υπολογίζονται επί του ποσού των επιδοτήσεων όσο το δυνατόν πλησιέστερα στο σημείο πρώτης πώλησης του υπό εξέταση βασικού γεωργικού προϊόντος. Μέτρα που απευθύνονται σε μεταποιητές γεωργικών προϊόντων περιλαμβάνονται στο μέτρο που ευνοούν τους παραγωγούς των βασικών γεωργικών προϊόντων. Οι συγκεκριμένες γεωργικές εισφορές ή τα τέλη που καταβάλλονται από παραγωγούς μειώνουν τις ισοδύναμες μετρήσεις ενισχύσεων κατά ένα αντίστοιχο ποσό.

ΠΑΡΑΡΤΗΜΑ 5

ΕΙΔΙΚΗ ΜΕΤΑΧΕΙΡΙΣΗ ΟΣΟΝ ΑΦΟΡΑ ΤΟ ΑΡΘΡΟ 4, ΠΑΡΑΓΡΑΦΟΣ 2

Τμήμα Α

1. Από την έναρξη ισχύος της συμφωνίας για τον ΠΟΕ, οι διατάξεις του άρθρου 4, παράγραφος 2 δεν εφαρμόζονται σε πρωτογενή γεωργικά προϊόντα ή σε παράγωγα επεξεργασμένα ή μεταποιημένα προϊόντα (καθορισμένα προϊόντα), για τα οποία πληρούνται οι ακόλουθοι όροι (που στο εξής καλούνται "ειδική μεταχείριση"):

(α) κατά την περίοδο βάσης 1986-1988 ("περίοδος βάσης") οι εισαγωγές των καθορισμένων προϊόντων αντιστοιχούσαν σε ποσοστό κάτω του 3% της αντίστοιχης εγχώριας κατανάλωσης·

(β) από την έναρξη της περιόδου βάσης δεν χορηγήθηκαν εξαγωγικές επιδοτήσεις για τα καθορισμένα προϊόντα·

(γ) όσον αφορά το πρωτογενές γεωργικό προϊόν εφαρμόζονται αποτελεσματικά μέτρα περιορισμού της παραγωγής·

(δ) τα εν λόγω προϊόντα προσδιορίζονται με το σύμβολο "ΕΜ Παράρτημα 5" στο τμήμα Ι-Β του μέρους Ι του πίνακα μέλους που επισυνάπτεται στο πρωτόκολλο του Μαρακές, δεδομένου ότι αποτελούν αντικείμενο ειδικής μεταχείρισης που ανταποκρίνεται σε ανάγκες μη εμπορικού χαρακτήρα, όπως η επισιτιστική ασφάλεια και η προστασία του περιβάλλοντος· και

(ε) οι δυνατότητες ελάχιστης πρόσβασης, όσον αφορά τα καθορισμένα προϊόντα, αντιστοιχούν, όπως ορίζεται στο τμήμα Ι-Β του μέρους Ι του πίνακα του ενδιαφερόμενου μέλους, στο 4% της εγχώριας κατανάλωσης των καθορισμένων προϊόντων κατά την περίοδο βάσης, από την αρχή του πρώτου έτους της περιόδου εφαρμογής και, στη συνέχεια, αυξάνονται κατά 0,8% της αντίστοιχης εγχώριας κατανάλωσης της περιόδου βάσης, ετησίως, για το υπόλοιπο της περιόδου εφαρμογής.

2. Στις αρχές οποιουδήποτε έτους της περιόδου εφαρμογής, οποιοδήποτε μέλος δύναται να διακόψει την εφαρμογή της ειδικής μεταχείρισης, σχετικά με τα καθορισμένα προϊόντα, σύμφωνα με τις διατάξεις της παραγράφου 6. Στην περίπτωση αυτή, το εν λόγω μέλος διατηρεί τις δυνατότητες ελάχιστης πρόσβασης που ήδη ισχύουν τη δεδομένη στιγμή, και αυξάνει τις δυνατότητες ελάχιστης πρόσβασης κατά 0,4% της αντίστοιχης εγχώριας κατανάλωσης της περιόδου βάσης, ετησίως, για το υπόλοιπο της περιόδου εφαρμογής. Στη συνέχεια, διατηρείται στον πίνακα του εν λόγω μέλους το επίπεδο των δυνατοτήτων ελάχιστης πρόσβασης που προκύπτει από το συγκεκριμένο τύπο κατά το τελευταίο έτος της περιόδου εφαρμογής.

3. Τυχόν διαπραγματεύσεις σχετικές με το αν θα υπάρχει δυνατότητα συνέχισης της ειδικής μεταχείρισης, όπως ορίζεται στην παράγραφο 1, μετά το πέρας της περιόδου εφαρμογής ολοκληρώνονται εντός του χρονικού πλαισίου της περιόδου εφαρμογής, ως μέρος των διαπραγματεύσεων που ορίζονται στο άρθρο 20 της παρούσας συμφωνίας, λαμβανομένων υπόψη των παραγόντων μη εμπορικού χαρακτήρα.

4. Εάν, σε συνέχεια των διαπραγματεύσεων που αναφέρονται στην παράγραφο 3, αποφασισθεί ότι ένα μέλος δύναται να συνεχίσει την εφαρμογή της ειδικής μεταχείρισης, το μέλος αυτό παρέχει πρόσθετες και αποδεκτές παραχωρήσεις, που καθορίζονται στις σχετικές διαπραγματεύσεις.

5. Στην περίπτωση που η ειδική μεταχείριση δεν πρόκειται να συνεχισθεί μετά το πέρας της περιόδου εφαρμογής, το εν λόγω μέλος εφαρμόζει τις διατάξεις της παραγράφου 6. Στην περίπτωση αυτή, μετά το πέρας της περιόδου εφαρμογής, οι δυνατότητες ελάχιστης πρόσβασης για τα καθορισμένα προϊόντα διατηρούνται στο επίπεδο του 8% της αντίστοιχης εγχώριας κατανάλωσης κατά την περίοδο βάσης στον πίνακα του ενδιαφερόμενου μέλους.

6. Τα μέτρα που λαμβάνονται στα σύνορα, εκτός των συνήθων δασμών που εφαρμόζονται όσον αφορά τα καθορισμένα προϊόντα, υπόκεινται στις διατάξεις του άρθρου 4, παράγραφος 2 από την αρχή του έτους κατά το οποίο διακόπτεται η εφαρμογή της ειδικής μεταχείρισης. Τα προϊόντα αυτά υπόκεινται σε συνήθεις δασμούς που έχουν παγιοποιηθεί στον πίνακα του ενδιαφερομένου μέλους, και εφαρμόζονται από την αρχή του έτους κατά το οποίο διακόπτεται η ειδική μεταχείριση και στη συνέχεια σε συντελεστές που θα ίσχυαν αν εφαρμόζετο μείωση τουλάχιστον 15% κατά τη διάρκεια της περιόδου εφαρμογής, σε ίσες ετήσιες δόσεις. Οι δασμοί αυτοί καθορίζονται βάσει ισοδυνάμων δασμών που υπολογίζονται σύμφωνα με τις κατευθυντήριες γραμμές που περιγράφονται στο παρόν προσάρτημα.

Τμήμα Β

7. οι διατάξεις του άρθρου 4, παράγραφος 2 δεν εφαρμόζονται, επίσης, από την έναρξη ισχύος της συμφωνίας για την ΠΟΕ, όσον αφορά πρωτογενή γεωργικά προϊόντα που αποτελούν το βασικό παραδοσιακό είδος διατροφής αναπτυσσομένων χωρών μελών και για τα οποία τηρούνται οι ακόλουθοι όροι πέραν αυτών που καθορίζονται στην παράγραφο 1, στοιχεία α) έως δ), σχετικά με τα υπό εξέταση προϊόντα:

(α) οι δυνατότητες ελάχιστης πρόσβασης, όσον αφορά τα υπό εξέταση προϊόντα, όπως καθορίζονται στο τμήμα I-Β του μέρους I του πίνακα της ενδιαφερόμενης αναπτυσσόμενης χώρας μέλους, αντιστοιχούν στο 1% της εγχώριας κατανάλωσης της περιόδου βάσης των σχετικών προϊόντων, από την αρχή του πρώτου έτους της περιόδου εφαρμογής, και αυξάνονται σε ίσες ετήσιες δόσεις στο 2% της αντίστοιχης εγχώριας κατανάλωσης της περιόδου βάσης στην αρχή του πέμπτου έτους της περιόδου εφαρμογής. Από την αρχή του έκτου έτους της περιόδου εφαρμογής, οι δυνατότητες ελάχιστης πρόσβασης όσον αφορά τα υπό εξέταση προϊόντα αντιστοιχούν στο 2% της αντίστοιχης εγχώριας κατανάλωσης κατά την περίοδο βάσης και αυξάνονται σε ίσες ετήσιες δόσεις στο 4% της αντίστοιχης εγχώριας κατανάλωσης της περιόδου βάσης μέχρι τις αρχές του δέκατου έτους. Στη συνέχεια, το επίπεδο δυνατοτήτων ελαχίστης πρόσβασης που προκύπτει από το συγκεκριμένο τύπο για το δέκατο έτος παραμένει σε ισχύ στον πίνακα της ενδιαφερόμενης αναπτυσσόμενης χώρας μέλους.

(β) κατάλληλες δυνατότητες πρόσβασης στην αγορά έχουν προβλεφθεί για άλλα προϊόντα που καλύπτονται από την παρούσα συμφωνία.

8. Τυχόν διαπραγματεύσεις σχετικά με το αν θα υπάρχει δυνατότητα συνέχισης της ειδικής μεταχείρισης, όπως ορίζεται στην παράγραφο 7, μετά το πέρας του δέκατου έτους από την έναρξη της περιόδου εφαρμογής, αρχίζουν και ολοκληρώνονται εντός του χρονικού πλαισίου του δέκατου έτους από την έναρξη της περιόδου εφαρμογής.

9. Εάν, σε συνέχεια των διαπραγματεύσεων που αναφέρονται στην παράγραφο 8, αποφασισθεί ότι ένα μέλος δύναται να συνεχίσει την εφαρμογή της ειδικής μεταχείρισης, το μέλος αυτό παρέχει πρόσθετες και αποδεκτές παραχωρήσεις, όπως ορίζονται στις σχετικές διαπραγματεύσεις.

10. Στην περίπτωση που δεν πρόκειται να συνεχισθεί η ειδική μεταχείριση βάσει της παραγράφου 7 μετά το δέκατο έτος από την έναρξη της περιόδου εφαρμογής, τα υπό εξέταση προϊόντα υποβάλλονται σε συνήθεις δασμούς οι οποίοι θεσπίζονται βάσει ισοδυνάμου δασμών, που υπολογίζεται σύμφωνα με τις κατευθυντήριες γραμμές που ορίζονται στο παρόν προσάρτημα και που παγιοποιείται στον πίνακα του εν λόγω μέλους. Κατά τα λοιπά, ισχύουν οι διατάξεις της παραγράφου 6, όπως έχουν τροποποιηθεί από τη σχετική ειδική και διακριτική μεταχείριση που παρέχεται σε αναπτυσσόμενες χώρες μέλη, στο πλαίσιο της παρούσας συμφωνίας.

Προσάρτημα του Παραρτήματος 5

Κατευθυντήριες γραμμές για τον υπολογισμό ισοδυνάμων δασμών για το συγκεκριμένο σκοπό που αναφέρεται στις παραγράφους 6 και 10 του παρόντος παραρτήματος

1. Ο υπολογισμός των ισοδυνάμων δασμών, είτε εκφράζονται κατ'αξία είτε με συγκεκριμένους συντελεστές, πραγματοποιείται με διαφανή τρόπο, βάσει της πραγματικής διαφοράς μεταξύ των εσωτερικών και εξωτερικών τιμών. Τα δεδομένα που χρησιμοποιούνται αναφέρονται στα έτη 1986 έως 1988. Τα ισοδύναμα δασμών :

(α) καθορίζονται κυρίως σε επίπεδο τετραψηφίου κωδικού του ΣΣ·

(β) καθορίζονται σε επίπεδο εξαψηφίου κωδικού του ΣΣ ή σε αναλυτικότερο επίπεδο, οποτεδήποτε κρίνεται σκόπιμο·

(γ) καθορίζονται, εν γένει, για επεξεργασμένα και/ή μεταποιημένα προϊόντα, με πολλαπλασιασμό του συγκεκριμένου ισοδυνάμου δασμών για το πρωτογενές γεωργικό προϊόν με το ποσοστό, κατ'αξία ή σε πραγματικούς όρους, κατά περίπτωση, του πρωτογενούς γεωργικού προϊόντος που περιέχεται στα επεξεργασμένα και/ή στα μεταποιημένα προϊόντα, και λαμβανομένων υπόψη, όπου είναι αναγκαίο, πρόσθετων στοιχείων τα οποία παρέχουν, επί του παρόντος, προστασία στον κλάδο παραγωγής.

2. Οι εξωτερικές τιμές ισούνται, εν γένει, με τις πραγματικές μέσες κατά μονάδα αξίες CIF για τη χώρα εισαγωγής. Στις περιπτώσεις που οι μέσες κατά μονάδα αξίες CIF δεν είναι διαθέσιμες ή κατάλληλες, οι εξωτερικές τιμές είτε :

(α) ισούνται με τις αντίστοιχες μέσες κατά μονάδα αξίες CIF μίας γειτονικής χώρας, είτε

(β) εκτιμώνται βάσει των μέσων κατά μονάδα αξιών FOB σχετικού βασικού εξαγωγέα, οι οποίες προσαρμόζονται με προσθήκη του εκτιμώμενου κόστους ασφάλειας, μεταφοράς και άλλων σχετικών δαπανών στη χώρα εισαγωγής.

3. Οι εξωτερικές τιμές μετατρέπονται εν γένει σε εγχώρια νομίσματα με εφαρμογή της μέσης ετήσιας επίσημης τιμής συναλλάγματος που ισχύει για την ίδια περίοδο όπως και για τα στοιχεία τιμών.

4. Η εσωτερική τιμή συνίσταται, εν γένει, σε μία αντιπροσωπευτική τιμή χονδρικής πώλησης που ισχύει στην εγχώρια αγορά ή σε εκτίμηση της τιμής αυτής όπου δεν υπάρχουν διαθέσιμα στοιχεία.

5. Τα αρχικά ισοδύναμα δασμών είναι δυνατόν να προσαρμοσθούν, εφόσον χρειαστεί, για να ληφθούν υπόψη οι διαφορές στην ποιότητα ή την ποικιλία, με εφαρμογή του κατάλληλου συντελεστή.

6. Στις περιπτώσεις που το ισοδύναμο δασμών που προκύπτει από τις συγκεκριμένες κατευθυντήριες γραμμές είναι αρνητικό ή κατώτερο του ισχύοντος παγιοποιημένου δασμού, το αρχικό ισοδύναμο δασμών δύναται να καθορισθεί βάσει του ισχύοντος παγιοποιημένου δασμού ή βάσει εθνικών προσφορών για το εν λόγω προϊόν.

7. Σε περίπτωση προσαρμογής του επιπέδου ισοδυνάμου δασμών που θα ήταν δυνατόν να προκύψει από τις ανωτέρω κατευθυντήριες γραμμές το ενδιαφερόμενο μέλος παρέχει, όταν ζητηθεί, κάθε δυνατότητα διαβουλεύσεων με στόχο τη διαπραγμάτευση πρόσφορων λύσεων.

ΣΥΜΦΩΝΙΑ ΓΙΑ ΤΗΝ ΕΦΑΡΜΟΓΗ ΜΕΤΡΩΝ ΥΓΕΙΟΝΟΜΙΚΗΣ ΚΑΙ ΦΥΤΟΥΓΕΙΟΝΟΜΙΚΗΣ ΠΡΟΣΤΑΣΙΑΣ

Τα μέλη,

Επιβεβαιώνοντας εκ νέου ότι κανένα μέλος δεν πρέπει να εμποδίζεται να εγκρίνει ή να επιβάλει μέτρα που είναι αναγκαία για την προστασία της ζωής και της υγείας των ανθρώπων, των ζώων και των φυτών, υπό την προϋπόθεση ότι τα εν λόγω μέτρα δεν εφαρμόζονται κατά τρόπον ο οποίος θα αποτελούσε αυθαίρετη ή αδικαιολόγητη διάκριση μεταξύ των μελών στα οποία επικρατούν οι ίδιες συνθήκες ή συγκεκαλυμμένο περιορισμό των διεθνών συναλλαγών·

Επιθυμώντας να βελτιώσουν την υγειονομική και φυτοϋγειονομική κατάσταση σε όλα τα μέλη·

Σημειώνοντας ότι τα μέτρα υγειονομικής και φυτοϋγειονομικής προστασίας εφαρμόζονται συχνά βάσει διμερών συμφωνιών ή πρωτοκόλλων·

Επιθυμώντας τη θέσπιση πολυμερούς πλαισίου κανόνων και υποχρεώσεων το οποίο να διέπει την κατάρτιση, έγκριση και επιβολή των μέτρων υγειονομικής και φυτοϋγειονομικής προστασίας προκειμένου να ελαχιστοποιηθούν οι αρνητικές επιπτώσεις τους στις συναλλαγές·

Αναγνωρίζοντας τη σημαντική συνεισφορά των διεθνών προτύπων, κατευθυντηρίων γραμμών και συστάσεων στο εν λόγω θέμα·

Επιθυμώντας να ευνοήσουν τη χρήση εναρμονισμένων μέτρων υγειονομικής και φυτοϋγειονομικής προστασίας μεταξύ των μελών, βάσει των διεθνών προτύπων, κατευθυντηρίων γραμμών και συστάσεων που έχουν καταρτισθεί από τους αρμόδιους διεθνείς οργανισμούς, συμπεριλαμβανομένης της επιτροπής κώδικα τροφίμων, του διεθνούς γραφείου επιζωοτιών, και των σχετικών διεθνών και περιφερειακών οργανισμών που ενεργούν στο πλαίσιο της διεθνούς σύμβασης προστασίας των φυτών, χωρίς να απαιτείται από τα μέλη να αλλάξουν το επίπεδο προστασίας της ζωής και της υγείας των ανθρώπων, των ζώων ή των φυτών, που θεωρούν κατάλληλο·

Αναγνωρίζοντας ότι οι αναπτυσσόμενες χώρες μέλη μπορεί να αντιμετωπίσουν ιδιαίτερες δυσκολίες στην τήρηση των μέτρων υγειονομικής και φυτοϋγειονομικής προστασίας των εισαγόντων μελών, και κατά συνέπεια, στην πρόσβαση των αγορών, καθώς και στη χάραξη και εφαρμογή μέτρων υγειονομικής και φυτοϋγειονομικής προστασίας εντός των εδαφών τους, και επιθυμώντας να τα συνδράμουν στις σχετικές προσπάθειές τους·

Επιθυμώντας, κατά συνέπεια, να θεσπίσουν κανόνες για την εφαρμογή των διατάξεων της GATT του 1994 οι οποίες αφορούν τη χρήση μέτρων υγειονομικής και φυτοϋγειονομικής προστασίας, και ιδίως τις διατάξεις του άρθρου XX, παράγραφος β)[1]·

Συμφώνησαν τα ακόλουθα:

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1 Στην παρούσα συμφωνία, η αναφορά στο άρθρο XX, παράγραφος β) περιλαμβάνει επίσης και την εισαγωγική φράση του εν λόγω άρθρου.

Άρθρο 1

Γενικές διατάξεις

1. Η παρούσα συμφωνία ισχύει για όλα τα μέτρα υγειονομικής και φυτοϋγειονομικής προστασίας τα οποία μπορούν, άμεσα ή έμμεσα, να επηρεάσουν τις διεθνείς συναλλαγές. Μέτρα τέτοιου είδους καταρτίζονται και εφαρμόζονται σύμφωνα με τις διατάξεις της παρούσας συμφωνίας.

2. Για τους σκοπούς της παρούσας συμφωνίας, ισχύουν οι ορισμοί που προβλέπονται στο παράρτημα Α.

3. Τα παραρτήματα αποτελούν αναπόσπαστο τμήμα της παρούσας συμφωνίας.

4. Ουδεμία από τις διατάξεις της παρούσας συμφωνίας δεν επηρεάζει τα δικαιώματα των μελών που απορρέουν από τη συμφωνία για τα τεχνικά εμπόδια στο εμπόριο, όσον αφορά τα μέτρα που δεν εμπίπτουν στο πεδίο εφαρμογής της παρούσας συμφωνίας.

Άρθρο 2

Βασικά δικαιώματα και υποχρεώσεις

1. Τα μέλη έχουν το δικαίωμα να λαμβάνουν μέτρα υγειονομικής και φυτοϋγειονομικής προστασίας που είναι αναγκαία για την προστασία της ζωής και της υγείας των ανθρώπων, των ζώων ή των φυτών, υπό την προϋπόθεση ότι τα μέτρα αυτού του είδους είναι συμβατά με τις διατάξεις της παρούσας συμφωνίας.

2. Τα μέλη εξασφαλίζουν ότι όλα τα μέτρα υγειονομικής ή φυτοϋγειονομικής προστασίας εφαρμόζονται αποκλειστικά στον βαθμό που απαιτείται για την προστασία της ζωής και της υγείας των ανθρώπων, των ζώων ή των των φυτών, ότι βασίζονται σε επιστημονικές αρχές και ότι δεν διατηρούνται χωρίς επαρκή επιστημονική αιτιολόγηση, εκτός από τις περιπτώσεις που προβλέπονται στο άρθρο 5, παράγραφος 7.

3. Τα μέλη εξασφαλίζουν ότι τα μέτρα υγειονομικής και φυτοϋγειονομικής προστασίας δεν επιφέρουν αυθαίρετη ή αδικαιολόγητη διακριτική μεταχείριση μεταξύ των μελών στα οποία επικρατούν ταυτόσημες ή παρόμοιες συνθήκες, όπως και μεταξύ του εδάφους τους και άλλων μελών. Τα μέτρα υγειονομικής και φυτοϋγειονομικής προστασίας εφαρμόζονται κατά τρόπον ώστε να μην αποτελούν συγκεκαλυμμένο περιορισμό των διεθνών συναλλαγών.

4. Τα μέτρα υγειονομικής και φυτοϋγειονομικής προστασίας τα οποία συμφωνούν με τις σχετικές διατάξεις της παρούσας συμφωνίας εκλαμβάνονται ως ανταποκρινόμενα στις υποχρεώσεις του μέλους στο πλαίσιο των διατάξεων της GATT του 1994, οι οποίες αφορούν τη χρήση μέτρων υγειονομικής και φυτοϋγειονομικής προστασίας, και ιδίως τις διατάξεις του άρθρου XX, παράγραφος β.

Άρθρο 3

Εναρμόνιση

1. Προκειμένου να εναρμονίσουν τα μέτρα υγειονομικής και φυτοϋγειονομικής προστασίας σε όσο το δυνατόν ευρύτερη βάση, τα μέλη θεσπίζουν τα μέτρα υγειονομικής και φυτοϋγειονομικής προστασίας με βάση διεθνή πρότυπα, κατευθυντήριες γραμμές ή συστάσεις, όπου αυτές υπάρχουν, εκτός εάν προβλέπεται διαφορετικά στην παρούσα συμφωνία, και ιδίως στην παράγραφο 3.

2. Τα μέτρα υγειονομικής και φυτοϋγειονομικής προστασίας τα οποία συμφωνούν με διεθνή πρότυπα, κατευθυντήριες γραμμές ή συστάσεις θεωρούνται ως αναγκαία για την προστασία της ζωής και της υγείας των ανθρώπων, των ζώων ή των φυτών, καθώς και ως συμβατά με τις σχετικές διατάξεις της παρούσας συμφωνίας και της GATT του 1994.

3. Τα μέλη δύνανται να εισαγάγουν ή να διατηρήσουν μέτρα υγειονομικής ή φυτοϋγειονομικής προστασίας τα οποία επιφέρουν υψηλότερο επίπεδο υγειονομικής ή φυτοϋγειονομικής προστασίας από αυτό που ενδεχομένως επιτυγχάνεται με μέτρα που βασίζονται στα σχετικά διεθνή πρότυπα, κατευθυντήριες γραμμές ή συστάσεις, σε περίπτωση που υπάρχει επιστημονική αιτιολόγηση, ή ως αποτέλεσμα του επιπέδου υγειονομικής ή φυτοϋγειονομικής προστασίας το οποίο καθορίζεται από ένα μέλος ως κατάλληλο σύμφωνα με τις σχετικές διατάξεις των παραγράφων 1 έως 8 του άρθρου 5[2]. Κατά παρέκκλιση των ανωτέρω, όλα τα μέτρα που έχουν ως αποτέλεσμα επίπεδο υγειονομικής ή φυτοϋγειονομικής προστασίας διαφορετικό από αυτό το οποίο θα επιτυγχάνετο με μέτρα βασισμένα σε διεθνή πρότυπα, κατευθυντήριες γραμμές ή συστάσεις, είναι συμβατά με όλες τις λοιπές διατάξεις της παρούσας συμφωνίας.

4. Τα μέλη συμμετέχουν πλήρως, εντός των ορίων των διαθεσίμων πόρων τους, στους σχετικούς διεθνείς οργανισμούς και τα επικουρικά όργανα τους, και ιδίως την επιτροπή κώδικα τροφίμων, το διεθνές γραφείο επιζωοτιών, και τους διεθνείς και περιφερειακούς οργανισμούς που ενεργούν στο πλαίσιο της διεθνούς σύμβασης προστασίας των φυτών, για την προώθηση μέσω των οργανισμών αυτών της κατάρτισης και της περιοδικής επανεξέτασης προτύπων, κατευθυντηρίων γραμμών και συστάσεων σε σχέση με όλες τις πτυχές των μέτρων υγειονομικής και φυτοϋγειονομικής προστασίας.

5. Η επιτροπή μέτρων υγειονομικής και φυτοϋγειονομικής προστασίας που προβλέπεται στις παραγράφους 1 και 4 του άρθρου 12 (καλούμενη στην παρούσα συμφωνία η "επιτροπή") καθιερώνει διαδικασία για την παρακολούθηση της πορείας της διεθνούς εναρμόνισης και το συντονισμό των προσπαθειών για το εν λόγω θέμα με τους αρμόδιους διεθνείς οργανισμούς.

Άρθρο 4

Ισοδυναμία

1. Τα μέλη αποδέχονται τα μέτρα υγειονομικής και φυτοϋγειονομικής προστασίας άλλων μελών ως ισοδύναμα, ακόμα και αν τα εν λόγω μέτρα διαφέρουν από τα δικά τους ή από αυτά που εφαρμόζονται από άλλα μέλη για το εμπόριο του ιδίου προϊόντος, σε περίπτωση που το εξάγον μέλος αποδεικνύει αντικειμενικά στο εισάγον μέλος ότι με τα μέτρα του επιτυγχάνεται το κατάλληλο επίπεδο υγειονομικής ή φυτοϋγειονομικής προστασίας του εισάγοντος μέλους. Για το σκοπό αυτό, δίδεται εύλογη πρόσβαση, μετά από αίτηση, στο εισάγον μέλος για έλεγχο, δοκιμές και άλλες σχετικές διαδικασίες.

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2 Για τους σκοπούς του άρθρου 3, παράγραφος 3, επιστημονική αιτιολόγηση υφίσταται εάν, βάσει εξέτασης και αξιολόγησης των διαθεσίμων επιστημονικών πληροφοριών σύμφωνα με τις σχετικές διατάξεις της παρούσας συμφωνίας, ένα μέλος διαπιστώσει ότι τα σχετικά διεθνή πρότυπα, κατευθυντήριες γραμμές ή συστάσεις δεν είναι επαρκείς για να επιτευχθεί το κατάλληλο επίπεδο υγειονομικής ή φυτοϋγειονομικής προστασίας.

2. Τα μέλη, μετά από αίτησή τους, προβαίνουν σε διαβουλεύσεις με σκοπό τη σύναψη διμερών και πολυμερών συμφωνιών για την αναγνώριση της ισοδυναμίας συγκεκριμένων μέτρων υγειονομικής ή φυτοϋγειονομικής προστασίας.

Άρθρο 5

Εκτίμηση κινδύνων και καθορισμός του κατάλληλου επιπέδου υγειονομικής ή φυτοϋγειονομικής προστασίας

1. Τα μέλη εξασφαλίζουν ότι τα μέτρα τους υγειονομικής ή φυτοϋγειονομικής προστασίας βασίζονται σε εκτίμηση, ανάλογα με τις συνθήκες, των κινδύνων για τη ζωή και την υγεία των ανθρώπων, των ζώων ή των φυτών, αφού λάβουν υπόψη τις τεχνικές εκτίμησης κινδύνων που έχουν αναπτύξει οι σχετικοί διεθνείς οργανισμοί.

2. Κατά την εκτίμηση των κινδύνων, τα μέλη λαμβάνουν υπόψη τα διαθέσιμα επιστημονικά αποδεικτικά στοιχεία, τις σχετικές διαδικασίες και τις μεθόδους παραγωγής, τις σχετικές μεθόδους ελέγχου, δειγματοληψίας και δοκιμής, τον επιπολασμό συγκεκριμένων νόσων ή παρασίτων, την ύπαρξη ζωνών απαλλαγμένων από παράσιτα ή νόσους, τις σχετικές οικολογικές και περιβαλλοντικές συνθήκες, και την εφαρμογή υγειονομικής απομόνωσης ή άλλης θεραπείας.

3. Κατά την εκτίμηση των κινδύνων για τη ζωή και την υγεία των ζώων ή των φυτών και κατά τον καθορισμό των μέτρων που πρέπει να εφαρμοσθούν ώστε να επιτευχθεί το κατάλληλο επίπεδο υγειονομικής ή φυτοϋγειονομικής προστασίας από τον εν λόγω κίνδυνο, τα μέλη λαμβάνουν υπόψη ως σχετικούς οικονομικούς παράγοντες τα εξής: τις ενδεχόμενες ζημίες όσον αφορά την απώλεια παραγωγής ή πωλήσεων σε περίπτωση εισόδου, εμφάνισης ή εξάπλωσης παρασίτων ή νόσου· το κόστος ελέγχου ή εξάλειψης στο έδαφος του εισάγοντος μέλους· και τη σχετική αποδοτικότητα των εναλλακτικών προσεγγίσεων για τον περιορισμό των κινδύνων.

4. Κατά τον καθορισμό του κατάλληλου επιπέδου υγειονομικής ή φυτοϋγειονομικής προστασίας, τα μέλη λαμβάνουν υπόψη το στόχο ελαχιστοποίησης των αρνητικών επιπτώσεων στις συναλλαγές.

5. Προκειμένου να υπάρξει συνεκτικότητα κατά την εφαρμογή της εννοίας του κατάλληλου επιπέδου υγειονομικής και φυτοϋγειονομικής προστασίας κατά των κινδύνων για τη ζωή και την υγεία των ανθρώπων καθώς και των ζώων, ή των φυτών, τα μέλη αποφεύγουν αυθαίρετες ή αδικαιολόγητες διακρίσεις όσον αφορά τα επίπεδα τα οποία θεωρούν ότι είναι κατάλληλα σε διαφορετικές καταστάσεις, εφόσον οι εν λόγω διακρίσεις επιφέρουν διακριτική μεταχείριση ή συγκεκαλυμμένο περιορισμό των διεθνών συναλλαγών. Τα μέλη συνεργάζονται στο πλαίσιο της επιτροπής, σύμφωνα με το άρθρο 12, παράγραφοι 1, 2 και 3, για την κατάρτιση κατευθυντηρίων γραμμών προκειμένου να ευνοηθεί η πρακτική εφαρμογή της παρούσας διάταξης. Για την κατάρτιση των κατευθυντηρίων γραμμών, η επιτροπή λαμβάνει υπόψη όλους τους σχετικούς παράγοντες, περιλαμβανομένου του ιδιαίτερου χαρακτήρα των κινδύνων για την υγεία των προσώπων στους οποίους ο πληθυσμός εκτίθεται εκουσίως.

6. Με την επιφύλαξη του άρθρου 3, παράγραφος 2, κατά τη λήψη ή τη διατήρηση μέτρων υγειονομικής ή φυτοϋγειονομικής προστασίας προκειμένου να επιτευχθεί το κατάλληλο επίπεδο υγειονομικής ή φυτοϋγειονομικής

προστασίας, τα μέλη εξασφαλίζουν ότι τα μέτρα αυτού του είδους δεν είναι περισσότερο περιοριστικά για τις συναλλαγές από όσο απαιτείται για να επιτευχθεί το κατάλληλο επίπεδο υγειονομικής ή φυτοϋγειονομικής προστασίας, αφού λάβουν υπόψη την τεχνική και οικονομική σκοπιμότητα[3].

7. Στις περιπτώσεις όπου τα σχετικά επιστημονικά αποδεικτικά στοιχεία είναι ανεπαρκή, οποιοδήποτε μέλος δύναται να εγκρίνει προσωρινά μέτρα υγειονομικής ή φυτοϋγειονομικής προστασίας βάσει των διαθεσίμων σχετικών πληροφοριών, περιλαμβανομένων των προερχόμενων από τους σχετικούς διεθνείς οργανισμούς καθώς και από μέτρα υγειονομικής ή φυτοϋγειονομικής προστασίας που εφαρμόζονται από άλλα μέλη. Σε τέτοιες περιπτώσεις, τα μέλη επιδιώκουν να αποκτήσουν τις αναγκαίες πρόσθετες πληροφορίες, ώστε να προβούν σε περισσότερο αντικειμενική εκτίμηση των κινδύνων και να επανεξετάσουν αναλόγως το μέτρο υγειονομικής ή φυτοϋγειονομικής προστασίας εντός ευλόγου προθεσμίας.

8. Όταν ένα μέλος έχει λόγους να πιστεύει ότι συγκεκριμένο μέτρο υγειονομικής ή φυτοϋγειονομικής προστασίας που έχει εισαχθεί ή διατηρείται από άλλο μέλος περιορίζει, ή μπορεί να περιορίσει, τις εξαγωγές του και ότι το εν λόγω μέτρο δεν βασίζεται στα σχετικά διεθνή πρότυπα, κατευθυντήριες γραμμές ή συστάσεις, ή όταν δεν υφίστανται τέτοια πρότυπα, κατευθυντήριες γραμμές ή συστάσεις, μπορεί να ζητήσει εξήγηση των αιτιών λήψης τέτοιου μέτρου υγειονομικής ή φυτοϋγειονομικής προστασίας, την οποία πρέπει να δώσει το μέλος που διατηρεί το μέτρο.

Άρθρο 6

Προσαρμογή στις περιφερειακές συνθήκες, περιλαμβανομένων των ζωνών των απαλλαγμένων από παράσιτα ή νόσους και των ζωνών με χαμηλό βαθμό επιπολασμού παρασίτων ή νόσων

1. Τα μέλη εξασφαλίζουν ότι τα μέτρα υγειονομικής ή φυτοϋγειονομικής προστασίας είναι προσαρμοσμένα στα υγειονομικά ή φυτοϋγειονομικά χαρακτηριστικά της περιοχής (είτε πρόκειται για το σύνολο της χώρας, τμήμα της χώρας, ή το σύνολο ή τμήματα πολλών χωρών) από την οποία προέρχεται το προϊόν και αυτής για την οποία προορίζεται το προϊόν. Για την εκτίμηση των υγειονομικών ή φυτοϋγειονομικών χαρακτηριστικών μιας περιοχής, τα μέλη λαμβάνουν υπόψη, μεταξύ άλλων, το βαθμό επιπολασμού συγκεκριμένων νόσων ή παρασίτων, την ύπαρξη προγραμμάτων εξάλειψης ή ελέγχου, και τα κατάλληλα κριτήρια ή κατευθυντήριες γραμμές, που έχουν ενδεχομένως καθοριστεί από τους σχετικούς διεθνείς οργανισμούς.

2. Τα μέλη αναγνωρίζουν, ιδίως, τις έννοιες των ζωνών που είναι απαλλαγμένες από παράσιτα ή νόσους και των ζωνών με χαμηλό βαθμό επιπολασμού παρασίτων ή νόσων. Ο καθορισμός τέτοιου είδους ζωνών βασίζεται σε παράγοντες όπως η γεωγραφική θέση, τα οικοσυστήματα, η επιδημιολογική επιτήρηση, και η αποτελεσματικότητα των υγειονομικών ή φυτοϋγειονομικών ελέγχων.

3. Τα μέλη τα οποία πραγματοποιούν εξαγωγές και τα οποία υποστηρίζουν ότι ζώνες των εδαφών τους αποτελούν ζώνες απαλλαγμένες από

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3 Για τους σκοπούς του άρθρου 5, παράγραφος 6, ένα μέτρο δεν είναι περισσότερο περιοριστικό για τις συναλλαγές από όσο απαιτείται εκτός εάν υπάρχει άλλο μέτρο, εύλογα εφαρμόσιμο, λαμβανομένης υπόψη της τεχνικής και οικονομικής σκοπιμότητας, το οποίο επιτυγχάνει το κατάλληλο επίπεδο υγειονομικής ή φυτοϋγειονομικής προστασίας και είναι σε σημαντικό βαθμό λιγότερο περιοριστικό για τις συναλλαγές.

παράσιτα ή νόσους, ή ζώνες χαμηλού βαθμού επιπολασμού παρασίτων ή νόσων, παρέχουν τα απαραίτητα αποδεικτικά στοιχεία προκειμένου να αποδείξουν αντικειμενικά στο εισάγον μέλος ότι τέτοιου είδους ζώνες αποτελούν, και κατά πάσα πιθανότητα θα παραμείνουν, ζώνες απαλλαγμένες από παράσιτα ή νόσους ή ζώνες χαμηλού βαθμού επιπολασμού παρασίτων ή νόσων αντιστοίχως. Για τον σκοπό αυτό, επιτρέπεται σε εύλογο βαθμό, μετά από αίτηση, στο εισάγον μέρος η επιθεώρηση, η δοκιμασία ή άλλη σχετική διαδικασία.

Αρθρο 7

Διαφάνεια

Τα μέλη γνωστοποιούν τις μεταβολές των μέτρων υγειονομικής ή φυτοϋγειονομικής προστασίας και παρέχουν πληροφορίες σχετικά με τα μέτρα υγειονομικής ή φυτοϋγειονομικής προστασίας σύμφωνα με τις διατάξεις του παραρτήματος Β.

Αρθρο 8

Διαδικασίες ελέγχου, επιθεώρησης και έγκρισης

Τα μέλη τηρούν τις διατάξεις του παραρτήματος Γ κατά την εφαρμογή των διαδικασιών ελέγχου, επιθεώρησης και έγκρισης, συμπεριλαμβανομένων των εθνικών συστημάτων για την έγκριση της χρήσης προσθέτων ή για τη θέσπιση ορίων ανοχής των προσμείξεων σε τρόφιμα, ποτά ή ζωοτροφές, και κατά τα άλλα εξασφαλίζουν ότι οι διαδικασίες τους είναι συμβατές με τις διατάξεις της παρούσας συμφωνίας.

Αρθρο 9

Τεχνική βοήθεια

1. Τα μέλη συμφωνούν να διευκολύνουν την παροχή τεχνικής βοήθειας σε άλλα μέλη, ιδίως σε αναπτυσσόμενες χώρες μέλη, είτε διμερώς είτε μέσω των καταλλήλων διεθνών οργανισμών. Τέτοιου είδους βοήθεια μπορεί να παρασχεθεί μεταξύ άλλων, στους τομείς των τεχνολογιών μεταποίησης, έρευνας και υποδομής, περιλαμβανομένης της θέσπισης εθνικών κανονιστικών φορέων, και μπορεί να λάβει τη μορφή συμβουλών, πιστώσεων, δωρεών και μη επιστρεπτέων ενισχύσεων, περιλαμβανομένου του στόχου της αναζήτησης τεχνικής πραγματογνωμοσύνης, κατάρτισης και εξοπλισμού που να επιτρέπει στις χώρες αυτές να ευθυγραμμισθούν και να συμμορφωθούν με τα μέτρα υγειονομικής ή φυτοϋγειονομικής προστασίας που είναι απαραίτητα για την επίτευξη του καταλλήλου επιπέδου υγειονομικής ή φυτοϋγειονομικής προστασίας στις αγορές εξαγωγών τους.

2. Στις περιπτώσεις όπου απαιτούνται σημαντικές επενδύσεις προκειμένου μία εξάγουσα αναπτυσσόμενη χώρα μέλος να τηρεί τις υγειονομικές ή φυτοϋγειονομικές προϋποθέσεις ενός εισάγοντος μέλους, το τελευταίο πρέπει να εξετάζει την παροχή τέτοιας τεχνικής βοήθειας η οποία θα επιτρέπει στην αναπτυσσόμενη χώρα μέλος να διατηρήσει και να διευρύνει τις ευκαιρίες πρόσβασης στην αγορά για το σχετικό προϊόν.

Αρθρο 10

Ειδική και διακριτική μεταχείριση

1. Κατά την κατάρτιση και την εφαρμογή των μέτρων υγειονομικής ή

φυτοϋγειονομικής προστασίας, τα μέλη λαμβάνουν υπόψη τις ιδιαίτερες ανάγκες των αναπτυσσομένων χωρών μελών, και, ιδίως, των λιγότερο ανεπτυγμένων χωρών μελών.

2. Στις περιπτώσεις όπου το κατάλληλο επίπεδο υγειονομικής ή φυτοϋγειονομικής προστασίας δίνει τη δυνατότητα για τη σταδιακή εισαγωγή νέων μέτρων υγειονομικής ή φυτοϋγειονομικής προστασίας, θα πρέπει να παρέχονται μεγαλύτερες προθεσμίες για συμμόρφωση σχετικά με προϊόντα τα οποία ενδιαφέρουν τις αναπτυσσόμενες χώρες μέλη προκειμένου αυτές να διατηρήσουν τις εξαγωγικές τους δυνατότητες.

3. Προκειμένου να εξασφαλισθεί ότι οι αναπτυσσόμενες χώρες μέλη δύνανται να συμμορφωθούν με τις διατάξεις της παρούσας συμφωνίας, η επιτροπή εξουσιοδοτείται να παραχωρεί στις χώρες αυτές, μετά από αίτηση, συγκεκριμένες εξαιρέσεις περιορισμένου χρονικού διαστήματος για το σύνολο ή για μέρος των υποχρεώσεων δυνάμει της παρούσας συμφωνίας, λαμβανομένων υπόψη των χρηματοδοτικών, εμπορικών και αναπτυξιακών αναγκών τους.

4. Τα μέλη οφείλουν να ενθαρρύνουν και να διευκολύνουν την ενεργό συμμετοχή των αναπτυσσομένων χωρών μελών στους σχετικούς διεθνείς οργανισμούς.

Άρθρο 11

Διαβουλεύσεις και επίλυση διαφορών

1. Οι διατάξεις των άρθρων XXII και XXIII της GATT του 1994 όπως διαμορφώθηκαν και εφαρμόζονται από το μνημόνιο συμφωνίας για την επίλυση των διαφορών ισχύουν για τις διαβουλεύσεις και την επίλυση διαφορών δυνάμει της παρούσας συμφωνίας, εκτός αν ορίζεται διαφορετικά και συγκεκριμένα σ'αυτή.

2. Σε περίπτωση διαφοράς δυνάμει της παρούσας συμφωνίας, η οποία περιλαμβάνει επιστημονικά ή τεχνικά θέματα, ειδική ομάδα (πάνελ) ζητεί τη συμβουλή εμπειρογνωμόνων οι οποίοι έχουν επιλεγεί από την εν λόγω ομάδα μετά από διαβουλεύσεις με τα μέρη της διαφοράς. Για το σκοπό αυτό, η ειδική ομάδα μπορεί, όταν το κρίνει απαραίτητο, να συστήσει συμβουλευτική ομάδα τεχνικών εμπειρογνωμόνων, ή να συμβουλευθεί τους σχετικούς διεθνείς οργανισμούς, μετά από αίτηση ενός εκ των μερών της διαφοράς ή με δική της πρωτοβουλία.

3. Ουδεμία διάταξη της παρούσας συμφωνίας, δεν θίγει τα δικαιώματα των μελών δυνάμει άλλων διεθνών συμφωνιών, περιλαμβανομένου του δικαιώματος της προσφυγής στις υπηρεσίες διαμεσολάβησης ή τους μηχανισμούς επίλυσης διαφορών άλλων διεθνών οργανισμών, ή που έχουν θεσπισθεί στο πλαίσιο οποιασδήποτε διεθνούς συμφωνίας.

Άρθρο 12

Διοίκηση

1. Συστήνεται επιτροπή μέτρων υγειονομικής και φυτοϋγειονομικής προστασίας για να αποτελέσει τακτική συνέλευση για διαβουλεύσεις. Η επιτροπή επιτελεί τα καθήκοντα που απαιτούνται για την εφαρμογή των διατάξεων της παρούσας συμφωνίας και την προώθηση των στόχων της, ιδίως όσον αφορά την εναρμόνιση. Η επιτροπή αποφασίζει σε συναινετική βάση.

2. Η επιτροπή ενθαρρύνει και διευκολύνει τις διαβουλεύσεις ή τις

διαπραγματεύσεις ad hoc μεταξύ των μελών για συγκεκριμένα υγειονομικά ή φυτοϋγειονομικά θέματα. Η επιτροπή ενθαρρύνει τη χρήση διεθνών προτύπων, κατευθυντηρίων γραμμών ή συστάσεων από όλα τα μέλη και, για το σκοπό αυτό, υποστηρίζει τις τεχνικές διαβουλεύσεις και μελέτες με στόχο το μεγαλύτερο συντονισμό και ολοκλήρωση των διεθνών και εθνικών συστημάτων και προσεγγίσεων για την έγκριση της χρήσης των προσθέτων στα τρόφιμα ή για τον καθορισμό ανοχών για τις προσμείξεις σε τρόφιμα, ποτά ή ζωοτροφές.

3. Η επιτροπή τηρεί στενή επαφή με τους σχετικούς διεθνείς οργανισμούς στον τομέα της υγειονομικής και φυτοϋγειονομικής προστασίας, ιδίως με την επιτροπή κώδικα τροφίμων, το διεθνές γραφείο επιζωοτιών, και τη γραμματεία της διεθνούς σύμβασης προστασίας των φυτών με σκοπό την εξασφάλιση των καλυτέρων δυνατόν διαθεσίμων επιστημονικών και τεχνικών συμβουλών για τη διαχείριση της παρούσας συμφωνίας και προκειμένου να αποφευχθεί η περιττή αλληλεπικάλυψη των προσπαθειών.

4. Η επιτροπή θεσπίζει διαδικασία για την παρακολούθηση της διεθνούς εναρμόνισης και της χρήσης των διεθνών προτύπων, κατευθυντηρίων γραμμών και συστάσεων. Για το σκοπό αυτό, η επιτροπή οφείλει, από κοινού με τους σχετικούς διεθνείς οργανισμούς, να καταρτίσει κατάλογο των διεθνών προτύπων, κατευθυντηρίων γραμμών ή συστάσεων που έχουν σχέση με τα μέτρα υγειονομικής ή φυτοϋγειονομικής προστασίας, τα οποία η επιτροπή διαπιστώνει ότι έχουν τις σημαντικότερες εμπορικές επιπτώσεις. Ο κατάλογος θα πρέπει να περιλαμβάνει ένδειξη των κρατών μελών σχετικά με τα διεθνή πρότυπα, τις κατευθυντήριες γραμμές ή τις συστάσεις τις οποίες εφαρμόζουν ως όρους για την εισαγωγή ή βάσει των οποίων τα εισαγόμενα προϊόντα που ανταποκρίνονται στα εν λόγω πρότυπα τυγχάνουν πρόσβασης στις αγορές τους. Στις περιπτώσεις που ένα μέλος δεν εφαρμόζει διεθνή πρότυπα, κατευθυντήριες γραμμές ή συστάσεις ως όρους για την εισαγωγή, το μέλος οφείλει να αναφέρει τους λόγους γι' τη μη εφαρμογή, και, ιδίως, το αν θεωρεί ότι το πρότυπο δεν είναι αρκετά αυστηρό ώστε να επιτευχθεί το κατάλληλο επίπεδο υγειονομικής ή φυτοϋγειονομικής προστασίας. Εάν κάποιο μέλος αναθεωρήσει τη θέση του, μετά την παροχή ένδειξης για τη χρήση ενός προτύπου, κατευθυντήριας γραμμής ή συστάσεως ως όρου για την εισαγωγή, οφείλει να αιτιολογήσει την αλλαγή αυτή και να ενημερώσει τη γραμματεία καθώς και τους σχετικούς διεθνείς οργανισμούς, εκτός εάν η γνωστοποίηση και η αιτιολόγηση αυτού του είδους δίδεται σύμφωνα με τις διαδικασίες του παραρτήματος Β.

5. Προκειμένου να αποφευχθεί περιττή αλληλεπικάλυψη, η επιτροπή δύναται να αποφασίσει, κατά περίπτωση, να χρησιμοποιήσει τις πληροφορίες που προέρχονται από τις διαδικασίες, ιδίως γνωστοποίησης, οι οποίες ισχύουν στους σχετικούς διεθνείς οργανισμούς.

6. Η επιτροπή δύναται, βάσει πρωτοβουλίας ενός εκ των μελών, μέσω καταλλήλων διαύλων να καλέσει τους σχετικούς διεθνείς οργανισμούς ή τα επικουρικά τους όργανα να εξετάσουν συγκεκριμένα θέματα σχετικά με κάποιο πρότυπο, κατευθυντήρια γραμμή ή σύσταση, περιλαμβανομένης της αιτιολόγησης για μη χρήση η οποία δίδεται σύμφωνα με την παράγραφο 4.

7. Η επιτροπή εξετάζει τη λειτουργία και την εφαρμογή της παρούσας συμφωνίας τρία έτη μετά την ημερομηνία έναρξης ισχύος της συμφωνίας για τον ΠΟΕ και στη συνέχεια όταν προκύψει ανάγκη. Κατά περίπτωση, η επιτροπή μπορεί να υποβάλει στο συμβούλιο εμπορευματικών συναλλαγών

προτάσεις για τροποποίηση του κειμένου της παρούσας συμφωνίας λαμβάνοντας υπόψη, μεταξύ άλλων, την εμπειρία που αποκτήθηκε κατά την εφαρμογή της.

Άρθρο 13

Εφαρμογή

Τα μέλη είναι πλήρως υπεύθυνα δυνάμει της παρούσας συμφωνίας για την τήρηση όλων των υποχρεώσεων που ορίζονται σε αυτήν. Τα μέλη καταρτίζουν και εφαρμόζουν θετικά μέτρα και μηχανισμούς για την ενίσχυση της τήρησης των διατάξεων της παρούσας συμφωνίας από τους άλλους φορείς εκτός της κεντρικής διοίκησης. Τα μέλη λαμβάνουν εύλογα μέτρα στο πλαίσιο της δικαιοδοσίας τους προκειμένου να εξασφαλίσουν ότι οι μη κυβερνητικές οντότητες εντός του εδάφους τους, καθώς και περιφερειακοί φορείς των οποίων είναι μέλη σχετικές οντότητες εντός του εδάφους τους, συμμορφώνονται με τις σχετικές διατάξεις της παρούσας συμφωνίας. Επιπλέον, τα μέλη δεν λαμβάνουν μέτρα τα οποία έχουν ως αποτέλεσμα, άμεσα ή έμμεσα, να υποχρεώνουν ή να ενθαρρύνουν τις περιφερειακές ή μη κυβερνητικές οντότητες, ή τους φορείς της τοπικής διοίκησης, να ενεργούν κατά τρόπο μη συμβατό με τις διατάξεις της παρούσας συμφωνίας. Τα μέλη εξασφαλίζουν την εφαρμογή των μέτρων υγειονομικής ή φυτοϋγειονομικής προστασίας από τις υπηρεσίες μη κυβερνητικών οντοτήτων μόνον εφόσον οι εν λόγω οντότητες συμμορφώνονται με τις διατάξεις της παρούσας συμφωνίας.

Άρθρο 14

Τελικές διατάξεις

Οι λιγότερο ανεπτυγμένες χώρες μέλη μπορούν να αναβάλουν την εφαρμογή των διατάξεων της παρούσας συμφωνίας για περίοδο πέντε ετών μετά την ημερομηνία έναρξης ισχύος της συμφωνίας για τον ΠΟΕ σε σχέση με τα ισχύοντα σ'αυτές μέτρα υγειονομικής ή φυτοϋγειονομικής προστασίας που επηρεάζουν τις εισαγωγές ή τα εισαγόμενα προϊόντα. Άλλες αναπτυσσόμενες χώρες μέλη μπορούν να αναβάλουν την εφαρμογή των διατάξεων της παρούσας συμφωνίας, εκτός του άρθρου 5 παραγράφος 8 και του άρθρου 7, για δύο έτη μετά την ημερομηνία έναρξης ισχύος της συμφωνίας για τον ΠΟΕ σε σχέση με τα δικά τους υφιστάμενα μέτρα υγειονομικής ή φυτοϋγειονομικής προστασίας που επηρεάζουν τις εισαγωγές ή τα εισαγόμενα προϊόντα, εφόσον η εφαρμογή αυτή εμποδίζεται λόγω έλλειψης τεχνικών γνώσεων, τεχνικής υποδομής ή πόρων.

ΠΑΡΑΡΤΗΜΑ Α

ΟΡΙΣΜΟΙ[4]

1. Μέτρο υγειονομικής ή φυτοϋγειονομικής προστασίας - Κάθε μέτρο που εφαρμόζεται για:

(α) την προστασία της ζωής και της υγείας των ζώων ή των φυτών εντός του εδάφους του μέλους από κινδύνους που προκύπτουν λόγω της εισόδου, εγκατάστασης ή μετάδοσης παρασίτων, νόσων, οργανισμών φορέων νόσων ή παθογόνων οργανισμών·

(β) την προστασία της ζωής και της υγείας των ανθρώπων ή των ζώων εντός του εδάφους του μέλους από κινδύνους που προκύπτουν λόγω της παρουσίας προσθέτων, προσμείξεων, τοξινών ή παθογόνων οργανισμών στα τρόφιμα, τα ποτά ή τις ζωοτροφές·

(γ) την προστασία της ζωής και της υγείας των ανθρώπων εντός του εδάφους του μέλους από κινδύνους που προκύπτουν λόγω νόσων που μεταφέρονται από τα ζώα, τα φυτά ή τα προϊόντα των φυτών, ή από την είσοδο, την εγκατάσταση ή μετάδοση παρασίτων· ή

(δ) την πρόληψη ή τον περιορισμό λοιπών ζημιών εντός του εδάφους του μέλους λόγω της εισόδου, εγκατάστασης ή μετάδοσης παρασίτων.

Τα μέτρα υγειονομικής ή φυτοϋγειονομικής προστασίας περιλαμβάνουν όλους τους σχετικούς νόμους, διατάγματα, κανονισμούς, προϋποθέσεις και διαδικασίες, περιλαμβανομένων μεταξύ άλλων, των κριτηρίων τελικού προϊόντος· τις διεργασίες και τις μεθόδους παραγωγής· τις διαδικασίες δοκιμής, ελέγχου, πιστοποίησης και έγκρισης· την υγειονομική απομόνωση, περιλαμβανομένων των σχετικών προϋποθέσεων που αφορούν τη μεταφορά ζώων ή φυτών, ή τα υλικά που απαιτούνται για την επιβίωσή τους κατά τη διάρκεια της μεταφοράς· τις διατάξεις περί σχετικών στατιστικών μεθόδων, διαδικασιών δειγματοληψίας και μεθόδων αξιολόγησης κινδύνων· και τις προϋποθέσεις συσκευασίας και σήμανσης που έχουν άμεση σχέση με την ασφάλεια των τροφίμων.

2. Εναρμόνιση - Η κατάρτιση, αναγνώριση και εφαρμογή κοινών μέτρων υγειονομικής και φυτοϋγειονομικής προστασίας από διαφορετικά μέλη.

3. Διεθνή πρότυπα, κατευθυντήριες γραμμές και συστάσεις

(α) όσον αφορά την ασφάλεια των τροφίμων, τα πρότυπα, οι κατευθυντήριες γραμμές και οι συστάσεις που έχουν θεσπισθεί από την επιτροπή κώδικα τροφίμων σε σχέση με τα πρόσθετα τροφίμων, τα υπολείμματα των κτηνιατρικών φαρμάκων και των φυτοφαρμάκων, τις προσμείξεις, τις μεθόδους ανάλυσης και δειγματοληψίας, καθώς και οι κώδικες και οι κατευθυντήριες γραμμές υγιεινής·

(β) όσον αφορά την υγεία των ζώων και τις ζωονόσους, τα πρότυπα, οι κατευθυντήριες γραμμές και οι συστάσεις που έχουν καταρτισθεί υπό την αιγίδα του διεθνούς γραφείου επιζωοτιών·

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4 Για το σκοπό των παρόντων ορισμών, ο όρος "ζώα" περιλαμβάνει τα ψάρια και την άγρια πανίδα· ο όρος φυτά περιλαμβάνει τα δάση και την άγρια χλωρίδα· ο όρος "παράσιτα" περιλαμβάνει τα ζιζάνια· και ο όρος "προσμείξεις" περιλαμβάνει υπολείμματα και ξένα σώματα των φυτοφαρμάκων και των κτηνιατρικών φαρμάκων.

(γ) όσον αφορά την υγεία των φυτών, τα διεθνή πρότυπα, οι κατευθυντήριες γραμμές και οι συστάσεις που έχουν καταρτισθεί υπό την αιγίδα της γραμματείας της διεθνούς σύμβασης προστασίας των φυτών σε συνεργασία με περιφερειακούς οργανισμούς, οι οποίοι λειτουργούν στο πλαίσιο της εν λόγω σύμβασης· και

(δ) όσον αφορά θέματα που δεν καλύπτονται από τους ανωτέρω οργανισμούς, τα κατάλληλα πρότυπα, κατευθυντήριες γραμμές και συστάσεις που εγκρίνονται από άλλους σχετικούς διεθνείς οργανισμούς, στους οποίους δύνανται να συμμετέχουν όλα τα μέλη, όπως έχουν προσδιοριστεί από την επιτροπή.

4. Αξιολόγηση κινδύνων - Η εκτίμηση της πιθανότητας εισόδου, εγκατάστασης ή μετάδοσης παρασίτων ή νόσων εντός του εδάφους ενός εισάγοντος μέλους σύμφωνα με τα μέτρα υγειονομικής ή φυτοϋγειονομικής προστασίας τα οποία μπορεί να ισχύουν, καθώς και των σχετικών δυνητικών βιολογικών και οικονομικών επιπτώσεων· ή η εκτίμηση των πιθανοτήτων για δυσμενείς επιπτώσεις στην υγεία των ανθρώπων ή των ζώων που προκύπτουν από την παρουσία προσθέτων, προσμείξεων, τοξινών ή παθογόνων οργανισμών στα τρόφιμα, τα ποτά ή τις ζωοτροφές.

5. Κατάλληλο επίπεδο υγειονομικής ή φυτοϋγειονομικής προστασίας - Το επίπεδο προστασίας που κρίνεται κατάλληλο από το μέλος το οποίο θεσπίζει μέτρο υγειονομικής ή φυτοϋγειονομικής προστασίας προκειμένου να προστατεύσει τη ζωή και την υγεία των προσώπων, των ζώων ή των φυτών εντός του εδάφους του.

ΣΗΜΕΙΩΣΗ: Πολλά μέλη, εξάλλου, αναφέρονται στην έννοια αυτήν με τον όρο "αποδεκτό επίπεδο κινδύνου".

6. Ζώνη απαλλαγμένη από παράσιτα ή νόσους - Η ζώνη, ανεξαρτήτως αν πρόκειται για το σύνολο της χώρας, μέρος της χώρας, ή το σύνολο ή μέρη ορισμένων χωρών, όπως έχει προσδιοριστεί από τις αρμόδιες αρχές, στην οποία δεν εμφανίζεται κρούσμα παρασίτων ή συγκεκριμένης νόσου.

ΣΗΜΕΙΩΣΗ: Μία ζώνη απαλλαγμένη από παράσιτα ή νόσους μπορεί να περιβάλλει, να περιβάλλεται ή να γειτνιάζει με περιοχή (είτε εντός μέρους χώρας ή εντός γεωγραφικής περιοχής η οποία περιλαμβάνει μέρη ή το σύνολο ορισμένων χωρών), στην οποία είναι γνωστό ότι έχει εμφανισθεί κρούσμα παρασίτων ή συγκεκριμένης νόσου αλλά υπόκειται σε περιφερειακά μέτρα ελέγχου, όπως η δημιουργία ζωνών προστασίας, επιτήρησης και παρεμβολής οι οποίες θα περιορίσουν ή θα εξαλείψουν τα εν λόγω παράσιτα ή νόσο.

7. Ζώνη χαμηλού επιπολασμού παρασίτων ή νόσων - Η ζώνη, ανεξάρτητα αν πρόκειται για χώρα, μέρος χώρας, ή το σύνολο ή μέρη ορισμένων χωρών, όπως έχει καθοριστεί από τις αρμόδιες αρχές, στην οποία τα εμφανιζόμενα κρούσματα παρασίτων ή συγκεκριμένης νόσου βρίσκονται σε χαμηλά επίπεδα και η οποία υπόκειται σε αποτελεσματικά μέτρα επιτήρησης, ελέγχου ή εξάλειψης.

ΠΑΡΑΡΤΗΜΑ Β

ΔΙΑΦΑΝΕΙΑ ΤΩΝ ΚΑΝΟΝΙΣΜΩΝ ΥΓΕΙΟΝΟΜΙΚΗΣ ΚΑΙ ΦΥΤΟΫΓΕΙΟΝΟΜΙΚΗΣ ΠΡΟΣΤΑΣΙΑΣ

Δημοσίευση κανονισμών

1. Τα μέλη εξασφαλίζουν ότι όλοι οι εκδιδόμενοι κανονισμοί υγειονομικής και φυτοϋγειονομικής προστασίας[5] δημοσιεύονται αμέσως έτσι ώστε να διευκολύνουν τα ενδιαφερόμενα μέλη να ενημερώνονται σχετικά.

2. Εκτός από επείγουσες περιστάσεις, τα μέλη επιτρέπουν να παρέλθει ένα λογικό χρονικό διάστημα μεταξύ της δημοσίευσης ενός κανονισμού υγειονομικής ή φυτοϋγειονομικής προστασίας και της έναρξης ισχύος του, προκειμένου να δώσουν χρόνο στους παραγωγούς των μελών με εξαγωγική δραστηριότητα, και ιδίως των αναπτυσσομένων χωρών μελών, να προσαρμόσουν τα προϊόντα τους και τις μεθόδους παραγωγής στις απαιτήσεις του εισάγοντος μέλους.

Κέντρα πληροφόρησης

3. Κάθε μέλος εξασφαλίζει την ύπαρξη κέντρων πληροφόρησης υπεύθυνες να δίδουν απαντήσεις σε όλες τις εύλογες ερωτήσεις των ενδιαφερόμενων μελών καθώς και να παρέχουν τα σχετικά έγγραφα όσον αφορά:

(α) κανονισμούς υγειονομικής ή φυτοϋγειονομικής προστασίας που έχουν εκδοθεί ή προταθεί εντός του εδάφους του·

(β) τις διαδικασίες ελέγχου και επιθεώρησης, την παραγωγή και την υγειονομική απομόνωση, τις ανοχές στα φυτοφάρμακα και τις διαδικασίες έγκρισης των προσθέτων τροφίμων, οι οποίες εφαρμόζονται εντός του εδάφους του·

(γ) τις διαδικασίες αξιολόγησης κινδύνων, τους παράγοντες που λαμβάνονται υπόψη, καθώς και τον προσδιορισμό του κατάλληλου επιπέδου υγειονομικής ή φυτοϋγειονομικής προστασίας·

(δ) την εγγραφή και τη συμμετοχή του μέλους, ή σχετικών φορέων εντός του εδάφους του, σε διεθνείς και περιφερειακούς οργανισμούς και συστήματα υγειονομικής και φυτοϋγειονομικής προστασίας, καθώς και σε διμερείς και πολυμερείς συμφωνίες και ρυθμίσεις εντός του πεδίου εφαρμογής της παρούσας συμφωνίας, και τα κείμενα αυτών των συμφωνιών και ρυθμίσεων.

4. Τα μέλη εξασφαλίζουν ότι η τεκμηρίωση που ζητούν τα ενδιαφερόμενα μέλη τους χορηγείται στην ίδια τιμή (εάν ενδεχομένως υπάρχει), εκτός από το κόστος παράδοσης, που ισχύει για τους υπηκόους[6] του ενδιαφερομένου μέλους.

Διαδικασίες γνωστοποίησης

5. Σε περίπτωση που δεν υφίσταται διεθνές πρότυπο, κατευθυντήριος

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5 Μέτρα υγειονομικής και φυτοϋγειονομικής προστασίας όπως νόμοι, διατάγματα ή διατάξεις γενικής εφαρμογής.

6 Όπου αναφέρεται ο όρος "υπήκοοι" στην παρούσα συμφωνία, στην περίπτωση χωριστού τελωνειακού εδάφους μέλους του ΠΟΕ, σημαίνει τα πρόσωπα, φυσικά ή νομικά, τα οποία κατοικούν ή τα οποία έχουν πραγματική και ισχύουσα βιομηχανική ή εμπορική έδρα στο εν λόγω τελωνειακό έδαφος.

γραμμή ή σύσταση ή το περιεχόμενο προτεινόμενου κανονισμού υγειονομικής ή φυτοϋγειονομικής προστασίας δεν είναι ουσιαστικά το ίδιο με το περιεχόμενο ενός διεθνούς προτύπου, κατευθυντηρίου γραμμής ή συστάσεως, και αν ο κανονισμός δύναται να έχει σημαντικές επιπτώσεις στις συναλλαγές των άλλων μελών, τα μέλη:

(α) δημοσιεύουν εντός συντόμου χρονικού διαστήματος κοινοποίηση κατά τρόπον ώστε να διευκολύνουν τα ενδιαφερόμενα μέλη να λάβουν γνώση της πρότασης για τη θέσπιση συγκεκριμένου κανονισμού·

(β) γνωστοποιούν στα λοιπά μέλη, μέσω της γραμματείας, τα προϊόντα τα οποία θα καλύπτει ο κανονισμός μαζί με συνοπτική αναφορά του σκοπού και της αιτιολόγησης του προτεινόμενου κανονισμού. Γνωστοποιήσεις τέτοιου είδους πραγματοποιούνται κατά τα αρχικά στάδια, όταν ακόμα είναι δυνατόν να γίνουν τροποποιήσεις και να ληφθούν υπόψη τα σχόλια·

(γ) παρέχουν, κατόπιν αιτήσεως, στα λοιπά μέλη αντίγραφα του προτεινόμενου κανονισμού και, όταν είναι δυνατόν, προσδιορίζουν τα τμήματα, τα οποία στην ουσία παρεκκλίνουν από τα διεθνή πρότυπα, τις κατευθυντήριες γραμμές ή τις συστάσεις·

(δ) χωρίς διακρίσεις, χορηγούν λογικό χρονικό διάστημα στα λοιπά μέλη προκειμένου αυτά να εκφράσουν γραπτώς τα σχόλια τους, συζητούν τα εν λόγω σχόλια μετά από αίτηση, και λαμβάνουν υπόψη τα σχόλια και τα αποτελέσματα των συζητήσεων.

6. Εντούτοις, σε περίπτωση που προκύπτουν ή ενδέχεται να προκύψουν επείγοντα προβλήματα προστασίας της υγείας για ένα μέλος, το εν λόγω μέλος δύναται να παραλείψει κάποια στάδια από αυτά που απαριθμούνται στην παράγραφο 5 του παρόντος παραρτήματος, όπως κρίνει αναγκαίο, υπό την προϋπόθεση ότι το μέλος:

(α) ενημερώνει αμέσως τα λοιπά μέλη, μέσω της γραμματείας, για το συγκεκριμένο κανονισμό και τα προϊόντα που καλύπτονται, με συνοπτική αναφορά του σκοπού και της αιτιολόγησης του κανονισμού, συμπεριλαμβανομένων των λόγων χαρακτηρισμού των προβλημάτων ως επειγόντων·

(β) παρέχει, μετά από αίτηση, αντίγραφα του κανονισμού στα λοιπά μέλη·

(γ) επιτρέπει στα λοιπά μέλη να προβαίνουν σε σχόλια γραπτώς, συζητά τα εν λόγω σχόλια μετά από αίτηση, και λαμβάνει υπόψη τα σχόλια και τα αποτελέσματα των συζητήσεων.

7. Οι γνωστοποιήσεις προς τη γραμματεία γίνονται στην αγγλική, γαλλική ή ισπανική γλώσσα.

8. Οι ανεπτυγμένες χώρες μέλη παρέχουν, εάν ζητηθεί από άλλο μέλος, αντίγραφα των εγγράφων, ή σε περίπτωση ογκώδους τεκμηρίωσης, σύνοψης των εγγράφων τα οποία αφορούν συγκεκριμένη γνωστοποίηση στην αγγλική, γαλλική ή ισπανική γλώσσα.

9. Η γραμματεία κοινοποιεί αμέσως αντίγραφα της γνωστοποίησης σε όλα τα μέλη και τους ενδιαφερόμενους διεθνείς οργανισμούς και εφιστά την προσοχή των αναπτυσσομένων χωρών μελών σε κάθε γνωστοποίηση σχετικά με προϊόντα τα οποία έχουν ιδιαίτερο ενδιαφέρον για αυτές.

10. Τα μέλη ορίζουν μία και μόνη κεντρική κυβερνητική αρχή ως υπεύθυνη για την εφαρμογή, σε εθνικό επίπεδο, των διατάξεων που αφορούν τις διαδικασίες γνωστοποίησης σύμφωνα με τις παραγράφους 5, 6, 7 και 8 του παρόντος παραρτήματος.

Γενικές επιφυλάξεις

11. Ουδεμία διάταξη της παρούσας συμφωνίας δεν ερμηνεύεται ως απαίτηση:

(α) για την παροχή στοιχείων ή αντιγράφων των σχεδίων· ή για τη δημοσίευση των κειμένων σε γλώσσα άλλη από τη γλώσσα του μέλους, με την επιφύλαξη των διατάξεων της παραγράφου 8 του παρόντος παραρτήματος· ή

(β) για αποκάλυψη από τα μέλη, εμπιστευτικών πληροφοριών, οι οποίες θα μπορούσαν να εμποδίσουν την επιβολή της νομοθεσίας υγειονομικής ή φυτοϋγειονομικής προστασίας ή οι οποίες θα έθεταν σε κίνδυνο τα νόμιμα εμπορικά συμφέροντα συγκεκριμένων επιχειρήσεων.

ΠΑΡΑΡΤΗΜΑ Γ

ΔΙΑΔΙΚΑΣΙΕΣ ΕΛΕΓΧΟΥ, ΕΠΙΘΕΩΡΗΣΗΣ ΚΑΙ ΕΓΚΡΙΣΗΣ[7]

1. Τα μέλη διασφαλίζουν, σε σχέση με κάθε διαδικασία ελέγχου και εξασφάλισης της τήρησης των μέτρων υγειονομικής ή φυτοϋγειονομικής προστασίας, ότι:

(α) οι διαδικασίες αυτές αναλαμβάνονται και ολοκληρώνονται χωρίς αδικαιολόγητες καθυστερήσεις και κατά τον ίδιο τουλάχιστον ευνοϊκό τρόπο τόσο για τα εισαγόμενα προϊόντα όσο και για τα παρόμοια εγχώρια προϊόντα·

(β) το σύνηθες διάστημα διεκπεραίωσης κάθε διαδικασίας δημοσιεύεται ή ότι το προβλεπόμενο διάστημα διεκπεραίωσης κοινοποιείται στον αιτούντα μετά από αίτησή του. Μόλις παραλάβει μία αίτηση, ο αρμόδιος φορέας εξετάζει αμέσως την πληρότητα των εγγράφων και ενημερώνει τον αιτούντα κατά ακριβή και πλήρη τρόπο για όλες τις ελλείψεις· ο αρμόδιος φορέας διαβιβάζει, το συντομότερο δυνατόν, τα αποτελέσματα της διαδικασίας, κατά ακριβή και πλήρη τρόπο, στον αιτούντα ούτως ώστε να γίνουν διορθωτικές ενέργειες, εάν είναι αναγκαίο· ακόμα και όταν η αίτηση παρουσιάζει ελλείψεις, ο αρμόδιος φορέας συνεχίζει τη διαδικασία, όσον αυτό είναι εφικτό, εάν το ζητήσει ο αιτών· και ότι, μετά από αίτησή του, ο αιτών ενημερώνεται για τη φάση που βρίσκεται η διαδικασία, και αιτιολογείται κάθε ενδεχόμενη καθυστέρηση·

(γ) οι αιτήσεις για πληροφορίες περιορίζονται σε ό,τι είναι αναγκαίο για την καταλληλότητα των διαδικασιών ελέγχου, επιθεώρησης και έγκρισης, περιλαμβανομένης της έγκρισης της χρήσης προσθέτων ή του καθορισμού ανοχών για τις προσμείξεις σε τρόφιμα, ποτά ή ζωοτροφές·

(δ) ο εμπιστευτικός χαρακτήρας των πληροφοριών σχετικά με εισαγόμενα προϊόντα, οι οποίες προκύπτουν από τον έλεγχο, την επιθεώρηση και την έγκριση, ή παρέχονται στο πλαίσιο αυτών, το ίδιο τουλάχιστον ευνοϊκό όπως για τα εγχώρια προϊόντα και έτσι ώστε να προστατεύονται τα νόμιμα εμπορικά συμφέροντα·

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7 Οι διαδικασίες ελέγχου, επιθεώρησης και έγκρισης περιλαμβάνουν, μεταξύ άλλων τις διαδικασίες δειγματοληψίας, δοκιμής και πιστοποίησης.

(ε) οι αιτήσεις για έλεγχο, επιθεώρηση και έγκριση μεμονωμένων δειγμάτων προϊόντος περιορίζονται σε ό,τι είναι εύλογο και αναγκαίο·

(στ) κάθε εισφορά που επιβάλλεται για τις διαδικασίες επί των εισαγομένων προϊόντων είναι δίκαιη σε σχέση με αυτές που επιβάλλονται σε παρόμοια εγχώρια προϊόντα ή προϊόντα που κατάγονται από άλλο μέλος και όχι υψηλότερη από το πραγματικό κόστος της υπηρεσίας·

(ζ) τα ίδια κριτήρια επιβάλλεται να χρησιμοποιούνται κατά τον καθορισμό της τοποθεσίας των εγκαταστάσεων που χρησιμοποιούνται στις διαδικασίες και κατά την επιλογή των δειγμάτων τόσο των εισαγομένων προϊόντων όσο και των εγχωρίων προϊόντων, ούτως ώστε να ελαχιστοποιούνται οι δυσχέρειες για τους αιτούντες, τους εισαγωγείς, τους εξαγωγείς ή τους αντιπροσώπους τους·

(η) όταν οι προδιαγραφές ενός προϊόντος τροποποιούνται μετά τον έλεγχο και την επιθεώρησή του στο πλαίσιο των ισχυόντων κανονισμών, η διαδικασία για το τροποποιημένο προϊόν περιορίζεται σε ό,τι είναι αναγκαίο ώστε να καθορισθεί εάν υπάρχει επαρκής εξασφάλιση, ότι το προϊόν εξακολουθεί να πληροί τους όρους των σχετικών κανονισμών· και

(θ) υπάρχει διαδικασία για την εξέταση των παραπόνων σχετικά με τη λειτουργία αυτών των διαδικασιών και για την ανάληψη διορθωτικών ενεργειών σε περίπτωση που κάποια καταγγελία είναι αιτιολογημένη.

όταν εισάγον μέλος εφαρμόζει σύστημα για την έγκριση της χρήσης των προσθέτων στα τρόφιμα ή για τον καθορισμό ανοχών για τις προσμείξεις στα τρόφιμα, τα ποτά ή τις ζωοτροφές, το οποίο απαγορεύει ή περιορίζει την πρόσβαση προϊόντων στις εγχώριες αγορές εξαιτίας της έλλειψης έγκρισης, το εισάγον μέλος εξετάζει την περίπτωση να χρησιμοποιήσει διεθνές πρότυπο ως βάση για να επιτρέψει την πρόσβαση, έως ότου ληφθεί η τελική απόφαση.

2. όταν ένα μέτρο υγειονομικής ή φυτοϋγειονομικής προστασίας προβλέπει έλεγχο στο επίπεδο της παραγωγής, το μέλος στου οποίου το έδαφος πραγματοποιείται η παραγωγή παρέχει την αναγκαία βοήθεια για να διευκολυνθεί ο έλεγχος αυτός και οι εργασίες των αρχών ελέγχου.

3. ουδεμία διάταξη της παρούσας συμφωνίας δεν εμποδίζει τα μέλη να διενεργήσουν εύλογη επιθεώρηση εντός των εδαφών τους.

ΣΥΜΦΩΝΙΑ ΓΙΑ ΤΑ ΚΛΩΣΤΟΥΦΑΝΤΟΥΡΓΙΚΑ ΠΡΟΙΟΝΤΑ ΚΑΙ ΤΑ ΕΙΔΗ ΕΝΔΥΣΗΣ

Τα μέλη,

Υπενθυμίζοντας ότι οι υπουργοί συμφώνησαν στην Punta del Este ότι "οι διαπραγματεύσεις στον τομέα των κλωστοϋφαντουργικών προϊόντων και των ειδών ένδυσης έχουν στόχο να ορίσουν τις λεπτομέρειες που θα επέτρεπαν την ενδεχόμενη ενσωμάτωση του εν λόγω τομέα στην GATT βάσει των ενισχυμένων κανόνων και υποχρεώσεων της GATT, συνεισφέροντας κατά συνέπεια και στον στόχο της περαιτέρω απελευθέρωσης του εμπορίου"·

Υπενθυμίζοντας επίσης ότι, με την απόφαση του Απριλίου 1989 της επιτροπής εμπορικών διαπραγματεύσεων, συνεφωνήθη ότι η διαδικασία ενσωμάτωσης ήταν ανάγκη να αρχίσει μετά την ολοκλήρωση των πολυμερών εμπορικών διαπραγματεύσεων του Γύρου της Ουρουγουάης και ήταν σκόπιμο να έχει σταδιακό χαρακτήρα·

Υπενθυμίζοντας, εξάλλου, ότι συνεφωνήθη ότι οι λιγότερο ανεπτυγμένες χώρες μέλη επιβάλετο να τύχουν ιδιαίτερης μεταχείρισης·

Συμφωνούν τα ακόλουθα:

Άρθρο 1

1. Η παρούσα συμφωνία ορίζει τις διατάξεις που θα ισχύσουν στα μέλη κατά τη διάρκεια μεταβατικής περιόδου για την ενσωμάτωση του τομέα των κλωστοϋφαντουργικών προϊόντων και των ειδών ένδυσης στην GATT του 1994.

2. Τα μέλη συμφωνούν να χρησιμοποιήσουν τις διατάξεις του άρθρου 2, παράγραφος 18 και του άρθρου 6, παράγραφος 6, στοιχείο β) κατά τρόπον ώστε να επιτρέψουν σημαντικές αυξήσεις των δυνατοτήτων πρόσβασης για τους μικρούς προμηθευτές και τη δημιουργία σημαντικών εμπορικών ευκαιριών για τους νεοεισερχόμενους στον τομέα του εμπορίου κλωστοϋφαντουργικών προϊόντων και ειδών ένδυσης.[1]

3. Τα μέλη δίνουν τη δέουσα προσοχή στην κατάσταση των μελών, τα οποία δεν έχουν αποδεχθεί τα πρωτόκολλα για την παράταση της ισχύος της συμφωνίας για το διεθνές εμπόριο κλωστοϋφαντουργικών προϊόντων (καλούμενης στην παρούσα συμφωνία "ΣΠΙ") του 1986 και, στο μέτρο του δυνατού, τους παρέχουν ειδική μεταχείριση κατ'εφαρμογή των διατάξεων της παρούσας συμφωνίας.

4. Τα μέλη συμφωνούν ότι, κατά την εφαρμογή των διατάξεων της παρούσας συμφωνίας, θα πρέπει να εκφράζονται, μετά από διαβουλεύσεις, τα επιμέρους συμφέροντα των βαμβακοπαραγωγών των εξαγόντων μελών.

5. Προκειμένου να διευκολυνθεί η ενσωμάτωση του τομέα των κλωστοϋφαντουργικών προϊόντων και των ειδών ένδυσης στην GATT του 1994, τα μέλη οφείλουν να δώσουν τις δυνατότητες για συνεχή και αυτοδύναμη βιομηχανική προσαρμογή και αυξημένο ανταγωνισμό στις αγορές τους.

6. Οι διατάξεις της παρούσας συμφωνίας δεν επηρεάζουν, εκτός εάν ορίζεται διαφορετικά σ'αυτή, τα δικαιώματα και τις υποχρεώσεις των μελών, δυνάμει των διατάξεων της συμφωνίας για τον ΠΟΕ και των πολυμερών εμπορικών συμφωνιών.

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1 Στο μέτρο του δυνατού, μπορούν επίσης να επωφεληθούν από την παρούσα διάταξη και οι εξαγωγές από τις λιγότερο αναπτυγμένες χώρες μέλη.

7. Τα χλωστούφαντουργικά προϊόντα και τα είδη ένδυσης για τα οποία ισχύει η παρούσα συμφωνία απαριθμούνται στο παράρτημα.

Άρθρο 2

1. Όλοι οι ποσοτικοί περιορισμοί στο πλαίσιο διμερών συμφωνιών που διατηρούνται δυνάμει του άρθρου 4 ή γνωστοποιούνται δυνάμει του άρθρου 7 ή 8 της ΣΠΙ, εν ισχύι την ημέρα πριν από τη θέση σε ισχύ της συμφωνίας για τον ΠΟΕ, γνωστοποιούνται με λεπτομέρειες, εντός 60 ημερών από την εν λόγω θέση σε ισχύ, περιλαμβανομένων των περιοριστικών επιπέδων, των συντελεστών αύξησης και των διατάξεων ευελιξίας, από τα μέλη που διατηρούν τέτοιου είδους περιορισμούς, στο εποπτικό όργανο χλωστούφαντουργικών προϊόντων το οποίο προβλέπεται στο άρθρο 8 (καλούμενο στην παρούσα συμφωνία το "ΕΟΚΠ"). Τα μέλη συμφωνούν ότι από την ημερομηνία θέσης σε ισχύ της συμφωνίας για τον ΠΟΕ, όλοι οι περιορισμοί αυτού του είδους που διατηρούνται μεταξύ των συμβαλλομένων μερών της GATT του 1947, και που έχουν τεθεί σε εφαρμογή την ημέρα πριν από την εν λόγω θέση σε ισχύ, διέπονται από τις διατάξεις της παρούσας συμφωνίας.

2. Το ΕΟΚΠ διαβιβάζει τις εν λόγω γνωστοποιήσεις σε όλα τα μέλη προς πληροφόρησή τους. Όλα τα μέλη δύνανται να θέσουν υπόψη του ΕΟΚΠ, εντός 60 ημερών από τη διαβίβαση των γνωστοποιήσεων, τις παρατηρήσεις που κρίνουν αρμόζουσες σχετικά με αυτές. Οι εν λόγω παρατηρήσεις διαβιβάζονται στα λοιπά μέλη για πληροφόρησή τους. Το ΕΟΚΠ δύναται να προβαίνει σε συστάσεις, κατά περίπτωση, στα ενδιαφερόμενα μέλη.

3. Σε περίπτωση που η 12μηνη περίοδος των περιορισμών που γνωστοποιούνται δυνάμει της παραγράφου 1 δεν συμπίπτει με τη 12μηνη περίοδο που προηγείται της ημερομηνίας θέσης σε ισχύ της συμφωνίας για τον ΠΟΕ, τα ενδιαφερόμενα μέλη οφείλουν να συμφωνήσουν αμοιβαίως σχετικά με τους διακανονισμούς που απαιτούνται για να ευθυγραμμισθεί η περίοδος των περιορισμών με το έτος εφαρμογής της συμφωνίας[2], και να θεσπίσουν τις εθνικές βάσεις αυτών των περιορισμών προκειμένου να εφαρμοσθούν οι διατάξεις του παρόντος άρθρου. Τα ενδιαφερόμενα μέλη συμφωνούν να προβούν σε διαβουλεύσεις αμέσως μόλις τους ζητηθεί προκειμένου να καταλήξουν σε τέτοια αμοιβαία συμφωνία. Αυτού του είδους οι διακανονισμοί λαμβάνουν υπόψη, μεταξύ άλλων, τις εποχιακές τάσεις των αποστολών εμπορευμάτων κατά τη διάρκεια των τελευταίων ετών. Τα αποτελέσματα των εν λόγω διαβουλεύσεων γνωστοποιούνται στο ΕΟΚΠ, το οποίο προβαίνει σε συστάσεις, όποτε το κρίνει απαραίτητο, προς τα ενδιαφερόμενα μέλη.

4. Οι περιορισμοί που γνωστοποιούνται δυνάμει της παραγράφου 1 θεωρείται ότι αποτελούν το σύνολο τέτοιου είδους περιορισμών που εφαρμόζονται από τα αντίστοιχα μέλη την ημέρα πριν τη θέση σε ισχύ της συμφωνίας για τον ΠΟΕ. Δεν εισάγονται νέοι περιορισμοί σχετικά με προϊόντα ή μέλη, εκτός αν αυτοί επιβάλλονται κατ'εφαρμογήν των διατάξεων της παρούσας συμφωνίας ή σχετικών διατάξεων της GATT του 1994[3]. Οι περιορισμοί που δεν γνωστοποιούνται εντός 60 ημερών από την ημερομηνία θέσης σε ισχύ της συμφωνίας για τον ΠΟΕ λήγουν πάραυτα.

5. Όλα τα μονομερή μέτρα, που λαμβάνονται δυνάμει του άρθρου 3 της ΣΠΙ πριν από την ημερομηνία θέσης σε ισχύ της συμφωνίας για τον ΠΟΕ, δύναται να παραμείνουν σε ισχύ για ορισμένη διάρκεια, που δεν

2 Ως "έτος εφαρμογής της συμφωνίας" νοείται η 12μηνη περίοδος που αρχίζει την ημερομηνία θέσης σε ισχύ της συμφωνίας για τον ΠΟΕ καθώς και τα επόμενα 12μηνα διαστήματα.

3 Οι σχετικές διατάξεις της GATT του 1994 δεν περιλαμβάνουν το άρθρο XIX σχετικά με τα προϊόντα που δεν έχουν ενσωματωθεί ακόμα στην GATT του 1994, εκτός αν προβλέπεται στην παράγραφο 3 του παραρτήματος.

υπερβαίνει τους 12 μήνες, εάν έχουν εξετασθεί από το Όργανο Επιτήρησης των Κλωστοϋφαντουργικών (καλούμενο στην παρούσα συμφωνία "ΟΕΚ") που θεσπίζεται δυνάμει της ΣΠΙ. Εάν το ΟΕΚ δεν είχε την ευκαιρία να εξετάσει τα εν λόγω μονομερή μέτρα, αυτά εξετάζονται από το ΣΟΚΠ σύμφωνα με τους κανόνες και διαδικασίες που διέπουν τα μέτρα του άρθρου 3 στο πλαίσιο της ΣΠΙ. Τα μέτρα που εφαρμόζονται στο πλαίσιο συμφωνίας βάσει του άρθρου 4 της ΣΠΙ πριν από την ημερομηνία θέσης σε ισχύ της συμφωνίας για τον ΠΟΕ και αποτελούν αντικείμενο διαφοράς, την οποία το ΟΕΚ δεν είχε την ευκαιρία να εξετάσει, εξετάζονται επίσης από το ΣΟΚΠ σύμφωνα με τους κανόνες και τις διαδικασίες της ΣΠΙ που ισχύουν για τέτοιου είδους εξέταση.

6. Την ημερομηνία θέσης σε ισχύ της συμφωνίας για τον ΠΟΕ, κάθε μέλος ενσωματώνει στην GATT του 1994 τα προϊόντα τα οποία αντιπροσωπεύουν πάνω από το 16% του συνολικού όγκου των εισαγωγών του μέλους κατά το 1990 των προϊόντων που αναφέρονται στο παράρτημα, σε σχέση με τις θέσεις ή κατηγορίες του ΕΣ. Τα προϊόντα που πρόκειται να ενσωματωθούν περιλαμβάνουν προϊόντα κάθε μιας από τις ακόλουθες τέσσερις ομάδες: ταινίες προπαρασκευής και νήματα, υφάσματα, έτοιμα κλωστοϋφαντουργικά προϊόντα, και είδη ένδυσης.

7. Οι πλήρεις λεπτομέρειες σχετικά με τις ενέργειες που πρέπει να γίνουν δυνάμει της παραγράφου 6 κοινοποιούνται από τα ενδιαφερόμενα μέλη σύμφωνα με τα ακόλουθα:

(α) Τα μέλη που διατηρούν περιορισμούς οι οποίοι εμπίπτουν στο πλαίσιο της παραγράφου 1 αναλαμβάνουν, κατά παρέκκλιση της ημερομηνίας της θέσης σε ισχύ της συμφωνίας για τον ΠΟΕ, να γνωστοποιήσουν τις λεπτομέρειες αυτές στη γραμματεία της GATT το αργότερο την ημερομηνία που καθορίζεται με την υπουργική απόφαση της 15ης Απριλίου 1994. Η γραμματεία της GATT διαβιβάζει αμέσως τις εν λόγω γνωστοποιήσεις στους λοιπούς συμμετέχοντες για πληροφόρησή τους. Οι εν λόγω γνωστοποιήσεις θα παραδοθούν στο ΣΟΚΠ, όταν αυτό συσταθεί, για τους σκοπούς της παραγράφου 21·

(β) Τα μέλη τα οποία, δυνάμει του άρθρου 6, παράγραφος 1, διατήρησαν το δικαίωμα της χρήσης των διατάξεων του άρθρου 6, κοινοποιούν τις εν λόγω λεπτομέρειες στο ΣΟΚΠ εντός 60 ημερών το αργότερο μετά τη θέση σε ισχύ της συμφωνίας για τον ΠΟΕ, ή, στην περίπτωση των μελών που καλύπτονται από το άρθρο 1, παράγραφος 3, το αργότερο στο τέλος του 12ου μήνα μετά τη θέση σε ισχύ της παρούσας συμφωνίας. Το ΣΟΚΠ διαβιβάζει τις εν λόγω κοινοποιήσεις στα λοιπά μέλη για πληροφόρηση και τις εξετάζει όπως προβλέπεται στην παράγραφο 21.

8. Τα εναπομένοντα προϊόντα, ήτοι τα προϊόντα που δεν έχουν ενσωματωθεί στην GATT του 1994 δυνάμει της παραγράφου 6, ενσωματώνονται, σε σχέση με τις θέσεις ή κατηγορίες του εναρμονισμένου συστήματος, σε τρία στάδια, ως ακολούθως:

(α) την πρώτη ημέρα του 37ου μήνα μετά τη θέση σε ισχύ της συμφωνίας για τον ΠΟΕ, τα προϊόντα τα οποία αντιπροσωπεύουν τουλάχιστον το 17 τοις εκατό του συνολικού όγκου των εισαγωγών του μέλους το 1990 για τα προϊόντα του παραρτήματος. Τα προϊόντα που ενσωματώνονται από τα μέλη περιλαμβάνουν προϊόντα κάθε μιας από τις ακόλουθες τέσσερις κατηγορίες: ταινίες προπαρασκευής και νήματα, υφάσματα, έτοιμα κλωστοϋφαντουργικά προϊόντα, και είδη ένδυσης·

(β) την πρώτη ημέρα του 85ου μήνα μετά τη θέση σε ισχύ της συμφωνίας για τον ΠΟΕ, τα προϊόντα τα οποία αντιπροσωπεύουν τουλάχιστον το 18 τοις εκατό του συνολικού όγκου των εισαγωγών του μέλους το 1990 για τα προϊόντα του παραρτήματος. Τα

προϊόντα που ενσωματώνονται από τα μέλη περιλαμβάνουν προϊόντα κάθε μιας από τις ακόλουθες τέσσερις κατηγορίες: ταινίες προπαρασκευής και νήματα, υφάσματα, έτοιμα κλωστοϋφαντουργικά προϊόντα, και είδη ένδυσης·

(γ) την πρώτη ημέρα του 121ου μήνα μετά τη θέση σε ισχύ της συμφωνίας για τον ΠΟΕ, ο τομέας των κλωστοϋφαντουργικών προϊόντων και των ειδών ένδυσης παραμένει ενσωματωμένος στην GATT του 1994, αφού έχουν καταργηθεί όλοι οι περιορισμοί δυνάμει της παρούσας συμφωνίας.

9. Τα μέλη τα οποία έχουν γνωστοποιήσει, δυνάμει του άρθρου 6, παράγραφος 1, την πρόθεσή τους να μην διατηρήσουν το δικαίωμα της χρήσης των διατάξεων του άρθρου 6, κρίνεται, για τους σκοπούς της παρούσας συμφωνίας, ότι έχουν ενσωματώσει τα κλωστοϋφαντουργικά προϊόντα και τα είδη ένδυσης στην GATT του 1994. Αυτά τα μέλη κατά συνέπεια, εξαιρούνται από την τήρηση των διατάξεων των παραγράφων 6 έως 8 και 11.

10. Ουδεμία διάταξη της παρούσας συμφωνίας δεν εμποδίζει τα μέλη, τα οποία έχουν υποβάλει πρόγραμμα ενσωμάτωσης δυνάμει της παραγράφου 6 ή 8, να ενσωματώσουν προϊόντα στην GATT του 1994 νωρίτερα απ'ότι προβλέπεται στο εν λόγω πρόγραμμα. Εντούτοις, μια τέτοια ενσωμάτωση προϊόντων αρχίζει να ισχύει στην αρχή του έτους εφαρμογής της συμφωνίας, και οι λεπτομέρειες γνωστοποιούνται στο ΕΟΚΠ τουλάχιστον τρεις μήνες νωρίτερα, για διαβίβαση προς όλα τα μέλη.

11. Τα αντίστοιχα προγράμματα ενσωμάτωσης, δυνάμει της παραγράφου 8, γνωστοποιούνται με λεπτομέρειες στο ΕΟΚΠ τουλάχιστον 12 μήνες πριν τη θέση τους σε ισχύ, και διαβιβάζονται από το ΕΟΚΠ σε όλα τα μέλη.

12. Τα επίπεδα βάσης των περιορισμών των εναπομενόντων προϊόντων, που αναφέρονται στην παράγραφο 8, αποτελούν τα επίπεδα περιορισμού που αναφέρονται στην παράγραφο 1.

13. Κατά τη διάρκεια του σταδίου 1 της εφαρμογής της παρούσας συμφωνίας (από την ημερομηνία θέσης σε ισχύ της συμφωνίας για τον ΠΟΕ έως και τον 36ο μήνα μετά τη θέση της σε ισχύ) το επίπεδο κάθε περιορισμού δυνάμει των διμερών συμφωνιών της ΣΠΙ που βρίσκονταν σε ισχύ κατά τη 12μηνη περίοδο πριν από τη θέση σε ισχύ της συμφωνίας για τον ΠΟΕ, αυξάνεται ετησίως κατά ποσοστό τουλάχιστον ίσο του συντελεστή αύξησης που έχει καθορισθεί για τους αντίστοιχους περιορισμούς, επαυξημένου κατά 16%.

14. Εκτός από τις περιπτώσεις όπου το συμβούλιο εμπορευματικών συναλλαγών ή το όργανο επίλυσης διαφορών αποφασίζει διαφορετικά δυνάμει του άρθρου 8, παράγραφος 12, το επίπεδο κάθε εναπομένοντος περιορισμού αυξάνεται ετησίως κατά τη διάρκεια των μεταγενεστέρων σταδίων της παρούσας συμφωνίας κατά ποσοστό τουλάχιστον ίσο των ακολούθων:

(α) όσον αφορά το στάδιο 2 (από τον 37ο έως και τον 84ο μήνα μετά τη θέση σε ισχύ της συμφωνίας για τον ΠΟΕ), του συντελεστή αύξησης για τους αντίστοιχους περιορισμούς κατά τη διάρκεια του σταδίου 1, επαυξημένου κατά 25 τοις εκατό·

(β) όσον αφορά το στάδιο 3 (από τον 85ο έως και τον 120ο μήνα μετά τη θέση σε ισχύ της συμφωνίας για τον ΠΟΕ), του συντελεστή αύξησης για τους αντίστοιχους περιορισμούς κατά τη διάρκεια του σταδίου 2, επαυξημένου κατά 27 τοις εκατό.

15. Ουδεμία διάταξη της παρούσας συμφωνίας δεν εμποδίζει τα μέλη να καταργήσουν περιορισμούς που διατηρούνται δυνάμει του παρόντος άρθρου, με ισχύ από τις αρχές κάθε έτους εφαρμογής της συμφωνίας κατά τη

διάρκεια της μεταβατικής περιόδου, υπό την προϋπόθεση ότι το ενδιαφερόμενο εξάγον μέλος και το ΣΟΚΠ ενημερώνονται τουλάχιστον τρεις μήνες πριν από την έναρξη ισχύος της κατάργησης. Η προθεσμία για προηγούμενη γνωστοποίηση δύναται να μειωθεί στις 30 ημέρες, με τη συγκατάθεση του μέλους το οποίο αφορά ο περιορισμός. Το ΣΟΚΠ διαβιβάζει αυτές τις γνωστοποιήσεις σε όλα τα μέλη. Κατά την εξέταση της κατάργησης περιορισμών που αναφέρονται στην παρούσα παράγραφο, τα ενδιαφερόμενα μέλη λαμβάνουν υπόψη τη μεταχείριση παρομοίων εξαγωγών άλλων μελών.

16. Οι διατάξεις ευελιξίας, ήτοι μεταβίβαση, μεταφορά και πρότερη χρήση, που ισχύουν για όλους τους περιορισμούς που διατηρούνται δυνάμει του παρόντος άρθρου, είναι οι ίδιες με αυτές που προβλέπονται στις διμερείς συμφωνίες της ΣΠΙ για τη 12μηνη περίοδο πριν από τη θέση σε ισχύ της συμφωνίας για τον ΠΟΕ. Δεν τίθενται ούτε διατηρούνται ποσοτικά όρια σχετικά με τη συνδυασμένη χρήση της μεταβίβασης, μεταφοράς και πρότερης χρήσης.

17. Οι διοικητικές ρυθμίσεις που κρίνονται απαραίτητες σε σχέση με την εφαρμογή των διατάξεων του παρόντος άρθρου, αποτελούν αντικείμενο συμφωνίας μεταξύ των ενδιαφερομένων μελών. Οι ρυθμίσεις αυτές γνωστοποιούνται στο ΣΟΚΠ.

18. Όσον αφορά τα μέλη των οποίων οι εξαγωγές υπόκεινται σε περιορισμούς την ημέρα πριν από τη θέση σε ισχύ της συμφωνίας για τον ΠΟΕ και των οποίων οι περιορισμοί αντιπροσωπεύουν έως και 1,2 τοις εκατό του συνολικού όγκου των περιορισμών, που ισχύουν σε εισάγον μέλος κατά την 31η Δεκεμβρίου 1991 και που έχουν κοινοποιηθεί δυνάμει του παρόντος άρθρου, παρέχονται σημαντικές βελτιώσεις στην πρόσβαση των εξαγωγών τους, κατά την έναρξη ισχύος της συμφωνίας για τον ΠΟΕ και κατά τη διάρκεια ισχύος της παρούσας συμφωνίας, μέσω της προώθησης κατά ένα στάδιο των συντελεστών αύξησης που ορίζονται στις παραγράφους 13 και 14, ή μέσω τουλάχιστον ισοδυνάμων μεταβολών όπως συμφωνούνται αμοιβαίως, σε σχέση με διαφορετικό συνδυασμό των επιπέδων βάσης, των συντελεστών αύξησης και των διατάξεων ευελιξίας. Οι βελτιώσεις αυτές κοινοποιούνται στο ΣΟΚΠ.

19. Κατά τη διάρκεια ισχύος της παρούσας συμφωνίας, σε κάθε περίπτωση που εισάγεται μέτρο διασφάλισης από μέλος δυνάμει του άρθρου XIX της GATT του 1994 σε σχέση με συγκεκριμένο προϊόν κατά τη διάρκεια περιόδου ενός έτους αμέσως μετά την ενσωμάτωση του εν λόγω προϊόντος στην GATT του 1994 σύμφωνα με τις διατάξεις του παρόντος άρθρου, ισχύουν οι διατάξεις του άρθρου XIX, όπως ερμηνεύονται από τη συμφωνία για τις ρήτρες διασφάλισης, εκτός από τις περιπτώσεις που ορίζονται στην παράγραφο 20.

20. Σε περίπτωση που το εν λόγω μέτρο εφαρμόζεται με τη χρήση μη δασμολογικών μέσων, το ενδιαφερόμενο εισάγον μέλος εφαρμόζει το μέτρο με τον τρόπο που καθορίζεται στο άρθρο XIII, παράγραφος 2, στοιχείο δ) της GATT του 1994 μετά από αίτηση οποιουδήποτε εξάγοντος μέλους, του οποίου οι εξαγωγές των προϊόντων αυτών υπέκειντο σε περιορισμούς δυνάμει της παρούσας συμφωνίας οποιαδήποτε στιγμή κατά τη διάρκεια του αμέσως προηγουμένου έτους πριν από την εισαγωγή του μέτρου διασφάλισης. Το ενδιαφερόμενο εξάγον μέλος εφαρμόζει το μέτρο αυτό. Το εφαρμοζόμενο επίπεδο δεν μειώνει τις σχετικές εξαγωγές κάτω από το επίπεδο προσφάτου αντιπροσωπευτικής περιόδου, που συνήθως είναι ο μέσος όρος των εξαγωγών του ενδιαφερομένου μέλους κατά τη διάρκεια των τελευταίων τριών αντιπροσωπευτικών ετών για τα οποία διατίθενται στατιστικά στοιχεία. Επιπλέον, όταν το μέτρο διασφάλισης εφαρμόζεται για περισσότερα του ενός έτη, το εφαρμοζόμενο επίπεδο ελευθερώνεται σταδιακά σε τακτικά διαστήματα κατά τη διάρκεια της περιόδου εφαρμογής. Σε αυτές τις περιπτώσεις, το εξάγον ενδιαφερόμενο μέλος δεν ασκεί το δικαίωμα της αναστολής ουσιαστικά ισοδυνάμων παραχωρήσεων ή άλλων υποχρεώσεων δυνάμει του άρθρου XIX, παράγραφος 3 στοιχείο α) της GATT του 1994.

21. Το ΕΟΚΠ ελέγχει την εφαρμογή του παρόντος άρθρου. Μετά από αίτηση οποιουδήποτε μέλους, εξετάζει κάθε συγκεκριμένο θέμα που αφορά την εφαρμογή των διατάξεων του παρόντος άρθρου. Προβαίνει στη διατύπωση κατάλληλων συστάσεων ή πορισμάτων εντός 30 ημερών προς τα ενδιαφερόμενα μέλη, αφού καλέσει τα μέλη αυτά να συμμετάσχουν στις εργασίες του.

Άρθρο 3

1. Εντός 60 ημερών μετά την ημερομηνία θέσης σε ισχύ της συμφωνίας για τον ΠΟΕ, τα μέλη που διατηρούν περιορισμούς[4] για τα κλωστοϋφαντουργικά προϊόντα και τα είδη ένδυσης (διαφορετικούς από αυτούς που διατηρούνται δυνάμει της ΣΠΙ και καλύπτονται από τις διατάξεις του άρθρου 2), είτε αυτοί είναι συμβατοί με την GATT του 1994 είτε όχι: α) τους γνωστοποιούν με λεπτομέρειες στο ΕΟΚΠ, ή β) διαβιβάζουν στο ΕΟΚΠ τις σχετικές με αυτούς γνωστοποιήσεις, οι οποίες έχουν υποβληθεί σε άλλο όργανο του ΠΟΕ. Οι γνωστοποιήσεις είναι σκόπιμο, όταν είναι δυνατόν, να παρέχουν πληροφορίες σχετικά με κάθε αιτιολόγηση των περιορισμών της GATT του 1994, περιλαμβανομένων των διατάξεων της GATT του 1994 στις οποίες βασίζονται οι εν λόγω περιορισμοί.

2. Τα μέλη που διατηρούν περιορισμούς που εμπίπτουν στο πλαίσιο της παραγράφου 1, άλλους από αυτούς οι οποίοι αιτιολογούνται δυνάμει διατάξεως της GATT του 1994:

(α) είτε τους προσαρμόζουν στην GATT του 1994 εντός ενός έτους μετά τη θέση σε ισχύ της συμφωνίας για τον ΠΟΕ, και γνωστοποιούν την εν λόγω ενέργεια στο ΕΟΚΠ για πληροφόρησή του,

(β) είτε τους καταργούν σταδιακά σύμφωνα με πρόγραμμα που υποβάλλεται στο ΕΟΚΠ από το μέλος που διατηρεί τους περιορισμούς το αργότερο εντός έξι μηνών μετά την ημερομηνία θέσης σε ισχύ της συμφωνίας για τον ΠΟΕ. Το εν λόγω πρόγραμμα προβλέπει τη σταδιακή κατάργηση όλων των περιορισμών εντός περιόδου η οποία δεν υπερβαίνει τη διάρκεια της παρούσας συμφωνίας. Το ΕΟΚΠ δύναται να προβεί σε συστάσεις προς το ενδιαφερόμενο μέλος σχετικά με αυτό το πρόγραμμα.

3. Κατά τη διάρκεια ισχύος της παρούσας συμφωνίας, τα μέλη παρέχουν στο ΕΟΚΠ, για πληροφόρησή του, τις κοινοποιήσεις που έχουν υποβληθεί στα άλλα όργανα του ΠΟΕ σχετικά με κάθε νέο περιορισμό ή μεταβολή των υφιστάμενων περιορισμών για τα κλωστοϋφαντουργικά προϊόντα και τα είδη ένδυσης, που έχουν ληφθεί δυνάμει οποιασδήποτε διάταξης της GATT του 1994, εντός 60 ημερών από την έναρξη ισχύος τους.

4. Τα μέλη είναι ελεύθερα να προβαίνουν σε αντικοινοποιήσεις προς το ΕΟΚΠ, για πληροφόρησή του, σχετικά με την αιτιολόγηση περιορισμού όσον αφορά την GATT του 1994, ή σχετικά με οιουσδήποτε περιορισμούς, οι οποίοι μπορεί να μην έχουν γνωστοποιηθεί δυνάμει των διατάξεων του παρόντος άρθρου. Όλα τα μέλη δύνανται να προβαίνουν σε ενέργειες σχετικά με αυτές τις γνωστοποιήσεις δυνάμει των σχετικών διατάξεων ή διαδικασιών της GATT του 1994 στο πλαίσιο του κατάλληλου οργάνου του ΠΟΕ.

5. Το ΕΟΚΠ διαβιβάζει τις γνωστοποιήσεις που έχουν πραγματοποιηθεί δυνάμει του παρόντος άρθρου σε όλα τα μέλη για πληροφόρησή τους.

4 Ως περιορισμοί νοούνται όλοι οι μονομερείς ποσοτικοί περιορισμοί, οι διμερείς διακανονισμοί και άλλα μέτρα παρομοίου αποτελέσματος.

Άρθρο 4

1. Οι περιορισμοί που αναφέρονται στο άρθρο 2, και αυτοί που ισχύουν δυνάμει του άρθρου 6, εφαρμόζονται από τα εξάγοντα μέλη. Τα εισάγοντα μέλη δεν είναι υποχρεωμένα να αποδεχθούν αποστολές εμπορευμάτων που υπερβαίνουν τους περιορισμούς που έχουν γνωστοποιηθεί δυνάμει του άρθρου 2, ή τους περιορισμούς που εφαρμόζονται δυνάμει του άρθρου 6.

2. Τα μέλη συμφωνούν ότι η εισαγωγή μεταβολών, όπως μεταβολές των πρακτικών, των κανόνων, των διαδικασιών και της ταξινόμησης των κλωστοϋφαντουργικών προϊόντων και των ειδών ένδυσης, περιλαμβανομένων των μεταβολών σχετικά με το Εναρμονισμένο Σύστημα, κατά την εφαρμογή ή τη διαχείριση των εν λόγω περιορισμών που έχουν κοινοποιηθεί ή εφαρμόζονται δυνάμει της παρούσας συμφωνίας δεν είναι σκόπιμο: να διαταράσσει την ισορροπία των δικαιωμάτων και των υποχρεώσεων μεταξύ των ενδιαφερομένων μελών δυνάμει της παρούσας συμφωνίας· να επηρεάζει αρνητικά την πρόσβαση που διαθέτει κάποιο μέλος· να εμποδίζει την πλήρη χρησιμοποίηση της εν λόγω πρόσβασης· ή να διακόπτει τις συναλλαγές δυνάμει της παρούσας συμφωνίας.

3. Εάν ένα προϊόν, το οποίο αποτελεί ένα μόνον τμήμα ενός περιορισμού, κοινοποιηθεί προκειμένου να ενσωματωθεί δυνάμει των διατάξεων του άρθρου 2, τα μέλη συμφωνούν ότι κάθε μεταβολή του επιπέδου του εν λόγω περιορισμού δεν διαταράσσει την ισορροπία των δικαιωμάτων και των υποχρεώσεων μεταξύ των ενδιαφερομένων μελών δυνάμει της παρούσας συμφωνίας.

4. Εντούτοις, όταν οι μεταβολές που αναφέρονται στις παραγράφους 2 και 3 είναι απαραίτητες, τα μέλη συμφωνούν ότι το μέλος που εισάγει τέτοιου είδους μεταβολές οφείλει να πληροφορεί και, όταν είναι δυνατόν, να προβαίνει σε διαβουλεύσεις με τα θιγόμενα μέλη, πριν από την εφαρμογή των εν λόγω μεταβολών, προκειμένου να εξευρεθεί αμοιβαία αποδεκτή λύση σχετικά με την κατάλληλη και δίκαιη προσαρμογή. Τα μέλη συμφωνούν περαιτέρω ότι, όπου οι διαβουλεύσεις πριν από την εφαρμογή δεν είναι εφικτές, το μέλος που εισάγει τέτοιου είδους μεταβολές προβαίνει, μετά από αίτηση του επηρεαζόμενου μέλους, σε διαβουλεύσεις, ει δυνατόν εντός 60 ημερών, με τα ενδιαφερόμενα μέλη προκειμένου να εξευρεθεί αμοιβαία ικανοποιητική λύση σχετικά με τις κατάλληλες και δίκαιες προσαρμογές. Εάν δεν εξευρεθεί αμοιβαία ικανοποιητική λύση, τα ενδιαφερόμενα μέλη δύνανται να παραπέμψουν το θέμα στο ΕΟΚΠ για συστάσεις, όπως προβλέπεται στο άρθρο 8. Εάν το ΕΟΚΠ δεν έχει την ευκαιρία να εξετάσει κάποια διαφορά σχετικά με τις εν λόγω μεταβολές που έχουν εισαχθεί πριν από τη θέση σε ισχύ της συμφωνίας για τον ΠΟΕ, η εν λόγω διαφορά εξετάζεται από το ΕΟΚΠ σύμφωνα με τους κανόνες και τις διαδικασίες της ΣΠΙ που ισχύουν για εξέταση αυτού του είδους.

Άρθρο 5

1. Τα μέλη συμφωνούν ότι η καταστρατήγηση των διατάξεων μέσω μεταφόρτωσης, αλλαγής δρομολογίου, ψευδούς δήλωσης σχετικά με τη χώρα ή τον τόπο καταγωγής, και παραποίησης επισήμων εγγράφων, εμποδίζει την εφαρμογή της παρούσας συμφωνίας για την ενσωμάτωση των κλωστοϋφαντουργικών προϊόντων και των ειδών ένδυσης στην GATT του 1994. Κατά συνέπεια, τα μέλη οφείλουν να θεσπίσουν τις αναγκαίες νομοθετικές διατάξεις και/ή τις διοικητικές διαδικασίες για να εξετάσουν τις εν λόγω καταστρατηγήσεις και να λάβουν μέτρα κατά αυτών. Τα μέλη συμφωνούν περαιτέρω ότι, ενώ εξακολουθούν να εφαρμόζουν τους εθνικούς τους νόμους και διαδικασίες, θα συνεργασθούν πλήρως για να εξετάσουν τα προβλήματα που προκύπτουν από την καταστρατήγηση των διατάξεων.

2. Σε περίπτωση που κάποιο μέλος φρονεί ότι η παρούσα συμφωνία έχει καταστρατηγηθεί μέσω μεταφόρτωσης, αλλαγής δρομολογίου, ψευδούς δήλωσης σχετικά με τη χώρα ή τον τόπο καταγωγής, ή παραποίησης επισήμων εγγράφων, και ότι δεν έχει εφαρμοσθεί κανένα μέτρο ή έχουν εφαρμοσθεί ακατάλληλα μέτρα για να αντιμετωπισθεί η καταστρατήγηση τέτοιου είδους, και/ή να γίνουν ενέργειες κατά αυτής, το εν λόγω μέλος οφείλει να προβαίνει σε διαβουλεύσεις με τα ενδιαφερόμενα μέλη προκειμένου να εξευρεθεί αμοιβαία ικανοποιητική λύση. Οι διαβουλεύσεις αυτού του είδους επιβάλλεται να διενεργούνται άμεσα, και, εί δυνατόν, εντός 30 ημερών. Εάν δεν εξευρεθεί αμοιβαία ικανοποιητική λύση, το θέμα μπορεί να παραπεμφθεί από οποιοδήποτε ενδιαφερόμενο μέλος στο ΣΟΚΠ για συστάσεις.

3. Τα μέλη συμφωνούν να προβαίνουν στις απαραίτητες ενέργειες που είναι συνεπείς με την εγχώρια νομοθεσία τους και διαδικασίες, για την πρόληψη, τη διερεύνηση και, κατά περίπτωση, τη λήψη νομικών και/ή διοικητικών μέτρων κατά των πρακτικών καταστρατήγησης εντός του εδάφους τους. Τα μέλη συμφωνούν να συνεργάζονται πλήρως, ενώ παραμένοντας συνεπή με την εγχώρια νομοθεσία και διαδικασίες, στις περιπτώσεις καταστρατήγησης ή υποτιθέμενης καταστρατήγησης της παρούσας συμφωνίας, για την απόδειξη των σχετικών γεγονότων στους τόπους εισαγωγής, εξαγωγής και, κατά περίπτωση, μεταφόρτωσης. Συμφωνείται ότι η εν λόγω συνεργασία, που είναι συνεπής με τους εγχώριους νόμους και διαδικασίες, θα περιλαμβάνει: διερεύνηση των πρακτικών καταστρατήγησης που αυξάνουν τις εξαγωγές που υπόκεινται σε περιορισμούς προς το μέλος που διατηρεί τέτοιου είδους περιορισμούς· ανταλλαγή εγγράφων, αλληλογραφίας, εκθέσεων και άλλων σχετικών πληροφοριών στο βαθμό του δυνατού· και διευκόλυνση των επισκέψεων στις εγκαταστάσεις, και των επαφών, μετά από αίτηση και κατά περίπτωση. Τα μέλη οφείλουν να προσπαθούν για τη διευκρίνιση των περιστάσεων κάθε τέτοιας περίπτωσης καταστρατήγησης ή υποτιθέμενης καταστρατήγησης, περιλαμβανομένων των αντιστοίχων ρόλων των εξαγωγέων ή των εισαγωγέων που εμπλέκονται.

4. Σε περίπτωση που, ως αποτέλεσμα διερεύνησης, υπάρχουν επαρκείς αποδείξεις ότι υπήρξε καταστρατήγηση (π.χ. όπου υπάρχουν αποδείξεις σχετικά με τη χώρα ή τον τόπο της πραγματικής καταγωγής και τις περιστάσεις της εν λόγω καταστρατήγησης), τα μέλη συμφωνούν ότι πρέπει να αναλαμβάνεται η κατάλληλη δράση, στο βαθμό που είναι αναγκαίος, ώστε να αντιμετωπισθεί το πρόβλημα. Τέτοιου είδους δράσεις μπορεί να περιλαμβάνουν την άρνηση εισόδου εμπορευμάτων ή, σε περίπτωση που τα εμπορεύματα έχουν ήδη εισέλθει, λαμβανομένων δεόντως υπόψη των πραγματικών περιστάσεων και της εμπλοκής της χώρας ή του τόπου της πραγματικής καταγωγής, την προσαρμογή των επιβαρύνσεων στα επίπεδα περιορισμών, ώστε να αντικατοπτρίζουν τη χώρα ή τον τόπο της πραγματικής καταγωγής. Επίσης, στις περιπτώσεις που υπάρχουν αποδείξεις της εμπλοκής των εδαφών των μελών, μέσω των οποίων τα εμπορεύματα μεταφορτώθηκαν, τέτοιου είδους δράσεις μπορεί να περιλαμβάνουν την εισαγωγή περιορισμών σε σχέση με τα εν λόγω μέλη. Οι εν λόγω δράσεις, μαζί με το χρονοδιάγραμμα και το πεδίο εφαρμογής τους, μπορούν να αναληφθούν μετά από διαβουλεύσεις που διενεργούνται με σκοπό την εξεύρεση αμοιβαίως ικανοποιητικής λύσης μεταξύ των ενδιαφερομένων μελών και γνωστοποιούνται στο ΣΟΚΠ πλήρως αιτιολογημένες. Τα ενδιαφερόμενα μέλη μπορούν να συμφωνούν μετά από διαβουλεύσεις σχετικά με άλλους τρόπους αντιμετώπισης. Οι εν λόγω συμφωνίες γνωστοποιούνται και αυτές στο ΣΟΚΠ, και το ΣΟΚΠ μπορεί να προβαίνει σε συστάσεις προς τα ενδιαφερόμενα μέλη, όπως κρίνει δέον. Εάν δεν εξευρεθεί αμοιβαίως ικανοποιητική λύση, κάθε ενδιαφερόμενο μέλος μπορεί να παραπέμψει το θέμα στο ΣΟΚΠ για άμεση εξέταση και συστάσεις.

5. Τα μέλη σημειώνουν ότι ορισμένες περιπτώσεις καταστρατήγησης μπορεί να αφορούν αποστολές υπό διαμετακόμιση μέσω χωρών ή τόπων χωρίς τα εμπορεύματα που περιλαμβάνονται σε τέτοιες αποστολές να υφίστανται μεταβολές ή αλλοιώσεις στους τόπους διαμετακόμισης. Τα μέλη σημειώνουν ότι μπορεί να μην είναι, εν γένει, εφικτό για τους τόπους αυτούς

διαμετακόμισης να διενεργούν ελέγχους σε τέτοιου είδους αποστολές.

6. Τα μέλη συμφωνούν ότι οι ψευδείς δηλώσεις σχετικά με την περιεκτικότητα σε ίνες, τις ποσότητες, την περιγραφή ή την κατάταξη των εμπορευμάτων εμποδίζουν επίσης την επίτευξη του στόχου της παρούσας συμφωνίας. Σε περιπτώσεις που υπάρχουν αποδείξεις ότι έχει γίνει ψευδής δήλωση με σκοπό την καταστρατήγηση, τα μέλη συμφωνούν ότι είναι ανάγκη να λαμβάνονται κατάλληλα μέτρα, συνεπή με την εγχώρια νομοθεσία και τις διαδικασίες, κατά των εξαγωγέων ή εισαγωγέων που εμπλέκονται. Σάν κάποιο μέλος φρονεί ότι η παρούσα συμφωνία έχει καταστρατηγηθεί με τέτοιου είδους ψευδή δήλωση και ότι δεν έχει εφαρμοστεί κανένα μέτρο ή έχουν εφαρμοσθεί ακατάλληλα μέτρα για να αντιμετωπιστεί η εν λόγω καταστρατήγηση και/ή να αναληφθεί δράση κατά αυτής, το εν λόγω μέλος θα πρέπει να προβαίνει αμέσως σε διαβουλεύσεις με το ενδιαφερόμενο μέλος προκειμένου να εξευρεθεί αμοιβαία ικανοποιητική λύση. Σάν τέτοιου είδους λύση δεν εξευρεθεί, το θέμα μπορεί να παραπεμφθεί από οποιοδήποτε ενδιαφερόμενο μέλος στο ΣΟΚΠ για συστάσεις. Η παρούσα διάταξη δεν έχει σκοπό να εμποδίσει τα μέλη να προβαίνουν σε τεχνικές προσαρμογές σε περίπτωση που έχουν γίνει ακούσια σφάλματα στις δηλώσεις.

Άρθρο 6

1. Τα μέλη αναγνωρίζουν ότι κατά τη διάρκεια της μεταβατικής περιόδου μπορεί να αποδειχθεί αναγκαίο να εφαρμοσθεί ειδικός μεταβατικός μηχανισμός διασφάλισης (καλούμενος στην παρούσα συμφωνία "μεταβατική διασφάλιση"). Η μεταβατική διασφάλιση μπόρεί να εφαρμοσθεί από κάθε μέλος για προϊόντα που καλύπτονται από το παράρτημα) εκτός από αυτά που έχουν ενσωματωθεί στην GATT του 1994 δυνάμει των διατάξεων του άρθρου 2. Τα μέλη τα οποία δεν διατηρούν περιορισμούς που εμπίπτουν στο πλαίσιο του άρθρου 2 ενημερώνουν το ΣΟΚΠ εντός 60 ημερών μετά την ημερομηνία θέσης σε ισχύ της συμφωνίας για τον ΠΟΕ, για το εάν επιθυμούν να διατηρήσουν το δικαίωμα της χρήσης των διατάξεων του παρόντος άρθρου. Τα μέλη που δεν έχουν αποδεχθεί τα πρωτόκολλα παράτασης της ΣΠΙ μετά το 1986, προβαίνουν σε τέτοιου είδους γνωστοποίηση εντός 6 μηνών μετά τη θέση σε ισχύ της συμφωνίας για τον ΠΟΕ. Η μεταβατική διασφάλιση είναι σκόπιμο να εφαρμόζεται με τη μεγαλύτερη δυνατή φειδώ, και σύμφωνα με τις διατάξεις του παρόντος άρθρου και την αποτελεσματική εφαρμογή διαδικασίας ενσωμάτωσης δυνάμει της παρούσας συμφωνίας.

2. Είναι δυνατόν να αναληφθούν δράσεις διασφάλισης δυνάμει του παρόντος άρθρου σε περίπτωση που, βάσει απόφασης ενός μέλους[5], αποδεικνύεται ότι συγκεκριμένο προϊόν εισάγεται στο έδαφός του, σε ποσότητες τέτοιου μεγέθους ώστε να δημιουργεί σοβαρές ζημίες ή πραγματική απειλή για σοβαρές ζημιές στην εγχώρια βιομηχανία, η οποία παράγει παρόμοια και/ή άμεσα ανταγωνιστικά προϊόντα. Οι σοβαρές ζημίες ή η πραγματική απειλή για σοβαρές ζημιές απαιτείται να προκαλείται αποδεδειγμένα από τις εν λόγω αυξημένες ποσότητες του συνόλου των εισαγωγών του συγκεκριμένου προϊόντος και όχι από άλλους παράγοντες, όπως οι τεχνολογικές αλλαγές ή αλλαγές στις προτιμήσεις των καταναλωτών.

5 Οποιαδήποτε τελωνειακή ένωση μπορεί να εφαρμόζει μέτρο διασφάλισης ως ενιαία οντότητα ή εξ ονόματος κράτους μέλους. Σε περίπτωση που η τελωνειακή ένωση εφαρμόζει μέτρο διασφάλισης ως ενιαία οντότητα, όλες οι προϋποθέσεις για τον προσδιορισμό σοβαρών ζημιών ή πραγματικής απειλής για σοβαρές ζημιές, δυνάμει της παρούσας συμφωνίας, βασίζονται στους υφιστάμενους όρους της τελωνειακής ένωσης στο σύνολό της. Όταν το μέτρο διασφάλισης εφαρμόζεται εξ ονόματος κράτους μέλους, όλες οι προϋποθέσεις για τον προσδιορισμό σοβαρών ζημιών ή πραγματικής απειλής για σοβαρές ζημιές βασίζονται στους υφιστάμενους όρους στο εν λόγω κράτος μέλος και το μέτρο περιορίζεται στο εν λόγω κράτος μέλος.

3. Κατά τον προσδιορισμό σοβαρών ζημιών ή πραγματικής απειλής για σοβαρές ζημίες όπως αναφέρεται στην παράγραφο 2, το μέλος εξετάζει τις επιπτώσεις των εν λόγω εισαγωγών στην κατάσταση της συγκεκριμένης βιομηχανίας, όπως αυτές αντικατοπτρίζονται στις μεταβολές σχετικών οικονομικών μεταβλητών όπως η παραγωγή, η παραγωγικότητα, η χρήση της παραγωγικής ικανότητας, τα αποθέματα, το μερίδιο της αγοράς, οι εξαγωγές, οι μισθοί, η απασχόληση, οι εγχώριες τιμές, τα κέρδη και οι επενδύσεις· κανένα από τα προηγούμενα, είτε μόνο του είτε σε συνδυασμό με άλλους παράγοντες, δεν έχει απαραιτήτως αποφασιστικό χαρακτήρα.

4. Κάθε μέτρο του οποίου γίνεται επίκληση δυνάμει των διατάξεων του παρόντος άρθρου εφαρμόζεται για κάθε μέλος χωριστά. Το μέλος ή τα μέλη στα οποία αποδίδονται οι σοβαρές ζημίες ή η πραγματική απειλή για σοβαρές ζημιές που αναφέρονται στις παραγράφους 2 και 3, προσδιορίζονται βάσει μεγάλης και ουσιαστικής αύξησης των εισαγωγών, τρέχουσας ή επικείμενης[6], από το εν λόγω μέλος ή μέλη, υπολογιζόμενης ξεχωριστά, και βάσει του επιπέδου των εισαγωγών σε σύγκριση με εισαγωγές από άλλες πηγές, του μεριδίου της αγοράς, και των τιμών εισαγωγής και των εγχωρίων τιμών σε συγκρίσιμο στάδιο εμπορικών συναλλαγών· κανείς από τους ανωτέρω παράγοντες, είτε μόνος του είτε σε συνδυασμό με άλλους παράγοντες, δεν έχει απαραιτήτως αποφασιστικό χαρακτήρα. Τέτοιου είδους μέτρα διασφάλισης δεν εφαρμόζονται στις εξαγωγές κανενός μέλους του οποίου οι εξαγωγές του συγκεκριμένου προϊόντος υπόκεινται ήδη σε περιορισμό δυνάμει της παρούσας συμφωνίας.

5. Η περίοδος ισχύος του προσδιορισμού σοβαρών ζημιών ή πραγματικής απειλής για σοβαρές ζημίες με σκοπό την επίκληση μέτρων διασφάλισης δεν υπερβαίνει τις 90 ημέρες από την ημερομηνία της αρχικής γνωστοποίησης όπως ορίζεται στην παράγραφο 7.

6. Κατά την εφαρμογή της μεταβατικής διασφάλισης, λαμβάνονται ιδιαίτερα υπόψη τα συμφέροντα των εξαγόντων μελών όπως καθορίζεται κατωτέρω:

(α) οι λιγότερο ανεπτυγμένες χώρες μέλη τυγχάνουν σημαντικά ευνοϊκότερης μεταχείρισης από αυτήν που παρέχεται σε άλλες ομάδες μελών που αναφέρονται στην παρούσα παράγραφο, κατά προτιμήση για όλα τα στοιχεία της, οπωσδήποτε όμως τουλάχιστον σε γενικές γραμμές·

(β) τα μέλη, των οποίων ο συνολικός όγκος των εξαγωγών κλωστοϋφαντουργικών προϊόντων και ειδών ένδυσης είναι χαμηλός σε σύγκριση με το συνολικό όγκο εξαγωγών άλλων μελών και αντιπροσωπεύει μόνο ένα μικρό ποσοστό του συνόλου των εισαγωγών του εν λόγω προϊόντος στο εισάγον μέλος τυγχάνουν διαφοροποιημένης και ευνοϊκότερης μεταχείρισης κατά τον καθορισμό των οικονομικών όρων που προβλέπονται στις παραγράφους 8, 13 και 14. Όσον αφορά τους εν λόγω προμηθευτές, θα ληφθούν δεόντως υπόψη, δυνάμει του άρθρου 1 οι παράγραφοι 2 και 3, οι μελλοντικές δυνατότητες ανάπτυξης του εμπορίου τους και η ανάγκη να επιτραπεί η εισαγωγή εμπορικών ποσοτήτων από αυτά·

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6 Η εν λόγω επικείμενη αύξηση είναι μετρήσιμη και η ύπαρξή της δεν προσδιορίζεται βάσει ισχυρισμών, εικασιών ή απλών πιθανοτήτων που προκύπτουν, για παράδειγμα, από την ύπαρξη παραγωγικής ικανότητας στα εξάγοντα μέλη.

(γ) όσον αφορά τα μάλλινα προϊόντα που προέρχονται από αναπτυσσόμενες χώρες μέλη που παράγουν μαλλί και των οποίων η οικονομία και το εμπόριο κλωστοϋφαντουργικών προϊόντων και ειδών ένδυσης εξαρτώνται από τον τομέα του μαλλιού, των οποίων το σύνολο των εξαγωγών κλωστοϋφαντουργικών προϊόντων και ειδών ένδυσης αποτελείται σχεδόν αποκλειστικά από μάλλινα προϊόντα, και των οποίων ο όγκος του εμπορίου κλωστοϋφαντουργικών προϊόντων και ειδών ένδυσης είναι συγκριτικά χαμηλός στις αγορές των εισαγόντων μελών, δίδεται ιδιαίτερη σημασία στις εξαγωγικές ανάγκες των εν λόγω μελών κατά την εξέταση των επιπέδων των ποσοστώσεων, των συντελεστών αύξησης και των ορίων ευελιξίας·

(δ) τυγχάνουν ευνοϊκότερης μεταχείρισης οι επανεισαγωγές, ενός μέλους, κλωστοϋφαντουργικών προϊόντων και ειδών ένδυσης τα οποία το εν λόγω μέλος, έχει εξαγάγει σε άλλο μέλος για μεταποίηση και επακόλουθη επανεισαγωγή, όπως καθορίζεται από τους νόμους και τις πρακτικές του εισάγοντος μέλους, και υπό την προϋπόθεση διενέργειας ικανοποιητικού ελέγχου και τήρησης διαδικασιών πιστοποίησης, όταν τα εν λόγω προϊόντα εισάγονται από μέλος για το οποίο αυτό το είδος συναλλαγών αντιπροσωπεύει σημαντικό μέρος του συνόλου των εξαγωγών του σε κλωστοϋφαντουργικά προϊόντα και είδη ένδυσης.

7. Το μέλος που προτείνει τη λήψη μέτρων διασφάλισης επιδιώκει διαβουλεύσεις με το μέλος ή τα μέλη τα οποία θα επηρεασθούν ενδεχομένως από τέτοιου είδους μέτρα. Η αίτηση για διαβουλεύσεις συνοδεύεται από συγκεκριμένες και σχετικές με τα γεγονότα πληροφορίες, όσον το δυνατόν πιο ενημερωμένες, ιδίως όσον αφορά τα ακόλουθα: (α) τους παράγοντες, που αναφέρονται στην παράγραφο 3, βάσει των οποίων το μέλος που επικαλείται τα μέτρα προσδιόρισε την ύπαρξη σοβαρών ζημιών ή πραγματικής απειλής για σοβαρές ζημιές· και (β) τους παράγοντες, που αναφέρονται στην παράγραφο 4, βάσει των οποίων προτείνει την προσφυγή σε μέτρα διασφάλισης σχετικά με το ενδιαφερόμενο ή τα ενδιαφερόμενα μέλη. Όσον αφορά τις αιτήσεις που γίνονται δυνάμει της παρούσας παραγράφου, οι πληροφορίες αφορούν, όσο το δυνατόν σαφέστερα, προσδιορίσιμα τμήματα της παραγωγής και την περίοδο αναφοράς που σημειώνεται στην παράγραφο 8. Το μέλος το οποίο προσφεύγει στα μέτρα σημειώνει επίσης το συγκεκριμένο επίπεδο στο οποίο προτείνει να περιορισθούν οι εισαγωγές του εν λόγω προϊόντος από το ενδιαφερόμενο ή τα ενδιαφερόμενα μέλη. Το επίπεδο αυτό δεν είναι κατώτερο του επιπέδου που σημειώνεται στην παράγραφο 8. Το μέλος το οποίο επιδιώκει διαβουλεύσεις κοινοποιεί ταυτόχρονα στον πρόεδρο του ΣΟΚΠ την αίτηση για διαβουλεύσεις, περιλαμβανομένων όλων των σχετικών με τα γεγονότα στοιχείων που περιγράφονται στις παραγράφους 3 και 4, μαζί με το προτεινόμενο επίπεδο περιορισμού. Ο πρόεδρος ενημερώνει τα μέλη του ΣΟΚΠ σχετικά με την αίτηση για διαβουλεύσεις, αναφέροντας το αιτόν μέλος, το προϊόν υπό εξέταση και το μέλος που έλαβε την αίτηση. Το ενδιαφερόμενο ή τα ενδιαφερόμενα μέλη απαντούν στην εν λόγω αίτηση αμέσως, ενώ οι διαβουλεύσεις διενεργούνται χωρίς καθυστέρηση και κανονικά ολοκληρώνονται εντός 60 ημερών από την ημέρα που παρελήφθη η αίτηση.

8. Εάν, κατά τη διάρκεια των διαβουλεύσεων υπάρξει κοινή αντίληψη ότι η κατάσταση απαιτεί περιορισμό των εξαγωγών του συγκεκριμένου προϊόντος από το ενδιαφερόμενο ή τα ενδιαφερόμενα μέλη, το επίπεδο του περιορισμού αυτού καθορίζεται σε επίπεδο υψηλότερο ή ίσο με το τρέχον επίπεδο των εξαγωγών ή των εισαγωγών από το ενδιαφερόμενο μέλος κατά τη διάρκεια της 12μηνης περιόδου που λήγει δύο μήνες πριν από το μήνα κατά τον οποίο έγινε η αίτηση για διαβουλεύσεις.

9. Οι λεπτομέρειες σχετικά με το περιοριστικό μέτρο που συναποφασίσθηκε κοινοποιούνται στο ΕΟΚΠ εντός 60 ημέρων από την ημερομηνία της σύναψης της συμφωνίας. Το ΕΟΚΠ προσδιορίζει εάν η συμφωνία είναι αιτιολογημένη σύμφωνα με τις διατάξεις του παρόντος άρθρου. Προκειμένου να προβεί στον προσδιορισμό αυτόν, το ΕΟΚΠ έχει στη διάθεσή του τα στοιχεία των γεγονότων που έχουν παρασχεθεί στον πρόεδρο του ΕΟΚΠ, και που αναφέρονται στην παράγραφο 7, καθώς και κάθε άλλη σχετική πληροφορία που έχει παρασχεθεί από τα ενδιαφερόμενα μέλη. Το ΕΟΚΠ δύναται να προβεί σε συστάσεις προς τα ενδιαφερόμενα μέλη, όπως κρίνει ότι είναι αρμόζον.

10. Εάν, εντούτοις, μετά τη λήξη της περιόδου των 60 ημερών από την ημερομηνία κατά την οποία παρελήφθη η αίτηση για διαβουλεύσεις, δεν υπάρξει καμία συμφωνία μεταξύ των μελών, το μέλος το οποίο πρότεινε την λήψη μέτρων διασφάλισης μπορεί να εφαρμόσει τον περιορισμό με βάση την ημερομηνία εισαγωγής ή την ημερομηνία εξαγωγής, σύμφωνα με τις διατάξεις του παρόντος άρθρου, εντός 30 ημερών μετά την περίοδο των 60 ημερών των διαβουλεύσεων, και ταυτόχρονα να παραπέμψει το θέμα στο ΕΟΚΠ. Οποιοδήποτε μέλος μπορεί να παραπέμψει το θέμα στο ΕΟΚΠ πριν από τη λήξη της περιόδου των 60 ημερών. Σε κάθε περίπτωση, το ΕΟΚΠ προβαίνει αμέσως σε εξέταση του θέματος, περιλαμβανομένου του προσδιορισμού των σοβαρών ζημιών ή της πραγματικής απειλής για σοβαρές ζημιές, και των αιτιών, και προβαίνει σε κατάλληλες συστάσεις προς τα ενδιαφερόμενα μέλη εντός 30 ημερών. Προκειμένου να προβεί στην εν λόγω εξέταση, το ΕΟΚΠ έχει στη διάθεσή του τα στοιχεία σχετικά με τα γεγονότα που έχουν παρασχεθεί στον πρόεδρο του ΕΟΚΠ, και που αναφέρονται στην παράγραφο 7, καθώς και κάθε άλλη σχετική πληροφορία που έχει παρασχεθεί από τα ενδιαφερόμενα μέλη.

11. Σε ιδιαίτερα ασυνήθεις και κρίσιμες περιστάσεις, κατά τις οποίες η καθυστέρηση θα προκαλούσε ζημίες που θα ήταν δύσκολο να αποκατασταθούν, είναι δυνατόν να αναληφθεί προσωρινή δράση δυνάμει της παραγράφου 10, υπό τον όρο ότι η αίτηση για διαβουλεύσεις και η γνωστοποίηση προς το ΕΟΚΠ πραγματοποιούνται το αργότερο εντός 5 εργασίμων ημερών μετά την ανάληψη της δράσης. Στην περίπτωση κατά την οποία οι διαβουλεύσεις δεν καταλήξουν σε συμφωνία, το ΕΟΚΠ ενημερώνεται σχετικά με τα συμπεράσματα των διαβουλεύσεων, αλλά οπωσδήποτε όχι αργότερα από 60 ημέρες από την ημερομηνία εφαρμογής των μέτρων. Το ΕΟΚΠ προβαίνει αμέσως σε εξέταση του θέματος, και διατυπώνει κατάλληλες συστάσεις προς τα ενδιαφερόμενα μέλη εντός 30 ημερών. Σε περίπτωση που οι διαβουλεύσεις καταλήξουν σε συμφωνία, τα μέλη ενημερώνουν το ΕΟΚΠ σχετικά με τα συμπεράσματα αλλά, οπωσδήποτε, το αργότερο σε 90 ημέρες μετά την ημερομηνία εφαρμογής της δράσης. Το ΕΟΚΠ δύναται να προβεί σε συστάσεις προς τα ενδιαφερόμενα μέλη όπως κρίνει δέον.

12. Τα μέλη δύνανται να διατηρήσουν μέτρα στα οποία έχουν προσφύγει δυνάμει των διατάξεων του παρόντος άρθρου: (α) επί τρία έτη το πολύ χωρίς παράταση, ή (β) μέχρις ότου το προϊόν ενσωματωθεί στην GATT του 1994, ανάλογα με το τι θα επέλθει νωρίτερα.

13. Εάν το περιοριστικό μέτρο παραμείνει σε ισχύ για περίοδο, η οποία υπερβαίνει το ένα έτος, το επίπεδο για τα επόμενα έτη είναι αυτό που έχει καθορισθεί για το πρώτο έτος επαυξημένο κατά συντελεστή αύξησης όχι μικρότερο από 6 τοις εκατό ετησίως, εκτός εάν έχει δοθεί διαφορετική αιτιολογία στο ΕΟΚΠ. Το επίπεδο περιορισμού για το σχετικό προϊόν δύναται να υπερκαλυφθεί κατά τη διάρκεια οποιουδήποτε από τα δύο επόμενα έτη μέσω πρότερης χρήσης και/ή μεταφοράς ύψους 10 τοις εκατό εκ των οποίων η πρότερη χρήση δεν αντιπροσωπεύει περισσότερο του 5 τοις εκατό. Δεν τίθενται ποσοτικά όρια στη συνδυασμένη εφαρμογή της πρότερης χρήσης και της μεταφοράς, και της διάταξης της παραγράφου 14.

14. Όταν ένα μέλος θέσει περιορισμό για περισσότερα από ένα προϊόντα ενός άλλους μέλους δυνάμει του παρόντος άρθρου, το επίπεδο του συμφωνηθέντος περιορισμού, δυνάμει των διατάξεων του παρόντος άρθρου, για καθένα από τα προϊόντα μπορεί να υπερκαλυφθεί κατά 7%, υπό την προϋπόθεση ότι το σύνολο των εξαγωγών που υπόκεινται στον περιορισμό δεν υπερβαίνει το σύνολο των επιπέδων όλων των προϊόντων που υπόκεινται σε περιορισμό δυνάμει του παρόντος άρθρου, βάσει συμφωνηθεισών κοινών μονάδων. Σε περίπτωση που οι περίοδοι εφαρμογής των περιορισμών των εν λόγω προϊόντων δεν συμπίπτουν μεταξύ τους, η παρούσα διάταξη εφαρμόζεται για κάθε επικαλυπτόμενη περίοδο κατ'αναλογία.

15. Εάν εφαρμόζεται μέτρο διασφάλισης δυνάμει του παρόντος άρθρου σε προϊόν για το οποίο έχει τεθεί προηγουμένως περιορισμός δυνάμει της ΣΠΙ κατά τη διάρκεια της 12μηνης περιόδου πριν από τη θέση σε ισχύ της συμφωνίας για τον ΠΟΕ, ή δυνάμει των διατάξεων του άρθρου 2 ή 6, το επίπεδο του νέου περιορισμού είναι αυτό που προβλέπεται στην παράγραφο 8, εκτός αν ο νέος περιορισμός τεθεί σε ισχύ εντός ενός έτους από:

(α) την ημερομηνία της γνωστοποίησης που αναφέρεται στο άρθρο 2 παράγραφος 15 για την κατάργηση του προηγούμενου περιορισμού· ή

(β) την ημερομηνία της κατάργησης του προηγούμενου περιορισμού που έχει τεθεί δυνάμει των διατάξεων του παρόντος άρθρου ή της ΣΠΙ

στην περίπτωση δε αυτή το επίπεδο δεν είναι χαμηλότερο από το μεγαλύτερο: (i) επίπεδο του περιορισμού για την τελευταία 12μηνη περίοδο κατά τη διάρκεια της οποίας το προϊόν υπέκειτο σε περιορισμό, ή (ii) επίπεδο του περιορισμού που προβλέπεται στην παράγραφο 8.

16. Όταν ένα μέλος, το οποίο δεν διατηρεί περιορισμό δυνάμει του άρθρου 2, αποφασίσει να εφαρμόσει περιορισμό δυνάμει των διατάξεων του παρόντος άρθρου, συνάπτει κατάλληλους διακανονισμούς, οι οποίοι: (α) λαμβάνουν πλήρως υπόψη παράγοντες, όπως η δασμολογική κατάταξη και οι ποσοτικές μονάδες που έχουν θεσπισθεί βάσει συνήθων εμπορικών πρακτικών κατά τις εξαγωγές και εισαγωγές, τόσο όσον αφορά τη σύνθεση των ινών όσο και τους όρους ανταγωνισμού στο ίδιο τμήμα της εγχώριας αγοράς, και (β) αποφεύγουν το διαχωρισμό σε υπερβολικό αριθμό κατηγοριών. Η αίτηση για διαβουλεύσεις, που αναφέρεται στις παραγράφους 7 ή 11, περιλαμβάνει πλήρεις πληροφορίες σχετικά με τέτοιους διακανονισμούς.

Άρθρο 7

1. Ως τμήμα της διαδικασίας ενσωμάτωσης και αναφορικά με τις ειδικές αναλήψεις υποχρεώσεων στις οποίες έχουν προβεί τα μέλη ως αποτέλεσμα του Γύρου της Ουρουγουάης, όλα τα μέλη αναλαμβάνουν δράσεις που κρίνουν αναγκαίες για να συμμορφωθούν με τους κανόνες και τις υποχρεώσεις της GATT του 1994 προκειμένου:

(α) να επιτύχουν μεγαλύτερη πρόσβαση στις αγορές για τα κλωστοϋφαντουργικά προϊόντα και τα είδη ένδυσης μέσω μέτρων, όπως οι δασμολογικές μειώσεις και παγιοποιήσεις, η μείωση ή η κατάργηση των μη δασμολογικών φραγμών, και η απλοποίηση των τελωνειακών και διοικητικών διατυπώσεων και των διατυπώσεων έκδοσης αδειών·

(β) να εξασφαλίσουν την εφαρμογή πολιτικών σχετικά με τις ορθές και δίκαιες συνθήκες συναλλαγών, όσον αφορά τα κλωστοϋφαντουργικά προϊόντα και τα είδη ένδυσης, σε τομείς όπως οι κανόνες και οι διαδικασίες ντάμπινγκ και αντιντάμπινγκ, οι επιδοτήσεις και τα αντισταθμιστικά μέτρα και η προστασία των δικαιωμάτων πνευματικής ιδιοκτησίας, και

(γ) να αποφύγουν τη διακριτική μεταχείριση των εισαγωγών των κλωστοϋφαντουργικών προϊόντων και των ειδών ένδυσης κατά τη λήψη μέτρων για λόγους γενικής εμπορικής πολιτικής.

οι δράσεις αυτές δεν θίγουν τα δικαιώματα και τις υποχρεώσεις των μελών δυνάμει της GATT του 1994.

2. Τα μέλη γνωστοποιούν στο ΕΟΚΠ τις δράσεις που αναφέρονται στην παράγραφο 1, οι οποίες έχουν επιπτώσεις στην εφαρμογή της παρούσας συμφωνίας. Στο βαθμό που οι ανωτέρω δράσεις έχουν γνωστοποιηθεί σε άλλο φορέα του ΠΟΕ, είναι αρκετή η συνοπτική περιγραφή, με αναφορά στην αρχική γνωστοποίηση, για να πληρούνται οι προϋποθέσεις δυνάμει της παρούσας παραγράφου. Όλα τα μέλη είναι ελεύθερα να προβαίνουν σε αντικοινοποιήσεις προς το ΕΟΚΠ.

3. Σε περίπτωση που κάποιο μέλος θεωρεί ότι ένα άλλο μέλος δεν έχει αναλάβει τις δράσεις που αναφέρονται στην παράγραφο 1, και ότι έχει διαταραχθεί η ισορροπία των δικαιωμάτων και υποχρεώσεων δυνάμει της παρούσας συμφωνίας το εν λόγω μέλος μπορεί να παραπέμψει το θέμα στους σχετικούς φορείς του ΠΟΕ και να ενημερώσει το ΕΟΚΠ. Ενδεχόμενα πορίσματα ή συμπεράσματα των σχετικών φορέων του ΠΟΕ αποτελούν μέρος της συνολικής έκθεσης του ΕΟΚΠ.

Άρθρο 8

1. Συστήνεται το εποπτικό όργανο κλωστοϋφαντουργικών προϊόντων ("ΕΟΚΠ"), προκειμένου να εποπτεύει την εφαρμογή της παρούσας συμφωνίας, να εξετάζει όλα τα λαμβανόμενα δυνάμει της παρούσας συμφωνίας μέτρα και τη συμφωνία τους με τις διατάξεις αυτές, και να αναλαμβάνει τις δράσεις που απαιτούνται συγκεκριμένα από την παρούσα συμφωνία. Το ΕΟΚΠ αποτελείται από τον πρόεδρο και 10 μέλη. Η σύνθεσή του είναι ισορροπημένη και ευρέως αντιπροσωπευτική των μελών και προβλέπεται η εναλλαγή των μελών σε εύθετα διαστήματα. Τα μέλη του οργάνου διορίζονται από τα μέλη που έχουν ορισθεί από το συμβούλιο εμπορευματικών συναλλαγών για να υπηρετήσουν στο ΕΟΚΠ, όπου εκτελούν τα καθήκοντά τους σε προσωποπαγή βάση.

2. Το ΕΟΚΠ θεσπίζει οικείες διαδικασίες εργασίας. Εντούτοις, εννοείται ότι για την ύπαρξη συναίνεσης στο πλαίσιο του ΕΟΚΠ δεν απαιτείται η έγκριση ή η σύμφωνη γνώμη των μελών του οργάνου που έχουν διορισθεί από μέλη που εμπλέκονται σε εκκρεμή υπόθεση την οποία εξετάζει το ΕΟΚΠ.

3. Το ΕΟΚΠ θεωρείται μόνιμο όργανο και συνεδριάζει όταν κρίνεται αναγκαίο για την εκτέλεση των καθηκόντων που έχει αναλάβει δυνάμει της παρούσας συμφωνίας. Το ΕΟΚΠ βασίζεται στις γνωστοποιήσεις και στις πληροφορίες που παρέχουν τα μέλη δυνάμει των σχετικών άρθρων της παρούσας συμφωνίας, οι οποίες συμπληρώνονται με οποιαδήποτε πρόσθετη πληροφορία ή απαραίτητες λεπτομέρειες που ενδεχομένως υποβάλλονται ή τις οποίες το ΕΟΚΠ αποφασίζει να ζητήσει από αυτά. Είναι δυνατόν να βασίζεται επίσης σε κοινοποιήσεις και σε εκθέσεις άλλων φορέων του ΠΟΕ και άλλων πηγών, οι οποίες κρίνονται, ενδεχομένως, κατάλληλες.

4. Τα μέλη παρέχουν σε αλλήλους τις κατάλληλες δυνατότητες για διαβουλεύσεις σχετικά με κάθε θέμα που επηρεάζει τη λειτουργία της παρούσας συμφωνίας.

5. Σε περίπτωση απουσίας οιασδήποτε αμοιβαίως συμφωνηθείσας λύσεως κατά τη διάρκεια των διμερών διαβουλεύσεων που προβλέπονται στην παρούσα συμφωνία, το ΕΟΚΠ, μετά από αίτηση οποιουδήποτε μέλους, και μετά από λεπτομερή και άμεση εξέταση του θέματος, προβαίνει σε συστάσεις προς τα ενδιαφερόμενα μέλη.

6. Μετά από αίτηση οποιουδήποτε μέλους, το ΣΟΚΠ εξετάζει αμέσως κάθε συγκεκριμένο θέμα το οποίο, το εν λόγω μέλος, θεωρεί ως ζημιογόνο για τα συμφέροντά του δυνάμει της παρούσας συμφωνίας, καθώς και στις περιπτώσεις όπου οι διαβουλεύσεις μεταξύ αυτού και του ενδιαφερόμενου ή ενδιαφερομένων μελών απέτυχαν να καταλήξουν σε αμοιβαίως ικανοποιητική λύση. Όσον αφορά τα εν λόγω θέματα, το ΣΟΚΠ μπορεί να προβαίνει σε παρατηρήσεις που κρίνει δέουσες προς τα ενδιαφερόμενα μέλη, καθώς και για τους σκοπούς της εξέτασης που προβλέπεται στην παράγραφο 11.

7. Πριν από τη διατύπωση των συστάσεων ή των παρατηρήσεών του, το ΣΟΚΠ καλεί τα μέλη, τα οποία είναι δυνατόν να θίγονται άμεσα από το εν λόγω θέμα να συμμετάσχουν στη διαδικασία.

8. Κάθε φορά που το ΣΟΚΠ καλείται να διατυπώσει σε συστάσεις ή να εκδώσει πορίσματα, είναι επιθυμητό να ενεργήσει εντός περιόδου 30 ημερών, εκτός εάν καθορίζεται διαφορετικό χρονικό διάστημα από την παρούσα συμφωνία. Όλες οι εν λόγω συστάσεις ή πορίσματα κοινοποιούνται στα άμεσα ενδιαφερόμενα μέλη. Όλες οι εν λόγω συστάσεις ή πορίσματα κοινοποιούνται επίσης στο συμβούλιο εμπορευματικών συναλλαγών για πληροφόρησή του.

9. Τα μέλη επιδιώκουν την πλήρη αποδοχή των συστάσεων του ΣΟΚΠ, το οποίο ασκεί τη δέουσα εποπτεία της εφαρμογής των εν λόγω συστάσεων.

10. Εάν κάποιο μέλος θεωρεί ότι δεν είναι σε θέση να συμμορφωθεί με τις συστάσεις του ΣΟΚΠ, εκθέτει τις σχετικές αιτίες στο ΣΟΚΠ το αργότερο ένα μήνα μετά την παραλαβή των εν λόγω συστάσεων. Μετά από λεπτομερή εξέταση των αιτιών που προβάλλονται, το ΣΟΚΠ προβαίνει σε περαιτέρω συστάσεις τις οποίες κρίνει ως δέουσες. Εάν μετά από τις εν λόγω περαιτέρω συστάσεις, το θέμα παραμένει ανεπίλυτο, κάθε μέλος δύναται να παραπέμψει το θέμα στο όργανο επίλυσης διαφορών και να επικαλεσθεί το άρθρο XXIII παράγραφος 2 της GATT του 1994 και τις σχετικές διατάξεις της συμφωνίας επίλυσης διαφορών.

11. Προκειμένου να επιβλέπει την εφαρμογή της παρούσας συμφωνίας, το συμβούλιο εμπορευματικών συναλλαγών προβαίνει σε μείζονα εξέταση πριν από το τέλος κάθε φάσης της διαδικασίας ενσωμάτωσης. Το ΣΟΚΠ, προκειμένου να συμβάλει στην εν λόγω εξέταση, διαβιβάζει, τουλάχιστον πέντε μήνες πριν από το τέλος κάθε φάσης, στο συμβούλιο εμπορευματικών συναλλαγών, λεπτομερή έκθεση σχετικά με την εφαρμογή της παρούσας συμφωνίας κατά τη διάρκεια της υπό εξέταση φάσης, ιδίως για θέματα σχετικά με τη διαδικασία ενσωμάτωσης, την εφαρμογή του μεταβατικού μηχανισμού διασφάλισης, και σχετικά με την εφαρμογή των κανόνων και των υποχρεώσεων της GATT του 1994 όπως καθορίζονται στα άρθρα 2,3,6 και 7 αντιστοίχως. Η εμπεριστατωμένη έκθεση του ΣΟΚΠ δύναται να περιλαμβάνει συστάσεις, που το ΣΟΚΠ θεωρεί κατάλληλες προς το συμβούλιο εμπορευματικών συναλλαγών.

12. Λαμβανομένης υπόψη της εξέτασης αυτής, το συμβούλιο εμπορευματικών συναλλαγών λαμβάνει συναινετικές αποφάσεις, όπως κρίνεται δέον, προκειμένου να εξασφαλισθεί ότι δεν διαταράσσεται η ισορροπία των δικαιωμάτων και των υποχρεώσεων που περιλαμβάνονται στην παρούσα συμφωνία. Για την επίλυση διαφορών που μπορεί να προκύψουν σχετικά με τα θέματα που αναφέρονται στο άρθρο 7, το όργανο επίλυσης διαφορών μπορεί να επιτρέπει, με την επιφύλαξη της καταληκτικής ημερομηνίας που αναφέρεται στο άρθρο 9, προσαρμογή του άρθρου 2, παράγραφος 14 για την επόμενη της εξέτασης φάση, όσον αφορά οποιοδήποτε μέλος το οποίο θεωρείται ότι δεν συμμορφώνεται με τις υποχρεώσεις δυνάμει της παρούσας συμφωνίας.

Άρθρο 9

Η παρούσα συμφωνία και όλοι οι περιορισμοί που επιβάλλονται βάσει αυτής παύουν να ισχύουν την πρώτη ημέρα του 121ου μήνα από τη θέση σε ισχύ της συμφωνίας για τον ΠΟΕ, ημερομηνία κατά την οποία ο τομέας των κλωστοϋφαντουργικών προϊόντων και των ειδών ένδυσης ενσωματώνεται πλήρως στην GATT του 1994. Η παρούσα συμφωνία δεν παρατείνεται.

ΠΑΡΑΡΤΗΜΑ

ΚΑΤΑΛΟΓΟΣ ΠΡΟΪΟΝΤΩΝ ΠΟΥ ΚΑΛΥΠΤΟΝΤΑΙ ΑΠΟ ΤΗΝ ΠΑΡΟΥΣΑ ΣΥΜΦΩΝΙΑ

1. Το παρόν παράρτημα απαριθμεί κλωστοϋφαντουργικά προϊόντα και είδη ένδυσης που ορίζονται από εξαψήφιους κωδικούς του Εναρμονισμένου Συστήματος Περιγραφής και Κωδικοποίησης των Εμπορευμάτων (ΕΣ).

2. Τα μέτρα δυνάμει των διατάξεων διασφάλισης του άρθρου 6 λαμβάνονται σε σχέση με συγκεκριμένα κλωστοϋφαντουργικά προϊόντα και είδη ένδυσης και όχι βάσει των ιδίων των θέσεων του ΕΣ.

3. Τα μέτρα δυνάμει των διατάξεων διασφάλισης του άρθρου 6 της παρούσας συμφωνίας δεν ισχύουν για:

α) τις αναπτυσσόμενες χώρες μέλη που εξάγουν χειροποίητα υφάσματα βιοτεχνίας ή χειροποίητα προϊόντα βιοτεχνίας από τέτοια χειροποίητα υφάσματα, ή παραδοσιακά βιοτεχνικά κλωστοϋφαντουργικά προϊόντα και είδη ένδυσης, υπό τον όρο ότι τα εν λόγω προϊόντα πιστοποιούνται καταλλήλως, δυνάμει διακανονισμών που έχουν συναφθεί μεταξύ των ενδιαφερομένων μελών·

β) τα κλωστοϋφαντουργικά προϊόντα που αποτελούσαν παραδοσιακά αντικείμενο εμπορίου και τα οποία ευρίσκοντο στο εμπόριο σε σημαντικές εμπορικά ποσότητες πριν από το 1982 όπως, τσάντες, σάκκες, βάσεις ταπήτων, σχοινιά, αποσκευές, ψάθες, ψάθινα χαλιά και τάπητες κατασκευασμένοι συνήθως από γιούτα, ίνες κοκκοφοίνικα, σιζάλ, άβακα, maguey και χενεκουέν·

γ) τα ολομέταξα προϊόντα.

Για τέτοιου είδους προϊόντα ισχύουν οι διατάξεις του άρθρου XIX της GATT του 1994, όπως ερμηνεύεται από τη συμφωνία για τα μέτρα διασφάλισης.

Προϊόντα του τμήματος XI (κλωστοϋφαντουργικά προϊόντα και είδη) της ονοματολογίας του Εναρμονισμένου Συστήματος (ΕΣ) Περιγραφής και Κωδικοποίησης των Εμπορευμάτων

Αριθ.ΕΣ Περιγραφή εμπορεύματος

Κεφ. 50 Μετάξι

5004.00 Νήματα από μετάξι (άλλα από τα νήματα από απορρίμματα από μετάξι), μη συσκευασμένα για τη λιανική πώληση

5005.00 Νήματα από απορρίμματα από μετάξι, μη συσκευασμένα για τη λιανική πώληση

5006.00 Νήματα από μετάξι ή από απορρίμματα από μετάξι, συσκευασμένα για τη λιανική πώληση. Τρίχες αλιείας (μεσσηνέζες)

5007.10 Υφάσματα από κατάλοιπα απορριμμάτων από μετάξι

5007.20 Άλλα υφάσματα, που περιέχουν τουλάχιστον 85% μετάξι ή απορρίμματα από μετάξι, άλλα από τα κατάλοιπα απορριμμάτων από μετάξι

5007.90 Άλλα υφάσματα από μετάξι

Κεφ. 51 Μαλλί, τρίχες εκλεκτής ποιότητας ή χονδροειδείς, νήματα και υφάσματα από χοντρότριχες

5105.10 Μαλλί λαναρισμένο

5105.21 Μαλλί χτενισμένο χύμα

5105.29 Μαλλί χτενισμένο άλλο από το μαλλί χτενισμένο χύμα

5105.30 Τρίχες εκλεκτής ποιότητας, λαναρισμένες ή χτενισμένες

5106.10 Νήματα από μαλλί λαναρισμένο, μη συσκευασμένα για τη λιανική πώληση, που περιέχουν τουλάχιστον 85% κατά βάρος μαλλί

5106.20 Νήματα από μαλλί λαναρισμένο, μη συσκευασμένα για τη λιανική πώληση, που περιέχουν λιγότερο του 85% κατά βάρος μαλλί

5107.10 Νήματα από μαλλί χτενισμένο, μη συσκευασμένα για τη λιανική πώληση, που περιέχουν τουλάχιστον 85% κατά βάρος μαλλί

5107.20 Νήματα από μαλλί χτενισμένο, μη συσκευασμένα για τη λιανική πώληση, που περιέχουν λιγότερο του 85% κατά βάρος μαλλί

5108.10 Νήματα από τρίχες εκλεκτής ποιότητας, λαναρισμένα, μη συσκευασμένα για τη λιανική πώληση

5108.20 Νήματα από τρίχες εκλεκτής ποιότητας, χτενισμένα, μη συσκευασμένα για τη λιανική πώληση

5109.10 Νήματα από μαλλί ή τρίχες εκλεκτής ποιότητας, συσκευασμένα για τη λιανική πώληση, που περιέχουν τουλάχιστον 85% κατά βάρος μαλλί ή τρίχες εκλεκτής ποιότητας

5109.90 Νήματα από μαλλί ή τρίχες εκλεκτής ποιότητας, συσκευασμένα για τη λιανική πώληση, που περιέχουν λιγότερο του 85% κατά βάρος μαλλί ή τρίχες εκλεκτής ποιότητας

5110.00 Νήματα από τρίχες χοντροειδείς ή από χοντρότριχες

5111.11 Υφάσματα από μαλλί λαναρισμένο ή από τρίχες εκλεκτής ποιότητας λαναρισμένες, που περιέχουν τουλάχιστον 85% κατά βάρος μαλλί ή τρίχες εκλεκτής ποιότητας με βάρος που δεν υπερβαίνει τα 300 g/m2

5111.19 Υφάσματα από μαλλί λαναρισμένο ή από τρίχες εκλεκτής ποιότητας λαναρισμένες, που περιέχουν τουλάχιστον 85% κατά βάρος μαλλί ή τρίχες εκλεκτής ποιότητας με βάρος που υπερβαίνει τα 300 g/m2

5111.20 Υφάσματα από μαλλί λαναρισμένο ή από τρίχες εκλεκτής ποιότητας λαναρισμένες, που περιέχουν τουλάχιστον 85% κατά βάρος μαλλί ή τρίχες εκλεκτής ποιότητας, σύμμεικτα κυρίως ή μόνο με συνθετικές ή τεχνητές ίνες

5111.30 Υφάσματα από μαλλί λαναρισμένο ή από τρίχες εκλεκτής ποιότητας λαναρισμένες, που περιέχουν τουλάχιστον 85% κατά βάρος μαλλί ή τρίχες εκλεκτής ποιότητας, σύμμεικτα κυρίως ή μόνο με συνθετικές ή τεχνητές ίνες μη συνεχείς

5111.90 Υφάσματα από μαλλί λαναρισμένο ή από τρίχες εκλεκτής ποιότητας λαναρισμένες, που περιέχουν τουλάχιστον 85% κατά βάρος μαλλί ή τρίχες εκλεκτής ποιότητας, άλλα

5112.11 Υφάσματα από μαλλί χτενισμένο ή από τρίχες εκλεκτής ποιότητας χτενισμένες, που περιέχουν τουλάχιστον 85% κατά βάρος μαλλί ή τρίχες εκλεκτής ποιότητας, με βάρος που δεν υπερβαίνει τα 200 g/m2

5112.19 Υφάσματα από μαλλί χτενισμένο ή από τρίχες εκλεκτής ποιότητας χτενισμένες, που περιέχουν τουλάχιστον 85% κατά βάρος μαλλί ή τρίχες εκλεκτής ποιότητας, με βάρος που υπερβαίνει τα 200 g/m2

5112.20 Υφάσματα από μαλλί χτενισμένο ή από τρίχες εκλεκτής ποιότητας χτενισμένες, που περιέχουν λιγότερο από 85% κατά βάρος μαλλί ή τρίχες εκλεκτής ποιότητας, σύμμεικτα κυρίως ή μόνο με συνθετικές ή τεχνητές ίνες

5112.30 Υφάσματα από μαλλί χτενισμένο ή από τρίχες εκλεκτής ποιότητας χτενισμένες, που περιέχουν λιγότερο από 85% κατά βάρος μαλλί ή τρίχες εκλεκτής ποιότητας, σύμμεικτα κυρίως ή μόνο με συνθετικές ή τεχνητές ίνες μη συνεχείς

5112.90 Υφάσματα από μαλλί χτενισμένο ή από τρίχες εκλεκτής ποιότητας χτενισμένες, που περιέχουν λιγότερο από 85% κατά βάρος μαλλί ή τρίχες εκλεκτής ποιότητας, άλλα

5113.00 Υφάσματα από τρίχες χοντροειδείς ή από χοντρότριχες

Κεφ. 52 Βαμβάκι

5204.11 Νήματα για ράψιμο από βαμβάκι, μη συσκευασμένα για τη λιανική πώληση, που περιέχουν τουλάχιστον 85% κατά βάρος βαμβάκι

5204.19 Νήματα για ράψιμο από βαμβάκι, μη συσκευασμένα για τη λιανική πώληση, που περιέχουν λιγότερο από 85% κατά βάρος βαμβάκι

5204.20 Νήματα για ράψιμο από βαμβάκι, συσκευασμένα για τη λιανική πώληση

5205.11 Νήματα από βαμβάκι, που περιέχουν τουλάχιστον 85% κατά βάρος βαμβάκι, μη συσκευασμένα για τη λιανική πώληση, απλά, από ίνες μη χτενισμένες, με τίτλο 714,29 decitex ή περισσότερο

5205.12 Νήματα από βαμβάκι, που περιέχουν τουλάχιστον 85% κατά βάρος βαμβάκι, μη συσκευασμένα για τη λιανική πώληση, απλά, από ίνες μη χτενισμένες, με τίτλο κατώτερο των 714,29 decitex αλλά όχι κατώτερο των 232,56 decitex

5205.13 Νήματα από βαμβάκι, που περιέχουν τουλάχιστον 85% κατά βάρος βαμβάκι, μη συσκευασμένα για τη λιανική πώληση, απλά, από ίνες μη χτενισμένες, με τίτλο κατώτερο των 232,56 decitex αλλά όχι κατώτερο των 192,31 decitex

5205.14 Νήματα από βαμβάκι, που περιέχουν τουλάχιστον 85% κατά βάρος βαμβάκι, μη συσκευασμένα για τη λιανική πώληση, απλά, από ίνες μη χτενισμένες, με τίτλο κατώτερο των 192,31 decitex αλλά όχι κατώτερο των 125 decitex

5205.15 Νήματα από βαμβάκι, που περιέχουν τουλάχιστον 85% κατά βάρος βαμβάκι, μη συσκευασμένα για τη λιανική πώληση, απλά, από ίνες μη χτενισμένες, με τίτλο κατώτερο των 125 decitex

5205.21 Νήματα από βαμβάκι, που περιέχουν τουλάχιστον 85% κατά βάρος βαμβάκι, μη συσκευασμένα για τη λιανική πώληση, απλά, από ίνες χτενισμένες, με τίτλο 714,29 decitex ή περισσότερο

5205.22 Νήματα από βαμβάκι, που περιέχουν τουλάχιστον 85% κατά βάρος βαμβάκι, μη συσκευασμένα για τη λιανική πώληση, απλά, από ίνες χτενισμένες, με τίτλο κατώτερο των 714,29 decitex αλλά όχι κατώτερο των 232,56 decitex

5205.23 Νήματα από βαμβάκι, που περιέχουν τουλάχιστον 85% κατά βάρος βαμβάκι, μη συσκευασμένα για τη λιανική πώληση, απλά, από ίνες χτενισμένες, με τίτλο κατώτερο των 232,56 decitex αλλά όχι κατώτερο των 192,31 decitex

5205.24 Νήματα από βαμβάκι, που περιέχουν τουλάχιστον 85% κατά βάρος βαμβάκι, μη συσκευασμένα για τη λιανική πώληση, απλά, από ίνες χτενισμένες, με τίτλο κατώτερο των 192,31 decitex αλλά όχι κατώτερο των 125 decitex

5205.25 Νήματα από βαμβάκι, που περιέχουν τουλάχιστον 85% κατά βάρος βαμβάκι, μη συσκευασμένα για τη λιανική πώληση, απλά, από ίνες χτενισμένες, με τίτλο κατώτερο των 125 decitex

5205.31 Νήματα από βαμβάκι, που περιέχουν τουλάχιστον 85% κατά βάρος βαμβάκι, μη συσκευασμένα για τη λιανική πώληση, στριμμένα ή κορδονωτά, από ίνες μη χτενισμένες, με τίτλο σε απλά νήματα 714,29 decitex ή περισσότερο

5205.32 Νήματα από βαμβάκι, που περιέχουν τουλάχιστον 85% κατά βάρος βαμβάκι, μη συσκευασμένα για τη λιανική πώληση, στριμμένα ή κορδονωτά, από ίνες μη χτενισμένες, με τίτλο σε απλά νήματα κατώτερο των 714,29 decitex αλλά όχι κατώτερο των 232,56 decitex

5205.33 Νήματα από βαμβάκι, που περιέχουν τουλάχιστον 85% κατά βάρος βαμβάκι, μη συσκευασμένα για τη λιανική πώληση, στριμμένα ή κορδονωτά, από ίνες μη χτενισμένες, με τίτλο σε απλά νήματα κατώτερο των 232,56 decitex αλλά όχι κατώτερο των 192,31 decitex

5205.34 Νήματα από βαμβάκι, που περιέχουν τουλάχιστον 85% κατά βάρος βαμβάκι, μη συσκευασμένα για τη λιανική πώληση, στριμμένα ή κορδονωτά, από ίνες μη χτενισμένες, με τίτλο σε απλά νήματα κατώτερο των 192,31 decitex αλλά όχι κατώτερο των 125 decitex

5205.35 Νήματα από βαμβάκι, που περιέχουν τουλάχιστον 85% κατά βάρος βαμβάκι, μη συσκευασμένα για τη λιανική πώληση, στριμμένα ή κορδονωτά, από ίνες μη χτενισμένες, με τίτλο σε απλά νήματα κατώτερο των 125 decitex

5205.41 Νήματα στριμμένα ή κορδονωτά, από ίνες χτενισμένες, με τίτλο σε απλά νήματα 714,29 decitex ή περισσότερο

5205.42 Με τίτλο σε απλά νήματα κατώτερο των 714,29 decitex αλλά όχι κατώτερο των 232,56 decitex

5205.43 Με τίτλο σε απλά νήματα κατώτερο των 232,56 decitex αλλά όχι κατώτερο των 192,31 decitex

5205.44 Με τίτλο σε απλά νήματα κατώτερο των 192,31 decitex αλλά όχι κατώτερο των 125 decitex

5205.45 Με τίτλο σε απλά νήματα κατώτερο των 125 decitex

5206.11 Νήματα από βαμβάκι, που περιέχουν λιγότερο από 85% κατά βάρος βαμβάκι, μη συσκευασμένα για τη λιανική πώληση, απλά, από ίνες μη χτενισμένες, με τίτλο 714,29 decitex ή περισσότερο

5206.12 Με τίτλο κατώτερο των 714,29 decitex αλλά όχι κατώτερο των 232,56 decitex

5206.13 Με τίτλο κατώτερο των 232,56 decitex αλλά όχι κατώτερο των 192,31 decitex

5206.14 Με τίτλο κατώτερο των 192,31 decitex αλλά όχι κατώτερο των 125 decitex

5206.15 Με τίτλο κατώτερο των 125 decitex

5206.21 Νήματα από βαμβάκι, που περιέχουν λιγότερο από 85% κατά βάρος βαμβάκι, μη συσκευασμένα για τη λιανική πώληση, απλά, από ίνες χτενισμένες, με τίτλο 714,29 decitex ή περισσότερο

5206.22 Με τίτλο κατώτερο των 714,29 decitex αλλά όχι κατώτερο των 232,56 decitex

5206.23 Με τίτλο κατώτερο των 232,56 decitex αλλά όχι κατώτερο των 192,31 decitex

5206.24 Με τίτλο κατώτερο των 192,31 decitex αλλά όχι κατώτερο των 125 decitex

5206.25 Με τίτλο κατώτερο των 125 decitex

5206.31 Νήματα από βαμβάκι, που περιέχουν λιγότερο από 85% κατά βάρος βαμβάκι, μη συσκευασμένα για τη λιανική πώληση, πολλαπλά, από ίνες μη χτενισμένες, με τίτλο σε απλά νήματα 714,29 decitex ή περισσότερο

5206.32 Με τίτλο σε απλά νήματα κατώτερο των 714,29 decitex αλλά όχι κατώτερο των 232,56 decitex
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5206.41 Νήματα από βαμβάκι, που περιέχουν λιγότερο από 85% κατά βάρος βαμβάκι, μη συσκευασμένα για τη λιανική πώληση, πολλαπλά, από ίνες χτενισμένες, με τίτλο σε απλά νήματα 714,29 decitex ή περισσότερο
5206.42 Με τίτλο σε απλά νήματα κατώτερο των 714,29 decitex αλλά όχι κατώτερο των 232,56 decitex
5206.43 Με τίτλο σε απλά νήματα κατώτερο των 232,56 decitex αλλά όχι κατώτερο των 192,31 decitex
5206.44 Με τίτλο σε απλά νήματα κατώτερο των 192,31 decitex αλλά όχι κατώτερο των 125 decitex
5206.45 Με τίτλο σε απλά νήματα κατώτερο των 125 decitex
5207.10 Νήματα από βαμβάκι (άλλα από τα νήματα για ράψιμο) συσκευασμένα για τη λιανική πώληση, που περιέχουν τουλάχιστον 85% κατά βάρος βαμβάκι
5207.90 Νήματα από βαμβάκι (άλλα από τα νήματα για ράψιμο) συσκευασμένα για τη λιανική πώληση, που περιέχουν λιγότερο από 85% κατά βάρος βαμβάκι
5208.11 Υφάσματα από βαμβάκι, που περιέχουν τουλάχιστον 85% κατά βάρος βαμβάκι, αλεύκαστα, απλής ύφανσης, με βάρος που δεν υπερβαίνει τα 100 g/m2
5208.12 Με βάρος που υπερβαίνει τα 100 g/m2 αλλά όχι τα 200 g/m2
5208.13 Υφάσματα από βαμβάκι, που περιέχουν τουλάχιστον 85% κατά βάρος βαμβάκι, αλεύκαστα, διαγώνιας ύφανσης, με βάρος που δεν υπερβαίνει τα 200 g/m2
5208.19 Άλλα υφάσματα από βαμβάκι, που περιέχουν τουλάχιστον 85% κατά βάρος βαμβάκι, αλεύκαστα, με βάρος που δεν υπερβαίνει τα 200 g/m2
5208.21 Υφάσματα από βαμβάκι, που περιέχουν τουλάχιστον 85% κατά βάρος βαμβάκι, λευκασμένα, απλής ύφανσης, με βάρος που δεν υπερβαίνει τα 100 g/m2
5208.22 Με βάρος που υπερβαίνει τα 100 g/m2 αλλά όχι τα 200 g/m2
5208.23 Υφάσματα από βαμβάκι, που περιέχουν τουλάχιστον 85% κατά βάρος βαμβάκι, λευκασμένα, διαγώνιας ύφανσης, με βάρος που δεν υπερβαίνει τα 200 g/m2
5208.29 Άλλα υφάσματα από βαμβάκι, που περιέχουν τουλάχιστον 85% κατά βάρος βαμβάκι, λευκασμένα, με βάρος που δεν υπερβαίνει τα 200 g/m
5208.31 Υφάσματα από βαμβάκι, που περιέχουν τουλάχιστον 85% κατά βάρος βαμβάκι, βαμμένα, απλής ύφανσης, με βάρος που δεν υπερβαίνει τα 100 g/m2
5208.32 Με βάρος που υπερβαίνει τα 100 g/m2 αλλά όχι τα 200 g/m2
5208.33 Υφάσματα από βαμβάκι, που περιέχουν τουλάχιστον 85% κατά βάρος βαμβάκι, βαμμένα, διαγώνιας ύφανσης, με βάρος που δεν υπερβαίνει τα 200 g/m2
5208.39 Άλλα υφάσματα από βαμβάκι, που περιέχουν τουλάχιστον 85% κατά βάρος βαμβάκι, βαμμένα, με βάρος που δεν υπερβαίνει τα 200 g/m2
5208.41 Υφάσματα από βαμβάκι, που περιέχουν τουλάχιστον 85% κατά βάρος βαμβάκι, από νήματα διαφόρων χρωμάτων, απλής ύφανσης, με βάρος που δεν υπερβαίνει τα 100 g/m2
5208.42 Με βάρος που υπερβαίνει τα 100 g/m2 αλλά όχι τα 200 g/m2

5208.43 Υφάσματα από βαμβάκι, που περιέχουν τουλάχιστον 85% κατά βάρος βαμβάκι, από νήματα διαφόρων χρωμάτων, διαγώνιας ύφανσης, με βάρος που δεν υπερβαίνει τα 200 g/m2

5208.49 Άλλα υφάσματα από βαμβάκι, που περιέχουν τουλάχιστον 85% κατά βάρος βαμβάκι, από νήματα διαφόρων χρωμάτων, με βάρος που δεν υπερβαίνει τα 200 g/m2

5208.51 Υφάσματα από βαμβάκι, που περιέχουν τουλάχιστον 85% κατά βάρος βαμβάκι, τυπωτά, απλής ύφανσης, με βάρος που δεν υπερβαίνει τα 100 g/m2

5208.52 Με βάρος που υπερβαίνει τα 100 g/m2 αλλά όχι τα 200 g/m2

5208.53 Υφάσματα από βαμβάκι, που περιέχουν τουλάχιστον 85% κατά βάρος βαμβάκι, τυπωτά, διαγώνιας ύφανσης, με βάρος που δεν υπερβαίνει τα 200 g/m2

5208.59 Άλλα υφάσματα από βαμβάκι, που περιέχουν τουλάχιστον 85% κατά βάρος βαμβάκι, τυπωτά, με βάρος που δεν υπερβαίνει τα 200 g/m2

5209.11 Υφάσματα από βαμβάκι, που περιέχουν τουλάχιστον 85% κατά βάρος βαμβάκι, με βάρος που υπερβαίνει τα 200 g/m2, αλεύκαστα, απλής ύφανσης

5209.12 Υφάσματα από βαμβάκι, που περιέχουν τουλάχιστον 85% κατά βάρος βαμβάκι, με βάρος που υπερβαίνει τα 200 g/m2, αλεύκαστα, διαγώνιας ύφανσης

5209.19 Άλλα υφάσματα από βαμβάκι, που περιέχουν τουλάχιστον 85% κατά βάρος βαμβάκι, με βάρος που υπερβαίνει τα 200 g/m2, λευκασμένα

5209.21 Υφάσματα από βαμβάκι, που περιέχουν τουλάχιστον 85% κατά βάρος βαμβάκι, με βάρος που υπερβαίνει τα 200 g/m2, λευκασμένα, απλής ύφανσης

5209.22 Υφάσματα από βαμβάκι, που περιέχουν τουλάχιστον 85% κατά βάρος βαμβάκι, με βάρος που υπερβαίνει τα 200 g/m2, λευκασμένα, διαγώνιας ύφανσης

5209.29 Άλλα υφάσματα από βαμβάκι, που περιέχουν τουλάχιστον 85% κατά βάρος βαμβάκι, με βάρος που υπερβαίνει τα 200 g/m2, λευκασμένα

5209.31 Υφάσματα από βαμβάκι, που περιέχουν τουλάχιστον 85% κατά βάρος βαμβάκι, με βάρος που υπερβαίνει τα 200 g/m2, βαμμένα, απλής ύφανσης

5209.32 Υφάσματα από βαμβάκι, που περιέχουν τουλάχιστον 85% κατά βάρος βαμβάκι, με βάρος που υπερβαίνει τα 200 g/m2, βαμμένα, διαγώνιας ύφανσης

5209.39 Άλλα υφάσματα από βαμβάκι, που περιέχουν τουλάχιστον 85% κατά βάρος βαμβάκι, με βάρος που υπερβαίνει τα 200 g/m2, βαμμένα

5209.41 Υφάσματα από βαμβάκι, που περιέχουν τουλάχιστον 85% κατά βάρος βαμβάκι, με βάρος που υπερβαίνει τα 200 g/m2, από νήματα διαφόρων χρωμάτων, απλής ύφανσης

5209.42 Υφάσματα με την ονομασία "denim" που περιέχουν τουλάχιστον 85% κατά βάρος βαμβάκι, με βάρος που υπερβαίνει τα 200 g/m2

5209.43 Υφάσματα από βαμβάκι, που περιέχουν τουλάχιστον 85% κατά βάρος βαμβάκι, με βάρος που υπερβαίνει τα 200 g/m2, από νήματα διαφόρων χρωμάτων, διαγώνιας ύφανσης εκτός των "denim"

5209.49 Άλλα υφάσματα από βαμβάκι, που περιέχουν τουλάχιστον 85% κατά βάρος βαμβάκι, με βάρος που υπερβαίνει τα 200 g/m2, από νήματα διαφόρων χρωμάτων

5209.51 Υφάσματα από βαμβάκι, που περιέχουν τουλάχιστον 85% κατά βάρος βαμβάκι, με βάρος που υπερβαίνει τα 200 g/m2, τυπωτά, απλής ύφανσης

5209.52 Υφάσματα από βαμβάκι, που περιέχουν τουλάχιστον 85% κατά βάρος βαμβάκι, με βάρος που υπερβαίνει τα 200 g/m2, τυπωτά, διαγώνιας ύφανσης

5209.59 Άλλα υφάσματα από βαμβάκι, που περιέχουν τουλάχιστον 85% κατά βάρος βαμβάκι, με βάρος που υπερβαίνει τα 200 g/m2, τυπωτά

5210.11 Υφάσματα από βαμβάκι, που περιέχουν λιγότερο από 85% κατά βάρος βαμβάκι, σύμμεικτα με συνθετικές ή τεχνητές ίνες, με βάρος που δεν υπερβαίνει τα 200 g/m2, αλεύκαστα, απλής ύφανσης

5210.12 Υφάσματα από βαμβάκι, που περιέχουν λιγότερο από 85% κατά βάρος βαμβάκι, σύμμεικτα με συνθετικές ή τεχνητές ίνες, με βάρος που δεν υπερβαίνει τα 200 g/m2, αλεύκαστα, διαγώνιας ύφανσης

5210.19 Άλλα υφάσματα από βαμβάκι, που περιέχουν λιγότερο από 85% κατά βάρος βαμβάκι, σύμμεικτα με συνθετικές ή τεχνητές ίνες, με βάρος που δεν υπερβαίνει τα 200 g/m2, λευκασμένα

5210.21 Υφάσματα από βαμβάκι, που περιέχουν λιγότερο από 85% κατά βάρος βαμβάκι, σύμμεικτα με συνθετικές ή τεχνητές ίνες, με βάρος που δεν υπερβαίνει τα 200 g/m2, λευκασμένα, απλής ύφανσης

5210.22 Υφάσματα από βαμβάκι, που περιέχουν λιγότερο από 85% κατά βάρος βαμβάκι, σύμμεικτα με συνθετικές ή τεχνητές ίνες, με βάρος που δεν υπερβαίνει τα 200 g/m2, λευκασμένα, διαγώνιας ύφανσης

5210.29 Άλλα υφάσματα από βαμβάκι, που περιέχουν λιγότερο από 85% κατά βάρος βαμβάκι, σύμμεικτα με συνθετικές ή τεχνητές ίνες, με βάρος που δεν υπερβαίνει τα 200 g/m2, λευκασμένα

5210.31 Υφάσματα από βαμβάκι, που περιέχουν λιγότερο από 85% κατά βάρος βαμβάκι, σύμμεικτα με συνθετικές ή τεχνητές ίνες, με βάρος που δεν υπερβαίνει τα 200 g/m2, βαμμένα, απλής ύφανσης

5210.32 Υφάσματα από βαμβάκι, που περιέχουν λιγότερο από 85% κατά βάρος βαμβάκι, σύμμεικτα με συνθετικές ή τεχνητές ίνες, με βάρος που δεν υπερβαίνει τα 200 g/m2, βαμμένα, διαγώνιας ύφανσης

5210.39 Άλλα υφάσματα από βαμβάκι, που περιέχουν λιγότερο από 85% κατά βάρος βαμβάκι, σύμμεικτα με συνθετικές ή τεχνητές ίνες, με βάρος που δεν υπερβαίνει τα 200 g/m2, βαμμένα

5210.41 Υφάσματα από βαμβάκι, που περιέχουν λιγότερο από 85% κατά βάρος βαμβάκι, σύμμεικτα με συνθετικές ή τεχνητές ίνες, με βάρος που δεν υπερβαίνει τα 200 g/m2, από νήματα διαφόρων χρωμάτων, απλής ύφανσης

5210.42 Υφάσματα από βαμβάκι, που περιέχουν λιγότερο από 85% κατά βάρος βαμβάκι, σύμμεικτα με συνθετικές ή τεχνητές ίνες, με βάρος που δεν υπερβαίνει τα 200 g/m2, από νήματα διαφόρων χρωμάτων, διαγώνιας ύφανσης

5210.49 Άλλα υφάσματα από βαμβάκι, που περιέχουν λιγότερο από 85% κατά βάρος βαμβάκι, σύμμεικτα με συνθετικές ή τεχνητές ίνες, με βάρος που δεν υπερβαίνει τα 200 g/m2, από νήματα διαφόρων χρωμάτων

5210.51 Υφάσματα από βαμβάκι, που περιέχουν λιγότερο από 85% κατά βάρος βαμβάκι, σύμμεικτα με συνθετικές ή τεχνητές ίνες, με βάρος που δεν υπερβαίνει τα 200 g/m2, τυπωτά, απλής ύφανσης

5210.52 Υφάσματα από βαμβάκι, που περιέχουν λιγότερο από 85% κατά βάρος βαμβάκι, σύμμεικτα με συνθετικές ή τεχνητές ίνες, με βάρος που δεν υπερβαίνει τα 200 g/m2, τυπωτά, διαγώνιας ύφανσης

5210.59 Άλλα υφάσματα από βαμβάκι, που περιέχουν λιγότερο από 85% κατά βάρος βαμβάκι, σύμμεικτα με συνθετικές ή τεχνητές ίνες, με βάρος που δεν υπερβαίνει τα 200 g/m2, τυπωτά

5211.11 Υφάσματα από βαμβάκι, που περιέχουν λιγότερο από 85% κατά βάρος βαμβάκι, σύμμεικτα με συνθετικές ή τεχνητές ίνες, με βάρος που υπερβαίνει τα 200 g/m2, αλεύκαστα, απλής ύφανσης

5211.12 Υφάσματα από βαμβάκι, που περιέχουν λιγότερο από 85% κατά βάρος βαμβάκι, σύμμεικτα με συνθετικές ή τεχνητές ίνες, με βάρος που υπερβαίνει τα 200 g/m2, αλεύκαστα, διαγώνιας ύφανσης

5211.19 Άλλα υφάσματα από βαμβάκι, που περιέχουν λιγότερο από 85% κατά βάρος βαμβάκι, σύμμεικτα με συνθετικές ή τεχνητές ίνες, με βάρος που υπερβαίνει τα 200 g/m2, λευκασμένα

5211.21 Υφάσματα από βαμβάκι, που περιέχουν λιγότερο από 85% κατά βάρος βαμβάκι, σύμμεικτα με συνθετικές ή τεχνητές ίνες, με βάρος που υπερβαίνει τα 200 g/m2, λευκασμένα, απλής ύφανσης

5211.22 Υφάσματα από βαμβάκι, που περιέχουν λιγότερο από 85% κατά βάρος βαμβάκι, σύμμεικτα με συνθετικές ή τεχνητές ίνες, με βάρος που υπερβαίνει τα 200 g/m2, λευκασμένα, διαγώνιας ύφανσης

5211.29 Άλλα υφάσματα από βαμβάκι, που περιέχουν λιγότερο από 85% κατά βάρος βαμβάκι, σύμμεικτα με συνθετικές ή τεχνητές ίνες, με βάρος που υπερβαίνει τα 200 g/m2, λευκασμένα

5211.31 Υφάσματα από βαμβάκι, που περιέχουν λιγότερο από 85% κατά βάρος βαμβάκι, σύμμεικτα με συνθετικές ή τεχνητές ίνες, με βάρος που υπερβαίνει τα 200 g/m2, βαμμένα, απλής ύφανσης

5211.32 Υφάσματα από βαμβάκι, που περιέχουν λιγότερο από 85% κατά βάρος βαμβάκι, σύμμεικτα με συνθετικές ή τεχνητές ίνες, με βάρος που υπερβαίνει τα 200 g/m2, βαμμένα, διαγώνιας ύφανσης

5211.39 Άλλα υφάσματα από βαμβάκι, που περιέχουν λιγότερο από 85% κατά βάρος βαμβάκι, σύμμεικτα με συνθετικές ή τεχνητές ίνες, με βάρος που υπερβαίνει τα 200 g/m2, βαμμένα

5211.41 Υφάσματα από βαμβάκι, που περιέχουν λιγότερο από 85% κατά βάρος βαμβάκι, σύμμεικτα με συνθετικές ή τεχνητές ίνες, με βάρος που υπερβαίνει τα 200 g/m2, από νήματα διαφόρων χρωμάτων, απλής ύφανσης

5211.42 Υφάσματα με την ονομασία "denim" που περιέχουν λιγότερο από 85% κατά βάρος βαμβάκι, σύμμεικτα με συνθετικές ή τεχνητές ίνες, με βάρος που υπερβαίνει τα 200 g/m2

5211.43 Υφάσματα από βαμβάκι, που περιέχουν λιγότερο από 85% κατά βάρος βαμβάκι, σύμμεικτα με συνθετικές ή τεχνητές ίνες, με βάρος που υπερβαίνει τα 200 g/m2, από νήματα διαφόρων χρωμάτων, διαγώνιας ύφανσης εκτός των "denim"

5211.49 Άλλα υφάσματα από βαμβάκι, που περιέχουν λιγότερο από 85% κατά βάρος βαμβάκι, σύμμεικτα με συνθετικές ή τεχνητές ίνες, με βάρος που υπερβαίνει τα 200 g/m2, από νήματα διαφόρων χρωμάτων

5211.51 Υφάσματα από βαμβάκι, που περιέχουν λιγότερο από 85% κατά βάρος βαμβάκι, σύμμεικτα με συνθετικές ή τεχνητές ίνες, με βάρος που υπερβαίνει τα 200 g/m2, τυπωτά, απλής ύφανσης

5211.52 Υφάσματα από βαμβάκι, που περιέχουν λιγότερο από 85% κατά βάρος βαμβάκι, σύμμεικτα με συνθετικές ή τεχνητές ίνες, με βάρος που υπερβαίνει τα 200 g/m2, τυπωτά, διαγώνιας ύφανσης

5211.59 Άλλα υφάσματα από βαμβάκι, που περιέχουν λιγότερο από 85% κατά βάρος βαμβάκι, σύμμεικτα με συνθετικές ή τεχνητές ίνες, με βάρος που υπερβαίνει τα 200 g/m2, τυπωτά

5212.11 Άλλα υφάσματα από βαμβάκι, με βάρος που δεν υπερβαίνει τα 200 g/m2, αλεύκαστα

5212.12 Λευκασμένα

5212.13 Βαμμένα

5212.14 Από νήματα διαφόρων χρωμάτων

5212.15 Τυπωτά

5212.21 Με βάρος που υπερβαίνει τα 200 g/m2

5212.21 Αλεύκαστα

5212.22 Λευκασμένα

5212.23 Βαμμένα

5212.24 Από νήματα διαφόρων χρωμάτων
5212.25 Τυπωτά

Κεφ. 53 Άλλες φυτικές υφαντικές ίνες. Νήματα από χαρτί και υφάσματα από νήματα από χαρτί
5306.10 Νήματα από λινάρι, απλά
5306.20 Στριμμένα ή κορδονωτά
5307.10 Νήματα από γιούτα ή άλλες υφαντικές ίνες που προέρχονται από το εσωτερικό του φλοιού (βίβλος) ορισμένης κατηγορίας φυτών, απλά
5307.20 Στριμμένα ή κορδονωτά
5308.20 Νήματα από καννάβι
5308.30 Νήματα από χαρτί
5308.90 Νήματα από άλλες φυτικές υφαντικές ίνες
5309.11 Υφάσματα από λινάρι, που περιέχουν τουλάχιστον 85% κατά βάρος λινάρι, αλεύκαστα ή λευκασμένα
5309.19 Άλλα
5309.21 Που περιέχουν λιγότερο του 85% κατά βάρος λινάρι, αλεύκαστα ή λευκασμένα
5309.29 Άλλα
5310.10 Υφάσματα από γιούτα ή άλλες υφαντικές ίνες που προέρχονται από το εσωτερικό του φλοιού (βίβλος) ορισμένης κατηγορίας φυτών, αλεύκαστα
5310.90 Άλλα
5311.00 Υφάσματα από άλλες φυτικές υφαντικές ίνες. Υφάσματα από νήματα από χαρτί.

Κεφ. 54 Συνθετικές ή τεχνητές ίνες, συνεχείς
5401.10 Νήματα για ράψιμο από ίνες συνθετικές συνεχείς
5401.20 Από ίνες τεχνητές συνεχείς
5402.10 Νήματα μεγάλης αντοχής από νάυλον ή άλλα πολυαμίδια, από ίνες συνεχείς (άλλα από τα νήματα για ράψιμο), μη συσκευασμένα για τη λιανική πώληση
5402.20 Νήματα μεγάλης αντοχής από πολυεστέρες, από ίνες συνεχείς (άλλα από τα νήματα για ράψιμο), μη συσκευασμένα για τη λιανική πώληση
5402.31 Νήματα ελαστικοποιημένα, από νάυλον ή άλλα πολυαμίδια, με τίτλο σε απλά νήματα 50 tex ή κατώτερο, μη συσκευασμένα για τη λιανική πώληση
5402.32 Από νάυλον ή άλλα πολυαμίδια, με τίτλο σε απλά νήματα ανώτερο των 50 tex, μη συσκευασμένα για τη λιανική πώληση
5402.33 Από πολυεστέρες, μη συσκευασμένα για τη λιανική πώληση
5402.39 Άλλα, μη συσκευασμένα για τη λιανική πώληση
5402.41 Άλλα νήματα, απλά, χωρίς στρίψιμο, από νάυλον ή άλλα πολυαμίδια, μη συσκευασμένα για τη λιανική πώληση
5402.42 Από πολυεστέρες, με ίνες μερικώς προσανατολισμένες, μη συσκευασμένα για τη λιανική πώληση
5402.43 Από πολυεστέρες, άλλα, μη συσκευασμένα για τη λιανική πώληση
5402.49 Άλλα, μη συσκευασμένα για τη λιανική πώληση
5402.51 Άλλα νήματα, απλά, με στρίψιμο που υπερβαίνει τις 50 στροφές το μέτρο, από νάυλον ή άλλα πολυαμίδια, μη συσκευασμένα για τη λιανική πώληση
5402.52 Από πολυεστέρες, μη συσκευασμένα για τη λιανική πώληση
5402.59 Άλλα
5402.61 Άλλα νήματα, στριμμένα ή κορδονωτά, από νάυλον ή άλλα πολυαμίδια, μη συσκευασμένα για τη λιανική πώληση
5402.62 Από πολυεστέρες, μη συσκευασμένα για τη λιανική πώληση
5402.69 Άλλα, μη συσκευασμένα για τη λιανική πώληση
5403.10 Νήματα μεγάλης αντοχής από τεχνητές υφαντικές ίνες, ρεγιόν συνεχείς (άλλα από τα νήματα για ράψιμο), μη συσκευασμένα για τη λιανική πώληση
5403.20 Νήματα ελαστικοποιημένα

5403.31 Άλλα νήματα, απλά, από τεχνητές υφαντικές ίνες βισκόζης, χωρίς στρίψιμο, μη συσκευασμένα για τη λιανική πώληση
5403.32 Από τεχνητές υφαντικές ίνες βισκόζης, με στρίψιμο που υπερβαίνει τις 120 στροφές το μέτρο, μη συσκευασμένα για τη λιανική πώληση
5403.33 Από οξική κυτταρίνη
5403.39 Άλλα
5403.41 Άλλα νήματα, στριμμένα ή κορδονωτά
5403.42 Από οξική κυτταρίνη
5403.49 Άλλα
5404.10 Νήματα μονόινα συνθετικά 67 decitex ή περισσότερο και των οποίων η μεγαλύτερη διάσταση της εγκάρσιας τομής δεν υπερβαίνει το 1 mm.
5404.90 Λουρίδες και παρόμοιες μορφές, από συνθετικές υφαντικές ύλες, των οποίων το ορατό πλάτος δεν υπερβαίνει τα 5 mm.
5405.00 Νήματα μονόινα συνθετικά 67 decitex ή περισσότερο και των οποίων η μεγαλύτερη διάσταση της εγκάρσιας τομής δεν υπερβαίνει το 1 mm. Λουρίδες από συνθετικές υφαντικές ύλες, των οποίων το ορατό πλάτος δεν υπερβαίνει τα 5 mm.
5406.10 Νήματα από συνθετικές ίνες, συνεχείς (άλλα από τα νήματα για ράψιμο), συσκευασμένα για τη λιανική πώληση
5406.20 Νήματα από ίνες τεχνητές συνεχείς
5407.10 Υφάσματα που κατασκευάζονται από νήματα μεγάλης αντοχής από νάυλον ή άλλα πολυαμίδια ή πολυεστέρες
5407.20 Υφάσματα που κατασκευάζονται από λουρίδες ή παρόμοιες μορφές
5407.30 "Υφάσματα" που αναφέρονται στη σημείωση 9 του τμήματος XI
5407.41 Άλλα υφάσματα, που περιέχουν τουλάχιστον 85% κατά βάρος ίνες συνεχείς από νάυλον ή άλλα πολυαμίδια, αλεύκαστα ή λευκασμένα
5407.42 Βαμμένα
5407.43 Από νήματα διαφόρων χρωμάτων
5407.44 Τυπωτά
5407.51 Άλλα υφάσματα, που περιέχουν τουλάχιστον 85% κατά βάρος ίνες συνεχείς από πολυεστέρα ελαστικοποιημένες, αλεύκαστα ή λευκασμένα
5407.52 Βαμμένα
5407.53 Από νήματα διαφόρων χρωμάτων
5407.54 Τυπωτά
5407.60 Άλλα υφάσματα, που περιέχουν τουλάχιστον 85% κατά βάρος ίνες συνεχείς από πολυεστέρα μη ελαστικοποιημένες
5407.71 Άλλα υφάσματα, που περιέχουν τουλάχιστον 85% κατά βάρος συνθετικές ίνες συνεχείς, αλεύκαστα ή λευκασμένα
5407.72 Βαμμένα
5407.73 Από νήματα διαφόρων χρωμάτων
5407.74 Τυπωτά
5407.81 Άλλα υφάσματα, που περιέχουν λιγότερο του 85% κατά βάρος συνθετικές ίνες συνεχείς και είναι σύμμεικτα κυρίως ή μόνο με βαμβάκι, αλεύκαστα ή λευκασμένα
5407.82 Βαμμένα
5407.83 Από νήματα διαφόρων χρωμάτων
5407.84 Τυπωτά
5407.91 Άλλα υφάσματα, αλεύκαστα ή λευκασμένα
5407.92 Βαμμένα
5407.93 Από νήματα διαφόρων χρωμάτων
5407.94 Τυπωτά
5408.10 Υφάσματα που κατασκευάζονται από νήματα μεγάλης αντοχής από τεχνητές υφαντικές ίνες βισκόζης
5408.21 Άλλα υφάσματα, που περιέχουν τουλάχιστον 85% κατά βάρος ίνες συνεχείς ή λουρίδες, ή παρόμοιες μορφές τεχνητές, αλεύκαστα ή λευκασμένα

5408.22 Βαμμένα
5408.23 Από νήματα διαφόρων χρωμάτων
5408.24 Τυπωτά
5408.31 Άλλα υφάσματα, αλεύκαστα ή λευκασμένα
5408.32 Βαμμένα
5408.33 Από νήματα διαφόρων χρωμάτων
5408.34 Τυπωτά

Κεφ. 55 Συνθετικές ή τεχνητές ίνες, μη συνεχείς
5501.10 Δέσμες από συνθετικές ίνες συνεχείς, από νάυλον ή άλλα πολυαμίδια
5501.20 Από πολυεστέρες
5501.30 Ακρυλικές ή μοντακρυλικές
5501.90 Άλλες
5502.00 Δέσμες από τεχνητές ίνες συνεχείς
5503.10 Συνθετικές ίνες μη συνεχείς, που δεν είναι λαναρισμένες, χτενισμένες ή με άλλο τρόπο παρασκευασμένες για νηματοποίηση, από νάυλον ή άλλα πολυαμίδια
5503.20 Από πολυεστέρες
5503.30 Ακρυλικές ή μοντακρυλικές
5503.40 Από πολυπροπυλένιο
5503.90 Άλλες
5504.10 Τεχνητές ίνες μη συνεχείς, που δεν είναι λαναρισμένες, χτενισμένες ή με άλλο τρόπο παρασκευασμένες για νηματοποίηση, από τεχνητό μετάξι βισκόζης
5504.90 Άλλες
5505.10 Απορρίμματα από συνθετικές ίνες
5505.20 Από τεχνητές ίνες
5506.10 Συνθετικές ίνες μη συνεχείς, που είναι λαναρισμένες, χτενισμένες ή με άλλο τρόπο παρασκευασμένες για νηματοποίηση, από νάυλον ή άλλα πολυαμίδια
5506.20 Από πολυεστέρες
5506.30 Ακρυλικές ή μοντακρυλικές
5506.90 Άλλες
5507.00 Τεχνητές ίνες μη συνεχείς, που δεν είναι λαναρισμένες, χτενισμένες ή με άλλο τρόπο παρασκευασμένες για νηματοποίηση
5508.10 Νήματα για ράψιμο από συνθετικές ίνες μη συνεχείς
5508.20 Από τεχνητές ίνες μη συνεχείς
5509.11 Νήματα από συνθετικές ίνες που περιέχουν τουλάχιστον 85% κατά βάρος ίνες, μη συνεχείς από νάυλον ή άλλα πολυαμίδια, μη συσκευασμένα για τη λιανική πώληση, απλά
5509.12 Στριμμένα ή κορδονωτά, πολλαπλά, μη συσκευασμένα για τη λιανική πώληση
5509.21 Που περιέχουν τουλάχιστον 85% κατά βάρος ίνες μη συνεχείς από πολυεστέρα, απλά, μη συσκευασμένα για τη λιανική πώληση
5509.22 Στριμμένα ή κορδονωτά, μη συσκευασμένα για τη λιανική πώληση
5509.31 Που περιέχουν τουλάχιστον 85% κατά βάρος ίνες μη συνεχείς ακρυλικές ή μοντακρυλικές, απλά, μη συσκευασμένα για τη λιανική πώληση
5509.32 Στριμμένα ή κορδονωτά, πολλαπλά, μη συσκευασμένα για τη λιανική πώληση
5509.41 Άλλα νήματα, που περιέχουν τουλάχιστον 85% κατά βάρος συνθετικές ίνες μη συνεχείς, απλά, μη συσκευασμένα για τη λιανική πώληση
5509.42 Στριμμένα ή κορδονωτά, μη συσκευασμένα για τη λιανική πώληση
5509.51 Άλλα νήματα, από ίνες μη συνεχείς από πολυεστέρα, σύμμεικτα κυρίως ή μόνο με τεχνητές ίνες μη συνεχείς, μη συσκευασμένα για τη λιανική πώληση
5509.52 Σύμμεικτα κυρίως ή μόνο με μαλλί ή τρίχες εκλεκτής ποιότητας, μη συσκευασμένα για τη λιανική πώληση
5509.53 Σύμμεικτα κυρίως ή μόνο με βαμβάκι, μη συσκευασμένα για τη λιανική πώληση
5509.59 Άλλα, μη συσκευασμένα για τη λιανική πώληση

5509.61 Άλλα νήματα, από ίνες μη συνεχείς ακρυλικές ή μοντακρυλικές, σύμμεικτα κυρίως ή μόνο με μαλλί ή τρίχες εκλεκτής ποιότητας, μη συσκευασμένα για τη λιανική πώληση
5509.62 Σύμμεικτα κυρίως ή μόνο με βαμβάκι, μη συσκευασμένα για τη λιανική πώληση
5509.69 Άλλα, μη συσκευασμένα για τη λιανική πώληση
5509.91 Άλλα νήματα, σύμμεικτα κυρίως ή μόνο με μαλλί ή τρίχες εκλεκτής ποιότητας, μη συσκευασμένα για τη λιανική πώληση
5509.92 Σύμμεικτα κυρίως ή μόνο με βαμβάκι, μη συσκευασμένα για τη λιανική πώληση
5509.99 Άλλα, μη συσκευασμένα για τη λιανική πώληση
5510.11 Νήματα από τεχνητές ίνες μη συνεχείς (άλλα από τα νήματα για ράψιμο), μη συσκευασμένα για τη λιανική πώληση, που περιέχουν τουλάχιστον 85% κατά βάρος τεχνητές ίνες, μη συνεχείς, απλά
5510.12 Στριμμένα ή κορδονωτά, πολλαπλά, μη συσκευασμένα για τη λιανική πώληση
5510.20 Άλλα νήματα, σύμμεικτα κυρίως, ή μόνο με μαλλί ή τρίχες εκλεκτής ποιότητας, μη συσκευασμένα για τη λιανική πώληση
5510.30 Άλλα νήματα, σύμμεικτα κυρίως, μόνο με βαμβάκι, μη συσκευασμένα για τη λιανική πώληση
5510.90 Άλλα νήματα, μη συσκευασμένα για τη λιανική πώληση
5511.10 Νήματα από συνθετικές ίνες, μη συνεχείς (άλλα από τα νήματα για ράψιμο), συσκευασμένα για τη λιανική πώληση, που περιέχουν τουλάχιστον 85% κατά βάρος από τις ίνες αυτές
5511.20 Από συνθετικές ίνες μη συνεχείς, που περιέχουν λιγότερο του 85% κατά βάρος από τις ίνες αυτές
5511.30 Από τεχνητές ίνες μη συνεχείς
5512.11 Υφάσματα από συνθετικές ίνες, μη συνεχείς, που περιέχουν τουλάχιστον 85% κατά βάρος συνθετικές ίνες μη συνεχείς, από πολυεστέρα, αλεύκαστα ή λευκασμένα
5512.19 Άλλα
5512.21 Που περιέχουν τουλάχιστον 85% κατά βάρος ίνες μη συνεχείς ακρυλικές ή μοντακρυλικές, αλεύκαστα ή λευκασμένα
5512.29 Άλλα από αλεύκαστα ή λευκασμένα
5512.91 Άλλα, αλεύκαστα ή λευκασμένα
5512.99 Άλλα
5513.11 Υφάσματα από συνθετικές ίνες μη συνεχείς, που περιέχουν λιγότερο του 85% κατά βάρος από τις ίνες αυτές, σύμμεικτα κυρίως ή μόνο με βαμβάκι, με βάρος που δεν υπερβαίνει τα 170 g/m2, αλεύκαστα ή λευκασμένα, από ίνες από πολυεστέρα, απλής ύφανσης
5513.12 Από ίνες από πολυεστέρα, διαγώνιας ριγωτής (σερζέ) ή σταυρωτής ύφανσης
5513.13 Άλλα υφάσματα από ίνες μη συνεχείς από πολυεστέρα
5513.19 Άλλα υφάσματα
5513.21 Βαμμένα, από ίνες μη συνεχείς από πολυεστέρα, απλής ύφανσης
5513.22 Από ίνες μη συνεχείς από πολυεστέρα, διαγώνιας ριγωτής (σερζέ) ή σταυρωτής ύφανσης
5513.23 Άλλα υφάσματα από ίνες μη συνεχείς από πολυεστέρα
5513.29 Άλλα υφάσματα
5513.31 Από νήματα διαφόρων χρωμάτων, από ίνες μη συνεχείς από πολυεστέρα, απλής ύφανσης
5513.32 Από ίνες μη συνεχείς από πολυεστέρα, διαγώνιας ριγωτής (σερζέ) ή σταυρωτής ύφανσης
5513.33 Άλλα υφάσματα από ίνες μη συνεχείς από πολυεστέρα
5513.39 Άλλα υφάσματα
5513.41 Από νήματα διαφόρων χρωμάτων, από ίνες μη συνεχείς από πολυεστέρα, απλής ύφανσης
5513.42 Από ίνες μη συνεχείς από πολυεστέρα, διαγώνιας ριγωτής (σερζέ) ή σταυρωτής ύφανσης
5513.43 Άλλα υφάσματα από ίνες μη συνεχείς από πολυεστέρα
5513.49 Άλλα υφάσματα

5514.11 Υφάσματα από ίνες μη συνεχείς από πολυεστέρα που περιέχουν λιγότερο του 85% κατά βάρος από τις ίνες αυτές, σύμμεικτα κυρίως ή μόνο με βαμβάκι, με βάρος που δεν υπερβαίνει τα 170 g/m2, αλεύκαστα ή λευκασμένα, από ίνες , απλής ύφανσης
5514.12 Από ίνες μη συνεχείς από πολυεστέρα, διαγώνιας ριγωτής (σερζέ) ή σταυρωτής ύφανσης
5514.13 Άλλα υφάσματα από ίνες μη συνεχείς από πολυεστέρα
5514.19 Άλλα υφάσματα
5514.21 Βαμμένα, από ίνες μη συνεχείς από πολυεστέρα, απλής ύφανσης
5514.22 Από ίνες μη συνεχείς από πολυεστέρα, διαγώνιας ριγωτής (σερζέ) ή σταυρωτής ύφανσης
5514.23 Άλλα υφάσματα από ίνες μη συνεχείς από πολυεστέρα
5514.29 Άλλα υφάσματα
5514.31 Από νήματα διαφόρων χρωμάτων, από ίνες μη συνεχείς από πολυεστέρα, απλής ύφανσης
5514.32 Από ίνες μη συνεχείς από πολυεστέρα, διαγώνιας ριγωτής (σερζέ) ή σταυρωτής ύφανσης
5514.33 Άλλα υφάσματα από ίνες μη συνεχείς από πολυεστέρα
5514.39 Άλλα υφάσματα
5514.41 Τυπωτά, από ίνες μη συνεχείς από πολυεστέρα, απλής ύφανσης
5514.42 Από ίνες μη συνεχείς από πολυεστέρα, διαγώνιας ριγωτής (σερζέ) ή σταυρωτής ύφανσης
5514.43 Άλλα υφάσματα από ίνες μη συνεχείς από πολυεστέρα
5514.49 Άλλα υφάσματα
5515.11 Σύμμεικτα κυρίως ή μόνο με ίνες μη συνεχείς από τεχνητό μετάξι βισκόζης
5515.12 Σύμμεικτα κυρίως ή μόνο από συνθετικές ή τεχνητές ίνες συνεχείς
5515.13 Σύμμεικτα κυρίως ή μόνο με μαλλί ή τρίχες εκλεκτής ποιότητας
5515.19 Άλλα
5515.21 Από ίνες μη συνεχείς ακρυλικές ή μοντακρυλικές, σύμμεικτα κυρίως ή μόνο με συνθετικές ή τεχνητές ίνες συνεχείς
5515.22 Σύμμεικτα κυρίως ή μόνο με μαλλί ή τρίχες εκλεκτής ποιότητας
5515.29 Άλλα
5515.91 Άλλα υφάσματα, σύμμεικτα κυρίως ή μόνο με συνθετικές ή τεχνητές ίνες συνεχείς
5515.92 Σύμμεικτα κυρίως ή μόνο με μαλλί ή τρίχες εκλεκτής ποιότητας
5515.99 Άλλα
5516.11 Υφάσματα από τεχνητές ίνες μη συνεχείς, που περιέχουν τουλάχιστον 85% κατά βάρος τεχνητές ίνες μη συνεχείς, αλεύκαστα ή λευκασμένα
5516.12 Βαμμένα
5516.13 Από νήματα διαφόρων χρωμάτων
5516.14 Τυπωτά
5516.21 Που περιέχουν λιγότερο του 85% κατά βάρος τεχνητές ίνες μη συνεχείς, σύμμεικτα κυρίως ή μόνο με συνθετικές ή τεχνητές ίνες συνεχείς, αλεύκαστα ή λευκασμένα
5516.22 Βαμμένα
5516.23 Από νήματα διαφόρων χρωμάτων
5516.24 Τυπωτά
5516.31 Που περιέχουν λιγότερο του 85% κατά βάρος τεχνητές ίνες μη συνεχείς, σύμμεικτα κυρίως ή μόνο με μαλλί ή τρίχες εκλεκτής ποιότητας, αλεύκαστα ή λευκασμένα
5516.32 Βαμμένα
5516.33 Από νήματα διαφόρων χρωμάτων
5516.34 Τυπωτά
5516.41 Που περιέχουν λιγότερο του 85% κατά βάρος τεχνητές ίνες μη συνεχείς, σύμμεικτα κυρίως ή μόνο με βαμβάκι, αλεύκαστα ή λευκασμένα
5516.42 Βαμμένα

5516.43 Από νήματα διαφόρων χρωμάτων
5516.44 Τυπωτά
5516.91 Άλλα, αλεύκαστα ή λευκασμένα
5516.92 Βαμμένα
5516.93 Από νήματα διαφόρων χρωμάτων
5516.94 Τυπωτά

Κεφ. 56 Βάτες, πιλήματα και υφάσματα μη υφασμένα, νήματα ειδικά, σπάγκοι, σχοινιά και χοντρά σχοινιά, είδη σχοινοποιΐας
5601.10 Βάτες από υφαντικές ύλες και είδη από τις βάτες αυτές. Πετσέτες (σερβιέτες) και ταμπόν υγείας
5601.21 Βάτες. Άλλα είδη από βάτες, από βαμβάκι
5601.22 Από συνθετικές ή τεχνητές ίνες
5601.29 Άλλα
5601.30 Χνούδι από την επεξεργασία των υφασμάτων, κόμποι και σφαιρίδια από υφαντικές ύλες
5602.10 Πιλήματα που γίνονται με βελονάκι και προϊόντα ραμμένα-πλεγμένα
5602.21 Άλλα πιλήματα, μη εμποτισμένα, επιχρισμένα, επικαλυμμένα ή με απανωτές στρώσεις, από μαλλί ή τρίχες εκλεκτής ποιότητας
5602.29 Από άλλες υφαντικές ύλες
5602.90 Άλλα
5603.00 Υφάσματα μη υφασμένα, έστω και εμποτισμένα, επιχρισμένα, επικαλυμμένα ή με απανωτές στρώσεις
5604.10 Νήματα και σχοινιά από καουτσούκ, επικαλυμμένα με υφαντικά.
5604.20 Νήματα μεγάλης αντοχής από πολυεστέρες, νάυλον ή άλλα πολυαμίδια ή από τεχνητές υφαντικές ίνες βισκόζης, εμποτισμένα ή επιχρισμένα
5604.90 Άλλα
5605.00 Μεταλλικές κλωστές και νήματα επιμεταλλωμένα, έστω και περιτυλιγμένα με άλλα νήματα από υφαντικές ίνες, που αποτελούνται από υφαντικά νήματα, λουρίδες ή παρόμοιες μορφές, συνδυασμένα με μέταλλο με μορφή νημάτων, λουρίδων ή σκόνης ή επικαλυμμένα με μέταλλο
5606.00 Νήματα περιτυλιγμένα, άλλα. Νήματα σενίλλης. Νήματα με την ονομασία "αλυσιδίτσα"
5607.10 Σπάγκοι. σχοινιά και χοντρά σχοινιά, πλεκτά ή όχι, από γιούτα ή άλλες υφαντικές ίνες που προέρχονται από το εσωτερικό του φλοιού ορισμένης κατηγορίας φυτών (βίβλος)
5607.21 Σπάγκοι για δεσίματα ή δεματιάσματα, από σιζάλ ή άλλες υφαντικές ίνες του είδους Agave
5607.29 Άλλα
5607.30 Από αβάκα (καννάβι της Μανίλας ή Musa textilis Nee) ή από άλλες σκληρές ίνες (από φύλλα)
5607.41 Σπάγκοι για δεσίματα ή δεματιάσματα, από πολυαιθυλένιο ή πολυπροπυλένιο
5607.49 Άλλα
5607.50 Από άλλες συνθετικές ίνες
5607.90 Άλλα
5608.11 Δίχτυα έτοιμα για την αλιεία και άλλα δίχτυα έτοιμα, από συνθετικές ή τεχνητές υφαντικές ύλες
5608.19 Δίχτυα με δεμένους κόμπους από σπάγγους, σχοινιά ή χοντρά σχοινιά και άλλα δίχτυα έτοιμα, από συνθετικές ή τεχνητές υφαντικές ύλες
5608.90 Άλλα
5609.00 Άλλα είδη από νήματα, λουρίδες, σπάγκους, σχοινιά ή χοντρά σχοινιά

Κεφ. 57 Τάπητες και άλλες επενδύσεις δαπέδου από υφαντικές ύλες
5701.10 Τάπητες από μαλλί ή τρίχες εκλεκτής ποιότητας με κόμπους
5701.90 Από άλλες υφαντικές ύλες

5702.10 Τάπητες με την ονομασία "κιλίμια", "σουμάκ", "καραμανίας" και παρόμοιοι τάπητες υφασμένοι με το χέρι
5702.20 Επενδύσεις δαπέδου από κοκοφοίνικα
5702.31 Αλλα, με βελουδωτή κατασκευή, όχι έτοιμα, από μαλλί ή τρίχες εκλεκτής ποιότητας
5702.32 Από συνθετικές ή τεχνητές υφαντικές ύλες
5702.39 Από άλλες υφαντικές ύλες
5702.41 Αλλα, με βελουδωτή κατασκευή, όχι έτοιμα, από μαλλί ή τρίχες εκλεκτής ποιότητας
5702.42 Από συνθετικές ή τεχνητές υφαντικές ύλες
5702.49 Από άλλες υφαντικές ύλες
5702.51 Αλλα, χωρίς βελουδωτή κατασκευή, όχι έτοιμα, από μαλλί ή τρίχες εκλεκτής ποιότητας
5702.52 Από συνθετικές ή τεχνητές υφαντικές ύλες
5702.59 Από άλλες υφαντικές ύλες
5702.91 Αλλα, χωρίς βελουδωτή κατασκευή, έτοιμα, από μαλλί ή τρίχες εκλεκτής ποιότητας
5702.92 Από συνθετικές ή τεχνητές υφαντικές ύλες
5702.99 Από άλλες υφαντικές ύλες
5703.10 Τάπητες από μαλλί ή τρίχες εκλεκτής ποιότητας, φουντωτοί
5703.20 Από νάυλον ή άλλα πολυαμίδια
5703.30 Από άλλες συνθετικές ή τεχνητές υφαντικές ύλες
5703.90 Από άλλες υφαντικές ύλες
5704.10 Τετράγωνα στα οποία η επιφάνεια δεν υπερβαίνει τα 0,3 m2
5704.90 Αλλα
5705.00 Αλλοι τάπητες και επενδύσεις δαπέδου από υφαντικές ύλες

Κεφ. 58 Υφάσματα ειδικά, υφαντικές φουντωτές επιφάνειες, δαντέλες, είδη επίστρωσης, είδη ταινιοπλεκτικής, κεντήματα
5801.10 Βελούδα και πλούσες από μαλλί ή τρίχες εκλεκτής ποιότητας, άλλα από τα είδη κορδελοποιίας
5801.21 Βελούδα και πλούσες υφαδιού, άκοπα, από βαμβάκι
5801.22 Βελούδα και πλούσες υφαδιού, κομμένα, με ραβδώσεις (κοτλέ)
5801.23 Αλλα βελούδα και πλούσες υφαδιού
5801.24 Βελούδα και πλούσες στημονιού, με ελαφρές ραβδώσεις (e'pingle's)
5801.25 Βελούδα και πλούσες στημονιού, κομμένα
5801.26 Υφάσματα σενίλλης
5801.31 Βελούδα και πλούσες υφαδιού, άκοπα, από συνθετικές ή τεχνητές ίνες
5801.32 Βελούδα και πλούσες υφαδιού, κομμένα, με ραβδώσεις (κοτλέ)
5801.33 Αλλα βελούδα και πλούσες υφαδιού
5801.34 Βελούδα και πλούσες στημονιού, με ελαφρές ραβδώσεις (e'pingle's)
5801.35 Βελούδα και πλούσες στημονιού, κομμένα
5801.36 Υφάσματα σενίλλης
5801.90 Από άλλες υφαντικές ύλες
5802.11 Υφάσματα φλοκωτά σπογγώδους μορφής, άλλα από τα είδη κορδελοποιίας, από βαμβάκι, αλεύκαστα
5802.19 Αλλα
5802.20 Υφάσματα φλοκωτά σπογγώδους μορφής, από άλλες υφαντικές ύλες
5802.30 Φουντωτές υφαντικές επιφάνειες
5803.10 Υφάσματα με ύφανση γάζας, άλλα από τα είδη κορδελοποιίας, από βαμβάκι
5803.90 Από άλλες υφαντικές ύλες

5804.10 Τούλια κάθε είδους και υφάσματα βροχιδωτά με κόμπους.
5804.21 Δαντέλες με τη μηχανή, από συνθετικές ή τεχνητές ίνες
5804.29 Από άλλες υφαντικές ύλες
5804.30 Δαντέλες με το χέρι
5805.00 Είδη επίστρωσης υφασμένα με το χέρι και είδη επίστρωσης κεντημένα με βελόνα, έστω και έτοιμα
5806.10 Είδη κορδελοποιΐας από βελούδα, από πλούσες, από υφάσματα σενίλλης ή από υφάσματα φλοκωτά σπογγώδους μορφής
5806.20 Άλλα είδη κορδελοποιΐας, που περιέχουν κατά βάρος 5% ή περισσότερο νήματα ελαστομερή ή νήματα από καουτσούκ
5806.31 Άλλα είδη κορδελοποιΐας, από βαμβάκι
5806.32 Από συνθετικές ή υφαντικές ίνες
5806.39 Από άλλες υφαντικές ύλες
5806.40 Ταινίες χωρίς υφάδι, από νήματα ή ίνες παραλληλισμένα και κολλημένα (bolducs)
5807.10 Ετικέτες, εμβλήματα και παρόμοια είδη από υφαντικές ύλες, υφασμένα
5807.90 Άλλα
5808.10 Ταινιοπλέγματα σε τόπια
5808.90 Άλλα
5809.00 Υφάσματα από νήματα από μέταλλο και υφάσματα από νήματα από μέταλλο συνδυασμένα με νήματα από υφαντικές ίνες ή από επιμεταλλωμένα υφαντικά νήματα κτλ, άλλα
5810.10 Κεντήματα χημικά ή αστήρικτα και κεντήματα με τη βάση αποκομμένη
5810.91 Άλλα κεντήματα
5810.91 Από βαμβάκι
5810.92 Από συνθετικές ή τεχνητές ίνες
5810.99 Από άλλες υφαντικές ύλες
5811.00 Υφαντουργικά προϊόντα σε τόπια

Κεφ. 59 Υφάσματα εμποτισμένα, επιχρισμένα, επικαλυμμένα ή με απανωτές στρώσεις. Είδη για τεχνικές χρήσεις από υφαντικές ύλες.
5901.10 Υφάσματα επιχρισμένα με κόλλα ή με αμυλώδεις ουσίες, των τύπων που χρησιμοποιούνται για τη βιβλιοδεσία, χαρτοδεσία, κατασκευή θηκών ή παρόμοιες χρήσεις
5901.90 Άλλα
5902.10 Φύλλα υφασμένα για επίσωτρα με πεπιεσμένο αέρα, που λαμβάνονται από νήματα υψηλής αντοχής από νάυλον ή από άλλα πολυαμίδια
5902.20 Από πολυεστέρες
5902.90 Άλλα
5903.00 Υφάσματα εμποτισμένα, επιχρισμένα ή επικαλυμμένα με πλαστική ύλη ή με απανωτές στρώσεις από πλαστική ύλη, άλλα, με πολυχλωριούχο βινύλιο
5903.20 Με πολυουρεθάνη
5903.90 Άλλα
5904.10 Λινοτάπητες, έστω και κομμένοι
5904.91 Επενδύσεις δαπέδων των οποίων το υπόθεμα αποτελείται από πίλημα με βελόνα ή μη υφασμένο ύφασμα
5904.92 Στα οποία το υπόθεμα από υφαντική ύλη έχει άλλη σύσταση
5905.00 Επενδύσεις τοίχων από υφαντικές ύλες
5906.10 Υφάσματα συνδυασμένα με καουτσούκ, ταινίες συγκολλητικές, πλάτους που δεν υπερβαίνει τα 20 cm
5906.91 Άλλα, πλεκτά
5906.99 Άλλα
5907.00 Άλλα υφάσματα εμποτισμένα, επιχρισμένα ή επικαλυμμένα. Υφάσματα ζωγραφισμένα για σκηνικά θεάτρων, παραπετάσματα εργαστηρίων ή για ανάλογες χρήσεις

5908.00 Φιτίλια υφασμένα, πλεγμένα σε πλεξούδες ή πλεκτά, από υφαντικές ύλες, για λάμπες, καμινέτα, αναπτήρες, κεριά ή παρόμοια. Αμίαντα φωτισμού και σωληνοειδή υφάσματα πλεκτά που χρησιμεύουν για την κατασκευή τους, έστω και εμποτισμένα
5909.00 Σωλήνες για αντλίες και παρόμοιοι σωλήνες, από υφαντικές ύλες, έστω και με εξοπλισμό ή εξαρτήματα από άλλες ύλες
5910.00 Ιμάντες μεταφοράς ή μετάδοσης κίνησης από υφαντικές ύλες, έστω και ενισχυμένοι με μέταλλο ή άλλες ύλες
5911.10 Υφάσματα, πιλήματα και υφάσματα επενδυμένα με πίλημα, συνδυασμένα με μία ή περισσότερες στρώσεις από καουτσούκ, από δέρμα ή άλλες ύλες, των τύπων που χρησιμοποιούνται για την κατασκευή επενδύσεων λαναριών, και ανάλογα προϊόντα για άλλες τεχνικές χρήσεις
5911.20 Γάζες και υφάσματα για κόσκινα, έστω και έτοιμα
5911.31 Υφάσματα και πιλήματα ατέρμονα ή εφοδιασμένα με μέσα συνένωσης, των τύπων που χρησιμοποιούνται στις χαρτοποιητικές μηχανές ή σε παρόμοιες μηχανές, βάρους κατά m2 κατώτερου των 650 g
5911.32 Βάρους κατά m2 ίσου ή ανώτερου των 650 g
5911.40 Φίλτρα και χοντρά υφάσματα των τύπων που χρησιμοποιούνται στα ελαιοπιεστήρια ή για ανάλογες τεχνικές χρήσεις, στα οποία περιλαμβάνονται και εκείνα που γίνονται από ανθρώπινες τρίχες κεφαλής
5911.90 Άλλα

Κεφ. 60 Υφάσματα πλεκτά
6001.10 Υφάσματα με την ονομασία "με μακρύ τρίχωμα"
6001.21 Υφάσματα βροχιδωτά, από βαμβάκι
6001.22 Από συνθετικές ή τεχνητές ίνες
6001.29 Από άλλες υφαντικές ύλες
6001.91 Άλλα, από βαμβάκι
6001.92 Από συνθετικές ή τεχνητές ίνες
6001.99 Από άλλες υφαντικές ύλες
6002.10 Άλλα πλεκτά υφάσματα, πλάτους που δεν υπερβαίνει τα 30 cm, που περιέχουν κατά βάρος 5% ή περισσότερο νήματα ελαστομερή ή νήματα από καουτσούκ
6002.20 Άλλα, πλάτους που δεν υπερβαίνει τα 30 cm
6002.30 Πλάτους που υπερβαίνει τα 30 cm, που περιέχουν κατά βάρος 5% ή περισσότερο νήματα ελαστομερή ή νήματα από καουτσούκ
6002.41 Άλλα, πλεκτά στημονιού (στα οποία περιλαμβάνονται και εκείνα που γίνονται σε μηχανές κατασκευής σειρητιών), από μαλλί ή τρίχες εκλεκτής ποιότητας
6002.42 Από βαμβάκι
6002.43 Από συνθετικές ή τεχνητές ίνες
6002.49 Άλλα
6002.91 Άλλα, από μαλλί ή τρίχες εκλεκτής ποιότητας
6002.92 Από βαμβάκι
6002.93 Από συνθετικές ή τεχνητές ίνες
6002.99 Άλλα

Κεφ. 61 Ενδύματα και συμπληρώματα του ενδύματος πλεκτά
6101.10 Παλτά, κοντά παλτά, κάπες, άνορακ, μπλουζόν και παρόμοια είδη, από πλεκτό, για άντρες ή αγόρια, από μαλλί ή τρίχες εκλεκτής ποιότητας
6101.20 Από βαμβάκι
6101.30 Από συνθετικές ή τεχνητές ίνες
6101.90 Από άλλες υφαντικές ύλες
6102.10 Παλτά, κοντά παλτά, κάπες, άνορακ, μπλουζόν και παρόμοια είδη, από πλεκτό, για γυναίκες ή κορίτσια, από μαλλί ή τρίχες εκλεκτής ποιότητας

6102.20 Από βαμβάκι
6102.30 Από συνθετικές ή τεχνητές ίνες
6102.90 Από άλλες υφαντικές ύλες
6103.11 Κουστούμια για άντρες ή αγόρια, από πλεκτό, από μαλλί ή τρίχες εκλεκτής ποιότητας
6103.12 Από συνθετικές ίνες
6103.19 Από άλλες υφαντικές ύλες
6103.21 Σύνολα, από μαλλί ή τρίχες εκλεκτής ποιότητας
6103.22 Από βαμβάκι
6103.23 Από συνθετικές ίνες
6103.29 Από άλλες υφαντικές ύλες
6103.31 Σακάκια, από μαλλί ή τρίχες εκλεκτής ποιότητας
6103.32 Από βαμβάκι
6103.33 Από συνθετικές ίνες
6103.39 Από άλλες υφαντικές ύλες
6103.41 Παντελόνια, φόρμες με τιράντες (σαλοπέτ), παντελόνια μέχρι το γόνατο και παντελόνια κοντά (σορτς), από μαλλί ή τρίχες εκλεκτής ποιότητας
6103.42 Από βαμβάκι
6103.43 Από συνθετικές ίνες
6103.49 Από άλλες υφαντικές ύλες
6104.11 Κουστούμια-ταγιέρ, από πλεκτό, για γυναίκες ή κορίτσια, από μαλλί ή τρίχες εκλεκτής ποιότητας
6104.12 Από βαμβάκι
6104.13 Από συνθετικές ίνες
6104.19 Από άλλες υφαντικές ύλες
6104.21 Σύνολα, από μαλλί ή τρίχες εκλεκτής ποιότητας
6104.22 Από βαμβάκι
6104.23 Από συνθετικές ίνες
6104.29 Από άλλες υφαντικές ύλες
6104.31 Ζακέτες, από μαλλί ή τρίχες εκλεκτής ποιότητας
6104.32 Από βαμβάκι
6104.33 Από συνθετικές ίνες
6104.39 Από άλλες υφαντικές ύλες
6104.41 Φορέματα, από μαλλί ή τρίχες εκλεκτής ποιότητας
6104.42 Από βαμβάκι
6104.43 Από συνθετικές ίνες
6104.44 Από τεχνητές ίνες
6104.49 Από άλλες υφαντικές ύλες
6104.51 Φούστες, φούστες-παντελόνια (ζιπ-κιλότ), από μαλλί ή τρίχες εκλεκτής ποιότητας
6104.52 Από βαμβάκι
6104.53 Από συνθετικές ίνες
6104.59 Από άλλες υφαντικές ύλες
6104.61 Παντελόνια, φόρμες με τιράντες (σαλοπέτ), παντελόνια μέχρι το γόνατο και παντελόνια κοντά (σορτς), από μαλλί ή τρίχες εκλεκτής ποιότητας
6104.62 Από βαμβάκι
6104.63 Από συνθετικές ίνες
6104.69 Από άλλες υφαντικές ύλες
6105.10 Πουκάμισα και πουκαμισάκια, από πλεκτό, για άντρες ή αγόρια, από βαμβάκι
6105.20 Από συνθετικές ή τεχνητές ίνες
6105.90 Από άλλες υφαντικές ύλες
6106.10 Φορέματα-πουκάμισα (σεμιζιέ), μπλούζες, μπλούζες-πουκάμισα και πουκαμισάκια, από πλεκτό, για γυναίκες ή κορίτσια, από βαμβάκι
6106.20 Από συνθετικές ή τεχνητές ίνες
6106.90 Από άλλες υφαντικές ύλες

6107.10 Σλιπ και σώβρακα, από πλεκτό, για άντρες ή αγόρια, από βαμβάκι
6107.12 Από συνθετικές ή τεχνητές ίνες
6107.19 Από άλλες υφαντικές ύλες
6107.21 Νυχτικά και πιτζάμες, από βαμβάκι
6107.22 Από συνθετικές ή τεχνητές ίνες
6107.29 Από άλλες υφαντικές ύλες
6107.91 Άλλα, από βαμβάκι
6107.92 Από συνθετικές ή τεχνητές ίνες
6107.99 Από άλλες υφαντικές ύλες
6108.11 Κομπινεζόν ή μεσοφόρια, μισά μεσοφόρια, από πλεκτό, για γυναίκες ή κορίτσια, από συνθετικές ή τεχνητές ίνες
6108.19 Από άλλες υφαντικές ύλες
6108.21 Σλιπ και κιλότες, από βαμβάκι
6108.22 Από συνθετικές ή τεχνητές ίνες
6108.29 Από άλλες υφαντικές ύλες
6108.31 Νυχτικά και πιτζάμες, από βαμβάκι
6108.32 Από συνθετικές ή τεχνητές ίνες
6108.39 Από άλλες υφαντικές ύλες
6108.91 Άλλα
6108.91 Από βαμβάκι
6108.92 Από συνθετικές ή τεχνητές ίνες
6108.99 Από άλλες υφαντικές ύλες
6109.10 Τι-σερτ και φανελάκια, από πλεκτό, από βαμβάκι
6109.90 Από άλλες υφαντικές ύλες
6110.10 Σαντάιγ, πουλόβερ, κάρντιγκαν, γιλέκα και παρόμοια είδη, από πλεκτό, από μαλλί ή τρίχες εκλεκτής ποιότητας
6110.20 Από βαμβάκι
6110.30 Από συνθετικές ή τεχνητές ίνες
6110.90 Από άλλες υφαντικές ύλες
6111.10 Ενδύματα και συμπληρώματα της ένδυσης, από πλεκτό, για βρέφη, από μαλλί ή τρίχες εκλεκτής ποιότητας
6111.20 Από βαμβάκι
6111.30 Από συνθετικές ίνες
6111.90 Από άλλες υφαντικές ύλες
6112.11 Φόρμες αθλητικές (προπόνησης), από πλεκτό, από βαμβάκι
6112.12 Από συνθετικές ίνες
6112.19 Από άλλες υφαντικές ύλες
6112.20 Κουστούμια και σύνολα του σκι
6112.31 Μαγιό, κιλότες και σλιπ μπάνιου, για άντρες ή αγόρια, από συνθετικές ίνες
6112.39 Από άλλες υφαντικές ύλες
6112.41 Μαγιό, κιλότες και σλιπ μπάνιου, για γυναίκες ή κορίτσια, από συνθετικές ίνες
6112.49 Από άλλες υφαντικές ύλες
6113.00 Ενδύματα κατασκευασμένα από πλεκτά υφάσματα των κλάσεων 5903, 5906 ή 5907
6114.10 Άλλα ενδύματα πλεκτά, από μαλλί ή τρίχες εκλεκτής ποιότητας
6114.20 Από βαμβάκι
6114.30 Από συνθετικές ή τεχνητές ίνες
6114.90 Από άλλες υφαντικές ύλες
6115.11 Κολάν (κάλτσες-κιλότες), , από πλεκτό, από συνθετικές ίνες, με τίτλο σε απλά νήματα λιγότερο των 67 decitex
6115.12 Από συνθετικές ίνες, με τίτλο σε απλά νήματα 67 decitex ή περισσότερο
6115.19 Από άλλες υφαντικές ύλες

6115.20 Κάλτσες και μισές-κάλτσες, για γυναίκες, με τίτλο σε απλά νήματα λιγότερο των 67 decitex
6115.91 Άλλα, από μαλλί ή τρίχες εκλεκτής ποιότητας
6115.92 Από βαμβάκι
6115.93 Από συνθετικές ίνες
6115.99 Από άλλες υφαντικές ύλες
6116.10 Γάντια εμποτισμένα, επιχρισμένα ή επικαλυμμένα από πλαστική ύλη ή καουτσούκ
6116.91 Άλλα, από μαλλί ή τρίχες εκλεκτής ποιότητας
6116.92 Από βαμβάκι
6116.93 Από συνθετικές ίνες
6116.99 Από άλλες υφαντικές ύλες
6117.10 Σάλια, σάρπες, μαντίλια λαιμού (φουλάρια), ρινοσκεπές, κασκόλ, μαντίλες, βέλα, βελάκια και παρόμοια είδη
6117.20 Γραβάτες, παπιγιόν και φουλάρια-γραβάτες
6117.80 Άλλα εξαρτήματα
6117.90 Μέρη

Κεφ. 62 Ενδύματα και συμπληρώματα του ενδύματος άλλα από τα πλεκτά
6201.11 Παλτά, αδιάβροχα, κοντά παλτά, κάπες και παρόμοια είδη, για άντρες ή αγόρια, από μαλλί ή τρίχες εκλεκτής ποιότητας
6201.12 Από βαμβάκι
6201.13 Από συνθετικές ή τεχνητές ίνες
6201.19 Από άλλες υφαντικές ύλες
6201.91 Άλλα, από μαλλί ή τρίχες εκλεκτής ποιότητας
6201.92 Από βαμβάκι
6201.93 Από συνθετικές ή τεχνητές ίνες
6201.99 Από άλλες υφαντικές ύλες
6202.11 Παλτά, κοντά παλτά, κάπες, άνορακ, μπλουζόν και παρόμοια είδη, για γυναίκες ή κορίτσια, από μαλλί ή τρίχες εκλεκτής ποιότητας
6202.12 Από βαμβάκι
6202.13 Από συνθετικές ή τεχνητές ίνες
6202.19 Από άλλες υφαντικές ύλες
6202.91 Άλλα, από μαλλί ή τρίχες εκλεκτής ποιότητας
6202.92 Από βαμβάκι
6202.93 Από συνθετικές ή τεχνητές ίνες
6202.99 Από άλλες υφαντικές ύλες
6203.11 Κουστούμια, για άντρες ή αγόρια, από μαλλί ή τρίχες εκλεκτής ποιότητας
6203.12 Από συνθετικές ίνες
6203.19 Από άλλες υφαντικές ύλες
6203.21 Σύνολα, από μαλλί ή τρίχες εκλεκτής ποιότητας
6203.22 Από βαμβάκι
6203.23 Από συνθετικές ίνες
6203.29 Από άλλες υφαντικές ύλες
6203.31 Σακάκια, από μαλλί ή τρίχες εκλεκτής ποιότητας
6203.32 Από βαμβάκι
6203.33 Από συνθετικές ίνες
6203.39 Από άλλες υφαντικές ύλες

6203.41 Παντελόνια, φόρμες με τιράντες (σαλοπέτ), παντελόνια μέχρι το γόνατο και παντελόνια κοντά (σορτς), από μαλλί ή τρίχες εκλεκτής ποιότητας
6203.42 Από βαμβάκι
6203.43 Από συνθετικές ίνες
6203.49 Από άλλες υφαντικές ύλες
6204.11 Κουστούμια-ταγιέρ, για γυναίκες ή κορίτσια, από μαλλί ή τρίχες εκλεκτής ποιότητας
6204.12 Από βαμβάκι
6204.13 Από συνθετικές ίνες
6204.19 Από άλλες υφαντικές ύλες
6204.21 Σύνολα, από μαλλί ή τρίχες εκλεκτής ποιότητας
6204.22 Από βαμβάκι
6204.23 Από συνθετικές ίνες
6204.29 Από άλλες υφαντικές ύλες
6204.31 Ζακέτες, από μαλλί ή τρίχες εκλεκτής ποιότητας
6204.32 Από βαμβάκι
6204.33 Από συνθετικές ίνες
6204.39 Από άλλες υφαντικές ύλες
6204.41 Φορέματα, από μαλλί ή τρίχες εκλεκτής ποιότητας
6204.42 Από βαμβάκι
6204.43 Από συνθετικές ίνες
6204.44 Από τεχνητές ίνες
6204.49 Από άλλες υφαντικές ύλες
6204.51 Φούστες, φούστες-παντελόνια (ζιπ-κιλότ), από μαλλί ή τρίχες εκλεκτής ποιότητας
6204.52 Από βαμβάκι
6204.53 Από συνθετικές ίνες
6204.59 Από άλλες υφαντικές ύλες
6204.61 Παντελόνια, φόρμες με τιράντες (σαλοπέτ), παντελόνια μέχρι το γόνατο και παντελόνια κοντά (σορτς), από μαλλί ή τρίχες εκλεκτής ποιότητας
6204.62 Από βαμβάκι
6204.63 Από συνθετικές ίνες
6204.69 Από άλλες υφαντικές ύλες
6205.10 Πουκάμισα και πουκαμισάκια, για άντρες ή αγόρια, από μαλλί ή τρίχες εκλεκτής ποιότητας
6205.20 Από βαμβάκι
6205.30 Από συνθετικές ή τεχνητές ίνες
6205.90 Από άλλες υφαντικές ύλες
6206.10 Φορέματα-πουκάμισα (σεμιζιέ), μπλούζες, μπλούζες-πουκάμισα και πουκαμισάκια για γυναίκες ή κορίτσια, από μετάξι ή από απορρίμματα από μετάξι
6206.20 Από μαλλί ή τρίχες εκλεκτής ποιότητας
6206.30 Από βαμβάκι
6206.40 Από συνθετικές ή τεχνητές ίνες
6206.90 Από άλλες υφαντικές ύλες
6207.11 Σλιπ και σώβρακα, για άντρες ή αγόρια, από βαμβάκι
6207.19 Από άλλες υφαντικές ύλες
6207.21 Νυχτικά και πιτζάμες

6207.21 Από βαμβάκι
6207.22 Από συνθετικές ή τεχνητές ίνες
6207.29 Από άλλες υφαντικές ύλες
6207.91 Άλλα, από βαμβάκι
6207.92 Από συνθετικές ή τεχνητές ίνες
6207.99 Από άλλες υφαντικές ύλες
6208.11 Κομπινεζόν ή μεσοφόρια και μισά μεσοφόρια, για γυναίκες ή κορίτσια, από συνθετικές ή τεχνητές ίνες
6208.19 Από άλλες υφαντικές ύλες
6208.21 Νυχτικά και πιτζάμες, από βαμβάκι
6208.22 Από συνθετικές ή τεχνητές ίνες
6208.29 Από άλλες υφαντικές ύλες
6208.91 Άλλα, από βαμβάκι
6208.92 Από συνθετικές ή τεχνητές ίνες
6208.99 Από άλλες υφαντικές ύλες
6209.10 Ενδύματα και συμπληρώματα της ενδύματος για βρέφη, από μαλλί ή τρίχες εκλεκτής ποιότητας
6209.20 Από βαμβάκι
6209.30 Από συνθετικές ίνες
6209.90 Από άλλες υφαντικές ύλες
6210.10 Ενδύματα κατασκευασμένα από προϊόντα των κλάσεων 5602, 5603, 5903, 5906 ή 5907, από προϊόντα των κλάσεων 5602 ή 5603
6210.20 Άλλα ενδύματα των τύπων που αναφέρονται στις διακρίσεις 6201 11 μέχρι 6201 19
6210.30 Άλλα ενδύματα των τύπων που αναφέρονται στις διακρίσεις 6202 11 μέχρι 6202 19
6210.40 Άλλα ενδύματα για άντρες ή αγόρια
6210.50 Άλλα ενδύματα για γυναίκες ή κορίτσια
6211.11 Μαγιό, κιλότες και σλιπ μπάνιου, για άντρες ή αγόρια
6211.12 Για γυναίκες ή κορίτσια
6211.20 Κοστούμια του σκι
6211.31 Άλλα ενδύματα για άντρες ή αγόρια, από μαλλί ή τρίχες εκλεκτής ποιότητας
6211.32 Από βαμβάκι
6211.33 Από συνθετικές ή τεχνητές ίνες
6211.39 Από άλλες υφαντικές ύλες
6211.41 Άλλα ενδύματα για γυναίκες ή κορίτσια, από μαλλί ή τρίχες εκλεκτής ποιότητας
6211.42 Από βαμβάκι
6211.43 Από συνθετικές ίνες
6211.49 Από άλλες υφαντικές ύλες
6212.10 Στηθόδεσμοι και τα μέρη τους
6212.20 Κορσέδες χωρίς ελάσματα (λαστέξ) και κορσέδες-κιλότες
6212.30 Συνδυασμοί
6212.90 Άλλα
6213.10 Μαντίλια και μαντιλάκια τσέπης, από μετάξι ή από απορρίμματα από μετάξι
6213.20 Από βαμβάκι
6213.90 Από άλλες υφαντικές ύλες
6214.10 Σάλια, σάρπες, μαντίλια του λαιμού (φουλάρια), καλύμματα μύτης, κασκόλ, μαντίλες, βέλα, βελάκια και παρόμοια είδη, από μετάξι ή από απορρίμματα από μετάξι
6214.20 Από μαλλί ή τρίχες εκλεκτής ποιότητας
6214.30 Από συνθετικές ίνες

6214.40 Από τεχνητές ίνες
6214.90 Από άλλες υφαντικές ύλες
6215.10 Γραβάτες, παπιγιόν και φουλάρια-γραβάτες, από μετάξι ή από απορρίμματα από μετάξι
6215.20 Από μαλλί ή τρίχες εκλεκτής ποιότητας
6215.90 Από άλλες υφαντικές ύλες
6216.00 Είδη γαντοποιΐας
6217.10 Άλλα έτοιμα συμπληρώματα του ενδύματος
6217.90 Μέρη ενδυμάτων ή συμπληρωμάτων του ενδύματος

Κεφ. 63 Άλλα έτοιμα υφαντουργικά είδη, συνδυασμοί, μεταχειρισμένα ενδύματα και άλλα μεταχειρισμένα είδη και ράκη
6301.10 Κλινοσκεπάσματα που θερμαίνονται με ηλεκτρισμό
6301.20 Κλινοσκεπάσματα (άλλα από τα κλινοσκεπάσματα που θερμαίνονται με ηλεκτρισμό) από μαλλί ή τρίχες εκλεκτής ποιότητας
6301.30 Κλινοσκεπάσματα (άλλα από τα κλινοσκεπάσματα που θερμαίνονται με ηλεκτρισμό) από βαμβάκι
6301.40 Κλινοσκεπάσματα (άλλα από τα κλινοσκεπάσματα που θερμαίνονται με ηλεκτρισμό) από συνθετικές ίνες
6301.90 Άλλα κλινοσκεπάσματα
6302.10 Πανικά κρεβατιού πλεκτά
6302.21 Άλλα πανικά κρεβατιού, τυπωτά
6302.21 Από βαμβάκι
6302.22 Από συνθετικές ή τεχνητές ίνες
6302.29 Από άλλες υφαντικές ύλες
6302.31 Άλλα πανικά κρεβατιού, από βαμβάκι
6302.32 Από συνθετικές ή τεχνητές ίνες
6302.39 Από άλλες υφαντικές ύλες
6302.40 Πανικά τραπεζιού πλεκτά
6302.51 Άλλα πανικά τραπεζιού, από βαμβάκι
6302.52 Από λινάρι
6302.53 Από συνθετικές ή τεχνητές ίνες
6302.59 Από άλλες υφαντικές ύλες
6302.60 Πανικά καθαριότητας ή κουζίνας, βοστρυχωτά σπογγώδους είδους, από βαμβάκι
6302.91 Άλλα, από βαμβάκι
6302.92 Από λινάρι
6302.93 Από συνθετικές ή τεχνητές ίνες
6302.99 Από άλλες υφαντικές ύλες
6303.11 Παραπετάσματα εσωτερικά κάθε είδους για πόρτες και παράθυρα, πλεκτά, από βαμβάκι
6303.12 Από συνθετικές ίνες
6303.19 Από άλλες υφαντικές ύλες
6303.91 Άλλα, από βαμβάκι
6303.92 Από συνθετικές ίνες
6303.99 Από άλλες υφαντικές ύλες
6304.11 Καλύμματα κρεβατιού, πλεκτά
6304.19 Άλλα
6304.91 Άλλα, πλεκτά
6304.92 Άλλα από τα πλεκτά, από βαμβάκι
6304.93 Άλλα από τα πλεκτά, από συνθετικές ίνες
6304.99 Άλλα από τα πλεκτά, από άλλες υφαντικές ύλες
6305.10 Σάκοι και σακίδια συσκευασίας, από γιούτα ή άλλες υφαντικές ίνες
6305.20 Από βαμβάκι
6305.31 Από συνθετικές ή τεχνητές υφαντικές ύλες, που κατασκευάζονται από λουρίδες ή παρόμοιες μορφές από πολυαιθυλένιο ή από πολυπροπυλένιο

6305.39 Άλλα
6305.90 Από άλλες υφαντικές ύλες
6306.11 Καλύμματα εμπορευμάτων, οχημάτων κλπ. και εξωτερικά προπετάσματα (τέντες), από βαμβάκι
6306.22 Από συνθετικές ίνες
6306.29 Από άλλες υφαντικές ύλες
6306.31 Ιστία, από συνθετικές ίνες
6306.39 Από άλλες υφαντικές ύλες
6306.41 Στρώματα που φουσκώνουν με αέρα, από βαμβάκι
6306.49 Από άλλες υφαντικές ύλες
6306.91 Άλλα, από βαμβάκι
6306.99 Από άλλες υφαντικές ύλες
6307.10 Υφάσματα για τον καθαρισμό πατωμάτων, πιατόπανα, ξεσκονιστήρια τύπου δέρματος και παρόμοια είδη καθαρισμού
6307.20 Σωσίβιες ζώνες και σωσίβια γιλέκα
6307.90 Άλλα
6308.00 Συνδυασμοί (σετ) που αποτελούνται από τεμάχια υφασμάτων και νήματα, για την κατασκευή ταπήτων, ειδών επίστρωσης (ταπετσαρίες), κεντημένων τραπεζομάνδηλων ή πετσετών ή παρόμοιων υφαντουργικών ειδών, σε συσκευασίες για τη λιανική πώληση
6309.00 Μεταχειρισμένα ενδύματα και άλλα μεταχειρισμένα είδη

Κλωστοϋφαντουργικά προϊόντα και είδη ένδυσης των κεφαλαίων 30 έως 49, 64 έως 96

Αριθ. ΣΣ	Περιγραφή εμπορευμάτων
3005.90	Βαμβάκι, γάζες, ταινίες, και ανάλογα είδη
ex 3921.12 ex 3921.13 ex 3921.90	Υφάσματα υφασμένα, πλεκτά ή μη πλεκτά επιχρισμένα, επικαλυμμένα ή επιστρωμένα με πλαστικές ύλες
ex 4202.12 ex 4202.22 ex 4202.32 ex 4202.92	Αποσκευές, σακκίδια χειρού και επίπεδα είδη με εξωτερική επιφάνεια κυρίως από υφαντικές ύλες
ex 6405.20	Υποδήματα με πέλματα και πάνω μέρη από μάλλινο πίλημα
ex 6406.10	Πάνω μέρη υποδημάτων των οποίων το 50% και άνω της εξωτερικής επιφάνειας αποτελείται από υφαντικές ύλες
ex 6406.99	Περιβλήματα της κνήμης και γκέτες από υφαντικές ύλες
6501.00	Καμπάνες, για καπέλα αδιαμόρφωτες και με ασήκωτο το γύρο, δίσκοι και κύλινδροι για καπέλα από πίλημα
6502.00	Καμπάνες ή τύποι για καπέλα, πλεγμένα ή κατασκευασμένα με συναρμολόγηση ταινιών, από κάθε ύλη
6503.00	Καπέλα και άλλα καλύμματα κεφαλής από πίλημα
6504.00	Καπέλα και άλλα καλύμματα κεφαλής, πλεγμένα ή κατασκευασμένα με συναρμολόγηση ταινιών από κάθε ύλη
6505.90	Καπέλα και άλλα καλύμματα κεφαλής, πλεγμένα με δαντέλες, ή άλλες υφαντικές ύλες
6601.10	Ομπρέλες για τη βροχή και τον ήλιο κήπου
6601.91	Άλλες ομπρέλες με τηλεσκοπική λαβή
6601.99	Άλλες ομπρέλες
ex 7019.10	Ίνες από υαλοβάμβακα
ex 7019.20	Υφάσματα από υαλοβάμβακα
8708.21	Ζώνες ασφαλείας για οχήματα με κινητήρα
8804.00	Αλεξίπτωτα, τα μέρη και τα εξαρτήματά τους
9113,90	Βραχιόλια (μπρασελέ) ρολογιών από υφαντικές ύλες
ex 9404.90	Προσκεφάλια και μαξιλάρια από βαμβάκι, καλύμματα ποδιών, παπλώματα και παρόμοια είδη από υφαντικές ύλες

ΣΥΜΦΩΝΙΑ ΓΙΑ ΤΑ ΤΕΧΝΙΚΑ ΕΜΠΟΔΙΑ ΣΤΟ ΕΜΠΟΡΙΟ

Τα μέλη,

Έχοντας υπόψη τις πολυμερείς εμπορικές διαπραγματεύσεις του Γύρου της Ουρουγουάης·

Επιθυμώντας την προώθηση των στόχων της GATT του 1994·

Αναγνωρίζοντας τη σπουδαιότητα της συνδρομής που τα διεθνή πρότυπα και τα συστήματα διαπίστωσης της συμμόρφωσης δύνανται να προσφέρουν, ενισχύοντας την αποτελεσματικότητα της παραγωγής και διευκολύνοντας το διεθνές εμπόριο·

Επιθυμώντας, κατά συνέπεια, την ενθάρρυνση της ανάπτυξης των διεθνών προτύπων και των συστημάτων διαπίστωσης της συμμόρφωσης·

Επιθυμώντας, εντούτοις, να εξασφαλίσουν ότι οι τεχνικοί κανονισμοί και τα πρότυπα, περιλαμβανομένων και των προδιαγραφών στον τομέα συσκευασίας, σήμανσης και επικόλλησης ετικετών, και οι μέθοδοι διαπίστωσης της συμμόρφωσης προς τους τεχνικούς κανονισμούς και τα πρότυπα δεν δημιουργούν περιττά εμπόδια στο διεθνές εμπόριο·

Αναγνωρίζοντας, ότι τίποτα δεν είναι δυνατόν να εμποδίσει μια χώρα να λάβει τα αναγκαία μέτρα προς εξασφάλιση της ποιότητας των εξαγωγών της, ή για την προστασία της υγείας και της ζωής ανθρώπων, ζώων, και φυτών, την προστασία του περιβάλλοντος ή την πρόληψη της απάτης, στα επίπεδα που θεωρεί αρμόζοντα, υπό την επιφύλαξη ότι τα μέτρα αυτά δεν εφαρμόζονται κατά τρόπον ώστε να αποτελούν είτε μέσο αυθαιρέτου ή αδικαιολογήτου διακρίσεως μεταξύ χωρών όπου κυριαρχούν οι αυτές συνθήκες, είτε συγκαλυμμένο περιορισμό του διεθνούς εμπορίου, και τα οποία είναι εξάλλου σύμφωνα με τις διατάξεις της παρούσας συμφωνίας·

Αναγνωρίζοντας, ότι τίποτα δεν είναι δυνατόν να εμποδίσει μια χώρα να λάβει τα αναγκαία μέτρα για την προστασία των βασικών συμφερόντων ασφαλείας της·

Αναγνωρίζοντας, τη συνεισφορά που η διεθνής τυποποίηση δύναται να προσφέρει στη μεταφορά της τεχνολογίας των ανεπτυγμένων χωρών προς τις αναπτυσσόμενες χώρες·

Αναγνωρίζοντας ότι οι αναπτυσσόμενες χώρες δύνανται να συναντήσουν ειδικές δυσκολίες στην εκπόνηση και εφαρμογή τεχνικών κανονισμών, προτύπων και μεθόδων διαπίστωσης της συμμόρφωσης προς τους τεχνικούς κανονισμούς και τα πρότυπα και επιθυμώντας να τις βοηθήσουν στις προσπάθειες τους στο θέμα αυτό·

Συμφωνούν τα ακόλουθα:

Άρθρο 1

Γενικές διατάξεις

1.1. Οι γενικοί όροι για την τυποποίηση και τη διαπίστωση της συμμόρφωσης έχουν την έννοια που τους έχει δοθεί από τους ορισμούς που

9502.91	Ενδύματα για κούκλες
ex 9612.10	Υφασμάτινες μελανοταινίες, από χειροποίητες ίνες άλλες από αυτές που έχουν πλάτος λιγότερο από 30 χιλ. τοποθετημένες μονίμως σε κασέτες

έχουν θεσπισθεί στο πλαίσιο του συστήματος των Ηνωμένων Εθνών και από τους διεθνείς οργανισμούς της τυποποίησης, λαμβανομένου υπόψη του πλαισίου τους και του αντικειμένου της παρούσας συμφωνίας.

1.2 Εντούτοις, για τους σκοπούς της παρούσας συμφωνίας, ισχύουν οι όροι που καθορίζονται στο παράρτημα Ι όπως ερμηνεύονται σ' αυτό.

1.3 Όλα τα προϊόντα, περιλαμβανομένων των βιομηχανικών και των γεωργικών, υπόκεινται στις διατάξεις της παρούσας συμφωνίας.

1.4 Οι προδιαγραφές σε θέματα αγοράς που έχουν εκπονηθεί από κυβερνητικούς οργανισμούς για τις ανάγκες της παραγωγής ή της κατανάλωσης κυβερνητικών οργανισμών δεν υπόκεινται στις διατάξεις της παρούσας συμφωνίας, αλλά διέπονται από τη συμφωνία περί των δημοσίων συμβάσεων, στο πλαίσιο του πεδίου εφαρμογής της.

1.5 Οι διατάξεις της παρούσας συμφωνίας δεν ισχύουν για τα μέτρα υγειονομικής και φυτοϋγειονομικής προστασίας, όπως καθορίζονται στο παράρτημα Α της συμφωνίας για την εφαρμογή των μέτρων υγειονομικής και φυτοϋγειονομικής προστασίας.

1.6 Όλες οι παραπομπές της παρούσας συμφωνίας σε τεχνικούς κανονισμούς, πρότυπα και μεθόδους διαπίστωσης της συμμόρφωσης ερμηνεύονται ως περιέχουσες τροποποιήσεις και προσθήκες στους κανόνες ή στα προϊόντα που αναφέρονται, εκτός των τροποποιήσεων ή των προσθηκών μικρής σημασίας.

ΤΕΧΝΙΚΟΙ ΚΑΝΟΝΙΣΜΟΙ ΚΑΙ ΠΡΟΤΥΠΑ

Αρθρο 2

Εκπόνηση, έκδοση και εφαρμογή τεχνικών κανονισμών από όργανα της κεντρικής κυβέρνησης

Όσον αφορά τα όργανα της κεντρικής τους κυβέρνησης:

2.1 Τα μέλη εξασφαλίζουν ότι, σχετικά με τους τεχνικούς κανονισμούς, τα προϊόντα που εισάγονται από έδαφος οποιουδήποτε μέλους τυγχάνουν μεταχείρισης τουλάχιστον το ίδιο ευνοϊκής με την εφαρμοζομένη σε παρόμοια προϊόντα εθνικής καταγωγής και σε ομοειδή προϊόντα καταγωγής οποιασδήποτε άλλης χώρας.

2.2 Τα μέλη εξασφαλίζουν ότι οι τεχνικοί κανονισμοί δεν εκπονούνται, εκδίδονται ή εφαρμόζονται με σκοπό ή με αποτέλεσμα να δημιουργηθούν περιττά εμπόδια στο διεθνές εμπόριο. Για το σκοπό αυτό, οι τεχνικοί κανονισμοί δεν περιορίζουν το εμπόριο σε βαθμό μεγαλύτερο από τον απαιτούμενο για την επίτευξη θεμιτού στόχου, λαμβανομένων υπόψη των κινδύνων που θα δημιουργούσε η αποτυχία του στόχου. Τέτοιου είδους θεμιτοί στόχοι είναι, μεταξύ άλλων, οι επιταγές της εθνικής ασφάλειας, η πρόληψη της απάτης, η προστασία της υγείας ή ασφαλείας των ανθρώπων, της ζωής ή της υγείας ζώων και των φυτών, ή το περιβάλλον. Κατά την εκτίμηση των κινδύνων αυτών, τα σχετικά στοιχεία που λαμβάνονται υπόψη είναι, μεταξύ άλλων, οι διαθέσιμες επιστημονικές και τεχνικές πληροφορίες, η σχετική τεχνολογία μεταποίησης ή η μελετώμενη τελική χρήση των προϊόντων.

2.3 Οι τεχνικοί κανονισμοί δεν διατηρούνται, εφόσον οι περιστάσεις ή οι στόχοι, οι οποίοι επέβαλαν τη θέσπισή τους, πάψουν να υφίστανται ή εφόσον οι μεταβληθείσες περιστάσεις ή στόχοι μπορούν να καλυφθούν κατά

τρόπο λιγότερο περιοριστικό για το εμπόριο.

2.4 Όταν απαιτούνται τεχνικοί κανονισμοί ενώ υπάρχουν διεθνή πρότυπα ή επίκειται η τελική τους διαμόρφωση, τα μέλη χρησιμοποιούν τα διεθνή αυτά πρότυπα ή τα βασικά στοιχεία τους ως βάση για τους τεχνικούς κανονισμούς τους εκτός των περιπτώσεων που τα διεθνή αυτά πρότυπα ή τα στοιχεία αυτά είναι αναποτελεσματικά ή ακατάλληλα για την επίτευξη των επιδιωκόμενων θεμιτών στόχων, παραδείγματος χάριν λόγω θεμελιωδών κλιματικών ή γεωγραφικών παραγόντων ή βασικών τεχνολογικών προβλημάτων.

2.5 Κάθε μέλος που εκπονεί, εκδίδει ή εφαρμόζει τεχνικό κανονισμό ο οποίος μπορεί να έχει σημαντικές επιπτώσεις στο εμπόριο των λοιπών μελών εκθέτει, μετά από αίτηση άλλου μέλους, την αιτιολόγηση που αφορά τον εν λόγω τεχνικό κανονισμό σε σχέση με τις διατάξεις των παραγράφων 2 έως 4. Κάθε φορά που εκπονείται, εκδίδεται ή εφαρμόζεται τεχνικός κανονισμός για έναν από τους θεμιτούς στόχους που αναφέρονται σαφώς στην παράγραφο 2, ο οποίος είναι σύμφωνος με τα σχετικά διεθνή πρότυπα, υπάρχει μαχητό τεκμήριο ότι δεν δημιουργεί περιττά εμπόδια στο διεθνές εμπόριο.

2.6 Προκειμένου να εναρμονίσουν μεταξύ τους κατά το δυνατόν ευρύτερα τους τεχνικούς τους κανονισμούς, τα μέλη συμμετέχουν πλήρως, εντός των ορίων των δυνατοτήτων τους στην εκπόνηση, από τους αρμόδιους διεθνείς οργανισμούς τυποποίησης, των διεθνών προτύπων που αναφέρονται σε προϊόντα, για τα οποία έχουν θεσπίσει ή προβλέπουν να θεσπίσουν τεχνικούς κανονισμούς.

2.7 Τα μέλη εξετάζουν θετικά την αποδοχή ως ισοδυνάμων των τεχνικών κανονισμών άλλων μελών, ακόμα και αν οι εν λόγω κανονισμοί διαφέρουν από τους δικούς τους, υπό την προϋπόθεση ότι είναι πεπεισμένα ότι οι εν λόγω κανονισμοί ανταποκρίνονται καταλλήλως τους στόχους των δικών τους κανονισμών.

2.8 Κάθε φορά που αυτό θεωρείται αρμόζον, τα μέλη καθορίζουν τους τεχνικούς κανονισμούς βάσει των προδιαγραφών απόδοσης του προϊόντος, μάλλον, παρά βάσει της μορφής του ή των περιγραφικών χαρακτηριστικών του.

2.9 Κάθε φορά που δεν υφίστανται σχετικά διεθνή πρότυπα ή που το τεχνικό περιεχόμενο σχεδιαζομένου τεχνικού κανονισμού δεν είναι σύμφωνο με το τεχνικό περιεχόμενο των σχετικών διεθνών προτύπων, και αν ο τεχνικός κανονισμός δύναται να επηρεάσει σημαντικά τις συναλλαγές των λοιπών μελών, τα μέλη:

2.9.1 προβαίνουν στη δημοσίευση, αρκετά έγκαιρα ώστε να επιτρέπει στα ενδιαφερόμενα μέρη άλλων μελών να λάβουν γνώση, ανακοίνωσης, σύμφωνα με την οποία σχεδιάζουν τη θέσπιση συγκεκριμένου τεχνικού κανονισμού·

2.9.2 γνωστοποιούν προς τα λοιπά μέλη, μέσω της γραμματείας, τα προϊόντα που θα καλύπτει ο προτεινόμενος τεχνικός κανονισμός, αναφέροντας συνοπτικά τον αντικειμενικό σκοπό και την αιτιολογία. Οι γνωστοποιήσεις αυτές πραγματοποιούνται έγκαιρα ώστε να μπορούν ακόμα να γίνουν τροποποιήσεις και να ληφθούν υπόψη τα σχόλια·

2.9.3 παρέχουν, κατόπιν αιτήσεως στα λοιπά μέλη, λεπτομέρειες ή αντίγραφα του σχεδιαζομένου τεχνικού κανονισμού και κάθε φορά που είναι δυνατόν, προσδιορίζουν τα στοιχεία τα οποία ουσιαστικά παρεκκλίνουν από τα σχετικά διεθνή πρότυπα·

2.9.4 χορηγούν στα λοιπά μέλη, εύλογη προθεσμία χωρίς να κάνουν διάκριση, για την υποβολή των παρατηρήσεων τους εγγράφως, συζητούν επί των παρατηρήσεων αυτών μετά από σχετική αίτηση, και λαμβάνουν υπόψη τις συγκεκριμένες γραπτές παρατηρήσεις και τα αποτελέσματα των συζητήσεων αυτών.

2.10 Με την επιφύλαξη των διατάξεων του εισαγωγικού μέρους της παραγράφου 9, όταν δημιουργούνται ή υπάρχει κίνδυνος να δημιουργηθούν, για κάποιο μέλος, επείγοντα προβλήματα ασφαλείας, υγείας, προστασίας του περιβάλλοντος ή εθνικής ασφαλείας, τούτο δύναται, εφόσον κρίνεται αναγκαίο, να παραλείψει τις απαριθμούμενες στην παράγραφο 9 ενέργειες, με την επιφύλαξη ότι τη στιγμή που θεσπίζει τεχνικό κανονισμό, το μέλος:

2.10.1 γνωστοποιεί αμέσως στα λοιπά μέλη μέσω της γραμματείας, τον εν λόγω τεχνικό κανονισμό και τα προϊόντα τα οποία αυτός αφορά, αναγράφοντας συνοπτικά τον αντικειμενικό σκοπό και την αιτιολογία του τεχνικού κανονισμού ως και τη φύση των επειγόντων προβλημάτων·

2.10.2 χορηγεί, κατόπιν αιτήσεως στα λοιπά μέλη αντίγραφα του τεχνικού κανονισμού·

2.10.3 παρέχει, αδιακρίτως, στα λοιπά μέλη τη δυνατότητα υποβολής γραπτών παρατηρήσεων, συζητεί επί των παρατηρήσεων αυτών εάν υποβληθεί σχετικό αίτημα, και λαμβάνει υπόψη τις γραπτές αυτές παρατηρήσεις και τα αποτελέσματα των εν λόγω συζητήσεων.

2.11 Τα μέλη εξασφαλίζουν ότι όλοι οι τεχνικοί κανονισμοί που έχουν εκδοθεί, δημοσιεύονται αμέσως ή τίθενται με διαφορετικό τρόπο στη διάθεση των ενδιαφερομένων μερών των λοιπών μελών για να λάβουν γνώση.

2.12 Εκτός από τις επείγουσες περιπτώσεις που προβλέπονται στην παράγραφο 10, τα μέλη παρέχουν εύλογη προθεσμία μεταξύ της δημοσίευσης των τεχνικών κανονισμών και της θέσης τους σε ισχύ, προκειμένου να δοθεί ο χρόνος, στους παραγωγούς, που είναι εγκατεστημένοι στις χώρες μέλη εξαγωγής, και ιδίως στις αναπτυσσόμενες χώρες μέλη, να προσαρμόσουν τα προϊόντα τους ή τις μεθόδους παραγωγής στις απαιτήσεις της χώρας μέλους εισαγωγής.

Άρθρο 3

Εκπόνηση, έκδοση και εφαρμογή τεχνικών κανονισμών από όργανα τοπικής διοίκησης και μη κυβερνητικά όργανα

Όσον αφορά τα όργανα τοπικής διοίκησης και τα μη κυβερνητικά όργανα εντός του εδάφους των:

3.1 Τα μέλη προβαίνουν στη λήψη των ενδεδειγμένων μέτρων που έχουν στη διάθεσή τους, προκειμένου τα εν λόγω όργανα να συμμορφώνονται με τις διατάξεις του άρθρου 2, εκτός της υποχρέωσης για γνωστοποίηση, όπως αναφέρεται στο άρθρο 2, παράγραφοι 9.2 και 10.1.

3.2 Τα μέλη εξασφαλίζουν ότι οι τεχνικοί κανονισμοί των τοπικών διοικήσεων σε επίπεδο αμέσως κατώτερο της κεντρικής διοίκησης στα μέλη γνωστοποιούνται σύμφωνα με τις διατάξεις του άρθρου 2, παράγραφοι 9.2 και 10.1,

με τη σημείωση ότι δεν απαιτείται γνωστοποίηση για τεχνικούς κανονισμούς, το τεχνικό περιεχόμενο των οποίων είναι ουσιαστικά το ίδιο με προγενέστερα γνωστοποιηθέντες τεχνικούς κανονισμούς οργάνων της κεντρικής κυβέρνησης του ενδιαφερομένου μέλους.

3.3 Τα μέλη μπορεί να ζητήσουν επαφές με τα λοιπά μέλη, περιλαμβανομένων των γνωστοποιήσεων, της παροχής πληροφοριών, των σχολίων και των συζητήσεων που αναφέρονται στο άρθρο 2, παράγραφοι 9 και 10, οι οποίες πραγματοποιούνται μέσω της κεντρικής κυβέρνησης.

3.4 Τα μέλη δεν προβαίνουν σε λήψη μέτρων, τα οποία απαιτούν από τα όργανα τοπικής διοίκησης ή τα μη κυβερνητικά όργανα εντός των εδαφών των, ή τους ενθαρρύνουν, να ενεργήσουν κατά τρόπο ασύμφωνο με τις διατάξεις του άρθρου 2.

3.5 Τα μέλη είναι πλήρως υπεύθυνα δυνάμει της παρούσας συμφωνίας για την τήρηση όλων των διατάξεων του άρθρου 2. Τα μέλη εκπονούν και εφαρμόζουν θετικά μέτρα και μηχανισμούς για τη στήριξη της τήρησης των διατάξεων του άρθρου 2 από άλλα όργανα εκτός αυτών της κεντρικής κυβέρνησης.

Άρθρο 4

Εκπόνηση, έκδοση και εφαρμογή προτύπων

4.1 Τα μέλη εξασφαλίζουν ότι τα όργανα της κεντρικής κυβέρνησης με δραστηριότητα τυποποίησης αποδέχονται και τηρούν τον κώδικα δεοντολογίας για την εκπόνηση, έκδοση και εφαρμογή προτύπων του παραρτήματος 3 της παρούσας συμφωνίας (αναφερόμενο στην παρούσα συμφωνία ως "κώδικα δεοντολογίας"). Τα μέλη προβαίνουν στη λήψη των ενδεδειγμένων μέτρων που έχουν στη διάθεσή τους, προκειμένου τα όργανα τοπικής διοίκησης και τα μη κυβερνητικά όργανα με δραστηριότητα τυποποίησης εντός του εδάφους τους, καθώς και τα περιφερειακά όργανα με δραστηριότητα τυποποίησης των οποίων τα ίδια τα μέλη ή ένα ή περισσότερα όργανα εντός του εδάφους τους είναι μέλη, να αποδέχονται και να τηρούν τον εν λόγω κώδικα δεοντολογίας. Επιπλέον, τα μέλη δεν προβαίνουν στη λήψη μέτρων που έχουν ως αποτέλεσμα, άμεσα ή έμμεσα, την υποχρέωση ή την ενθάρρυνση των εν λόγω οργάνων με δραστηριότητα τυποποίησης να ενεργούν κατά τρόπο ασύμφωνο με τον κώδικα δεοντολογίας. Οι υποχρεώσεις των μελών, σε σχέση με την τήρηση εκ μέρους των οργάνων με δραστηριότητα τυποποίησης των διατάξεων του κώδικα δεοντολογίας, ισχύουν ανεξαρτήτως του εάν το όργανο με δραστηριότητα τυποποίησης έχει αποδεχθεί ή όχι τον κώδικα δεοντολογίας.

4.2 Τα όργανα με δραστηριότητα τυποποίησης που έχουν αποδεχθεί και τηρούν τον κώδικα δεοντολογίας αναγνωρίζονται από τα μέλη ως συμμορφούμενα με τις αρχές της παρούσας συμφωνίας.

ΣΥΜΜΟΡΦΩΣΗ ΜΕ ΤΟΥΣ ΤΕΧΝΙΚΟΥΣ ΚΑΝΟΝΙΣΜΟΥΣ ΚΑΙ ΤΑ ΠΡΟΤΥΠΑ

Άρθρο 5

Μέθοδοι διαπίστωσης της συμμόρφωσης που εφαρμόζονται από τα όργανα της κεντρικής κυβέρνησης

5.1 Στις περιπτώσεις που απαιτείται θετική εξασφάλιση ότι τα προϊόντα είναι σύμφωνα με τεχνικούς κανονισμούς ή με πρότυπα, τα μέλη ενεργούν κατά τρόπον ώστε τα όργανα της κεντρικής κυβέρνησης να εφαρμόζουν τις ακόλουθες διατάξεις στα προϊόντα που προέρχονται από έδαφος άλλων μελών:

5.1.1 οι μέθοδοι διαπίστωσης της συμμόρφωσης εκπονούνται, εκδίδονται και εφαρμόζονται εις τρόπον ώστε να παρέχουν πρόσβαση σε προμηθευτές ομοειδών προϊόντων καταγόμενων από το έδαφος άλλων μελών με όρους όχι λιγότερο ευνοϊκούς εκείνων που παραχωρούνται σε προμηθευτές ομοειδών προϊόντων εθνικής καταγωγής ή καταγόμενων από οποιαδήποτε άλλη χώρα, σε παρεμφερή κατάσταση· η πρόσβαση συνεπάγεται το δικαίωμα του προμηθευτή για διαπίστωση της συμμόρφωσης δυνάμει των κανόνων και μεθόδων, περιλαμβανομένης, όταν προβλέπεται από την εν λόγω μέθοδο, της δυνατότητας να ασκεί δραστηριότητες διαπίστωσης της συμμόρφωσης στις εγκαταστάσεις και να λαμβάνει το σήμα του συστήματος·

5.1.2 οι μέθοδοι διαπίστωσης της συμμόρφωσης δεν εκπονούνται, εκδίδονται ή εφαρμόζονται με σκοπό ή με αποτέλεσμα να δημιουργηθούν περιττά εμπόδια στο διεθνές εμπόριο. Το ανωτέρω σημαίνει, μεταξύ άλλων, ότι οι μέθοδοι διαπίστωσης της συμμόρφωσης δεν είναι αυστηρότερες ή δεν εφαρμόζονται σε αυστηρότερο βαθμό από αυτόν που απαιτείται ώστε να παρέχεται στο εισάγον μέλος η δέουσα βεβαιότητα ότι τα προϊόντα πληρούν τους ισχύοντες τεχνικούς κανονισμούς ή πρότυπα, λαμβανομένου υπόψη του κινδύνου που θα δημιουργούσε η έλλειψη συμμόρφωσης.

5.2 Κατά την εφαρμογή των διατάξεων της παραγράφου 1 τα μέλη εξασφαλίζουν ότι:

5.2.1 οι μέθοδοι διαπίστωσης της συμμόρφωσης αναλαμβάνονται και ολοκληρώνονται όσον το δυνατόν ταχύτερα και σε σειρά όχι λιγότερο ευνοϊκή για προϊόντα που προέρχονται από εδάφη των λοιπών μελών από αυτή που ισχύει για ομοειδή εγχώρια προϊόντα·

5.2.2 η συνήθης περίοδος διεκπεραίωσης κάθε μεθόδου διαπίστωσης της συμμόρφωσης δημοσιεύεται ή ότι η προβλεπόμενη περίοδος διεκπεραίωσης κοινοποιείται στον αιτούντα μετά από αίτησή του· όταν παραλαμβάνει μία αίτηση, το αρμόδιο όργανο εξετάζει αμέσως την πληρότητα της τεκμηρίωσης και πληροφορεί τον αιτούντα κατά τρόπο ακριβή και πλήρη για όλες τις ατέλειες. Το αρμόδιο όργανο διαβιβάζει το συντομότερο δυνατόν τα αποτελέσματα της εκτίμησης κατά τρόπο ακριβή και πλήρη στον αιτούντα, ώστε να γίνουν αν χρειάζεται διαρθρωτικές ενέργειες· ακόμα και στην περίπτωση που η αίτηση παρουσιάζει ατέλειες, το αρμόδιο όργανο προβαίνει, στο βαθμό που είναι εφικτό, στη διαπίστωση της συμμόρφωσης, εάν το ζητήσει ο αιτών· και ότι, μετά από αίτηση, ο αιτών ενημερώνεται για το στάδιο της διαδικασίας, και για τους λόγους κάθε ενδεχόμενης καθυστέρησης·

5.2.3 οι αιτήσεις για πληροφορίες περιορίζονται σε ό,τι είναι αναγκαίο για τη διαπίστωση της συμμόρφωσης και του καθορισμού των αμοιβών·

5.2.4 ο εμπιστευτικός χαρακτήρας των πληροφοριών σχετικά με τα προϊόντα που κατάγονται από τα εδάφη των λοιπών μελών, οι οποίες προκύπτουν ή παρέχονται σε σχέση με τις εν λόγω μεθόδους διαπίστωσης της συμμόρφωσης, τηρείται κατά τον ίδιο τρόπο όπως για τα εγχώρια προϊόντα και εις τρόπον ώστε να προστατεύονται τα θεμιτά εμπορικά συμφέροντα·

5.2.5 οι αμοιβές που καταβάλλονται για τη διαπίστωση της συμμόρφωσης προϊόντων που κατάγονται από τα εδάφη άλλων μελών είναι ισοδύναμες σε σχέση με αμοιβές που καταβάλλονται για τη διαπίστωση της συμμόρφωσης ομοειδών προϊόντων εθνικής καταγωγής ή καταγωγής άλλης χώρας, λαμβανομένου υπόψη του κόστους επικοινωνιών, μεταφοράς και άλλων παραγόντων που προκύπτουν από διαφορές που υπάρχουν μεταξύ της τοποθεσίας των εγκαταστάσεων του αιτούντος και του οργάνου διαπίστωσης της συμμόρφωσης·

5.2.6 η επιλογή της τοποθεσίας των εγκαταστάσεων που χρησιμοποιούνται στις μεθόδους διαπίστωσης της συμμόρφωσης και η επιλογή δειγμάτων δεν είναι φύσεως τέτοιας ώστε να δημιουργούν περιττές δυσχέρειες στους αιτούντες ή τους αντιπροσώπους τους·

5.2.7 όταν οι προδιαγραφές ενός προϊόντος μεταβάλλονται μετά τη διαπίστωση της συμμόρφωσης του με τους ισχύοντες τεχνικούς κανονισμούς ή πρότυπα, η μέθοδος διαπίστωσης της συμμόρφωσης για το τροποποιηθέν προϊόν περιορίζεται σε ό,τι είναι αναγκαίο για να καθορισθεί εάν υφίσταται η δέουσα βεβαιότητα ότι το προϊόν πληροί ακόμα τους σχετικούς τεχνικούς κανονισμούς ή πρότυπα·

5.2.8 υφίσταται διαδικασία για την εξέταση των καταγγελιών σχετικά με τη λειτουργία κάποιας μεθόδου διαπίστωσης της συμμόρφωσης και την ανάληψη διορθωτικών ενεργειών σε περίπτωση που κάποια καταγγελία είναι αιτιολογημένη.

5.3 Οι παράγραφοι 1 και 2 δεν εμποδίζουν κατ' ουδένα τρόπο τα μέλη να πραγματοποιούν ευλόγους δειγματοληπτικούς ελέγχους στο έδαφος τους.

5.4 Στις περιπτώσεις που απαιτείται θετική διαβεβαίωση ότι τα προϊόντα είναι σύμφωνα με τεχνικούς κανονισμούς ή με πρότυπα, και υπάρχουν ή πρόκειται να ολοκληρωθούν σχετικοί οδηγοί ή συστάσεις που έχουν συνταχθεί από διεθνείς οργανισμούς τυποποίησης, τα μέλη εξασφαλίζουν ότι τα όργανα της κεντρικής κυβέρνησης χρησιμοποιούν τους εν λόγω οδηγούς ή συστάσεις, ή τμήματά τους ως βάση για τις μεθόδους διαπίστωσης της συμμόρφωσης, εκτός από τις περιπτώσεις κατά τις οποίες όπως αιτιολογείται δεόντως μετά από αίτηση, οι εν λόγω οδηγοί ή συστάσεις ή τα σχετικά μέρη είναι ακατάλληλα για τα ενδιαφερόμενα μέλη· αυτό μπορεί να συμβαίνει για λόγους όπως, μεταξύ άλλων, οι επιταγές εθνικής ασφαλείας, η πρόληψη της απάτης, η προστασία της υγείας ή ασφάλειας των ανθρώπων, της ζωής ή της υγείας των ζώων και των φυτών, η προστασία του περιβάλλοντος, βασικοί κλιματολογικοί ή λοιποί γεωγραφικοί παράγοντες, βασικά τεχνολογικά προβλήματα ή προβλήματα υποδομής.

5.5 Προκειμένου να εναρμονίσουν κατά το δυνατόν ευρύτερα τις μεθόδους διαπίστωσης της συμμόρφωσης, τα μέλη συμμετέχουν πλήρως, εντός των ορίων των δυνατοτήτων τους, στην εκπόνηση από τους αρμόδιους διεθνείς οργανισμούς με δραστηριότητες τυποποίησης, οδηγών και συστάσεων για μεθόδους διαπίστωσης της συμμόρφωσης.

5.6 Κάθε φορά που δεν υφίσταται σχετικός οδηγός ή σύσταση που έχει εκδοθεί από διεθνή οργανισμό με δραστηριότητες τυποποίησης ή που το τεχνικό περιεχόμενο προτεινόμενης μεθόδου διαπίστωσης της συμμόρφωσης δεν είναι σύμφωνο με τους σχετικούς οδηγούς και συστάσεις που

εκδίδονται από διεθνείς οργανισμούς τυποποίησης, και αν η μέθοδος διαπίστωσης της συμμόρφωσης δύναται να επηρεάσει σημαντικά τις εμπορικές συναλλαγές των λοιπών μελών, τα μέλη:

5.6.1 προβαίνουν στη δημοσίευση, αρκετά έγκαιρα ώστε να επιτραπεί στα ενδιαφερόμενα μέρη άλλων μελών να λάβουν γνώση, ανακοίνωσης για την πρόθεσή τους να θεσπίσουν συγκεκριμένη μέθοδο διαπίστωσης της συμμόρφωσης·

5.6.2 γνωστοποιούν προς τα λοιπά μέλη, μέσω της γραμματείας, τα προϊόντα που θα καλύπτει η προτεινόμενη μέθοδος διαπίστωσης της συμμόρφωσης, αναφέροντας συνοπτικά τον αντικειμενικό σκοπό και την αιτιολογία της. Οι γνωστοποιήσεις αυτές πραγματοποιούνται έγκαιρα, ώστε να μπορούν ακόμα να γίνουν τροποποιήσεις και να ληφθούν υπόψη τα σχόλια·

5.6.3 παρέχουν, κατόπιν αιτήσεως στα λοιπά μέλη, λεπτομέρειες ή αντίγραφα της προτεινόμενης μεθόδου διαπίστωσης της συμμόρφωσης και κάθε φορά που είναι δυνατόν, προσδιορίζουν τα στοιχεία τα οποία ουσιαστικά παρεκκλίνουν από τα σχετικά διεθνή πρότυπα·

5.6.4 χορηγούν στα λοιπά μέλη, εύλογη προθεσμία χωρίς να κάνουν διάκριση, για την υποβολή γραπτών παρατηρήσεων, συζητούν επί των παρατηρήσεων αυτών μετά από αίτηση, και λαμβάνουν υπόψη τις συγκεκριμένες γραπτές παρατηρήσεις και τα αποτελέσματα των εν λόγω συζητήσεων.

5.7 Με την επιφύλαξη των διατάξεων του εισαγωγικού μέρους της παραγράφου 6, όταν δημιουργούνται ή υπάρχει κίνδυνος να δημιουργηθούν για ένα μέλος επείγοντα προβλήματα ασφαλείας, υγείας, προστασίας του περιβάλλοντος ή εθνικής ασφαλείας, τούτο δύναται, εφόσον κρίνεται αναγκαίο, να παραλείψει τις απαριθμούμενες στην παράγραφο 6 ενέργειες, με την επιφύλαξη ότι κατά τη στιγμή που το μέλος θεσπίζει μέθοδο διαπίστωσης της συμμόρφωσης:

5.7.1 γνωστοποιεί αμέσως στα λοιπά μέλη, μέσω της γραμματείας, την εν λόγω μέθοδο διαπίστωσης της συμμόρφωσης και τα προϊόντα τα οποία αυτή καλύπτει, αναγράφοντας συνοπτικά τον αντικειμενικό σκοπό και την αιτιολογία της μεθόδου καθώς και τη φύση των επειγόντων προβλημάτων·

5.7.2 χορηγεί, κατόπιν αιτήσεως στα λοιπά μέλη αντίγραφα των κανόνων της μεθόδου·

5.7.3 παρέχει, αδιακρίτως, στα λοιπά μέλη τη δυνατότητα υποβολής γραπτών παρατηρήσεων, συζητεί επί των παρατηρήσεων αυτών εάν υποβληθεί σχετικό αίτημα, και λαμβάνει υπόψη τις γραπτές αυτές παρατηρήσεις και τα αποτελέσματα των εν λόγω συζητήσεων.

5.8 Τα μέλη εξασφαλίζουν ότι όλες οι μέθοδοι διαπίστωσης της συμμόρφωσης που έχουν εκδοθεί, δημοσιεύονται αμέσως ή τίθενται με διαφορετικό τρόπο στη διάθεση των ενδιαφερομένων μερών των λοιπών μελών για να λάβουν γνώση.

5.9 Εκτός από τις επείγουσες περιπτώσεις που προβλέπονται στην παράγραφο 7, τα μέλη παρέχουν εύλογη προθεσμία μεταξύ της δημοσίευσης

των απαιτήσεων σχετικά με τις μεθόδους διαπίστωσης της συμμόρφωσης και της θέσης τους σε ισχύ προκειμένου να δοθεί ο χρόνος, στους παραγωγούς, που είναι εγκατεστημένοι στις εξάγουσες χώρες μέλη, και ιδίως στις αναπτυσσόμενες χώρες μέλη, να προσαρμόσουν τα προϊόντα τους ή τις μεθόδους παραγωγής στις απαιτήσεις της εισάγουσας χώρας μέλους .

Αρθρο 6

Αναγνώριση της διαπίστωσης της συμμόρφωσης από όργανα της κεντρικής κυβέρνησης

Οσον αφορά τα όργανα της κεντρικής κυβέρνησής τους:

6.1 Με την επιφύλαξη των διατάξεων των παραγράφων 3 και 4, τα μέλη εξασφαλίζουν, οποτεδήποτε είναι δυνατόν, ότι τα αποτελέσματα των μεθόδων διαπίστωσης της συμμόρφωσης σε άλλα μέλη είναι αποδεκτά, ακόμα και όταν οι εν λόγω μέθοδοι διαφέρουν από τις δικές τους, υπό την προϋπόθεση ότι οι εν λόγω μέθοδοι κρίνονται ικανοποιητικές, όσον αφορά την εξασφάλιση συμμόρφωσης με τους ισχύοντες τεχνικούς κανονισμούς ή πρότυπα σε ισοδύναμο βαθμό με τις δικές τους μεθόδους. Εκτιμάται ότι είναι δυνατόν να απαιτηθούν προηγούμενες διαβουλεύσεις προκειμένου να επιτευχθεί αμοιβαία ικανοποιητική συμφωνία σχετικά, ιδίως, με τα εξής:

6.1.1 την κατάλληλη και διαρκή τεχνική αρμοδιότητα των σχετικών οργάνων διαπίστωσης της συμμόρφωσης στο εξάγον μέλος, ώστε να είναι δυνατόν να υπάρξει εμπιστοσύνη όσον αφορά τη συνεχή αξιοπιστία των αποτελεσμάτων διαπίστωσης της συμμόρφωσης· σχετικά με αυτό, η επαλήθευση της συμμόρφωσης, π.χ. μέσω διαπίστευσης, με τους σχετικούς οδηγούς ή συστάσεις που εκδίδονται από διεθνείς οργανισμούς τυποποίησης λαμβάνεται υπόψη ως ένδειξη της δέουσας τεχνικής αρμοδιότητας·

6.1.2 την αποδοχή εκείνων μόνο των αποτελεσμάτων διαπίστωσης της συμμόρφωσης που προκύπτουν από εντεταλμένα όργανα στο εξάγον μέλος.

6.2 Τα μέλη εξασφαλίζουν ότι οι μέθοδοι διαπίστωσης της συμμόρφωσης που εφαρμόζουν επιτρέπουν όσον αυτό είναι εφικτό, την εφαρμογή των διατάξεων της παραγράφου 1.

6.3 Τα μέλη ενθαρρύνονται, μετά από αίτηση άλλων μελών, να είναι πρόθυμα να αρχίσουν διαπραγματεύσεις για τη σύναψη συμφωνιών επί της αμοιβαίας αναγνώρισης των αποτελεσμάτων των μεθόδων διαπίστωσης της συμμόρφωσης που εφαρμόζουν. Τα μέλη μπορεί να απαιτήσουν αυτού του είδους οι συμφωνίες να πληρούν τα κριτήρια της παραγράφου 1 και να παρέχουν αμοιβαία ικανοποίηση σχετικά με τις δυνατότητες που προσφέρουν για διευκόλυνση του εμπορίου των σχετικών προϊόντων.

6.4 Τα μέλη ενθαρρρύνονται να επιτρέπουν τη συμμετοχή οργάνων διαπίστωσης της συμμόρφωσης που εδρεύουν στο έδαφος άλλων μελών στις οικείες μεθόδους διαπίστωσης της συμμόρφωσης με όρους όχι λιγότερο ευνοϊκούς από αυτούς που παρέχονται στα όργανα που εδρεύουν εντός του εδάφους τους ή στο έδαφος άλλης χώρας.

Αρθρο 7

Μέθοδοι διαπίστωσης της συμμόρφωσης από όργανα τοπικής διοίκησης

Οσον αφορά τα όργανα τοπικής διοίκησης εντός του εδάφους των:

7.1 Τα μέλη προβαίνουν στη λήψη των ενδεδειγμένων μέτρων που έχουν στη διάθεσή τους προκειμένου τα εν λόγω όργανα να συμμορφώνονται με τις διατάξεις των άρθρων 5 και 6, εκτός της υποχρέωσης για γνωστοποίηση που αναφέρεται στο άρθρο 5, παράγραφοι 6.2 και 7.1.

7.2 Τα μέλη εξασφαλίζουν ότι οι μέθοδοι διαπίστωσης της συμμόρφωσης των τοπικών διοικήσεων σε επίπεδο αμέσως κατώτερο της κεντρικής διοίκησης στα μέλη γνωστοποιούνται σύμφωνα με τις διατάξεις του άρθρου 5, παράγραφοι 6.2 και 7.1, με τη σημείωση ότι δεν απαιτείται γνωστοποίηση για μεθόδους διαπίστωσης της συμμόρφωσης, το τεχνικό περιεχόμενο των οποίων είναι ουσιαστικά το ίδιο με προγενέστερα κοινοποιηθείσες μεθόδους διαπίστωσης της συμμόρφωσης οργάνων της κεντρικής κυβέρνησης των ενδιαφερομένων μελών.

7.3 Τα μέλη μπορεί να ζητήσουν επαφές με τα λοιπά μέλη, περιλαμβανομένων των γνωστοποιήσεων, της παροχής πληροφοριών, των σχολίων και των συζητήσεων που αναφέρονται στο άρθρο 5 παράγραφοι 6 και 7, οι οποίες πραγματοποιούνται μέσω της κεντρικής κυβέρνησης.

7.4 Τα μέλη δεν προβαίνουν σε λήψη μέτρων, τα οποία απαιτούν από τα όργανα τοπικής διοίκησης εντός των εδαφών των ή τους ενθαρρύνουν να ενεργήσουν κατά τρόπο ασύμφωνο με τις διατάξεις των άρθρων 5 και 6.

7.5 Τα μέλη είναι πλήρως υπεύθυνα δυνάμει της παρούσας συμφωνίας για την τήρηση όλων των διατάξεων των άρθρων 5 και 6. Τα μέλη εκπονούν και εφαρμόζουν θετικά μέτρα και μηχανισμούς για τη στήριξη της τήρησης των διατάξεων των άρθρων 5 και 6 από άλλα όργανα εκτός αυτών της κεντρικής κυβέρνησης.

Αρθρο 8

Μέθοδοι διαπίστωσης της συμμόρφωσης από μη κυβερνητικά όργανα

8.1 Τα μέλη προβαίνουν στη λήψη των ενδεδειγμένων μέτρων που έχουν στη διάθεσή τους προκειμένου να εξασφαλίσουν ότι τα μη κυβερνητικά όργανα τα οποία εφαρμόζουν μεθόδους διαπίστωσης της συμμόρφωσης συμμορφώνονται με τις διατάξεις των άρθρων 5 και 6, εκτός της υποχρέωσης για γνωστοποίηση των προτεινομένων μεθόδων διαπίστωσης της συμμόρφωσης. Επιπλέον τα μέλη δεν προβαίνουν σε λήψη μέτρων τα οποία απαιτούν, άμεσα ή έμμεσα, από τα εν λόγω όργανα ή τα ενθαρρύνουν να ενεργούν κατά τρόπο ασύμφωνο με τις διατάξεις των άρθρων 5 και 6.

8.2 Τα μέλη εξασφαλίζουν ότι τα όργανα της κεντρικής τους διοίκησης βασίζονται στις μεθόδους διαπίστωσης της συμμόρφωσης τις οποίες εφαρμόζουν μη κυβερνητικά όργανα μόνον εάν τα τελευταία συμμορφώνονται με τις διατάξεις των άρθρων 5 και 6, εκτός της υποχρέωσης για γνωστοποίηση των προτεινομένων μεθόδων διαπίστωσης της συμμόρφωσης.

Άρθρο 9

Διεθνή και περιφερειακά συστήματα

9.1 Στις περιπτώσεις που απαιτείται θετική διαβεβαίωση για τη διαπίστωση της συμμόρφωσης με τεχνικούς κανονισμούς ή με πρότυπα, τα μέλη εκπονούν και εγκρίνουν, όταν είναι εφικτό, διεθνή συστήματα διαπίστωσης της συμμόρφωσης και γίνονται μέλη τούτων ή συμμετέχουν σ'αυτά.

9.2 Τα μέλη προβαίνουν στη λήψη των ενδεδειγμένων μέτρων που έχουν στη διάθεσή τους προκειμένου τα διεθνή και περιφερειακά συστήματα διαπίστωση της συμμόρφωσης, των οποίων είναι μέλη ή στα οποία συμμετέχουν αρμόδια όργανα που υπάγονται στη δικαιοδοσία τους, να συμμορφώνονται με τις διατάξεις των άρθρων 5 και 6. Επιπλέον, τα μέλη δεν προβαίνουν σε λήψη μέτρων τα οποία απαιτούν, άμεσα ή έμμεσα, από τα εν λόγω συστήματα ή τα ενθαρρύνουν να ενεργούν κατά τρόπο ασύμφωνο με τις διατάξεις των άρθρων 5 και 6.

9.3 Τα μέλη εξασφαλίζουν ότι τα όργανα της κεντρικής τους διοίκησης βασίζονται στα διεθνή ή περιφερειακά συστήματα διαπίστωση της συμμόρφωσης μόνο στον βαθμό που τα εν λόγω συστήματα συμμορφώνονται με τις διατάξεις των άρθρων 5 και 6, κατά περίπτωση.

ΠΛΗΡΟΦΟΡΗΣΗ ΚΑΙ ΣΥΝΔΡΟΜΗ

Αρθρο 10

Πληροφορίες επί των τεχνικών κανονισμών, των προτύπων και των μεθόδων διαπίστωσης της συμμόρφωσης

10.1 Κάθε μέλος φροντίζει ώστε να υπάρχει κάποιο κέντρο πληροφόρησης που θα είναι σε θέση να δίδει απαντήσεις σε όλα τα λογικά ερωτήματα που υποβάλλονται από άλλα μέλη και από ενδιαφερόμενα μέρη άλλων μελών καθώς και να παρέχει τα σχετικά έγγραφα, όσον αφορά:

10.1.1 όλους τους τεχνικούς κανονισμούς που έχουν εκδόσει ή σχεδιάζουν να εκδώσουν στο έδαφος του, τα όργανα κεντρικής κυβέρνησης ή τα δημόσια τοπικά όργανα, μη κυβερνητικά όργανα που είναι νομίμως εξουσιοδοτημένα για την εφαρμογή τεχνικού κανονισμού, ή περιφερειακά όργανα με δραστηριότητα τυποποίησης των οποίων τα όργανα αυτά είναι μέλη, ή στα οποία συμμετέχουν·

10.1.2 κάθε πρότυπο που έχουν θεσπίσει ή προτείνει στο έδαφος του, τα όργανα της κεντρικής κυβέρνησης, τα όργανα τοπικής διοίκησης ή τα περιφερειακά όργανα τυποποίησης, των οποίων είναι μέλη τα όργανα αυτά ή στα οποία συμμετέχουν·

10.1.3 κάθε μέθοδο διαπίστωσης της συμμόρφωσης που υφίσταται ή προτείνεται, και την οποία εφαρμόζουν, στο έδαφος του τα όργανα της κεντρικής κυβέρνησης, τα όργανα τοπικής διοίκησης, ή τα μη κυβερνητικά όργανα τα νομίμως εξουσιοδοτημένα για την εφαρμογή τεχνικού κανονισμού, ή οι περιφερειακοί οργανισμοί, των οποίων τα όργανα αυτά είναι μέλη ή στους οποίους συμμετέχουν·

10.1.4 την προσχώρηση και τη συμμετοχή του μέλους, ή των σχετικών οργάνων κεντρικής κυβέρνησης και οργάνων τοπικής διοίκησης στο έδαφος του, σε διεθνείς και περιφερειακούς οργανισμούς τυποποίησης και σε συστήματα διαπίστωσης της συμμόρφωσης, καθώς και σε διμερείς και πολυμερείς διακανονισμούς εντός του πεδίου εφαρμογής της παρούσας συμφωνίας· οφείλει επίσης να είναι σε θέση να παρέχει τις ενδεδειγμένες πληροφορίες σχετικά με τις διατάξεις αυτών των συστημάτων και των διακανονισμών·

10.1.5 τον εντοπισμό των δημοσιευμένων, σύμφωνα με την παρούσα συμφωνία ανακοινώσεων, ή ένδειξη σχετικά με το που δύνανται να ληφθούν οι πληροφορίες αυτές· και

10.1.6 τα σημεία όπου ευρίσκονται τα κέντρα πληροφόρησης πληροφόρησης περί των οποίων γίνεται μνεία στην παράγραφο 3.

10.2 Εάν, εντούτοις, για νομικούς ή διοικητικούς λόγους δημιουργούνται περισσότερα του ενός κέντρα πληροφόρησης από κάποιο μέλος, το εν λόγω μέλος παρέχει στα λοιπά μέλη πλήρεις και σαφείς πληροφορίες σχετικά με το πεδίο αρμοδιοτήτων καθενός εξ αυτών των κέντρων πληροφόρησης. Επιπλέον, το εν λόγω μέλος εξασφαλίζει ότι όλες οι αιτήσεις που απευθύνονται σε αναρμόδιο κέντρο πληροφόρησης διαβιβάζονται αμέσως στο αρμόδιο κέντρο πληροφόρησης.

10.3 Κάθε μέλος προβαίνει στη λήψη των ενδεδειγμένων μέτρων που έχει στη διάθεσή του, προκειμένου να εξασφαλίσει ότι υπάρχουν ένα ή περισσότερα κέντρα πληροφόρησης τα οποία είναι σε θέση να δίδουν απαντήσεις σε όλα τα λογικά ερωτήματα που υποβάλλονται από τα άλλα μέλη και από ενδιαφερόμενα μέρη των άλλων μελών καθώς και να παρέχουν τα σχετικά έγγραφα ή πληροφορίες σχετικά με το που μπορούν αυτά να ληφθούν όσον αφορά:

10.3.1 κάθε πρότυπο που έχουν θεσπίσει ή σχεδιάζουν να θεσπίσουν, στο έδαφος του, τα όργανα της κεντρικής κυβέρνησης, τα όργανα τοπικής διοίκησης ή τα περιφερειακά όργανα με δραστηριότητα τυποποίησης, των οποίων είναι μέλη τα όργανα αυτά ή στα οποία συμμετέχουν· και

10.3.2 κάθε μέθοδο διαπίστωσης της συμμόρφωσης που υφίσταται ή προτείνεται, και την οποία εφαρμόζουν, στο έδαφος του τα μη κυβερνητικά όργανα ή οι περιφερειακοί οργανισμοί, των οποίων τα όργανα αυτά είναι μέλη ή στους οποίους συμμετέχουν·

10.3.3 την προσχώρηση και τη συμμετοχή των σχετικών μη κυβερνητικών οργάνων στο έδαφος του, σε διεθνείς και περιφερειακούς οργανισμούς τυποποίησης και σε συστήματα διαπίστωσης της συμμόρφωσης, καθώς και σε διμερείς και πολυμερείς διακανονισμούς εντός του πεδίου εφαρμογής της παρούσας συμφωνίας· οφείλουν επίσης να παρέχουν τις ενδεδειγμένες πληροφορίες σχετικά με τις διατάξεις αυτών των συστημάτων και των διακανονισμών.

10.4 Τα μέλη προβαίνουν στη λήψη των εύλογων μέτρων που έχουν στη διάθεσή τους, προκειμένου, όταν ζητούνται αντίγραφα των εγγράφων από τα λοιπά μέλη ή από τα ενδιαφερόμενα μέρη των λοιπών μελών, σύμφωνα με τις διατάξεις της παρούσας συμφωνίας, τα αντίγραφα αυτά να παρέχονται στους αιτούντες στην ίδια τιμή (εφόσον επιβάλλεται τιμή), εξαιρουμένου του πραγματικού κόστους παράδοσης, στην οποία αυτά παρέχονται και στους υπηκόους[1] του ενδιαφερομένου μέλους ή οποιουδήποτε άλλου μέλους.

10.5 Οι ανεπτυγμένες χώρες μέλη παρέχουν, εάν τους ζητηθεί από τα λοιπά μέλη, μεταφράσεις στην αγγλική, γαλλική ή ισπανική γλώσσα των εγγράφων που καλύπτονται από συγκεκριμένη γνωστοποίηση ή περίληψη των εγγράφων σε περίπτωση μεγάλου όγκου των.

10.6 Όταν η γραμματεία λαμβάνει γνωστοποιήσεις σύμφωνα με τις διατάξεις της παρούσας συμφωνίας, διαβιβάζει αντίγραφα αυτών σε όλα τα μέλη και στους ενδιαφερόμενους διεθνείς οργανισμούς τυποποίησης και διαπίστωση της συμμόρφωσης, και επισύρει την προσοχή των αναπτυσσομένων χωρών μελών σε κάθε γνωστοποίηση σχετικά με τα προϊόντα που παρουσιάζουν ιδιαίτερο ενδιαφέρον για αυτές.

10.7 Όταν κάποιο μέλος έχει καταλήξει σε συμφωνία με άλλη χώρα ή χώρες σε θέματα σχετικά με τεχνικούς κανονισμούς, πρότυπα ή μεθόδους διαπίστωσης της συμμόρφωσης που μπορεί να επηρεάσουν σημαντικά τις συναλλαγές,

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1 "Ως υπήκοοι" στην περίπτωση ξεχωριστού τελωνειακού εδάφους μέλους του ΠΟΕ, νοούνται τα πρόσωπα, φυσικά ή νομικά, που έχουν τόπο διαμονής ή πραγματική και ισχύουσα βιομηχανική ή εμπορική έδρα στο εν λόγω τελωνειακό έδαφος.

τουλάχιστον ένα από τα μέλη που αποτελεί συμβαλλόμενο μέρος της συμφωνίας γνωστοποιεί στα λοιπά μέλη, μέσω της γραμματείας, τα προϊόντα που καλύπτονται από τη συμφωνία περιλαμβανομένης συνοπτικής περιγραφής της συμφωνίας. Τα ενδιαφερόμενα μέλη ενθαρρύνονται να προβούν, μετά από αίτηση, σε διαβουλεύσεις με τα λοιπά μέλη προκειμένου να συνάψουν παρόμοιες συμφωνίες ή να ρυθμίσουν τη συμμετοχή τους σε τέτοιου είδους συμφωνίες.

10.8 Ουδεμία από τις διατάξεις της παρούσας συμφωνίας δεν είναι δυνατόν να ερμηνευθεί ότι επιβάλλει:

10.8.1 τη δημοσίευση των κειμένων σε άλλη γλώσσα από τη γλώσσα του μέλους·

10.8.2 την παροχή λεπτομερειών ή αντιγράφων των σχεδίων σε άλλη γλώσσα από τη γλώσσα του μέλους, με την επιφύλαξη των διατάξεων της παραγράφου 5, ή

10.8.3 την κοινοποίηση από τα μέλη, πληροφοριών των οποίων η γνωστοποίηση θα ήταν αντίθετη, κατά την άποψή τους, προς τα ουσιώδη συμφέροντα της ασφαλείας τους.

10.9 Οι γνωστοποιήσεις που απευθύνονται στη γραμματεία συντάσσονται στη γαλλική, αγγλική ή ισπανική γλώσσα.

10.10 Τα μέλη καθορίζουν μία και μοναδική αρχή της κεντρικής κυβέρνησης, η οποία είναι υπεύθυνη για την εφαρμογή σε εθνικό επίπεδο των διατάξεων σχετικά με διαδικασίες γνωστοποίησης δυνάμει της παρούσας συμφωνίας εκτός από αυτές που περιλαμβάνονται στο παράρτημα 3.

10.11 Εάν, εντούτοις, για νομικούς ή διοικητικούς λόγους η ευθύνη για τις διαδικασίες γνωστοποίησης κατανέμεται μεταξύ δύο ή περισσοτέρων αρχών της κεντρικής κυβέρνησης, το ενδιαφερόμενο μέλος παρέχει στα λοιπά μέλη πλήρεις και σαφείς πληροφορίες σχετικά με το πεδίο αρμοδιότητας κάθε μίας από αυτές τις αρχές.

Αρθρο 11

Τεχνική βοήθεια στα λοιπά μέλη

11.1 Κατόπιν υποβολής αιτήσεως, τα μέλη συμβουλεύουν τα λοιπά μέλη, και ιδίως τις αναπτυσσόμενες χώρες μέλη στο θέμα της εκπονήσεως τεχνικών κανονισμών.

11.2 Κατόπιν υποβολής αιτήσεως, τα μέλη συμβουλεύουν τα λοιπά μέλη, ιδίως τις αναπτυσσόμενες χώρες μέλη και τους παρέχουν τεχνική βοήθεια σύμφωνα με τον τρόπο και τους όρους που καθορίζονται με κοινή συμφωνία, όσον αφορά τη σύσταση εθνικών οργανισμών τυποποίησης και τη συμμετοχή τους σε εργασίες διεθνών οργανισμών τυποποίησης. Αυτά ενθαρρύνουν τους εθνικούς τους οργανισμούς με δραστηριότητα τυποποίησης να πράξουν το ίδιο.

11.3 Κατόπιν υποβολής αιτήσεως, τα μέλη λαμβάνουν όλα τα κατάλληλα μέτρα που έχουν στη διάθεσή τους, ούτως ώστε οι κανονιστικοί οργανισμοί στο έδαφός τους να συμβουλεύουν τα λοιπά μέλη, ιδίως τις αναπτυσσόμενες χώρες μέλη και να τους προσφέρουν την τεχνική τους βοήθεια, σύμφωνα με τις λεπτομέρειες και τους όρους που συμφωνούνται από κοινού, όσον αφορά:

11.3.1 τη σύσταση κανονιστικών οργανισμών, ή οργάνων διαπίστωσης της συμμόρφωσης προς τους τεχνικούς κανονισμούς·

11.3.2 τις μεθόδους που επιτρέπουν την πληρέστερη δυνατόν συμμόρφωση με τους τεχνικούς τους κανονισμούς.

11.4 Εάν υποβληθεί αίτηση, τα μέλη προβαίνουν στη λήψη εύλογων μέτρων που έχουν στη διάθεσή τους, για την παροχή συμβουλών στα λοιπά μέλη, ιδίως στις αναπτυσσόμενες χώρες μέλη, και την παροχή τεχνικής βοήθειας, σύμφωνα με τον τρόπο και τους όρους που καθορίζονται με κοινή συμφωνία, όσον αφορά τη σύσταση οργάνων διαπίστωσης της συμμόρφωσης προς τα πρότυπα που ισχύουν στο έδαφος του μέρους που υπέβαλε την αίτηση.

11.5 Εάν υποβληθεί αίτηση, τα μέλη συμβουλεύουν τα λοιπά μέλη, ιδίως τις αναπτυσσόμενες χώρες μέλη, και παρέχουν τεχνική βοήθεια, σύμφωνα με τον τρόπο και τους όρους που καθορίζονται με κοινή συμφωνία, όσον αφορά τα μέτρα που οι παραγωγοί τους θα πρέπει να λάβουν εάν επιθυμούν να συμμετάσχουν σε συστήματα διαπίστωσης της συμμόρφωσης που εφαρμόζονται από όργανα, κυβερνητικά ή μη, στο έδαφος του μέλους προς το οποίο απευθύνεται η αίτηση.

11.6 Εάν υποβληθεί αίτηση, τα μέλη που είναι μέλη διεθνών ή περιφερειακών συστημάτων διαπίστωσης της συμμόρφωσης ή συμμετέχουν σ' αυτά, συμβουλεύουν τα λοιπά μέλη, ιδίως τις αναπτυσσόμενες χώρες μέλη, και τους παρέχουν τεχνική βοήθεια, κατά τον τρόπο και τους όρους, που καθορίζονται με κοινή συμφωνία, όσον αφορά τη σύσταση των οργάνων και του νομικού πλαισίου, που θα καταστήσουν δυνατή την εκπλήρωση των υποχρεώσεων που συνεπάγεται η ιδιότης μέλους των συστημάτων αυτών ή η συμμετοχή σ' αυτά.

11.7 Εάν υποβληθεί αίτηση, τα μέλη ενθαρρύνουν τα όργανα διαπίστωσης της συμμόρφωσης στο έδαφος τους, εάν τα όργανα αυτά είναι μέλη διεθνών ή τοπικών συστημάτων διαπίστωσης της συμμόρφωσης ή συμμετέχουν σ' αυτά, να συμβουλεύουν τα λοιπά μέλη, ιδίως τις αναπτυσσόμενες χώρες μέλη, και οφείλουν να λαμβάνουν υπόψη τα αιτήματά τους για τεχνική βοήθεια όσον αφορά στη σύσταση οργάνων που καθιστούν δυνατή στους αρμοδίους οργανισμούς στο έδαφος τους να εκπληρούν τις υποχρεώσεις που περιλαμβάνει η ιδιότης μέλους των συστημάτων αυτών ή η συμμετοχή στα συστήματα αυτά.

11.8 Οταν τα μέλη παρέχουν συμβουλές και τεχνική βοήθεια στα λοιπά μέλη βάσει των παραγράφων 1 έως 7, τα μέλη δίδουν προτεραιότητα στις ανάγκες των λιγότερο ανεπτυγμένων χωρών μελών.

Αρθρο 12

Ειδική και διακριτική μεταχείριση υπέρ των αναπτυσσομένων χωρών μελών

12.1 Τα μέλη χορηγούν στις αναπτυσσόμενες χώρες μέλη που είναι μέλη της παρούσας συμφωνίας διακριτική και περισσότερο ευνοϊκή μεταχείριση με την εφαρμογή των ακολούθων διατάξεων και των αναλόγων διατάξεων των λοιπών άρθρων της παρούσας συμφωνίας.

12.2 Τα μέλη δίδουν ιδιαίτερη προσοχή στις διατάξεις της παρούσας συμφωνίας που αναφέρονται σε δικαιώματα και υποχρεώσεις των αναπτυσσομένων χωρών μελών και λαμβάνουν υπόψη τις ειδικές αναπτυξιακές, χρηματοδοτικές και εμπορικές ανάγκες των χωρών αυτών,

κατά τή θέση σε εφαρμογή της παρούσας συμφωνίας, τόσο σε εθνικό επίπεδο όσο και κατά την εφαρμογή των θεσμικών διατάξεων που προβλέπονται σ' αυτή.

12.3 Κατά την εκπόνηση και εφαρμογή τεχνικών κανονισμών, προτύπων και μεθόδων διαπίστωσης της συμμόρφωσης, τα μέλη λαμβάνουν υπόψη τις ειδικές αναπτυξιακές, χρηματοδοτικές και εμπορικές ανάγκες των αναπτυσσομένων χωρών μελών, προκειμένου οι τεχνικοί αυτοί κανονισμοί, τα πρότυπα και οι μέθοδοι διαπίστωσης της συμμόρφωσης να μη δημιουργήσουν περιττά εμπόδια στις εξαγωγές των αναπτυσσομένων χωρών μελών.

12.4 Τα μέλη αναγνωρίζουν ότι, αν και είναι δυνατόν να υπάρχουν διεθνή πρότυπα, οδηγίες ή συστάσεις, υπό τις ιδιάζουσες τεχνολογικές και κοινωνικοοικονομικές συνθήκες των αναπτυσσομένων χωρών μελών, οι τελευταίες αυτές θεσπίζουν ορισμένους τεχνικούς κανονισμούς, πρότυπα ή μεθόδους διαπίστωσης της συμμόρφωσης με σκοπό να συμβιβάσουν τις εγχώριες τεχνολογίες και τις μεθόδους και διαδικασίες παραγωγής με τις αναπτυξιακές τους ανάγκες. Τα μέλη αναγνωρίζουν κατά συνέπεια, ότι δεν πρέπει να αναμένεται από τις αναπτυσσόμενες χώρες μέλη να εφαρμόσουν, ως βάση των τεχνικών τους κανονισμών και των προτύπων τους, περιλαμβανομένων και των μεθόδων δοκιμής, διεθνή πρότυπα που δεν είναι κατάλληλα για τις αναπτυξιακές, χρηματοδοτικές και εμπορικές τους ανάγκες.

12.5 Τα μέλη προβαίνουν στη λήψη των εύλογων μέτρων που έχουν στη διάθεσή τους, προκειμένου η διάρθρωση και η λειτουργία των διεθνών οργανισμών τυποποίησης και των διεθνών συστημάτων διαπίστωσης της συμμόρφωσης να είναι φύσεως τέτοιας, ώστε να διευκολύνεται η ενεργή και αντιπροσωπευτική συμμετοχή των αρμοδίων οργάνων όλων των μελών, λαμβανομένων υπόψη των ειδικών προβλημάτων των αναπτυσσομένων χωρών μελών.

12.6 Τα μέλη προβαίνουν στη λήψη όλων των εύλογων μέτρων, που έχουν στη διάθεσή τους, προκειμένου, μετά από αίτηση των αναπτυσσομένων χωρών μελών, οι διεθνείς οργανισμοί τυποποίησης, να εξετάζουν τη δυνατότητα εκπονήσεως, ει δυνατόν, διεθνών προτύπων όσον αφορά τα προϊόντα που παρουσιάζουν ιδιαίτερο ενδιαφέρον για τις χώρες αυτές.

12.7 Σύμφωνα με τις διατάξεις του άρθρου 11, τα μέλη παρέχουν τεχνική βοήθεια στις αναπτυσσόμενες χώρες μέλη, προκειμένου η εκπόνηση και εφαρμογή των τεχνικών κανονισμών, των προτύπων και των μεθόδων διαπίστωσης της συμμόρφωσης να μη δημιουργούν περιττά εμπόδια στην επέκταση και διαφοροποίηση των εξαγωγών των χωρών αυτών. Για να καθορισθούν οι λεπτομέρειες και οι όροι της τεχνικής αυτής βοήθειας, λαμβάνεται υπόψη ο βαθμός αναπτύξεως των αιτούντων μελών και ιδίως των λιγότερο ανεπτυγμένων χωρών μελών.

12.8 Αναγνωρίζεται ότι οι αναπτυσσόμενες χώρες μέλη δύνανται να προσκρούσουν σε ειδικά προβλήματα, περιλαμβανομένων των θεσμικών προβλημάτων και των προβλημάτων υποδομής, όσον αφορά την εκπόνηση και εφαρμογή τεχνικών κανονισμών, προτύπων και μεθόδων διαπίστωσης της συμμόρφωσης. Αναγνωρίζεται, επίσης, ότι οι ειδικές αναπτυξιακές και εμπορικές τους ανάγκες, όπως και ο βαθμός της τεχνολογικής τους ανάπτυξης, δύνανται να μειώσουν την ικανότητά τους να ανταποκριθούν πλήρως στις υποχρεώσεις τους που πηγάζουν από την παρούσα συμφωνία. Τα μέλη, λοιπόν, λαμβάνουν πλήρως υπόψη το γεγονός αυτό. Κατά συνέπεια, προκειμένου οι αναπτυσσόμενες χώρες μέλη να είναι σε θέση να συμμορφωθούν με τις διατάξεις της παρούσας συμφωνίας η επιτροπή τεχνικών εμποδίων στο εμπόριο που προβλέπεται στο άρθρο 13 (καλούμενη

στην παρούσα συμφωνία η "επιτροπή") εξουσιοδοτείται να χορηγήσει, μετά από αίτηση, ειδικές εξαιρέσεις, περιορισμένες χρονικά, για το σύνολο ή μέρος των υποχρεώσεων που πηγάζουν από τη συμφωνία. Οταν εξετάζει τις αιτήσεις αυτές, η επιτροπή λαμβάνει υπόψη τα ειδικά προβλήματα που αναφέρονται στην εκπόνηση και εφαρμογή των τεχνικών κανονισμών, των προτύπων και των μεθόδων διαπίστωσης της συμμόρφωσης, και τις ειδικές αναπτυξιακές και εμπορικές ανάγκες της αναπτυσσόμενης χώρας μέλους, όπως και το βαθμό της τεχνολογικής της ανάπτυξης, που είναι δυνατόν να μειώσουν την ικανότητά της εν λόγω χώρας να ανταποκριθεί πλήρως στις υποχρεώσεις της βάσει της παρούσας συμφωνίας. Η επιτροπή λαμβάνει υπόψη, ιδίως, τα ειδικά προβλήματα των λιγότερο ανεπτυγμένων χωρών μελών.

12.9 Κατά τη διάρκεια των διαβουλεύσεων, οι ανεπτυγμένες χώρες μέλη έχουν πάντοτε υπόψη τις ιδιαίτερες δυσχέρειες που αντιμετωπίζουν οι αναπτυσσόμενες χώρες κατά την εκπόνηση και εφαρμογή των προτύπων, των τεχνικών κανονισμών και των μεθόδων διαπίστωσης της συμμόρφωσης. Εξάλλου, επιθυμώντας να βοηθήσουν τις αναπτυσσόμενες χώρες μέλη στις προσπάθειές τους στο αντικείμενο αυτό, οι ανεπτυγμένες χώρες μέλη λαμβάνουν υπόψη τις ειδικές χρηματοδοτικές, εμπορικές και αναπτυξιακές ανάγκες των πρώτων.

12.10 Η επιτροπή εξετάζει περιοδικά την ειδική και διακριτική μεταχείριση που προβλέπεται από την παρούσα συμφωνία και που παραχωρείται στις αναπτυσσόμενες χώρες μέλη σε εθνικό και διεθνές επίπεδο.

ΟΡΓΑΝΑ, ΔΙΑΒΟΥΛΕΥΣΕΙΣ ΚΑΙ ΕΠΙΛΥΣΗ ΔΙΑΦΟΡΩΝ

Αρθρο 13

Επιτροπή τεχνικών εμποδίων στο εμπόριο

13.1 Συστήνεται επιτροπή τεχνικών εμποδίων στο εμπόριο που αποτελείται από εκπροσώπους κάθε μέλους. Η επιτροπή εκλέγει η ίδια τον πρόεδρό της, και συνέρχεται, όταν είναι αναγκαίο, αλλά τουλάχιστον μια φορά το χρόνο, για να δοθεί η δυνατότητα στα μέλη να διενεργούν διαβουλεύσεις για κάθε θέμα που αφορά την εφαρμογή της συμφωνίας ή την επίτευξη των σκοπών της και ασκεί τις αρμοδιότητες που της έχουν ανατεθεί βάσει της παρούσας συμφωνίας ή από τα μέλη.

13.2 Η επιτροπή συστήνει ομάδες εργασίας ή λοιπά όργανα, κατά περίπτωση, που ασκούν τις αρμοδιότητες που είναι δυνατόν να τους ανατεθούν από την επιτροπή, σύμφωνα με τις σχετικές διατάξεις της παρούσας συμφωνίας.

13.3 Θεωρείται δεδομένο ότι πρέπει να αποφευχθεί περιττή επανάληψη των εργασιών που έχουν ανατεθεί αφενός, βάσει της παρούσας συμφωνίας, και, αφετέρου, από τις κυβερνήσεις σε άλλα τεχνικά όργανα. Η επιτροπή εξετάζει το πρόβλημα αυτό προκειμένου να μειώσει στο ελάχιστο την εν λόγω επανάληψη.

Άρθρο 14

Διαβουλεύσεις και επίλυση διαφορών

14.1 Οι διαβουλεύσεις και η επίλυση διαφορών σε σχέση με οποιοδήποτε θέμα που επηρεάζει την εφαρμογή της παρούσας συμφωνίας πραγματοποιούνται στο πλαίσιο του οργάνου επίλυσης διαφορών και τηρούν, κατ'αναλογία, τις διατάξεις των άρθρων XXII και XXIII της GATT του 1994, όπως έχουν διαμορφώθηκαν και εφαρμόζονται από το μνημόνιο συμφωνίας για την επίλυση διαφορών.

14.2 Μετά από αίτηση μέρους της διαφοράς, ή με δική της πρωτοβουλία, η ειδική ομάδα (πάνελ) δύναται να συστήσει ομάδα εμπειρογνωμόνων η οποία βοηθά σε θέματα τεχνικής φύσεως που απαιτούν λεπτομερή εξέταση από εμπειρογνώμονες.

14.3 Οι ομάδες των τεχνικών εμπειρογνωμόνων διέπονται από τις διαδικασίες που προβλέπονται στο παράρτημα 2.

14.4 Είναι δυνατόν να γίνει επίκληση των διατάξεων περί επίλυσης των διαφορών που αναφέρονται ανωτέρω στις περιπτώσεις που ένα μέλος κρίνει ότι ένα άλλο μέλος δεν έχει επιτύχει ικανοποιητικά αποτελέσματα βάσει των άρθρων 3, 4, 7, 8 και 9 και ότι τα εμπορικά του συμφέροντα θίγονται καίρια. Προς το σκοπό αυτό, τα αποτελέσματα αυτά πρέπει να είναι ισοδύναμα με εκείνα που θα προέκυπταν εάν το εν λόγω όργανο αποτελούσε μέλος.

ΤΕΛΙΚΕΣ ΔΙΑΤΑΞΕΙΣ

Άρθρο 15

Τελικές διατάξεις

Επιφυλάξεις

15.1 Δεν είναι δυνατή η διατύπωση επιφυλάξεων όσον αφορά τις διατάξεις της παρούσας συμφωνίας χωρίς τη συγκατάθεση των λοιπών μελών.

Εξέταση

15.2 Το συντομότερο δυνατό μετά την ημερομηνία κατά την οποία η παρούσα συμφωνία αρχίζει να ισχύει για ένα μέλος, το μέλος αυτό πληροφορεί την επιτροπή για τα μέτρα που ισχύουν ή που θα λάβει για να εξασφαλίσει την εφαρμογή και τη διαχείριση της παρούσας συμφωνίας. Το μέλος γνωστοποιεί επίσης στην επιτροπή κάθε μεταγενέστερη τροποποίηση των μέτρων.

15.3 Η επιτροπή προβαίνει κάθε χρόνο σε εξέταση της εφαρμογής και της λειτουργίας της παρούσας συμφωνίας, λαμβάνοντας υπόψη τους αντικειμενικούς της στόχους.

15.4 Το αργότερο κατά την εκπνοή του τρίτου έτους από της θέσης σε ισχύ της παρούσας συμφωνίας και εν συνεχεία στο τέλος κάθε περιόδου 3 ετών, η επιτροπή εξετάζει τη λειτουργία και την εφαρμογή της συμφωνίας αυτής, περιλαμβανομένων και των διατάξεων περί διαφάνειας, προκειμένου να προτείνει την προσαρμογή των δικαιωμάτων των υποχρεώσεων που πηγάζουν απ' αυτή, εάν αυτό είναι αναγκαίο, για να εξασφαλισθεί το αμοιβαίο οικονομικό πλεονέκτημα και η ισορροπία των δικαιωμάτων και υποχρεώσεων αυτών, με την επιφύλαξη των διατάξεων του άρθρου 12. Λαμβανομένης κυρίως υπόψη της πείρας από την εφαρμογή της συμφωνίας, η επιτροπή, μεταξύ άλλων, προτείνει, όταν χρειάζεται, τροποποιήσεις του κειμένου της συμφωνίας προς το συμβούλιο εμπορευματικών συναλλαγών.

Παραρτήματα

15.5 Τα παραρτήματα της παρούσας συμφωνίας αποτελούν αναπόσπαστο μέρος αυτής.

ΠΑΡΑΡΤΗΜΑ 1

**ΟΡΟΙ ΚΑΙ ΟΡΙΣΜΟΙ
ΓΙΑ ΤΟΥΣ ΣΚΟΠΟΥΣ ΤΗΣ ΠΑΡΟΥΣΑΣ ΣΥΜΦΩΝΙΑΣ**

Οι όροι που παρατίθενται στην έκτη έκδοση του οδηγού 2 του ISO/IEC του 1991 (Γενικοί όροι και ορισμοί σχετικά με την τυποποίηση και τις συναφείς δραστηριότητες), έχουν, όταν χρησιμοποιούνται στην παρούσα συμφωνία, την ίδια έννοια με αυτή η οποία δίδεται στους ορισμούς του εν λόγω οδηγού λαμβανομένου υπόψη ότι υπηρεσίες εξαιρούνται από το πεδίο εφαρμογής της παρούσας συμφωνίας.

Για τους σκοπούς της παρούσας συμφωνίας, εντούτοις, ισχύουν οι ακόλουθοι ορισμοί :

1. Τεχνικός κανονισμός

Έγγραφο το οποίο καθορίζει τα χαρακτηριστικά των προϊόντων ή τις σχετικές διεργασίες και μεθόδους παραγωγής, περιλαμβανομένων των ισχυουσών διοικητικών διατάξεων, των οποίων η τήρηση είναι υποχρεωτική. Δυνατόν επίσης να περιλαμβάνει ή να αφορά αποκλειστικά προδιαγραφές ορολογίας, συμβόλων, συσκευασίας, σήμανσης ή επικόλλησης ετικετών οι οποίες ισχύουν για ένα προϊόν, διεργασία ή μέθοδο παραγωγής.

Επεξηγηματική σημείωση

Ο ορισμός του οδηγού 2 ISO/IEC δεν είναι ανεξάρτητος αλλά βασίζεται στο σύστημα, το αποκαλούμενο "παίγνιο κατασκευών".

2. Πρότυπο

Έγγραφο εγκεκριμένο από αναγνωρισμένο όργανο, το οποίο προβλέπει, για συνήθη και επαναλαμβανόμενη χρήση, κανόνες, κατευθυντήριες γραμμές ή χαρακτηριστικά προϊόντων ή σχετικές διεργασίες και μεθόδους παραγωγής, των οποίων η τήρηση δεν είναι υποχρεωτική. Δυνατόν επίσης να περιλαμβάνει ή να αφορά αποκλειστικά προδιαγραφές ορολογίας, συμβόλων, συσκευασίας, σήμανσης ή επικόλλησης ετικετών οι οποίες ισχύουν για ένα προϊόν, διεργασία ή μέθοδο παραγωγής.

Επεξηγηματική σημείωση

οι όροι, όπως περιγράφονται στον οδηγό 2 του ISO/IEC, καλύπτουν προϊόντα, διεργασίες και υπηρεσίες. Η παρούσα συμφωνία αφορά μόνο τεχνικούς κανονισμούς, πρότυπα και μεθόδους διαπίστωσης της συμμόρφωσης σε σχέση με προϊόντα ή διεργασίες και μεθόδους παραγωγής. Τα πρότυπα, όπως ορίζονται από τον οδηγό 2 του ISO/IEC, μπορεί να είναι υποχρεωτικά ή προαιρετικά. Για τους σκοπούς της παρούσας συμφωνίας τα πρότυπα ορίζονται ως προαιρετικά και οι τεχνικοί κανονισμοί ως υποχρεωτικά έγγραφα. Τα πρότυπα που εκπονούνται από την διεθνή κοινότητα τυποποίησης βασίζονται στη συναίνεση. Η παρούσα συμφωνία καλύπτει επίσης έγγραφα τα οποία δεν βασίζονται σε συναίνεση.

3. Μέθοδοι διαπίστωσης της συμμόρφωσης

Κάθε μέθοδος που χρησιμοποιείται, άμεσα ή έμμεσα, για την εξακρίβωση της τήρησης των σχετικών προδιαγραφών τεχνικών κανονισμών ή προτύπων.

Επεξηγηματική σημείωση

οι μέθοδοι διαπίστωσης της συμμόρφωσης περιλαμβάνουν, μεταξύ άλλων, μεθόδους δειγματοληψίας, δοκιμής και επιθεώρησης, αξιολόγησης, επαλήθευσης και εξασφάλισης της συμμόρφωσης, καταχώρησης, διαπίστευσης και έγκρισης καθώς και συνδυασμούς αυτών.

4. Διεθνής οργανισμός ή σύστημα

οργανισμός ή σύστημα, η προσχώρηση στο οποίο είναι ανοικτή για τους αρμόδιους οργανισμούς τουλάχιστον όλων των μελών.

5. Περιφερειακός οργανισμός ή σύστημα

οργανισμός ή σύστημα, στο οποίο δύνανται να προσχωρήσουν τα αρμόδια όργανα μόνο μερικών μελών.

6. Όργανο κεντρικής κυβέρνησης

Η κεντρική κυβέρνηση, τα υπουργεία της ή οι υπηρεσίες της και οποιοδήποτε άλλο όργανο που υπόκειται στον έλεγχο της κεντρικής κυβέρνησης για ό,τι αφορά την εν λόγω δραστηριότητα.

Επεξηγηματική σημείωση

Στην περίπτωση των Ευρωπαϊκών Κοινοτήτων εφαρμόζονται οι διατάξεις που διέπουν τα όργανα της κεντρικής κυβέρνησης. Εντούτοις, οι περιφερειακοί οργανισμοί ή τα συστήματα διαπίστωσης της συμμόρφωσης δύνανται να εγκρίνονται στις Ευρωπαϊκές Κοινότητες, οπότε υπάγονται στις διατάξεις της παρούσας συμφωνίας τις σχετικές με τους περιφερειακούς οργανισμούς ή τα συστήματα διαπίστωσης της συμμόρφωσης.

7. Όργανο τοπικής διοίκησης

Δημόσιες αρχές, εκτός της κεντρικής κυβέρνησης (π.χ. οι αρχές των κρατών, επαρχιών, Länder, καντονίων, κοινοτήτων κ.λπ) τα υπουργεία τους ή οι υπηρεσίες τους ή οποιοδήποτε όργανο που υπάγεται στον έλεγχο των δημοσίων αυτών αρχών για ό,τι αφορά την εν λόγω δραστηριότητα.

8. Μη κυβερνητικό όργανο

Όργανο άλλο από όργανο κεντρικής κυβέρνησης ή όργανο τοπικής διοίκησης συμπεριλαμβανομένου και του μη κυβερνητικού οργάνου το οποίο σύμφωνα με τον νόμο έχει αρμοδιότητα να επιβλέπει την τήρηση τεχνικού κανονισμού.

ΠΑΡΑΡΤΗΜΑ 2

ΟΜΑΔΕΣ ΤΕΧΝΙΚΩΝ ΕΜΠΕΙΡΟΓΝΩΜΟΝΩΝ

Οι ακόλουθες διαδικασίες εφαρμόζονται στις ομάδες τεχνικών εμπειρογνωμόνων που συνιστώνται σύμφωνα με τις διατάξεις του άρθρου 14.

1. Οι ομάδες τεχνικών εμπειρογνωμόνων υπόκεινται στη δικαιοδοσία των ειδικών ομάδων. Η εντολή καθώς και οι λεπτομερείς μέθοδοι εργασίας αποφασίζονται από την ειδική ομάδα. Οι ομάδες τεχνικών εμπειρογνωμόνων αναφέρονται στην ειδική ομάδα.

2. Η συμμετοχή στις εργασίες ομάδων τεχνικών εμπειρογνωμόνων περιορίζεται σε πρόσωπα τα οποία έχουν αναγνωρισμένες αρμοδιότητες και επαγγελματική πείρα στο συγκεκριμένο τομέα.

3. Κανένας υπήκοος χωρών που είναι διάδικο μέρος σε διαφορά δεν δύναται να είναι μέλος ομάδας τεχνικών εμπειρογνωμόνων χωρίς την από κοινού συμφωνία των μερών της διαφοράς, εκτός από εξαιρετικές περιστάσεις κατά τις οποίες η ειδική ομάδα θεωρεί ότι η ανάγκη για ειδικές επιστημονικές γνώσεις δεν μπορεί να καλυφθεί με άλλον τρόπο. Τα κυβερνητικά στελέχη των μερών της διαφοράς δεν δύνανται να είναι μέλη ομάδας τεχνικών εμπειρογνωμόνων. Τα μέλη των ομάδων τεχνικών εμπειρογνωμόνων συμμετέχουν σε προσωπική βάση και όχι υπό την ιδιότητα εκπροσώπου κυβερνήσεως ή οργανισμού. Οι κυβερνήσεις και οι οργανισμοί δεν τους δίδουν εντολές, όσον αφορά τα θέματα των οποίων επιλαμβάνεται η ομάδα τεχνικών εμπειρογνωμόνων.

4. Οι ομάδες τεχνικών εμπειρογνωμόνων δύνανται να συμβουλεύονται και να αναζητούν πληροφορίες και τεχνικές συμβουλές σε οποιαδήποτε πηγή θεωρούν κατάλληλη. Πριν αναζητήσουν τέτοιου είδους πληροφορίες ή συμβουλές σε πηγή της δικαιοδοσίας ενός μέλους, οι ομάδες τεχνικών εμπειρογνωμόνων ενημερώνουν την κυβέρνηση του εν λόγω μέλους. Κάθε μέλος ανταποκρίνεται αμέσως και πλήρως σε κάθε αίτηση που υποβάλλεται από ομάδα τεχνικών εμπειρογνωμόνων για πληροφορίες τις οποίες η ομάδα τεχνικών εμπειρογνωμόνων θεωρεί αναγκαίες και κατάλληλες.

5. Τα μέρη διαφοράς έχουν πρόσβαση σε οποιαδήποτε σχετική πληροφορία που έχει παρασχεθεί σε ομάδα τεχνικών εμπειρογνωμόνων, εκτός αν είναι εμπιστευτικής φύσεως. Οι πληροφορίες εμπιστευτικού χαρακτήρα που έχουν παρασχεθεί σε ομάδα τεχνικών εμπειρογνωμόνων δεν ανακοινώνονται χωρίς τη ρητή έγκριση της κυβέρνησης, του οργανισμού ή του προσώπου που τις παρέσχε. Εφόσον οι πληροφορίες αυτές ζητούνται από ομάδα τεχνικών εμπειρογνωμόνων, αλλά δεν εγκρίνεται η ανακοίνωσή τους, τότε παρέχεται περίληψη αυτών μη εμπιστευτικού χαρακτήρα, από την κυβέρνηση, τον οργανισμό ή το πρόσωπο που τις παρέσχε.

6. Η ομάδα τεχνικών εμπειρογνωμόνων υποβάλλει σχέδιο έκθεσης στα ενδιαφερόμενα μέλη προκειμένου να λάβει τα σχόλιά τους, και να τα λάβει υπόψη της, κατά περίπτωση, στην τελική έκθεση, η οποία διαβιβάζεται επίσης στα ενδιαφερόμενα μέλη όταν υποβληθεί στην ειδική ομάδα.

ΠΑΡΑΡΤΗΜΑ 3

ΚΩΔΙΚΑΣ ΔΕΟΝΤΟΛΟΓΙΑΣ ΓΙΑ ΤΗΝ ΕΚΠΟΝΗΣΗ, ΕΚΔΟΣΗ ΚΑΙ ΕΦΑΡΜΟΓΗ ΤΩΝ ΠΡΟΤΥΠΩΝ.

Γενικές διατάξεις

Α. Για τους σκοπούς του παρόντος κώδικα ισχύουν οι ορισμοί του παραρτήματος 1 της παρούσας συμφωνίας.

Β. Η αποδοχή του παρόντος κώδικα είναι ελεύθερη για κάθε όργανο με δραστηριότητα τυποποίησης στο έδαφος μέλους του ΠΟΕ, ανεξάρτητα από το αν πρόκειται για όργανο κεντρικής κυβέρνησης, όργανο τοπικής διοίκησης, ή μη κυβερνητικό όργανο· για όλα τα κυβερνητικά περιφερειακά όργανα με δραστηριότητα τυποποίησης, των οποίων ένα ή περισσότερα μέλη αποτελούν μέλη του ΠΟΕ· και για όλα τα μη κυβερνητικά περιφερειακά όργανα με δραστηριότητα τυποποίησης, των οποίων ένα ή περισσότερα μέλη εδρεύουν στην επικράτεια ενός μέλους του ΠΟΕ (αναφέρονται στον παρόντα κώδικα συνολικά ως "όργανα με δραστηριότητα τυποποίησης" και μεμονωμένα ως "το όργανο με δραστηριότητα τυποποίησης").

Γ. Τα όργανα με δραστηριότητα τυποποίησης αποδέχονται ή απορρίπτουν τον παρόντα κώδικα γνωστοποιούν το γεγονός στο κέντρο πληροφοριών του Διεθνούς Οργανισμού Τυποποίησης ISO/IEC στη Γενεύη. Η γνωστοποίηση περιλαμβάνει την επωνυμία και τη διεύθυνση του σχετικού οργάνου καθώς και το πεδίο εφαρμογής των τρεχουσών και αναμενομένων δραστηριοτήτων τυποποίησης. Η γνωστοποίηση είναι δυνατόν να αποστέλλεται απευθείας στο κέντρο πληροφοριών ISO/IEC, ή μέσω του εθνικού οργανισμού μέλους του ISO/IEC ή, κατά προτίμηση, μέσω του αρμόδιου εθνικού μέλους ή διεθνούς συνδρομητή του δικτύου ISONET κατά περίπτωση.

ΔΙΑΤΑΞΕΙΣ ΕΠΙ ΤΗΣ ΟΥΣΙΑΣ

Δ. Όσον αφορά τα πρότυπα, το όργανο με δραστηριότητα τυποποίησης παρέχει στα προϊόντα που κατάγονται από το έδαφος των λοιπών μελών του ΠΟΕ μεταχείριση όχι λιγότερο ευνοϊκή από αυτή που παρέχει σε ομοειδή προϊόντα εθνικής καταγωγής και σε ομοειδή προϊόντα που κατάγονται από οποιαδήποτε άλλη χώρα.

Ε. Το όργανο με δραστηριότητα τυποποίησης εξασφαλίζει ότι τα πρότυπα δεν εκπονούνται, εκδίδονται ή εφαρμόζονται με σκοπό ή με αποτέλεσμα να δημιουργήσουν περιττά εμπόδια στο διεθνές εμπόριο.

ΣΤ. Όταν υπάρχουν διεθνή πρότυπα ή επίκειται η τελική τους διαμόρφωση, το όργανο με δραστηριότητα τυποποίησης χρησιμοποιεί τα διεθνή αυτά πρότυπα ή τα βασικά στοιχεία τους, ως βάση για τα πρότυπα που εκπονεί, εκτός των περιπτώσεων που τα διεθνή αυτά πρότυπα ή τα στοιχεία αυτών είναι αναποτελεσματικά ή ακατάλληλα, παραδείγματος χάριν λόγω θεμελιωδών κλιματικών ή γεωγραφικών παραγόντων ή βασικών τεχνολογικών προβλημάτων.

Ζ. Προκειμένου να εναρμονίσει τα πρότυπα μεταξύ τους κατά το δυνατόν ευρύτερα, το όργανο με δραστηριότητα τυποποίησης συμμετέχει με τον κατάλληλο τρόπο, πλήρως, εντός των ορίων των δυνατοτήτων του στην εκπόνηση, από τους αρμόδιους διεθνείς οργανισμούς τυποποίησης, των διεθνών προτύπων που αναφέρονται σε προϊόντα για τα οποία έχει θεσπίσει ή προβλέπει να θεσπίσει τεχνικούς κανονισμούς. Όσον αφορά τα όργανα με

δραστηριότητα τυποποίησης στο έδαφος ενός μέλους, η συμμετοχή σε συγκεκριμένη διεθνή δραστηριότητα τυποποίησης πραγματοποιείται, όταν είναι δυνατόν, μέσω αντιπροσωπείας όλων των οργάνων με δραστηριότητα τυποποίησης στο έδαφος του που έχουν εγκρίνει, ή αναμένεται να εγκρίνουν, πρότυπα στον τομέα τον οποίο αφορά η διεθνής δραστηριότητα τυποποίησης.

Η. Το όργανο με δραστηριότητα τυποποίησης στο έδαφος ενός μέλους καταβάλλει κάθε προσπάθεια για να αποφευχθεί η επανάληψη ή η αλληλεπικάλυψη με τις εργασίες άλλων οργάνων με δραστηριότητα τυποποίησης της εθνικής επικράτειας ή με τις εργασίες αρμοδίων διεθνών ή περιφερειακών οργανισμών τυποποίησης. Καταβάλλουν επίσης κάθε προσπάθεια για να επιτευχθεί εθνική συναίνεση για τα πρότυπα που εκπονούν. Παρομοίως το περιφερειακό όργανο με δραστηριότητα τυποποίησης καταβάλλει κάθε προσπάθεια για να αποφευχθεί η επανάληψη, ή η αλληλεπικάλυψη με τις εργασίες αρμοδίων διεθνών οργανισμών τυποποίησης.

Θ. Κάθε φορά που αυτό θεωρείται αρμόζον, το όργανο με δραστηριότητα τυποποίησης καθορίζει τα πρότυπα βάσει των προδιαγραφών απόδοσης του προϊόντος, μάλλον, παρά βάσει της μορφής του ή των περιγραφικών χαρακτηριστικών του.

Ι. Κάθε εξάμηνο τουλάχιστον, το όργανο με δραστηριότητα τυποποίησης δημοσιεύει πρόγραμμα εργασιών που περιλαμβάνει την επωνυμία του και τη διεύθυνσή του, τα πρότυπα που εκπονεί τη στιγμή εκείνη και τα πρότυπα τα οποία έχει εκδώσει την προηγούμενη περίοδο. Ένα πρότυπο θεωρείται υπό εκπόνηση από τη στιγμή που έχει ληφθεί απόφαση για την εκπόνησή του μέχρι τη στιγμή που θα εκδοθεί. Οι τίτλοι συγκεκριμένων σχεδίων προτύπων παρέχονται, μετά από αίτηση, στην αγγλική, γαλλική ή ισπανική γλώσσα. Δημοσιεύεται ανακοίνωση σχετικά με την ύπαρξη του προγράμματος εργασιών σε εθνικό ή, κατά πάσα πιθανότητα, περιφερειακό έντυπο για τις δραστηριότητες τυποποίησης.

Το πρόγραμμα εργασιών αναφέρει για κάθε πρότυπο, σύμφωνα με όλους τους κανόνες ISONET, την κατάταξη σχετικά με το αντικείμενο, το στάδιο όπου βρίσκεται η εκπόνηση του προτύπου, και τα στοιχεία διεθνών προτύπων που έχουν ληφθεί ως βάση. Το όργανο με δραστηριότητα τυποποίησης γνωστοποιεί, όχι αργότερα από τη στιγμή της δημοσίευσης του προγράμματος εργασιών, την ύπαρξή του στο κέντρο πληροφόρησης ISO/IEC στη Γενεύη.

Η γνωστοποίηση περιλαμβάνει την επωνυμία και τη διεύθυνση του οργάνου με δραστηριότητα τυποποίησης, το όνομα και το τεύχος της έκδοσης στο οποίο δημοσιεύεται το πρόγραμμα εργασιών, την περίοδο που καλύπτει το πρόγραμμα εργασιών, την τιμή του (αν υπάρχει), καθώς και τον τρόπο και τον τόπο που μπορεί να βρεθεί. Η γνωστοποίηση είναι δυνατόν να αποσταλεί απευθείας στο κέντρο πληροφόρησης ISO/IEC, κατά προτίμηση, μέσω του αρμοδίου εθνικού οργανισμού μέλους ή διεθνούς οργανισμού συνδρομητού του ISONET, κατά περίπτωση.

ΙΑ. Ο εθνικός οργανισμός μέλος του ISO/IEC προβαίνει σε κάθε αναγκαία ενέργεια, ώστε να γίνει μέλος του ISONET ή να ορίσει άλλο όργανο για να γίνει μέλος, καθώς και για να αποκτήσει το καλύτερο καθεστώς μέλους του ISONET. Τα λοιπά όργανα με δραστηριότητα τυποποίησης προβαίνουν σε κάθε απαραίτητη ενέργεια ώστε να συνδεθούν με το μέλος του ISONET.

ΙΒ. Πριν από τη θέσπιση ενός προτύπου, το όργανο με δραστηριότητα τυποποίησης χορηγεί προθεσμία τουλάχιστον εξήντα ημερών για την υποβολή των σχολίων επί του σχεδίου του προτύπου από τα ενδιαφερόμενα μέρη εντός της επικράτειας του μέλους του ΠΟΕ. Η εν λόγω προθεσμία δύναται, εντούτοις, να μειωθεί σε περιπτώσεις όπου προκύπτουν ή υπάρχει κίνδυνος να προκύψουν επείγοντα προβλήματα ασφάλειας, υγείας ή περιβάλλοντος. Το όργανο με δραστηριότητα τυποποίησης δημοσιεύει, όχι αργότερα από την αρχή της περιόδου υποβολής των σχολίων, ανακοίνωση σχετικά με την περίοδο της υποβολής σχολίων στη δημοσίευση που αναφέρεται στην παράγραφο Ι. Η εν λόγω ανακοίνωση περιλαμβάνει, στον βαθμό του εφικτού, την περίπτωση κατά την οποία το σχέδιο του προτύπου παρεκκλίνει από σχετικά διεθνή πρότυπα.

ΙΓ. Μετά από αίτηση ενός ενδιαφερομένου μέρους εντός της επικράτειας ενός μέλους του ΠΟΕ, το όργανο με δραστηριότητα τυποποίησης παρέχει αμέσως, ή κανονίζει να παρασχεθεί, αντίγραφο του σχεδίου προτύπου το οποίο έχει υποβάλει για σχόλια. Τυχόν αντίτιμο που χρεώνεται για την υπηρεσία αυτή είναι, εκτός από το πραγματικό κόστος παράδοσης, το ίδιο για μέρη του εξωτερικού και του εσωτερικού.

ΙΔ. Το όργανο με δραστηριότητα τυποποίησης λαμβάνει υπόψη, κατά την περαιτέρω επεξεργασία του προτύπου, τα σχόλια που παρέλαβε κατά τη διάρκεια της περιόδου υποβολής σχολίων. Στα σχόλια που έχουν παραληφθεί μέσω των οργάνων με δραστηριότητα τυποποίησης, τα οποία έχουν αποδεχθεί τον παρόντα κώδικα δίνεται απάντηση, αν έχει ζητηθεί, όσον το δυνατόν συντομότερα. Η απάντηση περιλαμβάνει επεξηγήσεις για τους λόγους που επιβάλλουν την παρέκκλιση από σχετικά διεθνή πρότυπα.

ΙΕ. Πρότυπο το οποίο εκδίδεται, δημοσιεύεται αμέσως.

ΙΣΤ. Μετά από αίτηση ενός ενδιαφερομένου μέρους εντός της επικράτειας ενός μέλους του ΠΟΕ, το όργανο με δραστηριότητα τυποποίησης παρέχει αμέσως ή κανονίζει να παρασχεθεί αντίγραφο του περισσότερο προσφάτου προγράμματος εργασιών ή ενός προτύπου που εξεπόνησε. Τυχόν αντίτιμο που χρεώνεται για την εν λόγω υπηρεσία είναι, εκτός από το πραγματικό κόστος παράδοσης, το ίδιο για μέρη του εξωτερικού και του εσωτερικού.

ΙΖ. Το όργανο με δραστηριότητα τυποποίησης εξετάζει ευμενώς, και δίνει την κατάλληλη ευκαιρία για διαβουλεύσεις σχετικά με καταγγελίες όσον αφορά τη λειτουργία του παρόντος κώδικα που υποβάλλονται από όργανα με δραστηριότητα τυποποίησης τα οποία έχουν αποδεχθεί τον παρόντα κώδικα δεοντολογίας. Ο οργανισμός τυποποίησης προσπαθεί να εξετάσει αντικειμενικά τυχόν καταγγελίες.

ΣΥΜΦΩΝΙΑ ΓΙΑ ΤΑ ΕΠΕΝΔΥΤΙΚΑ ΜΕΤΡΑ ΣΤΟΝ ΤΟΜΕΑ ΤΟΥ ΕΜΠΟΡΙΟΥ

Τα μέλη,

Εκτιμώντας ότι οι υπουργοί συνεφώνησαν στη δήλωση της Punta del Este ότι "Μετά από εξέταση της λειτουργίας των άρθρων της GATT που αφορούν τον περιορισμό και τη στρέβλωση του εμπορίου που προκαλούν τα επενδυτικά μέτρα, στο πλαίσιο των διαπραγματεύσεων θα πρέπει να συζητηθούν, κατά περίπτωση, πρόσθετες διατάξεις που απαιτούνται, ενδεχομένως για να αποφεύγονται τέτοιου είδους αρνητικές επιπτώσεις στο εμπόριο"·

Επιθυμώντας να προωθήσουν την επέκταση και τη σταδιακή απελευθέρωση του διεθνούς εμπορίου και να διευκολύνουν τις επενδύσεις πέραν των διεθνών συνόρων προκειμένου να αυξήσουν την οικονομική αύξηση όλων των εμπορικών εταίρων, και ιδίως των αναπτυσσομένων χωρών μελών, εξασφαλίζοντας ταυτόχρονα τον ελεύθερο ανταγωνισμό·

Λαμβάνοντας υπόψη τις ιδιαίτερες εμπορικές, αναπτυξιακές και χρηματοδοτικές ανάγκες των αναπτυσσομένων χωρών μελών, και ιδίως των λιγότερο ανεπτυγμένων χωρών μελών·

Αναγνωρίζοντας ότι ορισμένα επενδυτικά μέτρα μπορεί να επιφέρουν περιορισμό και στρέβλωση του εμπορίου·

Συμφωνούν τα ακόλουθα:

Άρθρο 1

Πεδίο εφαρμογής

Η παρούσα συμφωνία ισχύει για επενδυτικά μέτρα που συνδέονται αποκλειστικά με τις εμπορευματικές συναλλαγές (καλούμενα στην παρούσα συμφωνία "TRIM")

Άρθρο 2

Εθνική μεταχείριση και ποσοτικοί περιορισμοί

1. Με την επιφύλαξη των λοιπών δικαιωμάτων και υποχρεώσεων στο πλαίσιο της GATT του 1994, τα μέλη δεν εφαρμόζουν TRIM που δεν συμφωνούν με τις διατάξεις του άρθρου III ή του άρθρου XI της GATT του 1994.

2. Στο παράρτημα της παρούσας συμφωνίας περιλαμβάνεται επεξηγηματικός κατάλογος των TRIM, τα οποία δεν είναι συμβατά με την υποχρέωση της εθνικής μεταχείρισης η οποία προβλέπεται στο άρθρο III, παράγραφος 4 της GATT του 1994 και την υποχρέωση της γενικής κατάργησης των ποσοτικών περιορισμών που προβλέπεται στο άρθρο XI παράγραφος 1 της GATT του 1994.

Άρθρο 3

Εξαιρέσεις

Όλες οι εξαιρέσεις στο πλαίσιο της GATT του 1994 ισχύουν, ανάλογα και για τις διατάξεις της παρούσας συμφωνίας.

Άρθρο 4

Αναπτυσσόμενες χώρες μέλη

Οι αναπτυσσόμενες χώρες μέλη έχουν τη δυνατότητα να παρεκκλίνουν προσωρινά από τις διατάξεις του άρθρου 2 στο βαθμό και με τον τρόπο που το άρθρο XVIII της GATT του 1994, το μνημόνιο συμφωνίας για τις διατάξεις του ισοζυγίου πληρωμών της GATT του 1994 και η δήλωση σχετικά με τα μέτρα για το εμπόριο που λαμβάνονται για τους σκοπούς του ισοζυγίου πληρωμών, η οποία εξεδόθη στις 28 Νοεμβρίου 1979 (BISD 26S/205-209), επιτρέπουν στα μέλη να παρεκκλίνουν από τις διατάξεις των άρθρων III και XI της GATT του 1994.

Άρθρο 5

Γνωστοποίηση και μεταβατικοί διακανονισμοί

1. Τα μέλη, εντός 90 ημερών από την ημερομηνία θέσης σε ισχύ της συμφωνίας για τον ΠΟΕ, γνωστοποιούν στο συμβούλιο εμπορευματικών συναλλαγών όλα τα TRIM που εφαρμόζουν και που δεν συμφωνούν με τις διατάξεις της παρούσας συμφωνίας. Τα TRIM αυτού του είδους γενικής ή ειδικής εφαρμογής γνωστοποιούνται μαζί με τα κύρια χαρακτηριστικά τους.[1]

2. Όλα τα μέλη καταργούν το σύνολο των TRIM τα οποία γνωστοποιούνται δυνάμει της παραγράφου 1, εντός δύο ετών από την ημερομηνία θέσης σε ισχύ της συμφωνίας για το ΠΟΕ στην περίπτωση ανεπτυγμένης χώρας μέλους, εντός πέντε ετών στην περίπτωση αναπτυσσόμενης χώρας μέλους, και εντός επτά ετών στην περίπτωση λιγότερο ανεπτυγμένης χώρας μέλους.

3. Μετά από αίτηση, το συμβούλιο εμπορευματικών συναλλαγών δύναται να παρατείνει τη μεταβατική περίοδο για την κατάργηση των TRIM που έχουν γνωστοποιηθεί δυνάμει της παραγράφου 1, για αναπτυσσόμενες χώρες μέλη, περιλαμβανομένων των λιγότερο ανεπτυγμένων χωρών μελών, οι οποίες αντιμετωπίζουν ιδιαίτερες δυσκολίες στην εφαρμογή των διατάξεων της παρούσας συμφωνίας. Κατά την εξέταση της εν λόγω αίτησης, το συμβούλιο εμπορευματικών συναλλαγών λαμβάνει υπόψη τις επιμέρους αναπτυξιακές, χρηματοδοτικές και εμπορικές ανάγκες των εν λόγω μελών.

4. Κατά τη διάρκεια της μεταβατικής περιόδου, τα μέλη δεν τροποποιούν τους όρους των TRIM τα οποία κοινοποιούν δυνάμει της παραγράφου 1 σε σχέση με αυτούς που ισχύουν κατά την ημερομηνία θέσης σε ισχύ της συμφωνίας για τον ΠΟΕ ώστε να μην αυξηθεί ο βαθμός της ανακολουθίας με τις διατάξεις του άρθρου 2. Τα TRIM που έχουν θεσπισθεί εντός λιγότερο των 180 ημερών πριν από την ημερομηνία θέσης σε ισχύ της συμφωνίας για τον ΠΟΕ, δεν ωφελούνται από τους μεταβατικούς διακανονισμούς που προβλέπονται στην παράγραφο 2.

5. Με την επιφύλαξη των διατάξεων του άρθρου 2, τα μέλη, προκειμένου να μην φέρουν σε μειονεκτική θέση υφιστάμενες επιχειρήσεις οι οποίες υπόκεινται σε TRIM που έχει γνωστοποιηθεί δυνάμει της παραγράφου 1, μπορούν να εφαρμόζουν κατά τη διάρκεια της μεταβατικής περιόδου το ίδιο TRIM σε νέα επένδυση (i) στην περίπτωση που τα

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1 Στην περίπτωση των TRIM που εφαρμόζονται στο πλαίσιο διακριτικής εξουσίας, γνωστοποιείται κάθε ειδική εφαρμογή. Οι πληροφορίες που θα έθεταν σε κίνδυνο τα νόμιμα εμπορικά συμφέροντα συγκεκριμένων επιχειρήσεων δεν χρειάζεται να γνωστοποιούνται.

προϊόντα στόχος της εν λόγω επένδυσης είναι ομοειδή προϊόντα με αυτά των υφισταμένων επιχειρήσεων, και (ii) στην περίπτωση που είναι αναγκαίο να αποφευχθεί η στρέβλωση των όρων ανταγωνισμού μεταξύ της νέας επένδυσης και των υφισταμένων επιχειρήσεων. Τα TRIM που εφαρμόζονται κατ'αυτόν τον τρόπο στις νέες επενδύσεις γνωστοποιούνται στο συμβούλιο εμπορευματικών συναλλαγών. Οι όροι ενός τέτοιου TRIM είναι ισοδύναμοι, όσον αφορά τις επιπτώσεις τους στον ανταγωνισμό με αυτούς που ισχύουν για τις υφιστάμενες επιχειρήσεις, και παύει να ισχύει την ίδια στιγμή.

Άρθρο 6

Διαφάνεια

1. Τα μέλη επαναβεβαιώνουν, σε σχέση με τα TRIM, ότι αναλαμβάνουν την υποχρέωση να τηρήσουν τις υποχρεώσεις σχετικά με τη διαφάνεια και τη γνωστοποίηση που απορρέουν από το άρθρο X της GATT του 1994, από τη δέσμευση για τις γνωστοποιήσεις που περιλαμβάνεται στο μνημόνιο συμφωνίας σχετικά με τη γνωστοποίηση, τις διαβουλεύσεις, την επίλυση διαφορών και την εποπτεία, που εξεδόθη στις 28 Νοεμβρίου 1979 και από την υπουργική απόφαση σχετικά με τις διαδικασίες γνωστοποίησης που εξεδόθη στις 15 Απριλίου 1994.

2. Κάθε μέλος γνωστοποιεί στη γραμματεία τις δημοσιεύσεις όπου μπορούν να βρεθούν τα TRIM, περιλαμβανομένων αυτών που εφαρμόζονται από περιφερειακές και τοπικές διοικήσεις και αρχές εντός της επικρατείας τους.

3. Κάθε μέλος εξετάζει θετικά τις αιτήσεις για πληροφορίες, και είναι διαθέσιμο για διαβουλεύσεις, για κάθε θέμα που προκύπτει από την παρούσα συμφωνία και που θίγεται από κάποιο άλλο μέλος. Σύμφωνα με το άρθρο X της GATT του 1994 δεν ζητείται από τα μέλη να κοινοποιήσουν πληροφορίες, των οποίων η αποκάλυψη θα εμπόδιζε την εφαρμογή του νόμου ή θα ήταν αντίθετη με το δημόσιο συμφέρον ή θα έθετε σε κίνδυνο τα νόμιμα εμπορικά συμφέροντα επιχειρήσεων του δημόσιου ή ιδιωτικού τομέα.

Άρθρο 7

Επιτροπή επενδυτικών μέτρων στον τομέα του εμπορίου.

1. Συστήνεται επιτροπή επενδυτικών μέτρων στον τομέα του εμπορίου στην οποία δύνανται να συμμετέχουν όλα τα μέλη (καλούμενη στην παρούσα συμφωνία "η επιτροπή"). Η επιτροπή εκλέγει η ίδια τον πρόεδρο και τον αντιπρόεδρο της, και συνεδριάζει τουλάχιστον άπαξ του έτους και οπωσδήποτε μετά από αίτηση κάποιου μέλους.

2. Η επιτροπή εκτελεί καθήκοντα τα οποία της έχουν ανατεθεί από το συμβούλιο εμπορευματικών συναλλαγών και παρέχει στα μέλη την ευκαιρία να προβαίνουν σε διαβουλεύσεις για όλα τα θέματα τα σχετικά με τη λειτουργία και την εφαρμογή της παρούσας συμφωνίας.

3. Η επιτροπή παρακολουθεί την εφαρμογή και τη λειτουργία της παρούσας συμφωνίας και υποβάλλει σχετικές ετήσιες εκθέσεις στο συμβούλιο εμπορευματικών συναλλαγών.

Άρθρο 8

Διαβουλεύσεις και επίλυση διαφορών

Οι διατάξεις των άρθρων XXII και XXIII της GATT του 1994, όπως διαμορφώθηκαν και εφαρμόζονται στο πλαίσιο της συμφωνίας επίλυσης διαφορών ισχύουν για τις διαβουλεύσεις και την επίλυση διαφορών δυνάμει της παρούσας συμφωνίας.

Άρθρο 9

Εξέταση από το συμβούλιο εμπορευματικών συναλλαγών

Εντός το αργότερο πέντε ετών από την ημερομηνία θέσης σε ισχύ της συμφωνίας για τον ΠΟΕ, το συμβούλιο εμπορευματικών συναλλαγών εξετάζει τη λειτουργία της παρούσας συμφωνίας και, κατά περίπτωση, προτείνει στην υπουργική συνδιάσκεψη τροποποιήσεις του κειμένου της. Κατά τη διάρκεια της εξέτασης αυτής, το συμβούλιο εμπορευματικών συναλλαγών μελετά κατά πόσον η συμφωνία πρέπει να συμπληρωθεί με διατάξεις σχετικά με την επενδυτική πολιτική και την πολιτική ανταγωνισμού.

ΠΑΡΑΡΤΗΜΑ

Επεξηγηματικός κατάλογος

1. Τα TRIM που δεν είναι σύμφωνα με την υποχρέωση της εθνικής μεταχείρισης που προβλέπεται στο άρθρο III, παράγραφος 4 της GATT του 1994 περιλαμβάνουν τα μέτρα τα οποία είναι υποχρεωτικά ή εκτελεστά δυνάμει της εθνικής νομοθεσίας ή δυνάμει διοικητικών αποφάσεων, ή με τα οποία απαιτείται συμμόρφωση προκειμένου να επιτευχθεί πλεονέκτημα, και τα οποία απαιτούν:

(α) την αγορά ή τη χρήση εκ μέρους μιας επιχείρησης προϊόντων εγχώριας καταγωγής ή οποιασδήποτε εγχώριας πηγής, που ορίζεται σε σχέση είτε με συγκεκριμένα προϊόντα, είτε με τον όγκο ή την αξία των προϊόντων είτε με ποσοστό του όγκου ή της αξίας της τοπικής της παραγωγής· ή

(β) οι αγορές ή η χρήση εκ μέρους επιχείρησης εισαγομένων προϊόντων να περιορίζεται σε ορισμένη ποσότητα σε σχέση με τον όγκο ή την αξία των τοπικών προϊόντων που εξάγει.

2. Τα TRIM που δεν είναι σύμφωνα με την υποχρέωση της γενικής κατάργησης των ποσοτικών περιορισμών που προβλέπεται στο άρθρο XI, παράγραφος 1 της GATT του 1994 περιλαμβάνουν τα μέτρα τα οποία είναι υποχρεωτικά ή εκτελεστά δυνάμει της εθνικής νομοθεσίας ή δυνάμει διοικητικών αποφάσεων, ή με τα οποία απαιτείται συμμόρφωση προκειμένου να επιτευχθεί πλεονέκτημα, και τα οποία περιορίζουν:

(α) την εισαγωγή εκ μέρους επιχείρησης προϊόντων που χρησιμοποιούνται στην τοπική παραγωγή της ή σχετίζονται με αυτή, εν γένει ή σε ποσότητα που συνδέεται με τον όγκο ή την αξία της τοπικής παραγωγής που εξάγει.

(β) την εισαγωγή, εκ μέρους επιχείρησης, προϊόντων που χρησιμοποιούνται στην τοπική παραγωγή της ή σχετίζονται με αυτή, περιορίζοντας την πρόσβασή της σε συνάλλαγμα, σε ποσότητα ανάλογη με τις εισροές συναλλάγματος που αποδίδονται στην επιχείρηση· ή

(γ) την εξαγωγή ή την πώληση για εξαγωγές, εκ μέρους επιχείρησης, προϊόντων, που ορίζονται σε σχέση είτε με συγκεκριμένα προϊόντα, είτε με τον όγκο ή την αξία προϊόντων είτε με το ποσοστό του όγκου της αξίας της τοπικής της παραγωγής.

ΣΥΜΦΩΝΙΑ ΓΙΑ ΤΗΝ ΕΦΑΡΜΟΓΗ ΤΟΥ ΑΡΘΡΟΥ VI ΤΗΣ ΓΕΝΙΚΗΣ ΣΥΜΦΩΝΙΑΣ ΔΑΣΜΩΝ ΚΑΙ ΕΜΠΟΡΙΟΥ ΤΟΥ 1994

Τα μέλη συμφωνούν τα ακόλουθα:

ΜΕΡΟΣ Ι

Άρθρο 1

Αρχές

Η επιβολή μέτρου αντιντάμπινγκ επιτρέπεται μόνο υπό τις προϋποθέσεις που ορίζονται στο άρθρο VI της GATT του 1994 και κατόπιν σχετικών ερευνών που έχουν αρχίσει[1] και διεξαχθεί σύμφωνα με τις διατάξεις της παρούσας συμφωνίας. Η εφαρμογή του άρθρου VI της GATT του 1994 διέπεται από τις ακόλουθες διατάξεις, στις περιπτώσεις κατά τις οποίες λαμβάνονται μέτρα κατ' εφαρμογήν νόμων και κανονισμών αντιντάμπινγκ.

Άρθρο 2

Καθορισμός του ντάμπινγκ

2.1 Για τους σκοπούς της παρούσας συμφωνίας, ένα προϊόν θεωρείται ότι αποτελεί αντικείμενο ντάμπινγκ, δηλαδή ότι εισάγεται στην αγορά μιας άλλης χώρας σε τιμή κατώτερη της κανονικής του αξίας, αν η τιμή εξαγωγής του προϊόντος που εξάγεται από μία χώρα σε μια άλλη είναι κατώτερη της αντίστοιχης τιμής που εφαρμόζεται υπό κανονικές συνθήκες εμπορίας για ομοειδές προϊόν, όταν το τελευταίο προορίζεται για κατανάλωση στη χώρα εξαγωγής.

2.2 Όταν δεν υπάρχουν πωλήσεις ομοειδούς προϊόντος υπό κανονικές συνθήκες εμπορίας στην εγχώρια αγορά της χώρας εξαγωγής, ή όταν υπάρχουν μεν τέτοιες πωλήσεις, αλλά δεν επιτρέπουν τη διεξαγωγή ορθής σύγκρισης, είτε λόγω των ειδικών συνθηκών που έχουν διαμορφωθεί στην αγορά, είτε λόγω του μικρού όγκου των πωλήσεων στην εγχώρια αγορά της χώρας εξαγωγής[2], τότε το περιθώριο ντάμπινγκ καθορίζεται με μέτρο σύγκρισης μια ανάλογη τιμή ομοειδούς προϊόντος κατά την εξαγωγή του σε κατάλληλη τρίτη χώρα, υπό την προϋπόθεση ότι η εν λόγω τιμή είναι αντιπροσωπευτική, ή το κόστος παραγωγής στη χώρα καταγωγής, προσαυξημένο κατά ένα εύλογο ποσό που αντιπροσωπεύει τα διοικητικά και γενικά έξοδα, τα έξοδα πωλήσεων και το κέρδος.

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1 Ο όρος "έχουν αρχίσει", όπως χρησιμοποιείται στην παρούσα συμφωνία, σημαίνει τη διαδικαστική πράξη με την οποία ένα μέλος εγκαινιάζει επισήμως έρευνα κατ' εφαρμογήν του άρθρου 5.

2 Οι πωλήσεις ομοειδούς προϊόντος που προορίζεται για κατανάλωση στην εγχώρια αγορά της χώρας εξαγωγής θεωρούνται καταρχήν αρκούντως υψηλές, ώστε να επιτρέπουν τον καθορισμό της κανονικής αξίας, εφόσον οι εν λόγω πωλήσεις αντιπροσωπεύουν ποσοστό 5% τουλάχιστον των πωλήσεων του υπό εξέταση προϊόντος με προορισμό το εισάγον μέλος, υπό την προϋπόθεση ότι είναι δυνατό να γίνει δεκτό και χαμηλότερο ποσοστό, όταν από τα αποδεικτικά στοιχεία προκύπτει ότι οι εγχώριες πωλήσεις, παρά τον περιορισμένο όγκο τους, δεν παύουν να αφορούν αρκούντως μεγάλες ποσότητες, ώστε να επιτρέπουν τη διεξαγωγή ορθής σύγκρισης.

2.2.1 Οι πωλήσεις ομοειδούς προϊόντος στην εγχώρια αγορά της χώρας εξαγωγής ή οι πωλήσεις προς μια τρίτη χώρα σε τιμές κατώτερες του κόστους παραγωγής ανά μονάδα (πάγιου και μεταβλητού), προσαυξημένου κατά τα έξοδα πωλήσεων και τα γενικά και διοικητικά έξοδα, είναι δυνατό να θεωρηθούν ως μη ανταποκρινόμενες σε κανονικές συνθήκες εμπορίας εξαιτίας της τιμής τους και κατά συνέπεια να μη ληφθούν υπόψη για τον καθορισμό της κανονικής αξίας, μόνο εφόσον οι αρχές[3] καταλήγουν στο συμπέρασμα ότι οι εν λόγω πωλήσεις πραγματοποιούνται για ικανό χρονικό διάστημα[4] σε αξιόλογες ποσότητες[5] και σε τιμές που δεν επιτρέπουν την ολοσχερή κάλυψη του κόστους εντός ευλόγου χρονικού διαστήματος. Αν οι τιμές υπολείπονται μεν του κόστους ανά μονάδα κατά τον χρόνο πώλησης, αλλά είναι ανώτερες του μέσου σταθμισμένου κόστους ανά μονάδα κατά την περίοδο έρευνας, γίνεται δεκτό ότι οι εν λόγω τιμές επιτρέπουν την κάλυψη του κόστους εντός ευλόγου χρονικού διαστήματος.

2.2.1.1 Για την εφαρμογή της παραγράφου 2, το κόστος υπολογίζεται κανονικά με βάση τα στοιχεία που τηρεί ο εξαγωγέας ή ο παραγωγός τον οποίον αφορά η έρευνα, υπό την προϋπόθεση ότι τα εν λόγω στοιχεία ανταποκρίνονται στους γενικώς παραδεδεγμένους κανόνες της λογιστικής που ισχύουν στη χώρα εξαγωγής και αντανακλούν σε ικανοποιητικό βαθμό τις δαπάνες τις σχετικές με την παραγωγή και την πώληση του υπό εξέταση προϊόντος. Οι αρχές συνεκτιμούν όλα τα διαθέσιμα αποδεικτικά στοιχεία για τον ορθό καταλογισμό των δαπανών, συμπεριλαμβανομένων των στοιχείων που έχει υποβάλει ο εξαγωγέας ή ο παραγωγός κατά τη διάρκεια της έρευνας, υπό την προϋπόθεση ότι ο συγκεκριμένος τρόπος καταλογισμού είναι αυτός που χρησιμοποιείται παγίως από τον εκάστοτε εξαγωγέα ή παραγωγό, ιδίως όταν πρέπει να προσδιοριστούν κατάλληλοι χρόνοι αποπληρωμής και απόσβεσης ή να ληφθούν υπόψη οι κεφαλαιακές δαπάνες και οι λοιπές δαπάνες ανάπτυξης. Σε περίπτωση και μόνο που δεν έχουν ήδη ληφθεί υπόψη για τον καταλογισμό των δαπανών βάσει της παρούσας παραγράφου, οι δαπάνες πρέπει να αναπροσαρμόζονται καταλλήλως, ώστε να αντανακλούν από τα έκτακτα έξοδα εκείνα τα οποία ευνοούν τη μελλοντική ή/και την τρέχουσα παραγωγή ή να λαμβάνουν υπόψη τυχόν περιστάσεις, που έχουν ως αποτέλεσμα τα έξοδα κατά την περίοδο έρευνας να επηρεάζονται από πράξεις που εκτελεί δεδομένη

3 Όταν στην παρούσα συμφωνία γίνεται χρήση του όρου "αρχές", αυτός αφορά τις αρχές με την ενδεδειγμένη υψηλή θέση στην ιεραρχία.

4 Ως "ικανό" θεωρείται κανονικά χρονικό διάστημα ενός έτους, ενώ σε καμία περίπτωση δεν είναι αρκετό χρονικό διάστημα συντομότερο του εξαμήνου.

5 Οι πωλήσεις σε τιμές κατώτερες του κόστους ανά μονάδα γίνεται δεκτό ότι πραγματοποιούνται σε αξιόλογες ποσότητες, όταν οι αρχές καταλήγουν στο συμπέρασμα ότι η μέση σταθμισμένη τιμή πωλήσεως για τις συναλλαγές που λαμβάνονται υπόψη για τον καθορισμό της κανονικής αξίας είναι χαμηλότερη του μέσου σταθμισμένου κόστους ανά μονάδα ή ότι ο όγκος των πωλήσεων σε τιμές χαμηλότερες του κόστους ανά μονάδα αντιπροσωπεύει ποσοστό όχι κατώτερο του 20% του όγκου των πωλήσεων που αποτελούν αντικείμενο των εξεταζομένων για τον καθορισμό της κανονικής αξίας συναλλαγών.

επιχείρηση σε αρχικό στάδιο της λειτουργίας της.[6]

2.2.2 Για την εφαρμογή της παραγράφου 2, τα ποσά που αντιστοιχούν στα γενικά και διοικητικά έξοδα, στα έξοδα πωλήσεων και στα κέρδη υπολογίζονται με βάση τα πραγματικά στοιχεία τα σχετικά με την παραγωγή και τις πωλήσεις του ομοειδούς προϊόντος υπό κανονικές συνθήκες εμπορίας από τον εξαγωγέα ή τον παραγωγό τον οποίον αφορά η έρευνα. Σε περίπτωση που τα εν λόγω ποσά δεν είναι δυνατό να υπολογιστούν με τον ανωτέρω τρόπο, αυτά είναι δυνατό να υπολογίζονται με βάση :

(i) τα πραγματικά ποσά για τα οποία έχει δεσμευθεί και τα οποία έχει εισπράξει ο εκάστοτε εξαγωγέας ή παραγωγός σε σχέση με την παραγωγή και τις πωλήσεις στην εγχώρια αγορά της χώρας καταγωγής για την ίδια γενική κατηγορία προϊόντων·

(ii) το σταθμισμένο μέσο όρο των πραγματικών ποσών για τα οποία έχουν δεσμευθεί και τα οποία έχουν εισπράξει άλλοι εξαγωγείς ή παραγωγοί τους οποίους αφορά η έρευνα σε σχέση με την παραγωγή και τις πωλήσεις ομοειδούς προϊόντος στην εγχώρια αγορά της χώρας καταγωγής·

(iii) οποιαδήποτε άλλη εύλογη μέθοδο, υπό την προϋπόθεση ότι η τιμή που προκύπτει με τον τρόπο αυτό για το κέρδος δεν υπερβαίνει το κέρδος που πραγματοποιείται κανονικά από άλλους εξαγωγείς ή παραγωγούς επί πωλήσεων προϊόντων της ίδιας γενικής κατηγορίας στην εγχώρια αγορά της χώρας καταγωγής.

2.3 Σε περιπτώσεις κατά τις οποίες δεν υπάρχει τιμή εξαγωγής ή οι αρμόδιες αρχές έχουν ενδείξεις ότι η τιμή εξαγωγής δεν μπορεί να χρησιμεύσει ως βάση λόγω της ύπαρξης κάποιας σύνδεσης ή κάποιας αντισταθμιστικής συμφωνίας μεταξύ του εκάστοτε εξαγωγέα και του εισαγωγέα ή ενός τρίτου, η τιμή εξαγωγής είναι δυνατό να κατασκευάζεται με βάση την τιμή στην οποία τα εισαγόμενα προϊόντα μεταπωλούνται για πρώτη φορά σε ανεξάρτητο αγοραστή ή, σε περίπτωση που τα προϊόντα δεν μεταπωλούνται προς κάποιον ανεξάρτητο αγοραστή ή δεν μεταπωλούνται στην κατάσταση που είχαν κατά την εισαγωγή τους, με βάση οποιανδήποτε εύλογη μέθοδο που δύνανται να καθορίζουν οι αρχές.

2.4 Μεταξύ της τιμής εξαγωγής και της κανονικής αξίας διεξάγεται εύλογη σύγκριση. Η σύγκριση αυτή αφορά το ίδιο στάδιο εμπορίας, και συνήθως το στάδιο εξόδου εκ του εργοστασίου, και πωλήσεις που πραγματοποιήθηκαν σε χρόνο όσο γίνεται πλησιέστερο. Για κάθε περίπτωση λαμβάνονται δεόντως υπόψη, με βάση τα ατομικά στοιχεία της υπόθεσης, διαφορές που επηρεάζουν τη συγκρισιμότητα των τιμών, συμπεριλαμβανομένων των διαφορών που υφίστανται όσον αφορά τους γενικούς και ειδικούς όρους και προϋποθέσεις πώλησης, τη φορολογία, τα στάδια εμπορίας, τις ποσότητες, τα φυσικά χαρακτηριστικά και οποιεσδήποτε άλλες διαφορές οι οποίες αποδεδειγμένα επηρεάζουν ομοίως τη συγκρισιμότητα των τιμών[7]. Στις περιπτώσεις για τις οποίες γίνεται

6 Η αναπροσαρμογή που γίνεται για να ληφθούν υπόψη πράξεις που εκτελούνται στην αρχική περίοδο λειτουργίας μιας επιχείρησης πρέπει να αντανακλά τα έξοδα που ισχύουν στο τέλος της αρχικής περιόδου λειτουργίας ή, σε περίπτωση που η περίοδος αυτή εκτείνεται πέραν της περιόδου έρευνας, τις πλέον πρόσφατες δαπάνες που θα μπορούσαν δικαιολογημένα να λάβουν υπόψη οι αρχές κατά την έρευνα.

7 Γίνεται δεκτό ότι ορισμένοι από τους ανωτέρω παράγοντες είναι δυνατό να αλληλεπικαλύπτονται, και οι αρχές οφείλουν να μεριμνούν, ώστε να μη λαμβάνονται υπόψη οι ίδιοι παράγοντες πλέον της μίας φοράς για τους σκοπούς της αναπροσαρμογής της τιμής βάσει της παρούσας διάταξης.

λόγος στην παράγραφο 3, πρέπει επίσης να λαμβάνονται υπόψη τα έξοδα που ανακύπτουν μεταξύ εισαγωγής και μεταπώλησης (συμπεριλαμβανομένων των δασμών και των φόρων) και τα αντίστοιχα πραγματοποιούμενα κέρδη. Εάν, στις περιπτώσεις αυτές έχει επηρεασθεί η συγκρισιμότητα των τιμών, οι αρχές καθορίζουν την κανονική αξία για στάδιο εμπορίας αντίστοιχο του σταδίου εμπορίας που ισχύει για την κατασκευασμένη τιμή εξαγωγής ή συνεκτιμούν δεόντως τους παράγοντες που προβλέπονται από την παρούσα παράγραφο. Οι αρχές οφείλουν να ενημερώνουν τους ενδιαφερομένους σχετικά με τα στοιχεία που απαιτούνται για τη διασφάλιση δίκαιων όρων σύγκρισης, ενώ το βάρος της απόδειξης που επιβάλλουν στους ενδιαφερομένους δεν πρέπει να είναι υπέρμετρο.

2.4.1 Όταν για τη σύγκριση βάσει της παραγράφου 4 είναι απαραίτητη η μετατροπή των νομισμάτων, η μετατροπή αυτή πρέπει να γίνεται με βάση τη συναλλαγματική ισοτιμία που ισχύει κατά την ημερομηνία πώλησης[8], υπό την προϋπόθεση ότι όταν μια πράξη πώλησης συναλλάγματος σε προθεσμιακές αγορές συνδέεται άμεσα με την αντίστοιχη πράξη αγοράς προς εξαγωγή, λαμβάνεται υπόψη η συναλλαγματική ισοτιμία που ισχύει για την προθεσμιακή πώληση. Οι διακυμάνσεις των συναλλαγματικών ισοτιμιών δεν λαμβάνονται υπόψη, ενώ στο πλαίσιο μιας έρευνας οι αρχές τάσσουν στους εξαγωγείς προθεσμία 60 ημερών τουλάχιστον, προκειμένου να αναπροσαρμόσουν τις τιμές εξαγωγής που εφαρμόζουν, με βάση τις μη πρόσκαιρου χαρακτήρα αυξομειώσεις των συναλλαγματικών ισοτιμιών που έχουν σημειωθεί κατά την περίοδο έρευνας.

2.4.2 Με την επιφύλαξη των διατάξεων της παραγράφου 4, που διέπουν τα σχετικά με τη δίκαιη σύγκριση, η ύπαρξη περιθωρίων ντάμπινγκ κατά το στάδιο της έρευνας κρίνεται καταρχήν με βάση τη σύγκριση κάποιας σταθμισμένης μέσης κανονικής αξίας με τον σταθμισμένο μέσο όρο των τιμών που έχουν ισχύσει για όλες τις ανάλογες εξαγωγικές πράξεις ή με βάση τη σύγκριση της κανονικής αξίας με τις τιμές εξαγωγής για κάθε συναλλαγή ξεχωριστά. Η κανονική αξία, η οποία έχει προκύψει από τη στάθμιση των μέσων όρων, είναι δυνατό να συγκρίνεται με τις τιμές των επιμέρους εξαγωγικών πράξεων, εφόσον οι αρχές διαπιστώνουν ότι οι τιμές εξαγωγής διαφέρουν συστηματικά και σε μεγάλο βαθμό ανάλογα με την ταυτότητα του αγοραστή, την περιφέρεια ή τη χρονική περίοδο και, εφόσον εξηγείται ο λόγος για τον οποίον οι διαφορές αυτού του είδους δεν είναι δυνατό να ληφθούν καταλλήλως υπόψη μέσω της σύγκρισης των σταθμισμένων μέσων όρων μεταξύ τους ή μέσω της σύγκρισης της μίας συναλλαγής με την άλλη.

2.5 Όταν δεδομένα προϊόντα δεν εισάγονται απευθείας από τη χώρα καταγωγής, αλλά εξάγονται προς το εισάγον μέλος από κάποια ενδιάμεση χώρα, η τιμή στην οποία πωλούνται τα προϊόντα από τη χώρα εξαγωγής στο εισάγον μέλος συγκρίνεται κατά κανόνα με την αντίστοιχη τιμή στη χώρα εξαγωγής. Εντούτοις, η τιμή είναι δυνατό να συγκρίνεται με την τιμή στη χώρα καταγωγής εάν, για παράδειγμα, τα εν λόγω προϊόντα διέρχονται απλώς από τη χώρα εξαγωγής υπό καθεστώς διαμετακόμισης ή αν τέτοιου είδους προϊόντα δεν παράγονται στη χώρα εξαγωγής ή αν δεν υπάρχει γι' αυτά συγκρίσιμη τιμή στη χώρα εξαγωγής.

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8 Κανονικά, ως ημερομηνία πώλησης θεωρείται η ημερομηνία της συμβάσεως, της εντολής αγοράς, της επιβεβαίωσης εντολής ή του τιμολογίου, ανάλογα με το πού καθορίζονται οι βασικοί όροι της πώλησης.

2.6 Οπουδήποτε γίνεται χρήση στην παρούσα συμφωνία του όρου "ομοειδές προϊόν" ("like product", "produit similaire"), αυτός νοείται ως αναφερόμενος σε ένα όμοιο προϊόν, δηλαδή προϊόν που μοιάζει από κάθε άποψη με το υπό εξέταση προϊόν ή, όταν δεν υπάρχει κάποιο τέτοιο προϊόν, σε ένα άλλο προϊόν το οποίο, αν και δεν του μοιάζει από κάθε άποψη, ωστόσο έχει χαρακτηριστικά που μοιάζουν στενά με εκείνα του υπό εξέταση προϊόντος.

2.7 Το παρόν άρθρο ισχύει υπό την επιφύλαξη της δεύτερης συμπληρωματικής διάταξης του άρθρου VI, παράγραφος 1 του παραρτήματος I της GATT του 1994.

Άρθρο 3

Προσδιορισμός της ζημίας[9]

3.1 Ο προσδιορισμός της ζημίας στο πλαίσιο εφαρμογής του άρθρου VI της GATT του 1994 βασίζεται σε θετικά αποδεικτικά στοιχεία και προϋποθέτει την αντικειμενική αξιολόγηση τόσο (α) του όγκου των εισαγωγών που αποτελούν αντικείμενο ντάμπινγκ και των συνεπειών των εν λόγω εισαγωγών για τις τιμές των ομοειδών προϊόντων στην εγχώρια αγορά, όσο και (β) των επακόλουθων συνεπειών των εν λόγω εισαγωγών για τους εγχώριους παραγωγούς τέτοιων προϊόντων.

3.2 Προκειμένου περί του όγκου των εισαγωγών που αποτελούν αντικείμενο ντάμπινγκ, οι αρχές που διεξάγουν τις σχετικές έρευνες εξετάζουν κατά πόσον έχει σημειωθεί σημαντική αύξηση του όγκου των εν λόγω εισαγωγών, είτε σε απόλυτα μεγέθη, είτε σε συνάρτηση με την παραγωγή ή την κατανάλωση στο εισάγον μέλος. Προκειμένου περί της επίδρασης των εισαγωγών που αποτελούν αντικείμενο ντάμπινγκ επί των τιμών, οι αρχές που διεξάγουν τις σχετικές έρευνες εξετάζουν κατά πόσον έχουν πραγματοποιηθεί εισαγωγές με πρακτικές ντάμπινγκ σε τιμές αισθητά κατώτερες της τιμής ομοειδών προϊόντων του εισάγοντος μέλους και κατά πόσον εισαγωγές αυτού του είδους προκαλούν με οποιονδήποτε τρόπο σημαντική συμπίεση των τιμών ή θέτουν σημαντικά εμπόδια σε αυξήσεις των τιμών που θα είχαν σημειωθεί σε αντίθετη περίπτωση. Κανένας από τους ανωτέρω παράγοντες, ούτε περισσότεροι εξ αυτών από κοινού δεν είναι απαραίτητο να θεωρηθούν βαρύνουσας σημασίας για την εξαγωγή συμπερασμάτων.

3.3 Όταν διεξάγονται ταυτοχρόνως έρευνες αντιντάμπινγκ σχετικά με τις εισαγωγές συγκεκριμένου προϊόντος από διάφορες χώρες, οι αρχές που διεξάγουν τις έρευνες δύνανται να προσμετρούν σωρευτικώς τις συνέπειες των εισαγωγών αυτών μόνο εφόσον βεβαιωθούν ότι: (α) το περιθώριο ντάμπινγκ που προκύπτει για τις εισαγωγές από κάθε χώρα είναι αρκετά υψηλό ώστε να θεωρείται ότι έχει νομικές συνέπειες, όπως προβλέπεται στο άρθρο 5, παράγραφος 8, ενώ ο όγκος των εισαγωγών από κάθε χώρα δεν είναι αμελητέος· και (β) ότι η σωρευτική αξιολόγηση των συνεπειών των εισαγωγών είναι η ενδεδειγμένη λαμβανομένων υπόψη των όρων του ανταγωνισμού μεταξύ των εισαγόμενων προϊόντων, καθώς και των όρων του ανταγωνισμού μεταξύ των εισαγομένων προϊόντων και των ομοειδών εγχώριων προϊόντων.

9 Βάσει της παρούσας συμφωνίας, ο όρος "ζημία" σημαίνει, εφόσον δεν ορίζεται κάτι διαφορετικό, τη σοβαρή ζημία που προκαλείται σε έναν εγχώριο κλάδο παραγωγής, τον κίνδυνο πρόκλησης σοβαρής ζημίας σε έναν εγχώριο κλάδο παραγωγής ή την αισθητή καθυστέρηση της δημιουργίας ενός τέτοιου κλάδου· ο όρος ερμηνεύεται σύμφωνα με τις διατάξεις του παρόντος άρθρου.

3.4 Η εξέταση των συνεπειών των εισαγωγών με πρακτικές ντάμπινγκ για τον εκάστοτε εγχώριο κλάδο παραγωγής περιλαμβάνει αξιολόγηση όλων των συναφών οικονομικών παραγόντων, καθώς και των δεικτών που έχουν σημασία για την κατάσταση του αντίστοιχου κλάδου παραγωγής, στους οποίους περιλαμβάνονται: η πραγματική ή ενδεχόμενη μείωση των πωλήσεων, των κερδών, της παραγωγής, του μεριδίου αγοράς, της παραγωγικότητας, της αποδοτικότητας των επενδύσεων ή της χρησιμοποίησης της ικανότητας, οι παράγοντες που επηρεάζουν τις εγχώριες τιμές, το μέγεθος του περιθωρίου ντάμπινγκ, οι πραγματικές ή ενδεχόμενες επιπτώσεις για τις ταμειακές ροές, τα αποθέματα, την απασχόληση, τους μισθούς, την ανάπτυξη, την ικανότητα άντλησης κεφαλαίων ή τις επενδύσεις. Η ανωτέρω απαρίθμηση έχει ενδεικτικό χαρακτήρα, και κανένας από τους ανωτέρω παράγοντες, ούτε περισσότεροι εξ αυτών από κοινού δεν είναι απαραίτητο να θεωρηθούν βαρύνουσας σημασίας για την εξαγωγή συμπερασμάτων.

3.5 Πρέπει να αποδεικνύεται ότι, εξαιτίας των συνεπειών του ντάμπινγκ, όπως ορίζεται στις παραγράφους 2 και 4, οι εισαγωγές που αποτελούν αντικείμενο ντάμπινγκ προκαλούν ζημία κατά την έννοια της παρούσας συμφωνίας. Για να διαπιστωθεί κατά πόσον υπάρχει αιτιώδης συνάφεια μεταξύ των εισαγωγών που αποτελούν αντικείμενο ντάμπινγκ και της ζημίας που υφίσταται ο εγχώριος κλάδος παραγωγής, οι αρχές συνεκτιμούν όλα τα σχετικά αποδεικτικά στοιχεία που έχουν στη διάθεσή τους. Οι αρχές εξετάζουν ακόμη τυχόν άλλους γνωστούς παράγοντες, πέραν των εισαγωγών που αποτελούν αντικείμενο ντάμπινγκ, οι οποίοι προκαλούν κατά τον ίδιο χρόνο ζημία στον εγχώριο κλάδο παραγωγής, και η ζημία που προξενείται από αυτούς τους άλλους παράγοντες πρέπει να μην είναι δυνατό να αποδοθεί στις εισαγωγές με πρακτικές ντάμπινγκ. Στους παράγοντες που ενδέχεται να έχουν σημασία από αυτή την άποψη είναι δυνατό να συμπεριλαμβάνονται, μεταξύ άλλων, ο όγκος και οι τιμές των εισαγωγών των οποίων οι τιμές δεν είναι αποτέλεσμα πρακτικών ντάμπινγκ, η συρρίκνωση της ζήτησης ή οι μεταβολές των δεδομένων κατανάλωσης, οι περιοριστικές εμπορικές πρακτικές που εφαρμόζουν οι ξένοι και οι εγχώριοι παραγωγοί, καθώς και ο ανταγωνισμός μεταξύ τους, οι τεχνολογικές εξελίξεις και, τέλος, οι εξαγωγικές επιδόσεις και η παραγωγικότητα του εγχώριου κλάδου παραγωγής.

3.6 Οι συνέπειες των εισαγωγών που αποτελούν αντικείμενο ντάμπινγκ αξιολογούνται σε σχέση με την εγχώρια παραγωγή ομοειδούς προϊόντος, εφόσον τα διαθέσιμα στοιχεία επιτρέπουν τον ξεχωριστό προσδιορισμό της εν λόγω παραγωγής βάσει ορισμένων κριτηρίων, όπως είναι η μέθοδος παραγωγής, οι πωλήσεις και τα κέρδη των παραγωγών. Αν δεν είναι δυνατός ο χωριστός προσδιορισμός της εν λόγω παραγωγής, οι συνέπειες των εισαγωγών που αποτελούν αντικείμενο ντάμπινγκ αξιολογούνται μέσω της εξέτασης της παραγωγής της πλέον περιορισμένης ομάδας ή φάσματος προϊόντων, που περιλαμβάνει το ομοειδές προϊόν, για την οποία είναι δυνατό να συγκεντρωθούν οι αναγκαίες πληροφορίες.

3.7 Για να διαπιστωθεί η ύπαρξη κινδύνου πρόκλησης σοβαρής ζημίας λαμβάνονται υπόψη τα πραγματικά περιστατικά, και όχι μόνο τυχόν ισχυρισμοί, εικασίες ή μεμακρυσμένες πιθανότητες. Οποιαδήποτε μεταβολή των περιστάσεων, που θα δημιουργούσε κατάσταση υπό την οποία είναι πιθανή η πρόκληση ζημίας από το ντάμπινγκ, πρέπει να είναι δυνατό να προβλεφθεί με βεβαιότητα και να είναι επικείμενη.[10] Προκειμένου να αποφανθούν σχετικά με την ύπαρξη κινδύνου πρόκλησης σοβαρής ζημίας, οι αρχές οφείλουν να συνεκτιμούν, μεταξύ άλλων, τους ακόλουθους παράγοντες:

10 Ένα παράδειγμα, μεταξύ περισσοτέρων που θα μπορούσαν να αναφερθούν σχετικά, είναι η ύπαρξη αποχρώντος λόγου που οδηγεί στην υπόθεση ότι πρόκειται να υπάρξει, στο εγγύς μέλλον, σημαντική αύξηση των εισαγωγών του υπό εξέταση προϊόντος σε τιμές που αποτελούν αντικείμενο ντάμπινγκ.

(i) τυχόν αύξηση σε σημαντικό ποσοστό των εισαγωγών που αποτελούν αντικείμενο ντάμπινγκ στην εγχώρια αγορά, η οποία αποτελεί ένδειξη για την πιθανότητα ουσιαστικής αύξησης των εισαγωγών·

(ii) την ύπαρξη ελεύθερα διαθέσιμης ικανότητας ή την πιθανότητα επικείμενης σημαντικής αύξησης της ικανότητας του εξαγωγέα, από την οποία προκύπτει ως πιθανή σημαντική αύξηση των εξαγωγών που αποτελούν αντικείμενο ντάμπινγκ προς την αγορά του εισάγοντος μέλους, λαμβανομένης υπόψη της ύπαρξης άλλων εξαγωγικών αγορών, οι οποίες θα μπορούσαν ενδεχομένως να απορροφήσουν τυχόν πρόσθετες εξαγωγές·

(iii) το κατά πόσον τα εισαγόμενα προϊόντα εισέρχονται στη χώρα σε τιμές που θα έχουν ως αποτέλεσμα τη σημαντική συμπίεση ή την παρεμπόδιση της αύξησης των εγχώριων τιμών και οι οποίες είναι πιθανό να οδηγήσουν σε αύξηση της ζήτησης για επιπλέον εισαγωγές· και

(iv) τα αποθέματα του υπό διερεύνηση προϊόντος.

Κανένας από τους ανωτέρω παράγοντες από μόνος του δεν είναι απαραίτητο να θεωρηθεί βαρύνουσας σημασίας για την εξαγωγή συμπερασμάτων, αλλά όλοι οι παράγοντες που λαμβάνονται υπόψη σωρευτικά πρέπει να οδηγούν στο συμπέρασμα ότι επίκειται η πραγματοποίηση περαιτέρω εξαγωγών με πρακτικές ντάμπινγκ και ότι υπάρχει κίνδυνος πρόκλησης σοβαρής ζημίας σε περίπτωση που δεν ληφθούν προστατευτικά μέτρα.

3.8 Σε περιπτώσεις, εξάλλου, κατά τις οποίες επαπειλείται η πρόκληση ζημίας από εισαγωγές με πρακτικές ντάμπινγκ, εξετάζεται το ενδεχόμενο επιβολής μέτρων αντιντάμπινγκ και η σχετική απόφαση λαμβάνεται με ιδιαίτερη περίσκεψη.

Άρθρο 4

Καθορισμός του εγχώριου κλάδου παραγωγής

4.1 Για τους σκοπούς της παρούσας συμφωνίας, ο όρος "εγχώριος κλάδος παραγωγής" θεωρείται ότι περιλαμβάνει το σύνολο των εγχώριων παραγωγών ομοειδών προϊόντων ή εκείνους εξ αυτών των οποίων αθροιστικά η παραγωγή των υπό εξέταση προϊόντων αντιπροσωπεύει το μεγαλύτερο μέρος της συνολικής εγχώριας παραγωγής των εν λόγω προϊόντων, με τις ακόλουθες εξαιρέσεις:

(i) όταν κάποιοι παραγωγοί συνδέονται[11] με τους εξαγωγείς ή τους εισαγωγείς ή είναι οι ίδιοι εισαγωγείς του προϊόντος που υποτίθεται ότι αποτελεί αντικείμενο ντάμπινγκ, ο όρος "εγχώριος κλάδος παραγωγής" είναι δυνατό να θεωρείται ότι περιλαμβάνει μόνο τους υπόλοιπους παραγωγούς·

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11 Για τους σκοπούς της παρούσας παραγράφου, γίνεται δεκτό ότι ένας παραγωγός συνδέεται με κάποιον εξαγωγέα ή εισαγωγέα μόνο εφόσον (α) ο ένας από αυτούς ελέγχει άμεσα ή έμμεσα τον άλλον· ή (β) και οι δύο ελέγχονται άμεσα ή έμμεσα από κάποιον τρίτο· ή (γ) από κοινού ελέγχουν άμεσα ή έμμεσα κάποιον τρίτο, υπό την προϋπόθεση ότι συντρέχουν λόγοι για να πιστεύει ή να υποψιάζεται κανείς ότι η σχέση αυτή έχει ως αποτέλεσμα να συμπεριφέρεται ο εκάστοτε παραγωγός διαφορετικά από ό,τι συμπεριφέρονται οι μη συνδεόμενοι παραγωγοί. Για τους σκοπούς της παρούσας παραγράφου, γίνεται δεκτό ότι μία οντότητα ελέγχει κάποιαν άλλη όταν η πρώτη έχει τη δυνατότητα, είτε νομικώς, είτε λειτουργικώς, να θέτει περιορισμούς στη δεύτερη ή να κατευθύνει τις ενέργειές της.

(ii) σε εξαιρετικές περιπτώσεις, το έδαφος ενός μέλους είναι δυνατό εις ό,τι αφορά την υπό εξέταση παραγωγή να διαιρεθεί σε δύο ή περισσότερες ανταγωνιστικές αγορές, και οι παραγωγοί κάθε επιμέρους αγοράς είναι δυνατό να θεωρηθούν ως ξεχωριστός κλάδος παραγωγής εφόσον: (α) οι παραγωγοί κάθε επιμέρους αγοράς πωλούν το σύνολο ή σχεδόν το σύνολο των ποσοτήτων του υπό εξέταση προϊόντος που παράγουν στη συγκεκριμένη αγορά, και (β) η ζήτηση στη συγκεκριμένη αγορά δεν καλύπτεται σε αξιόλογο ποσοστό από παραγωγούς του υπό εξέταση προϊόντος οι οποίοι είναι εγκατεστημένοι σε διαφορετικό τμήμα του εθνικού εδάφους. Όταν συντρέχουν οι ανωτέρω προϋποθέσεις, είναι δυνατό να γίνει δεκτό ότι προκαλείται ζημία ακόμη και αν μεγάλο μέρος του συνολικού εγχώριου κλάδου παραγωγής δεν υφίσταται ζημία, υπό την προϋπόθεση ότι παρατηρείται συγκέντρωση των εισαγωγών που αποτελούν αντικείμενο ντάμπινγκ σε μια τόσο απομονωμένη αγορά και επιπροσθέτως ότι οι επίμαχες εισαγωγές προξενούν ζημία στους παραγωγούς του συνόλου ή σχεδόν του συνόλου της παραγωγής στη συγκεκριμένη αγορά.

4.2 Όταν έχει οριστεί ότι τον εγχώριο κλάδο παραγωγής αποτελούν οι παραγωγοί συγκεκριμένης περιοχής, πράγμα που συμβαίνει όταν για τον ορισμό της αγοράς έχει εφαρμοστεί η ανωτέρω παράγραφος 1 σημείο (ii), οι επιβαλλόμενοι[12] δασμοί αντιντάμπινγκ αφορούν μόνο τις ποσότητες των υπό εξέταση προϊόντων οι οποίες προορίζονται για τελική κατανάλωση στην εν λόγω περιοχή. Όταν το συνταγματικό δίκαιο του εισάγοντος μέλους δεν επιτρέπει μια τέτοιου είδους επιβολή δασμών αντιντάμπινγκ, το εισάγον μέλος δύναται να επιβάλλει δασμούς αντιντάμπινγκ χωρίς περιορισμό μόνο εφόσον: (α) έχει παρασχεθεί η δυνατότητα στους οικείους εξαγωγείς να διακόψουν τις εξαγωγές σε τιμές που απορρέουν από πρακτικές ντάμπινγκ προς τη συγκεκριμένη περιοχή ή έστω να παράσχουν διαβεβαιώσεις, όπως προβλέπει το άρθρο 8, και δεν παρεσχέθησαν αμελλητί ικανοποιητικές διαβεβαιώσεις σχετικά· και (β) τέτοιου είδους δασμοί δεν είναι δυνατό να επιβληθούν μόνο στα προϊόντα συγκεκριμένων παραγωγών, οι οποίοι διοχετεύουν την παραγωγή τους στη συγκεκριμένη περιοχή.

4.3 Όταν δύο η περισσότερες χώρες έχουν, βάσει των διατάξεων του άρθρου XXIV, παράγραφος 8, στοιχείο α) της GATT του 1994, επιτύχει τέτοιο βαθμό οικονομικής ολοκλήρωσης, ώστε να φέρουν τα χαρακτηριστικά μίας ενιαίας, ενοποιημένης, αγοράς, ως εγχώριος κλάδος παραγωγής κατά την έννοια της παραγράφου 1 νοείται ο κλάδος παραγωγής στο σύνολο της περιοχής την οποία καλύπτει η οικονομική ολοκλήρωση.

4.4 Για το παρόν άρθρο εφαρμόζονται οι διατάξεις του άρθρου 3 παράγραφος 6.

Άρθρο 5

Έναρξη και διεξαγωγή της έρευνας

5.1 Με την επιφύλαξη της παραγράφου 6, η έναρξη έρευνας για να διαπιστωθούν η ύπαρξη, η έκταση και οι συνέπειες των τυχόν καταγγελλόμενων πρακτικών ντάμπινγκ προϋποθέτει γραπτή αίτηση εκ μέρους ή για λογαριασμό του εγχώριου κλάδου παραγωγής.

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12 Στην παρούσα συμφωνία ο όρος "επιβολή (δασμών)" σημαίνει τον οριστικό ή τελικό νομικό καταλογισμό ενός δασμού ή φόρου, ή την είσπραξή του.

5.2 Η αίτηση που υποβάλλεται βάσει της ανωτέρω παραγράφου 1 πρέπει να περιλαμβάνει αποδεικτικά στοιχεία σχετικά με τα εξής: (α) το ντάμπινγκ, (β) τη ζημία, κατά την έννοια του άρθρου VI της GATT του 1994, όπως ερμηνεύεται από την παρούσα συμφωνία, και (γ) την αιτιώδη συνάφεια μεταξύ των εισαγωγών που αποτελούν αντικείμενο ντάμπινγκ και της υποτιθέμενης ζημίας. Οι απλοί ισχυρισμοί, οι οποίοι δεν τεκμηριώνονται με τα κατάλληλα αποδεικτικά στοιχεία, δεν αρκούν για την τήρηση των προϋποθέσεων της παρούσας παραγράφου. Η αίτηση περιέχει τα στοιχεία που μπορεί ευλόγως να συγκεντρώσει ο αιτών σχετικά με τα εξής θέματα:

(i) την ταυτότητα του αιτούντος και στοιχεία για τον όγκο και την αξία της εγχώριας παραγωγής ομοειδούς προϊόντος από τον αιτούντα. Όταν η γραπτή αίτηση υποβάλλεται για λογαριασμό του εγχώριου κλάδου παραγωγής, η αίτηση πρέπει να προσδιορίζει τον κλάδο παραγωγής για λογαριασμό του οποίου υποβάλλεται η αίτηση, με την απαρίθμηση όλων των γνωστών εγχώριων παραγωγών ομοειδούς προϊόντος (ή των ενώσεων που έχουν συστήσει οι εγχώριοι παραγωγοί ομοειδούς προϊόντος)· επίσης, πρέπει στο μέτρο του δυνατού να περιέχει στοιχεία για τον όγκο και την αξία του τμήματος της εγχώριας παραγωγής ομοειδούς προϊόντος το οποίο αντιπροσωπεύουν οι συγκεκριμένοι παραγωγοί·

(ii) πλήρη περιγραφή του προϊόντος, το οποίο κατά την αίτηση αποτελεί αντικείμενο ντάμπινγκ, το όνομα της εμπλεκόμενης χώρας ή χωρών καταγωγής ή εξαγωγής, την ταυτότητα όλων των γνωστών εξαγωγέων ή αλλοδαπών παραγωγών, καθώς και κατάλογο των προσώπων που είναι γνωστό ότι εισάγουν το συγκεκριμένο προϊόν·

(iii) στοιχεία για τις τιμές στις οποίες το συγκεκριμένο προϊόν πωλείται, όταν προορίζεται για κατανάλωση στις εγχώριες αγορές της χώρας ή των χωρών καταγωγής ή εξαγωγής (ή, κατά περίπτωση, στοιχεία για τις τιμές στις οποίες το συγκεκριμένο προϊόν πωλείται από τη χώρα ή τις χώρες καταγωγής ή εξαγωγής προς κάποια τρίτη χώρα ή τρίτες χώρες, ή για την κατασκευασμένη αξία του εν λόγω προϊόντος)· επίσης, στοιχεία για τις τιμές εξαγωγής και, κατά περίπτωση, για τις τιμές στις οποίες το προϊόν μεταπωλείται για πρώτη φορά προς ανεξάρτητο αγοραστή στο έδαφος του εισάγοντος μέλους·

(iv) στοιχεία σχετικά με την εξέλιξη του όγκου των εισαγωγών που υποτίθεται ότι αποτελούν αντικείμενο ντάμπινγκ, σχετικά με τις συνέπειες των εν λόγω εισαγωγών για τις τιμές ομοειδούς προϊόντος στην εγχώρια αγορά και τις επακόλουθες συνέπειες των εισαγωγών για τον εγχώριο κλάδο παραγωγής, όπως αυτές προκύπτουν από τα σχετικά μεγέθη και τους δείκτες στα οποία αποτυπώνεται η κατάσταση του εγχώριου κλάδου παραγωγής, όπως εκείνα που απαριθμούνται στο άρθρο 3, παράγραφοι 2 και 4.

5.3 Οι αρχές εξετάζουν την ακρίβεια και την πληρότητα των αποδεικτικών στοιχείων που περιέχονται στην αίτηση, προκειμένου να διαπιστώσουν κατά πόσον υπάρχουν επαρκή αποδεικτικά στοιχεία που να δικαιολογούν την έναρξη έρευνας.

5.4 Έρευνα αρχίζει κατ'εφαρμογήν της παραγράφου 1 μόνον εφόσον οι αρχές έχουν καταλήξει στο συμπέρασμα, μετά από αξιολόγηση του βαθμού στήριξης της αίτησης ή αντίθεσης προς αυτήν που έχουν εκφράσει[13] οι εγχώριοι παραγωγοί ομοειδούς προϊόντος, ότι η αίτηση έχει υποβληθεί εκ μέρους ή για λογαριασμό του εγχώριου κλάδου παραγωγής[14]. Γίνεται δεκτό ότι η αίτηση έχει υποβληθεί "εκ μέρους ή για λογαριασμό του εγχώριου κλάδου παραγωγής", αν υποστηρίζεται από εγχώριους παραγωγούς των οποίων η αθροιστική παραγωγή αντιπροσωπεύει ποσοστό άνω του 50% της συνολικής παραγωγής ομοειδούς προϊόντος που πραγματοποιεί εκείνο το τμήμα του εγχώριου κλάδου παραγωγής το οποίο είτε εκφράζει την υποστήριξή του προς την αίτηση, είτε αντιτίθεται σε αυτήν. Παρ'όλα αυτά, η έναρξη έρευνας δεν είναι δυνατή, όταν οι εγχώριοι παραγωγοί που υποστηρίζουν ρητώς την αίτηση αντιπροσωπεύουν ποσοστό κατώτερο του 25% της συνολικής παραγωγής ομοειδούς προϊόντος που πραγματοποιεί ο εγχώριος κλάδος παραγωγής.

5.5 Οι αρχές αποφεύγουν, εκτός αν έχει ληφθεί απόφαση για την έναρξη έρευνας, να δίνουν οποιαδήποτε δημοσιότητα στην αίτηση για την έναρξη έρευνας. Εντούτοις, αφού λάβουν μια δεόντως τεκμηριωμένη αίτηση και πριν προχωρήσουν στην έναρξη σχετικής έρευνας, οι αρχές ενημερώνουν σχετικά την κυβέρνηση του οικείου εξάγοντος μέλους.

5.6 Αν σε ειδικές περιπτώσεις οι αρμόδιες αρχές αποφασίσουν την έναρξη έρευνας χωρίς να έχουν λάβει σχετική γραπτή αίτηση εκ μέρους ή για λογαριασμό του εγχώριου κλάδου παραγωγής για την έναρξη τέτοιας έρευνας, προχωρούν στα επόμενα στάδια της διαδικασίας μόνο εφόσον διαθέτουν επαρκή αποδεικτικά στοιχεία σχετικά με το ντάμπινγκ, τη ζημία και την ύπαρξη αιτιώδους συνάφειας, όπως ορίζεται στην παράγραφο 2, τα οποία δικαιολογούν την έναρξη έρευνας.

5.7 Τα αποδεικτικά στοιχεία τα σχετικά τόσο με το ντάμπινγκ, όσο και με τη ζημία αξιολογούνται συγχρόνως: (α) για την απόφαση περί ενάρξεως ή μη έρευνας, και (β) στη συνέχεια, κατά τη διάρκεια της έρευνας, με αφετηρία ημερομηνία που δεν επιτρέπεται να είναι μεταγενέστερη της νωρίτερης ημερομηνίας κατά την οποία είναι δυνατή η θέσπιση προσωρινών μέτρων με βάση τις διατάξεις της παρούσας συμφωνίας.

5.8 Αίτηση που υποβάλλεται βάσει της παραγράφου 1 είναι απορριπτέα, και τυχόν έρευνα που έχει αρχίσει περατούται πάραυτα, από τη στιγμή που οι αρμόδιες αρχές καταλήξουν στο συμπέρασμα ότι δεν υπάρχουν επαρκή αποδεικτικά στοιχεία σχετικά με το ντάμπινγκ ή τη ζημία, τα οποία να δικαιολογούν τη συνέχιση της υπόθεσης. Η υπόθεση περατούται αμέσως, όταν οι αρχές διαπιστώσουν ότι το περιθώριο ντάμπινγκ είναι αμελητέο ή ότι ο όγκος των πραγματικών ή δυνητικών εισαγωγών που αποτελούν αντικείμενο ντάμπινγκ ή η ζημία είναι άνευ σημασίας. Το περιθώριο ντάμπινγκ θεωρείται αμελητέο αν υπολείπεται του 2% της τιμής εξαγωγής. Ο όγκος των εισαγωγών που αποτελούν αντικείμενο ντάμπινγκ θεωρείται κατά κανόνα αμελητέος, αν διαπιστωθεί ότι ο όγκος των επίμαχων εισαγωγών από συγκεκριμένη χώρα αντιπροσωπεύει ποσοστό κατώτερο του 3%

13 Στην περίπτωση κατακερματισμένων κλάδων παραγωγής, οι οποίοι απαρτίζονται από εξαιρετικά μεγάλο αριθμό παραγωγών, οι αρχές είναι δυνατό να υπολογίζουν την υποστήριξη ή την αντίθεση προς την αίτηση μέσω της χρήσης στατιστικώς παραδεδεγμένων μεθόδων δειγματοληψίας.

14 Τα μέλη αναγνωρίζουν ότι στο έδαφος ορισμένων μελών είναι δυνατό οι εργαζόμενοι που απασχολούνται από εγχώριους παραγωγούς ομοειδούς προϊόντος ή εκπρόσωποι των εν λόγω εργαζομένων να έχουν το δικαίωμα να υποβάλουν αίτηση για τη διεξαγωγή έρευνας βάσει της παραγράφου 1 ή να εκφράσουν την υποστήριξή τους για μια τέτοια αίτηση.

του συνόλου των εισαγωγών ομοειδούς προϊόντος στο εισάγον μέλος, εκτός αν υπάρχει ένας αριθμός χωρών, καθεμία από τις οποίες αντιπροσωπεύει ποσοστό κατώτερο του 3% των εισαγωγών ομοειδούς προϊόντος στο εισάγον μέλος, αλλά όλες μαζί αντιπροσωπεύουν ποσοστό ανώτερο του 7% των εισαγωγών ομοειδούς προϊόντος στο εισάγον μέλος.

5.9 Το γεγονός ότι ενδεχομένως βρίσκεται σε εξέλιξη διαδικασία αντιντάμπινγκ δεν αποτελεί εμπόδιο για την ομαλή εξέλιξη των διαδικασιών εκτελωνισμού.

5.10 Πλην ειδικών περιπτώσεων, οι έρευνες ολοκληρώνονται εντός έτους, και σε καμία περίπτωση δεν είναι δυνατόν η διάρκειά τους να υπερβεί τους 18 μήνες από την έναρξή τους.

Άρθρο 6

Αποδεικτικά στοιχεία

6.1 Όλες οι πλευρές που εξαρτούν συμφέροντα από συγκεκριμένη έρευνα αντιντάμπινγκ ενημερώνονται σχετικά με τα στοιχεία που χρειάζονται οι αρμόδιες αρχές, και τους παρέχεται πλήρης ευχέρεια να υποβάλουν γραπτώς όλα τα αποδεικτικά στοιχεία που θεωρούν ότι έχουν σημασία για την έρευνα.

6.1.1 Στους εξαγωγείς ή τους αλλοδαπούς παραγωγούς που λαμβάνουν τα ερωτηματολόγια που χρησιμοποιούνται στο πλαίσιο έρευνας αντιντάμπινγκ τάσσεται προθεσμία 30 ημερών τουλάχιστον, για να απαντήσουν[15]. Οποιοδήποτε αίτημα για παράταση της ανωτέρω προθεσμίας των 30 ημερών τυγχάνει της προσήκουσας σημασίας, και, εφόσον αποδεικνύεται ότι συντρέχει λόγος, πρέπει να αποφασίζεται η παράταση της προθεσμίας, όποτε αυτό είναι πρακτικώς δυνατό.

6.1.2 Με την επιφύλαξη της υποχρέωσης διασφάλισης της εμπιστευτικότητας ορισμένων στοιχείων, τα αποδεικτικά στοιχεία που έχει υποβάλει γραπτώς κάποιο ενδιαφερόμενο μέρος κοινοποιούνται αμελλητί στα υπόλοιπα ενδιαφερόμενα μέρη που μετέχουν στη σχετική έρευνα.

6.1.3 Αφ'ης στιγμής αρχίσει έρευνα, οι αρχές κοινοποιούν το πλήρες κείμενο της γραπτής αίτησης που έχει παραληφθεί κατ' εφαρμογήν του άρθρου 5, παράγραφος 1 στους γνωστούς εξαγωγείς[16] και στις αρχές του εξάγοντος μέλους· επίσης το κοινοποιούν σε οποιοδήποτε ενδιαφερόμενο μέρος διατυπώσει σχετικό αίτημα. Λαμβάνονται όλα τα αναγκαία μέτρα για την τήρηση της υποχρέωσης προστασίας ορισμένων στοιχείων εμπιστευτικού χαρακτήρα, όπως προβλέπει η παράγραφος 5.

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15 Κατά κανόνα, η προθεσμία για τους εξαγωγείς άρχεται από την ημερομηνία παραλαβής του ερωτηματολογίου· εν προκειμένω, τεκμαίρεται ότι το ερωτηματολόγιο λαμβάνεται μία εβδομάδα μετά την ημερομηνία αποστολής του προς αυτόν που καλείται να το συμπληρώσει ή διαβίβασής του στον αρμόδιο διπλωματικό εκπρόσωπο του εξάγοντος μέλους ή, αν πρόκειται για ξεχωριστό τελωνειακό έδαφος μέλος του ΠΟΕ, στον επίσημο εκπρόσωπο του εδάφους εξαγωγής.

16 Γίνεται δεκτό ότι όταν ο αριθμός των εξαγωγέων που εμπλέκονται στην υπόθεση είναι ιδιαιτέρως μεγάλος, το πλήρες κείμενο της γραπτής αίτησης πρέπει να γνωστοποιείται μόνο στις αρχές του εξάγοντος μέλους ή στον οικείο επαγγελματικό συλλογικό φορέα.

6.2 Καθ'όλη τη διάρκεια μιας έρευνας αντιντάμπινγκ, παραχωρείται σε όλα τα ενδιαφερόμενα μέρη πλήρης δυνατότητα να υπερασπισθούν τα συμφέροντά τους. Για τον σκοπό αυτό, οι αρχές παρέχουν, εφόσον τους ζητηθεί, τη δυνατότητα σε όλους τους ενδιαφερόμενους να έρθουν σε επαφή με τις πλευρές που προωθούν αντίθετα συμφέροντα, ούτως ώστε να είναι δυνατή η ανάπτυξη των αντιτιθέμενων απόψεων και η προβολή από κάθε πλευρά επιχειρημάτων προς αντίκρουση των ισχυρισμών της άλλης πλευράς. Κατά την παραχώρηση των ανωτέρω δυνατοτήτων, λαμβάνεται υπόψη η ανάγκη προστασίας του απορρήτου και διευκόλυνσης των ενδιαφερομένων. Κανένα μέρος δεν είναι υποχρεωμένο να παρίσταται σε συγκεκριμένη συνάντηση, ενώ η μη συμμετοχή σε κάποια συνάντηση δεν έχει αρνητικές συνέπειες για τη θέση του απόντος μέρους. Επίσης, οι ενδιαφερόμενοι έχουν το δικαίωμα, εφόσον επικαλούνται και αποδεικνύουν σχετικό λόγο, να υποβάλλουν τυχόν πρόσθετα στοιχεία προφορικώς.

6.3 Τα στοιχεία που παρέχονται προφορικώς βάσει της παραγράφου 2 λαμβάνονται υπόψη από τις αρχές μόνο στο μέτρο που έχουν υποβληθεί εκ νέου και γραπτώς σε μεταγενέστερη φάση και έχουν κοινοποιηθεί στους λοιπούς ενδιαφερομένους, όπως προβλέπει η παράγραφος 1.2.

6.4 Οι αρχές παρέχουν όποτε είναι εφικτό σε όλους τους ενδιαφεράμενους τη δυνατότητα να εξετάσουν εγκαίρως το σύνολο των στοιχείων τα οποία είναι δυνατό να χρησιμεύσουν για την παρουσίαση των απόψεών τους, δεν έχουν εμπιστευτικό χαρακτήρα κατά την έννοια της παραγράφου 6 και τα οποία χρησιμοποιούν οι αρχές στο πλαίσιο έρευνας αντιντάμπινγκ. Ομοίως, τους παρέχουν την ευκαιρία να αξιοποιήσουν τα εν λόγω στοιχεία για να προετοιμάσουν την παρουσίαση των απόψεών τους.

6.5 Οι αρχές, όταν αποδεικνύεται η ύπαρξη σοβαρού λόγου, αντιμετωπίζουν ως εμπιστευτικού χαρακτήρα κάθε στοιχείο το οποίο από τη φύση του έχει τέτοιον χαρακτήρα (παραδείγματος χάρη, επειδή η αποκάλυψή του θα προσπόριζε ένα σημαντικό ανταγωνιστικό πλεονέκτημα σε έναν ανταγωνιστή ή επειδή η αποκάλυψή του θα είχε αξιόλογες αρνητικές συνέπειες για το πρόσωπο που έχει προσκομίσει το συγκεκριμένο στοιχείο ή για το πρόσωπο από το οποίο προήλθε το συγκεκριμένο στοιχείο) ή το οποίο έχει υποβληθεί από κάποια πλευρά που μετέχει στην έρευνα, με την επεξήγηση ότι πρόκειται για στοιχείο εμπιστευτικού χαρακτήρα. Απαγορεύεται η αποκάλυψη στοιχείων εμπιστευτικού χαρακτήρα αν δεν υπάρχει σχετική ρητή συγκατάθεση της πλευράς που τα έχει προσκομίσει[17].

6.5.1 Οι αρχές ζητούν από τους ενδιαφερομένους που προσκομίζουν εμπιστευτικού χαρακτήρα πληροφορίες να υποβάλουν μη εμπιστευτικού χαρακτήρα περιλήψεις των ίδιων πληροφοριών. Οι εν λόγω περιλήψεις πρέπει να είναι αρκούντως περιεκτικές, ώστε να επιτρέπουν τη σε ικανοποιητικό βαθμό κατανόηση της ουσίας της εμπιστευτικού χαρακτήρα πληροφορίας που υποβάλλεται. Σε εξαιρετικές περιπτώσεις, τα μέρη που υποβάλλουν κάποια εμπιστευτικού χαρακτήρα πληροφορία επιτρέπεται συγχρόνως να δηλώνουν ότι η εν λόγω πληροφορία δεν είναι δυνατό να παρουσιασθεί σε περιληπτική μορφή. Στις εξαιρετικές αυτές περιπτώσεις πρέπει να επισημαίνονται οι λόγοι για τους οποίους η περιληπτική παρουσίαση της πληροφορίας δεν είναι δυνατή.

17 Τα μέλη αναγνωρίζουν ότι στο έδαφος ορισμένων μελών είναι δυνατό η διάδοση ορισμένων στοιχείων να είναι υποχρεωτική υπό ορισμένες αυστηρές προϋποθέσεις βάσει δικαστικής απόφασης για τη λήψη συντηρητικών μέτρων.

6.5.2 Σε περίπτωση που οι αρχές κρίνουν ότι η αίτηση παροχής εμπιστευτικής μεταχείρισης είναι απορριπτέα, και ο παρέχων την πληροφορία δεν είναι διατεθειμένος ούτε να καταστήσει ευρύτερα γνωστή την πληροφορία, ούτε να επιτρέψει την κοινοποίησή της σε γενικόλογη ή περιληπτική μορφή, οι αρχές δύνανται να μη λαμβάνουν υπόψη τους την πληροφορία αυτή, εκτός αν πείθονται, βάσει αξιόπιστων στοιχείων, ότι η πληροφορία ανταποκρίνεται στην πραγματικότητα.[18]

6.6 Εκτός από τις περιπτώσεις που προβλέπονται στην παράγραφο 8, οι αρχές σχηματίζουν κατά τη διάρκεια της έρευνας πεποίθηση όσον αφορά την ακρίβεια των στοιχείων που έχουν προσκομίσει οι ενδιαφερόμενοι και τα οποία αποτελούν τη βάση των συμπερασμάτων τους.

6.7 Προκειμένου να ελέγξουν την ακρίβεια των προσκομισθέντων στοιχείων ή να συγκεντρώσουν λεπτομερέστερα στοιχεία, οι αρχές δύνανται να διενεργούν έρευνες στο έδαφος άλλων μελών, εφόσον κρίνεται απαραίτητο, υπό την προϋπόθεση ότι εξασφαλίζουν τη σχετική συγκατάθεση των εμπλεκομένων εταιρειών, ότι ειδοποιούν σχετικά τους εκπροσώπους της κυβέρνησης του μέλους στο οποίο πρόκειται να διεξαχθεί έρευνα και ότι το εν λόγω μέλος δεν εκφράζει αντιρρήσεις για τη διεξαγωγή της έρευνας. Για τις έρευνες που διενεργούνται στο έδαφος άλλων μελών εφαρμόζονται οι διαδικασίες που ορίζονται στο παράρτημα I. Με την επιφύλαξη της υποχρέωσης προστασίας της εμπιστευτικότητας ορισμένων στοιχείων, οι αρχές δίδουν στη δημοσιότητα τα πορίσματα των ερευνών που έχουν ενδεχομένως διενεργήσει ή τα γνωστοποιούν, βάσει της παραγράφου 9, στις εταιρείες στις οποίες αυτά αναφέρονται, ενώ είναι δυνατό να κοινοποιούν τα πορίσματα αυτά στα πρόσωπα που υπέβαλαν την αίτηση.

6.8 Σε περιπτώσεις κατά τις οποίες οποιοδήποτε ενδιαφερόμενο μέρος αρνείται να επιτρέψει την πρόσβαση στα απαραίτητα στοιχεία ή γενικά δεν προβαίνει στη γνωστοποίησή τους εντός ευλόγου χρονικού διαστήματος ή παρεμποδίζει σε σημαντικό βαθμό την έρευνα, είναι δυνατό να διατυπώνονται προκαταρκτικά και τελικά συμπεράσματα, είτε καταφατικά, είτε απόφατικά, βάσει των διαθέσιμων στοιχείων. Για την εφαρμογή της παρούσας παραγράφου τηρούνται οι διατάξεις του παραρτήματος II.

6.9 Πριν τη διατύπωση τελικού συμπεράσματος, οι αρχές ενημερώνουν όλους τους ενδιαφερόμενους σχετικά με τα ουσιώδη πραγματικά περιστατικά τα οποία πρόκειται να λάβουν υπόψη τους και στα οποία στηρίζεται η απόφαση για την εφαρμογή ή μη οριστικών μέτρων. Η ενημέρωση αυτή πρέπει να πραγματοποιείται αρκετά ενωρίς, ώστε τα μέρη να έχουν τον χρόνο για την υπεράσπιση των συμφερόντων τους.

6.10 Οι αρχές καθορίζουν, κατά κανόνα, ένα ξεχωριστό περιθώριο ντάμπινγκ για καθέναν από τους γνωστούς ενδιαφερόμενους εξαγωγείς ή παραγωγούς του προϊόντος που αποτελεί αντικείμενο της έρευνας. Όταν ο αριθμός των εξαγωγέων, των παραγωγών, των εισαγωγέων ή των τύπων προϊόντων που έχουν σημασία για την υπόθεση είναι τόσο μεγάλος, ώστε να καθιστά πρακτικώς ανέφικτο τον προαναφερθέντα ατομικό καθορισμό του περιθωρίου ντάμπινγκ, οι αρχές δύνανται να λαμβάνουν υπόψη για τους σκοπούς της εξέτασης είτε εύλογο αριθμό ενδιαφερομένων ή προϊόντων, με δειγματοληψίες που ανταποκρίνονται στις αρχές της στατιστικής και λαμβάνοντας ως βάση τα στοιχεία που έχουν στη διάθεσή τους οι αρχές κατά το χρόνο επιλογής του δείγματος, είτε το μεγαλύτερο δυνατό ποσοστό του όγκου των εξαγωγών από την εκάστοτε χώρα για το οποίο μπορεί λογικά να διεξαχθεί έρευνα.

18 Τα μέλη συμφωνούν ότι οι αιτήσεις για την παροχή εμπιστευτικής μεταχείρισης δεν πρέπει να απορρίπτονται αυθαίρετα.

6.10.1 Οποιαδήποτε επιλογή εξαγωγέων, παραγωγών, εισαγωγέων ή τύπων προϊόντων βάσει της παρούσας παραγράφου διενεργείται, εφόσον είναι δυνατόν, κατόπιν διαβουλεύσεων με τους εκάστοτε εξαγωγείς, παραγωγούς ή εισαγωγείς και με τη συγκατάθεσή τους.

6.10.2 Όταν οι αρχές έχουν περιστείλει το αντικείμενο της εξέτασης που διενεργούν, όπως προβλέπει η παρούσα παράγραφος, δεν παύουν να είναι υποχρεωμένες να καθορίσουν ξεχωριστό περιθώριο ντάμπινγκ ως προς κάθε εξαγωγέα ή παραγωγό, ο οποίος δεν συμπεριελήφθη στην αρχική επιλογή, αλλά ο οποίος έχει υποβάλει τα απαραίτητα στοιχεία και μάλιστα εγκαίρως, ώστε να είναι δυνατή η συνεκτίμησή τους κατά τη διάρκεια της έρευνας, εκτός αν ο αριθμός των εξαγωγέων ή των παραγωγών είναι τόσο μεγάλος, ώστε η ατομική εξέταση των δεδομένων καθενός να καθίσταται υπέρμετρα επαχθής για τις αρχές και να παρεμποδίζεται η έγκαιρη ολοκλήρωση της έρευνας. Οι ενέργειες που αναλαμβάνονται με ιδίαν πρωτοβουλία δεν αποθαρρύνονται.

6.11 Για τους σκοπούς της παρούσας συμφωνίας, ο όρος "ενδιαφερόμενα μέρη" περιλαμβάνει:

(i) τους εξαγωγείς, τους αλλοδαπούς παραγωγούς ή τους εισαγωγείς του προϊόντος που αποτελεί αντικείμενο της έρευνας ή τις εμπορικές και επιχειρηματικές ενώσεις, η πλειονότης των μελών των οποίων αποτελείται από παραγωγούς, εξαγωγείς ή εισαγωγείς του συγκεκριμένου προϊόντος·

(ii) την κυβέρνηση του εξάγοντος μέλους· και

(iii) τους παραγωγούς ομοειδούς προϊόντος στο εισάγον μέλος ή τις εμπορικές και επιχειρηματικές ενώσεις, η πλειονότης των μελών των οποίων αποτελείται από παραγωγούς ομοειδούς προϊόντος στο έδαφος του εισάγοντος μέλους.

Η ανωτέρω απαρίθμηση δεν σημαίνει ότι τα μέλη δεν έχουν το δικαίωμα να συμπεριλάβουν στα ενδιαφερόμενα μέρη και κάποια άλλα μέρη, είτε ημεδαπά, είτε αλλοδαπά, τα οποία ενδεχομένως δεν καλύπτονται από τον ανωτέρω ορισμό.

6.12 Οι αρχές παρέχουν τη δυνατότητα σε βιομηχανικούς χρήστες του προϊόντος που αποτελεί αντικείμενο της έρευνας και σε αντιπροσωπευτικές οργανώσεις καταναλωτών, σε περιπτώσεις κατά τις οποίες το προϊόν αυτό πωλείται συνήθως στο λιανεμπόριο, να προσκομίσουν τυχόν στοιχεία που θα μπορούσαν να ληφθούν υπόψη κατά τη διερεύνηση των θεμάτων των σχετικών με το ντάμπινγκ, τη ζημία και την αιτιώδη συνάφεια.

6.13 Οι αρχές λαμβάνουν δεόντως υπόψη τυχόν δυσκολίες που αντιμετωπίζουν τα ενδιαφερόμενα μέρη, ιδιαίτερα οι περιορισμένου μεγέθους εταιρείες, για τη συγκέντρωση των στοιχείων που τους έχουν ζητηθεί, και παρέχουν κάθε δυνατή βοήθεια σχετικά.

6.14 Οι διαδικασίες που καθορίζονται παραπάνω δεν σημαίνουν ότι οι αρχές κάποιου μέλους δεν έχουν το δικαίωμα να διενεργούν με ταχύτητα τις διάφορες πράξεις που αναφέρονται στην έναρξη της έρευνας, τη διατύπωση προκαταρκτικών ή τελικών συμπερασμάτων, είτε καταφατικών, είτε αποφατικών, ή να θεσπίζουν προσωρινά ή οριστικά μέτρα κατ' εφαρμογήν των σχετικών διατάξεων της παρούσας συμφωνίας.

Άρθρο 7

Προσωρινά μέτρα

7.1 Η εφαρμογή προσωρινών μέτρων επιτρέπεται μόνο εφόσον:

(i) έχει αρχίσει έρευνα σύμφωνα με τις διατάξεις του άρθρου 5, έχει εκδοθεί σχετική δημόσια ανακοίνωση και έχει παρασχεθεί στα ενδιαφερόμενα μέρη κατάλληλη δυνατότητα για να υποβάλουν τυχόν στοιχεία και να διατυπώσουν τις παρατηρήσεις τους·

(ii) έχει διατυπωθεί προκαταρκτικό συμπέρασμα το οποίο επιβεβαιώνει την ύπαρξη του ντάμπινγκ και την επακόλουθη πρόκληση ζημίας στον εγχώριο κλάδο παραγωγής· και

(iii) οι αρμόδιες αρχές κρίνουν ότι τα εν λόγω μέτρα είναι αναγκαία προκειμένου να αποτραπεί η πρόκληση ζημίας κατά τη διάρκεια της έρευνας.

7.2 Τα προσωρινά μέτρα είναι δυνατό να έχουν τη μορφή προσωρινού δασμού ή, πράγμα που είναι και προτιμότερο, παροχής εγγύησης υπό μορφή κατάθεσης σε μετρητά ή χορήγησης έγγραφης εγγυητικής δήλωσης· το ύψος της εγγύησης πρέπει να είναι ίσο με το ύψος του δασμού αντιντάμπινγκ, όπως αυτό έχει υπολογισθεί προσωρινά, και να μην υπερβαίνει το περιθώριο ντάμπινγκ το οποίο έχει προκύψει από τους προσωρινούς υπολογισμούς. Η αναστολή του καθορισμού της δασμολογητέας αξίας αποτελεί ενδεδειγμένο προσωρινό μέτρο, υπό την προϋπόθεση ότι προσδιορίζεται ο δασμός που ισχύει κανονικά και το ύψος του δασμού αντιντάμπινγκ που είναι επιβλητέος σύμφωνα με τους υπολογισμούς και ότι το μέτρο της αναστολής του καθορισμού της δασμολογητέας αξίας διέπεται από τις ίδιες προϋποθέσεις, όπως και τα υπόλοιπα προσωρινά μέτρα.

7.3 Δεν επιτρέπεται η επιβολή προσωρινών μέτρων πριν από την πάροδο 60 ημερών από την ημερομηνία έναρξης της έρευνας.

7.4 Η ισχύς τυχόν προσωρινών μέτρων πρέπει να έχει τη συντομότερη δυνατή χρονική διάρκεια, η οποία δεν μπορεί να υπερβαίνει τους τέσσερις μήνες· μετά από απόφαση των αρμόδιων αρχών και εφόσον διατυπωθεί σχετικό αίτημα εκ μέρους εξαγωγέων που αντιπροσωπεύουν σημαντικό ποσοστό του όγκου του εμπορίου για το συγκεκριμένο προϊόν, είναι δυνατόν η διάρκεια ισχύος των εν λόγω μέτρων να είναι έξι μήνες κατά μέγιστο. Όταν οι αρχές, κατά τη διάρκεια έρευνας, εξετάζουν κατά πόσον η επιβολή δασμού χαμηλότερου από το περιθώριο ντάμπινγκ θα ήταν αρκετή για την άρση της ζημίας, οι ανωτέρω χρονικές περίοδοι είναι δυνατό να είναι έξι και εννιά μήνες, αντιστοίχως.

7.5 Η εφαρμογή προσωρινών μέτρων διέπεται από τις συναφείς διατάξεις του άρθρου 9.

Άρθρο 8

Αναλήψεις υποχρεώσεων ως προς τις τιμές

8.1 Η πρόοδος της διαδικασίας είναι δυνατό[19] να αναστέλλεται ή να περατούται χωρίς να επιβληθούν προσωρινά μέτρα ή δασμοί αντιντάμπινγκ σε περίπτωση που υποβληθούν οικειοθελώς από οποιονδήποτε εξαγωγέα ικανοποιητικές αναλήψεις υποχρεώσεων με αντικείμενο την αναπροσαρμογή

19 Ο όρος "είναι δυνατό" δεν σημαίνει ότι επιτρέπεται η ταυτόχρονη συνέχιση της διαδικασίας και η τήρηση αναλήψεων υποχρεώσεων ως προς τις τιμές, εκτός από τις περιπτώσεις που ορίζονται στην παράγραφο 4.

των τιμών που αυτός εφαρμόζει ή τη διακοπή των εξαγωγών προς τη συγκεκριμένη περιοχή σε τιμές που απορρέουν από πρακτικές ντάμπινγκ και εφόσον οι αρχές πεισθούν ότι με τον τρόπο αυτό πρόκειται να εξαλειφθούν οι ζημιογόνες συνέπειες του ντάμπινγκ. Οι αυξήσεις τιμών που προβλέπονται από τέτοιου είδους αναλήψεις υποχρεώσεων δεν επιτρέπεται να είναι μεγαλύτερες από αυτές που χρειάζονται για την άρση του περιθωρίου ντάμπινγκ. Οι αυξήσεις τιμών είναι προτιμότερο να υπολείπονται του περιθωρίου ντάμπινγκ, εφόσον οι αυξήσεις αυτής της κλίμακας είναι αρκετές για την άρση της ζημίας που προξενείται στον εγχώριο κλάδο παραγωγής.

8.2 Δεν επιτρέπεται να ζητείται ή να γίνεται δεκτή η ανάληψη υποχρεώσεων ως προς τις τιμές εκ μέρους εξαγωγέων, παρά μόνο εφόσον οι αρχές του εισάγοντος μέλους έχουν καταλήξει, στο πλαίσιο των προκαταρκτικών συμπερασμάτων τους, στη διαπίστωση ότι όντως υπάρχει ντάμπινγκ και ότι το ντάμπινγκ αυτό έχει ζημιογόνες συνέπειες.

8.3 Οι προτεινόμενες αναλήψεις υποχρεώσεων είναι δυνατό να μη γίνονται δεκτές, αν οι αρχές εκτιμούν ότι η αποδοχή τους θα δημιουργούσε πρακτικές δυσκολίες, παραδείγματος χάρη αν ο αριθμός των πραγματικών ή δυνητικών εξαγωγέων είναι υπερβολικά μεγάλος ή για άλλους λόγους, συμπεριλαμβανομένων λόγων που ανάγονται στην ακολουθούμενη συνολική πολιτική. Όταν παρίσταται ανάγκη και εφόσον είναι πρακτικώς δυνατόν, οι αρχές εξηγούν στον εξαγωγέα τους λόγους για τους οποίους έκριναν ως μη ενδεδειγμένη την αποδοχή κάποιας ανάληψης υποχρέωσης και παρέχουν, στο μέτρο του δυνατού, στον εξαγωγέα τη δυνατότητα να υποβάλει τις παρατηρήσεις του σχετικά.

8.4 Όταν γίνεται δεκτή μία ανάληψη υποχρέωσης, η έρευνα η σχετική με το ντάμπινγκ και τη ζημία ολοκληρώνεται παρά την αποδοχή, εφόσον το επιθυμεί ο εξαγωγέας ή εφόσον ληφθεί σχετική απόφαση από τις αρχές. Στην περίπτωση αυτή, αν διαπιστωθεί ότι δεν υπάρχει ντάμπινγκ ή ζημία, η ανάληψη υποχρέωσης παύει να ισχύει αυτοδικαίως, εκτός από τις περιπτώσεις κατά τις οποίες η διαπίστωση της μη ύπαρξης ντάμπινγκ ή ζημίας είναι σε μεγάλο βαθμό αποτέλεσμα της ύπαρξης ανάληψης υποχρέωσης ως προς τις τιμές. Σε τέτοιες περιπτώσεις, οι αρχές δύνανται να απαιτούν τη διατήρηση σε ισχύ της ανάληψης υποχρέωσης για εύλογο χρονικό διάστημα, σύμφωνα με τις διατάξεις της παρούσας συμφωνίας. Σε περίπτωση που διαπιστωθεί ότι όντως υπάρχει ντάμπινγκ και ζημία, η αναληφθείσα υποχρέωση παραμένει σε ισχύ με βάση το περιεχόμενό της και σύμφωνα με τις διατάξεις της παρούσας συμφωνίας.

8.5 Οι αρχές του εισάγοντος μέλους δύνανται να εισηγούνται την ανάληψη υποχρεώσεων ως προς τις τιμές, αλλά κανείς εξαγωγέας δεν είναι δυνατό να υποχρεωθεί να αναλάβει κάποια υποχρέωση αυτής της μορφής. Το γεγονός ότι κάποιος εξαγωγέας δεν προσφέρεται να αναλάβει τέτοιου είδους υποχρεώσεις ή δεν ανταποκρίνεται στην πρόσκληση που του έχουν απευθύνει οι αρχές για τον σκοπό αυτό δεν προδικάζει με κανέναν τρόπο την αξιολόγηση των δεδομένων της υπόθεσης. Παρόλα αυτά, οι αρχές έχουν την ευχέρεια να καταλήγουν στο συμπέρασμα ότι η επέλευση του κινδύνου πρόκλησης ζημίας είναι πιθανότερη σε περίπτωση συνέχισης των εισαγωγών που αποτελούν αντικείμενο ντάμπινγκ.

8.6 Οι αρχές του εισάγοντος μέλους δύνανται να απαιτούν από οποιονδήποτε εξαγωγέα, από τον οποίον έχει προταθεί και γίνει δεκτή ανάληψη υποχρέωσης, να υποβάλλει ανά τακτά χρονικά διαστήματα στοιχεία σχετικά με την τήρηση της αναληφθείσας υποχρέωσης και να επιτρέπει την επαλήθευση των συναφών στοιχείων. Σε περίπτωση παράβασης της αναληφθείσας υποχρέωσης, οι αρχές του εισάγοντος μέλους δύνανται να λαμβάνουν μέτρα με ταχείες διαδικασίες, στο πλαίσιο της παρούσας συμφωνίας και σύμφωνα με τις διατάξεις της· τα μέτρα αυτά είναι δυνατό να συνίστανται στην άμεση εφαρμογή προσωρινών μέτρων, βάσει της

καλύτερης διαθέσιμης τεκμηρίωσης. Σε τέτοιες περιπτώσεις, επιτρέπεται η επιβολή συμφώνως προς την παρούσα συμφωνία οριστικών δασμών επί προϊόντων τα οποία έχουν τεθεί σε κατανάλωση όχι περισσότερες από 90 ημέρες πριν από την εφαρμογή των προσωρινών μέτρων, με εξαίρεση τα προϊόντα που ετέθησαν σε κατανάλωση πριν από την παράβαση της αναληφθείσας υποχρέωσης, ως προς τα οποία δεν ισχύει η αναδρομική αυτή μεταχείριση.

Άρθρο 9

Επιβολή και είσπραξη των δασμών αντιντάμπινγκ

9.1 Η απόφαση περί της επιβολής ή μη δασμού αντιντάμπινγκ σε περιπτώσεις κατά τις οποίες συντρέχουν όλες οι προϋποθέσεις για την επιβολή, καθώς και η απόφαση περί του κατά πόσον το ύψος του επιβλητέου δασμού αντιντάμπινγκ πρέπει να ισούται με ολόκληρο το περιθώριο ντάμπινγκ ή με ποσοστό αυτού είναι αποφάσεις τις οποίες λαμβάνουν οι αρχές του εισάγοντος μέλους. Καλό είναι η επιβολή να έχει προαιρετικό χαρακτήρα στο έδαφος όλων των μελών και ο δασμός να υπολείπεται του περιθωρίου, αν ο μικρότερος αυτός δασμός κρίνεται επαρκής για την άρση της ζημίας που προξενείται στον εγχώριο κλάδο παραγωγής.

9.2 Όταν επιβάλλεται δασμός αντιντάμπινγκ σε σχέση με οποιοδήποτε προϊόν, ο δασμός αυτός εισπράττεται κάθε φορά μέχρι του προβλεπόμενου ποσού για όλες χωρίς διάκριση τις εισαγωγές του συγκεκριμένου προϊόντος, όποια και αν είναι η προέλευσή τους, εφόσον διαπιστώνεται ότι οι εισαγωγές αυτές αποτελούν αντικείμενο ντάμπινγκ και προκαλούν ζημία, με εξαίρεση τις εισαγωγές που προέρχονται από εταιρείες για τις οποίες έχουν γίνει δεκτές αναλήψεις υποχρεώσεων ως προς τις τιμές συμφώνως προς τις διατάξεις της παρούσας συμφωνίας. Οι αρχές κατονομάζουν αυτόν ή αυτούς που προμηθεύουν το συγκεκριμένο προϊόν. Αν, παρόλα αυτά, η υπόθεση αφορά περισσότερους προμηθευτές από την ίδια χώρα και είναι πρακτικώς αδύνατο να κατονομασθούν οι προμηθευτές αυτοί στο σύνολό τους, οι αρχές δύνανται να κατονομάζουν τη συγκεκριμένη προμηθεύτρια χώρα. Αν η υπόθεση αφορά περισσότερους προμηθευτές από διάφορες χώρες, οι αρχές δύνανται να κατονομάζουν είτε όλους τους εμπλεκόμενους προμηθευτές, είτε, αν αυτό είναι πρακτικώς αδύνατο, όλες τις προμηθεύτριες χώρες.

9.3 Το ύψος του δασμού αντιντάμπινγκ δεν επιτρέπεται να υπερβαίνει το περιθώριο ντάμπινγκ, όπως αυτό έχει υπολογισθεί βάσει του άρθρου 2.

9.3.1 Όταν το ύψος του δασμού αντιντάμπινγκ καθορίζεται βάσει παρελθόντων στοιχείων, ο υπολογισμός της τελικής οφειλής που πρέπει να καταβληθεί λόγω των δασμών αντιντάμπινγκ διενεργείται το συντομότερο δυνατόν, και καταρχήν εντός δωδεκαμήνου, ενώ σε καμία περίπτωση δεν επιτρέπεται να μεσολαβήσει μέχρι τη διενέργειά του χρονικό διάστημα μεγαλύτερο των 18 μηνών από την ημερομηνία υποβολής του αιτήματος για τον οριστικό προσδιορισμό του ποσού που αντιπροσωπεύουν οι δασμοί αντιντάμπινγκ.[20] Οποιαδήποτε επιστροφή πραγματοποιείται αμελλητί και κατά κανόνα εντός 90 ημερών το αργότερο από τον προσδιορισμό της τελικής οφειλής κατ' εφαρμογήν της παρούσας παραγράφου. Σε κάθε περίπτωση, αν η επιστροφή δεν πραγματοποιηθεί εντός 90 ημερών, οι αρχές είναι υποχρεωμένες, εφόσον τους ζητηθεί, να παράσχουν σχετικές εξηγήσεις.

20 Γίνεται δεκτό ότι η τήρηση των προθεσμιών που ορίζονται στην παρούσα παράγραφο, καθώς και στην παράγραφο 3.2 ενδέχεται να μην είναι δυνατή σε περίπτωση που για το συγκεκριμένο προϊόν βρίσκονται σε εξέλιξη διαδικασίες παροχής δικαστικής προστασίας.

9.3.2 Όταν το ύψος του δασμού αντιντάμπινγκ υπολογίζεται βάσει προβλέψεων, λαμβάνεται υπόψη το ενδεχόμενο άμεσης επιστροφής, μετά από διατύπωση σχετικού αιτήματος, τυχόν δασμών που έχουν καταβληθεί και οι οποίοι υπερβαίνουν το περιθώριο ντάμπινγκ. Η επιστροφή οποιουδήποτε δασμού, που έχει καταβληθεί και ο οποίος υπερβαίνει το πραγματικό περιθώριο ντάμπινγκ, πρέπει κανονικά να πραγματοποιείται εντός 12 μηνών και οπωσδήποτε εντός 18 μηνών το αργότερο από την ημερομηνία κατά την οποία κάποιος εισαγωγέας του προϊόντος στο οποίο έχει επιβληθεί ο δασμός αντιντάμπινγκ υπέβαλε αίτηση επιστροφής, η οποία συνοδεύεται από τη δέουσα τεκμηρίωση. Η εγκριθείσα επιστροφή πρέπει κανονικά να πραγματοποιείται εντός 90 ημερών από τη λήψη της προμνημονευθείσας απόφασης.

9.3.3 Για να αποφασισθεί εάν και σε ποιά έκταση είναι σκόπιμη η επιστροφή κάποιου ποσού σε περιπτώσεις κατά τις οποίες η τιμή εξαγωγής έχει κατασκευασθεί κατ'εφαρμογήν του άρθρου 2, παράγραφος 3, οι αρχές οφείλουν να λαμβάνουν υπόψη ενδεχόμενες αυξομειώσεις της κανονικής αξίας, ενδεχόμενες μεταβολές των δαπανών που ανακύπτουν μεταξύ εισαγωγής και μεταπώλησης, καθώς και τις τυχόν αυξομειώσεις της τιμής μεταπώλησης, οι οποίες έχουν την αναμενόμενη επίδραση επί των κατοπινών τιμών πώλησης· επίσης οφείλουν να υπολογίζουν την τιμή εξαγωγής χωρίς να αφαιρούν το ποσό που αντιστοιχεί στους καταβληθέντες δασμούς αντιντάμπινγκ, εφόσον έχουν προσκομιστεί πειστικά αποδεικτικά στοιχεία για το θέμα αυτό.

9.4 Όταν οι αρχές έχουν περιστείλει το αντικείμενο της εξέτασης που διενεργούν σύμφωνα με το άρθρο 6, παράγραφος 10, δεύτερο εδάφιο, οποιοσδήποτε δασμός αντιντάμπινγκ, ο οποίος επιβάλλεται στις εισαγωγές που προέρχονται από εξαγωγείς ή παραγωγούς μη συμπεριλαμβανόμενους στην εξέταση, δεν επιτρέπεται να υπερβαίνει:

(i) το μέσο σταθμισμένο περιθώριο ντάμπινγκ που έχει καθοριστεί σε σχέση με τους επιλεγέντες εξαγωγείς ή παραγωγούς· ή,

(ii) όταν η οφειλή που προκύπτει από τους δασμούς αντιντάμπινγκ υπολογίζεται με βάση κάποια προβλεπόμενη κανονική αξία, τη διαφορά μεταξύ της σταθμισμένης μέσης κανονικής αξίας που αντιστοιχεί στους επιλεγέντες εξαγωγείς ή παραγωγούς και των τιμών εξαγωγής που εφαρμόζουν οι εξαγωγείς ή οι παραγωγοί που δεν ελήφθησαν ξεχωριστά υπόψη για τους σκοπούς της εξέτασης,

υπό την προϋπόθεση ότι οι αρχές δεν λαμβάνουν υπόψη για τους σκοπούς της παρούσας παραγράφου τυχόν περιθώρια που είτε είναι μηδενικά είτε αμελητέα καθώς και τυχόν περιθώρια που έχουν καθοριστεί υπό τις προϋποθέσεις που αναφέρονται στο άρθρο 6, παράγραφος 8. Οι αρχές επιβάλλουν μεμονωμένους δασμούς ή κανονικές αξίες για τις εισαγωγές που προέρχονται από οποιονδήποτε εξαγωγέα ή παραγωγό που δεν έχει συμπεριληφθεί στην εξέταση, εφόσον αυτός έχει προσκομίσει τα απαραίτητα στοιχεία κατά τη διάρκεια της έρευνας, όπως προβλέπει το άρθρο 6, παράγραφος 10.2.

9.5 Αν σε ένα προϊόν έχουν επιβληθεί δασμοί αντιντάμπινγκ από κάποιο μέλος που το εισάγει, οι αρχές διενεργούν αμελλητί επανεξέταση, προκειμένου να καθορίσουν ξεχωριστά περιθώρια ντάμπινγκ για τυχόν εξαγωγείς ή παραγωγούς της εμπλεκόμενης χώρας εξαγωγής, οι οποίοι δεν πραγματοποίησαν εξαγωγές του εν λόγω προϊόντος στο εισάγον μέλος κατά την περίοδο έρευνας, υπό την προϋπόθεση ότι οι εν λόγω εξαγωγείς ή παραγωγοί είναι σε θέση να αποδείξουν ότι δεν συνδέονται με κανέναν από

τους εξαγωγείς ή παραγωγούς της χώρας εξαγωγής, στους οποίους έχουν επιβληθεί οι δασμοί αντιντάμπινγκ που επιβαρύνουν το συγκεκριμένο προϊόν. Η επανεξέταση αυτή εγκαινιάζεται και διενεργείται με συνοπτικές διαδικασίες εν συγκρίσει με τις συνήθεις διαδικασίες που ακολουθούνται στο εισάγον μέλος για τον καθορισμό και την επανεξέταση των δασμών. Στις εισαγωγές, οι οποίες προέρχονται από τους προαναφερθέντες εξαγωγείς ή παραγωγούς, δεν επιτρέπεται να επιβάλλονται δασμοί αντιντάμπινγκ όσο βρίσκεται σε εξέλιξη η διαδικασία επανεξέτασης. Ωστόσο, οι αρχές δύνανται να αναστέλλουν τον καθορισμό της δασμολογητέας αξίας ή/και να απαιτούν την παροχή εγγυήσεων, προκειμένου να διασφαλισθεί ότι, σε περίπτωση που διαπιστωθεί από την επανεξέταση ότι οι συγκεκριμένοι εξαγωγείς ή παραγωγοί εφαρμόζουν πρακτικές ντάμπινγκ, θα είναι δυνατή η επιβολή δασμών αντιντάμπινγκ με αναδρομική ισχύ, μέχρι την ημερομηνία έναρξης της επανεξέτασης.

Άρθρο 10

Αναδρομική ισχύς

10.1 Προσωρινά μέτρα και δασμοί αντιντάμπινγκ εφαρμόζονται μόνο ως προς προϊόντα που τίθενται σε κατανάλωση μετά το χρόνο θέσης σε ισχύ της απόφασης που λαμβάνεται βάσει του άρθρου 7, παράγραφος 1 και του άρθρου 9, παράγραφος 1, αντιστοίχως, με την επιφύλαξη των εξαιρέσεων που προβλέπονται στο παρόν άρθρο.

10.2 Όταν διατυπώνεται οριστικό συμπέρασμα, το οποίο επιβεβαιώνει την ύπαρξη ζημίας (αλλά όχι την ύπαρξη κινδύνου πρόκλησης ζημίας ούτε τη σημαντική επιβράδυνση της δημιουργίας κλάδου παραγωγής) ή, σε περίπτωση που συμπεραίνεται οριστικά ότι υπάρχει κίνδυνος πρόκλησης ζημίας, όταν διαπιστώνεται ότι αν δεν εφαρμόζονταν προσωρινά μέτρα οι συνέπειες των εισαγωγών που αποτελούν αντικείμενο ντάμπινγκ θα είχαν οδηγήσει στο συμπέρασμα ότι υπάρχει πρόκληση ζημίας, οι δασμοί αντιντάμπινγκ είναι δυνατό να έχουν αναδρομική ισχύ, ώστε να καλύπτεται και η περίοδος εφαρμογής τυχόν προσωρινών μέτρων.

10.3 Αν ο οριστικός δασμός αντιντάμπινγκ είναι υψηλότερος από τον καταβληθέντα ή καταβλητέο προσωρινό δασμό ή από το ποσό που έχει υπολογισθεί ότι πρέπει να καταβληθεί υπό μορφή εγγύησης, δεν επιτρέπεται η είσπραξη της προκύπτουσας διαφοράς. Αν ο οριστικός δασμός είναι μικρότερος από τον καταβληθέντα ή καταβλητέο προσωρινό δασμό ή από το ποσό που έχει υπολογισθεί ότι πρέπει να καταβληθεί υπό μορφή εγγύησης, επιβάλλεται η επιστροφή της διαφοράς ή ο εκ νέου υπολογισμός του δασμού, ανάλογα με την περίπτωση.

10.4 Με την επιφύλαξη όσων προβλέπονται στην παράγραφο 2, όταν διαπιστώνεται η ύπαρξη κινδύνου πρόκλησης ζημίας ή σημαντικής επιβράδυνσης της δημιουργίας κλάδου παραγωγής (αλλά ακόμη δεν έχει προκληθεί ζημία), η επιβολή οριστικού δασμού αντιντάμπινγκ μπορεί να αφορά μόνο το χρόνο μετά τη διαπίστωση της ύπαρξης κινδύνου πρόκλησης ζημίας ή της σημαντικής επιβράδυνσης· στην περίπτωση αυτή, τυχόν μετρητά που έχουν κατατεθεί ως εγγύηση κατά τη διάρκεια εφαρμογής των προσωρινών μέτρων είναι επιστρεπτέα, ενώ αν έχει χορηγηθεί έγγραφη εγγυητική δήλωση, αυτή πρέπει να αποδοθεί το ταχύτερο δυνατόν.

10.5 Όταν το οριστικό συμπέρασμα είναι αποφατικό, τυχόν μετρητά που έχουν κατατεθεί ως εγγύηση κατά τη διάρκεια εφαρμογής των προσωρινών μέτρων είναι επιστρεπτέα, ενώ αν έχει χορηγηθεί έγγραφη εγγυητική δήλωση, αυτή πρέπει να αποδοθεί το ταχύτερο δυνατόν.

10.6 Επιτρέπεται η επιβολή οριστικού δασμού αντιντάμπινγκ ως προς προϊόντα που ετέθησαν σε κατανάλωση το πολύ 90 ημέρες πριν από την

ημερομηνία έναρξης ισχύος των προσωρινών μέτρων, όταν οι αρχές καταλήγουν στα εξής συμπεράσματα όσον αφορά το προϊόν που αποτελεί αντικείμενο του ντάμπινγκ:

(i) ότι κατά το παρελθόν παρατηρήθηκε άσκηση πρακτικών ντάμπινγκ από την οποία προκλήθηκε ζημία ή ότι ο εισαγωγέας γνώριζε ή όφειλε να γνωρίζει ότι ο εξαγωγέας ασκεί πρακτικές ντάμπινγκ και ότι οι πρακτικές αυτές εμπεριείχαν τον κίνδυνο πρόκλησης ζημίας· και

(ii) ότι η ζημία προκαλείται από την πραγματοποίηση σε σχετικά βραχύ χρονικό διάστημα εκτεταμένων εισαγωγών κάποιου προϊόντος σε τιμές που είναι αποτέλεσμα ντάμπινγκ, οι οποίες εισαγωγές, λαμβανομένου υπόψη του χρόνου κατά τον οποίον πραγματοποιήθηκαν, του όγκου τους και των λοιπών περιστάσεων (παραδείγματος χάρη, της ταχείας αύξησης των αποθεμάτων του εισαγόμενου προϊόντος) είναι πιθανό να εξουδετερώσουν σε μεγάλο βαθμό την επανορθωτική επίδραση του οριστικού δασμού αντιντάμπινγκ που πρόκειται να επιβληθεί, υπό την προϋπόθεση ότι οι ενδιαφερόμενοι εισαγωγείς είχαν την ευκαιρία να διατυπώσουν τις παρατηρήσεις τους.

10.7 Μετά την έναρξη της έρευνας, οι αρχές δύνανται να προβαίνουν στη θέσπιση μέτρων, όπως η αναστολή του καθορισμού της δασμολογητέας αξίας ή της εκτίμησης του ύψους του δασμού, τα οποία κρίνονται απαραίτητα για την είσπραξη των δασμών αντιντάμπινγκ με αναδρομική ισχύ, όπως προβλέπει η παράγραφος 6, αφ'ης στιγμής έχουν συγκεντρώσει επαρκή αποδεικτικά στοιχεία από τα οποία προκύπτει ότι πληρούνται οι προϋποθέσεις που καθορίζονται στην εν λόγω παράγραφο.

10.8 Δεν επιτρέπεται η επιβολή δασμών με αναδρομική ισχύ, κατ'εφαρμογή της παραγράφου 6, ως προς προϊόντα που τίθενται σε κατανάλωση πριν από την ημερομηνία έναρξης της έρευνας.

Άρθρο 11

Διάρκεια ισχύος και επανεξέταση των δασμών αντιντάμπινγκ και των αναλήψεων υποχρεώσεων ως προς τις τιμές

11.1 Οι δασμοί αντιντάμπινγκ παραμένουν σε ισχύ μόνο για όσο χρόνο και στην έκταση που χρειάζεται για την εξουδετέρωση των ζημιογόνων συνεπειών του ντάμπινγκ.

11.2 Όποτε το κρίνουν σκόπιμο, οι αρχές επανεξετάζουν κατά πόσον επιβάλλεται η συνέχιση της επιβολής του δασμού, είτε με δική τους πρωτοβουλία, είτε εφόσον υποβληθεί σχετική αίτηση από οποιονδήποτε ενδιαφερόμενο, υπό την προϋπόθεση ότι από την επιβολή του οριστικού δασμού αντιντάμπινγκ έχει παρέλθει ικανό χρονικό διάστημα και ότι η αίτηση συνοδεύεται από θετικά αποδεικτικά στοιχεία, από τα οποία προκύπτει ότι είναι επιβεβλημένη η ζητούμενη επανεξέταση[21]. Τα ενδιαφερόμενα μέρη έχουν το δικαίωμα να ζητούν από τις αρχές να εξετάσουν κατά πόσον η συνέχιση της επιβολής του δασμού είναι αναγκαία για την εξουδετέρωση των συνεπειών του ντάμπινγκ και κατά πόσον είναι πιθανή η συνέχιση ή επανάληψη της πρόκλησης ζημίας σε περίπτωση ανάκλησης ή/και διαφοροποίησης του δασμού. Αν, βάσει της επανεξέτασης που έχει πραγματοποιηθεί δυνάμει της παρούσας παραγράφου, οι αρχές καταλήξουν στο συμπέρασμα ότι ο δασμός αντιντάμπινγκ δεν είναι πλέον απαραίτητος, ο δασμός καταργείται αμέσως.

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21 Ο καθορισμός του τελικού ποσού που οφείλεται για τους δασμούς αντιντάμπινγκ, όπως προβλέπει το άρθρο 9, παράγραφος 3, δεν αποτελεί από μόνος του επανεξέταση κατά την έννοια του παρόντος άρθρου.

11.3 Κατά παρέκκλιση των διατάξεων των παραγράφων 1 και 2, κάθε οριστικός δασμός αντιντάμπινγκ καταργείται το αργότερο πέντε έτη από την επιβολή του (ή από την ημερομηνία της πλέον πρόσφατης επανεξέτασής του, βάσει της παραγράφου 2, σε περίπτωση που αντικείμενο της επανεξέτασης ήταν τόσο το ντάμπινγκ, όσο και η ζημία, ή βάσει της παρούσας παραγράφου), εκτός αν οι αρχές καταλήξουν στο συμπέρασμα, στο πλαίσιο επανεξέτασης που άρχισαν πριν από την ανωτέρω ημερομηνία, είτε με δική τους πρωτοβουλία, είτε μετά τη διατύπωση σχετικού και δεόντως τεκμηριωμένου αιτήματος εκ μέρους ή για λογαριασμό του εγχώριου κλάδου παραγωγής σε προγενέστερο χρόνο που δεν απέχει υπερβολικά από την ανωτέρω ημερομηνία, ότι η λήξη ισχύος του δασμού θα είχε ως πιθανή συνέπεια τη συνέχιση ή την επανάληψη του ντάμπινγκ και της εξ αυτού προκαλούμενης ζημίας.[22] Ο δασμός είναι δυνατό να διατηρείται σε ισχύ μέχρι την ολοκλήρωση της διαδικασίας επανεξέτασης.

11.4 Οι διατάξεις του άρθρου 6 σχετικά με τις αποδείξεις και τη διαδικασία εφαρμόζονται για κάθε επανεξέταση, η οποία διενεργείται βάσει του παρόντος άρθρου. Κάθε τέτοια επανεξέταση διενεργείται χωρίς καθυστερήσεις και πρέπει κανονικά να ολοκληρώνεται εντός 12 μηνών από την ημερομηνία έναρξης της επανεξέτασης.

11.5 Οι διατάξεις του παρόντος άρθρου εφαρμόζονται κατ' αναλογίαν και για τις αναλήψεις υποχρεώσεων ως προς τις τιμές, οι οποίες έχουν γίνει δεκτές βάσει του άρθρου 8.

Άρθρο 12

Δημόσια ανακοίνωση και ανάπτυξη του σκεπτικού στο οποίο στηρίζεται

12.1 Όταν οι αρχές έχουν καταλήξει στο συμπέρασμα ότι υπάρχουν επαρκή αποδεικτικά στοιχεία, τα οποία δικαιολογούν την έναρξη έρευνας αντιντάμπινγκ βάσει του άρθρου 5, ενημερώνουν σχετικά το μέλος ή τα μέλη στα οποία παράγονται τα προϊόντα που πρόκειται να αποτελέσουν αντικείμενο της έρευνας, καθώς και τα άλλα τυχόν ενδιαφερόμενα μέρη, για τα οποία οι αρμόδιες για τη διεξαγωγή της έρευνας αρχές γνωρίζουν ότι εξαρτούν συμφέροντα από την υπόθεση, και εκδίδουν σχετική δημόσια ανακοίνωση.

12.1.1 Η δημόσια ανακοίνωση η σχετική με την έναρξη της έρευνας περιλαμβάνει, ή τουλάχιστον παραπέμπει σε ξεχωριστή έκθεση με ανάλογο περιεχόμενο[23], επαρκή στοιχεία σχετικά με τα ακόλουθα θέματα:

(i) το όνομα της χώρας ή των χωρών εξαγωγής και το προϊόν που αποτελεί αντικείμενο της διαδικασίας·

(ii) την ημερομηνία έναρξης της έρευνας·

(iii) τους λόγους που διαλαμβάνονται στην αίτηση προς επίρρωση του ισχυρισμού ότι υπάρχει ντάμπινγκ·

(iv) συνοπτική παρουσίαση των στοιχείων επί των οποίων στηρίζεται ο ισχυρισμός ότι προκαλείται ζημία·

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22 Όταν το ύψος του δασμού αντιντάμπινγκ καθορίζεται βάσει παρελθόντων στοιχείων και από την πλέον πρόσφατη διαδικασία καθορισμού βάσει του άρθρου 9, παράγραφος 3.1 έχει προκύψει ότι δεν είναι σκόπιμη η επιβολή δασμού, το γεγονός αυτό δεν σημαίνει από μόνο του ότι οι αρχές είναι υποχρεωμένες να καταργήσουν τον οριστικό δασμό.

23 Όταν οι αρχές παρέχουν πληροφορίες και διευκρινίσεις δυνάμει των διατάξεων του παρόντος άρθρου σε ξεχωριστή έκθεση, λαμβάνουν μέτρα ώστε το κοινό να μπορεί εύκολα να λάβει γνώση του περιεχομένου της έκθεσης.

(v) τη διεύθυνση στην οποία τα ενδιαφερόμενα μέρη πρέπει να αποστέλλουν τυχόν στοιχεία ή παρατηρήσεις τους·

(vi) τις προθεσμίες που τάσσονται στα ενδιαφερόμενα μέρη για τη γνωστοποίηση των απόψεών τους.

12.2 Δημόσια ανακοίνωση εκδίδεται για κάθε προκαταρκτικό ή οριστικό συμπέρασμα, είτε καταφατικό, είτε αποφατικό, για κάθε απόφαση με την οποία γίνεται δεκτή ανάληψη υποχρέωσης κατ' εφαρμογήν του άρθρου 8, για τη λήξη ισχύος κάποιας ανάληψης υποχρέωσης και για την κατάργηση οποιουδήποτε οριστικού δασμού αντιντάμπινγκ. Κάθε δημόσια ανακοίνωση αυτού του είδους αναφέρει, ή τουλάχιστον παραπέμπει σε ξεχωριστή έκθεση με ανάλογο περιεχόμενο, με τη δέουσα σαφήνεια τα πορίσματα και τα συμπεράσματα στα οποία κατέληξαν οι αρχές που διενεργούν την έρευνα σχετικά με όλες τις αποφασιστικής σημασίας πραγματικές ή νομικές παραμέτρους της υπόθεσης. Κάθε τέτοια ανακοίνωση ή έκθεση διαβιβάζεται στο μέλος ή τα μέλη που παράγουν το προϊόν στο οποίο αναφέρεται το συμπέρασμα ή η ανάληψη υποχρέωσης, καθώς και στα λοιπά ενδιαφερόμενα μέρη για τα οποία είναι γνωστό ότι εξαρτούν συμφέροντα από την υπόθεση.

12.2.1 Για την επιβολή προσωρινών μέτρων εκδίδεται δημόσια ανακοίνωση στην οποία εξηγούνται, ή η οποία τουλάχιστον παραπέμπει σε ξεχωριστή έκθεση με ανάλογο περιεχόμενο, με τη δέουσα λεπτομέρεια τα προκαταρκτικά συμπεράσματα για το ντάμπινγκ και τη ζημία, και αναφέρονται τα νομικά και πραγματικά δεδομένα με βάση τα οποία αποφασίστηκε η αποδοχή ή η απόρριψη των προβαλλόμενων επιχειρημάτων. Κάθε τέτοια ανακοίνωση ή έκθεση περιέχει, χωρίς να παραγνωρίζεται η υποχρέωση προστασίας της εμπιστευτικότητας ορισμένων πληροφοριών, μεταξύ άλλων, τα ακόλουθα:

(i) τα ονόματα των προμηθευτών ή, όταν αυτό είναι πρακτικώς αδύνατο, των εμπλεκόμενων προμηθευτριών χωρών·

(ii) περιγραφή του προϊόντος αρκετά πλήρη, ώστε να καλύπτονται οι ανάγκες του εκτελωνισμού·

(iii) τα καθοριζόμενα περιθώρια ντάμπινγκ και πλήρη ανάλυση του σκεπτικού στο οποίο βασίστηκε η επιλογή της μεθόδου που χρησιμοποιήθηκε για τον καθορισμό και τη σύγκριση της τιμής εξαγωγής με την κανονική αξία, κατ'εφαρμογή του άρθρου 2·

(iv) το σκεπτικό βάσει του οποίου διαπιστώθηκε η πρόκληση ή μη ζημίας κατά τα προβλεπόμενα από το άρθρο 3·

(v) τους βασικούς λόγους στους οποίους στηρίζεται το συμπέρασμα.

12.2.2 Η δημόσια ανακοίνωση με την οποία περατούται ή αναστέλλεται η έρευνα σε περίπτωση διατύπωσης καταφατικού συμπεράσματος, με βάση το οποίο επιβάλλεται οριστικός δασμός ή γίνεται δεκτή ανάληψη υποχρέωσης ως προς τις τιμές, διαλαμβάνει, ή τουλάχιστον παραπέμπει σε ξεχωριστή έκθεση με ανάλογο περιεχόμενο, όλα τα συναφή στοιχεία τα σχετικά με τα πραγματικά και νομικά δεδομένα της υπόθεσης, καθώς και τους λόγους που οδήγησαν στην επιβολή των οριστικών μέτρων ή την αποδοχή ανάληψης υποχρέωσης ως προς τις τιμές, λαμβανομένης υπόψη της υποχρέωσης προστασίας της εμπιστευτικότητας ορισμένων πληροφοριών. Ειδικότερα, η ανακοίνωση ή η έκθεση περιέχει τα στοιχεία που περιγράφονται στην παράγραφο 2.1, καθώς και τους λόγους για τους οποίους έγιναν δεκτά ή απορρίφθηκαν τα σχετικά επιχειρήματα ή οι ισχυρισμοί των εξαγωγέων και των εισαγωγέων, όπως επίσης το σκεπτικό τυχόν απόφασης που λαμβάνεται δυνάμει του άρθρου 6, παράγραφος 10.2.

12.2.3 Η δημόσια ανακοίνωση με την οποία περατούται ή αναστέλλεται η έρευνα μετά την αποδοχή ανάληψης υποχρέωσης κατ' εφαρμογήν του άρθρου 8 περιλαμβάνει, ή τουλάχιστον παραπέμπει σε ξεχωριστή έκθεση με ανάλογο περιεχόμενο, το μη εμπιστευτικού χαρακτήρα σκέλος της εν λόγω ανάληψης υποχρέωσης.

12.3 Οι διατάξεις του παρόντος άρθρου εφαρμόζονται κατ' αναλογίαν και για την έναρξη και περάτωση των επανεξετάσεων που διενεργούνται βάσει του άρθρου 11, καθώς και για τις αποφάσεις που λαμβάνονται βάσει του άρθρου 10 και αφορούν την επιβολή δασμών με αναδρομική ισχύ.

Άρθρο 13

Δικαστικός έλεγχος

Κάθε μέλος, η εσωτερική νομοθεσία του οποίου προβλέπει τη δυνατότητα θέσπισης μέτρων αντιντάμπινγκ, φροντίζει για την ύπαρξη και λειτουργία ταχτικών, διαιτητικών ή διοικητικών δικαιοδοτικών οργάνων, καθώς και για τη θέσπιση των σχετικών διαδικασιών, ώστε να είναι δυνατός, μεταξύ άλλων, ο άμεσος έλεγχος των πράξεων της Διοίκησης που αναφέρονται στη διατύπωση των οριστικών συμπερασμάτων και την επανεξέταση των συμπερασμάτων κατά την έννοια του άρθρου 11. Τα εν λόγω δικαιοδοτικά όργανα και οι διαδικασίες πρέπει να χαρακτηρίζονται από ανεξαρτησία έναντι των αρχών που φέρουν την ευθύνη για το επίμαχο συμπέρασμα ή την επίμαχη επανεξέταση.

Άρθρο 14

Μέτρα αντιντάμπινγκ για λογαριασμό τρίτης χώρας

14.1 Η αίτηση για τη λήψη μέτρων αντιντάμπινγκ για λογαριασμό τρίτης χώρας υποβάλλεται από τις αρχές της τρίτης χώρας που ζητεί τη λήψη μέτρων.

14.2 Η ανωτέρω αίτηση πρέπει να συνοδεύεται από στοιχεία σχετικά με τις τιμές, από τα οποία να προκύπτει ότι οι επίμαχες εισαγωγές αποτελούν αντικείμενο ντάμπινγκ, καθώς και από λεπτομερή στοιχεία που να αποδεικνύουν ότι οι υποτιθέμενες πρακτικές ντάμπινγκ προκαλούν ζημία στον οικείο κλάδο παραγωγής της τρίτης χώρας. Η κυβέρνηση της τρίτης χώρας παρέχει κάθε δυνατή συνδρομή στις αρχές της χώρας εισαγωγής, με σκοπό τη συγκέντρωση τυχόν συμπληρωματικών στοιχείων που κρίνονται απαραίτητα από αυτή την τελευταία.

14.3 Κατά την εξέταση κάθε σχετικής αίτησης, οι αρχές της χώρας εισαγωγής συνεκτιμούν τις συνέπειες των υποτιθέμενων πρακτικών ντάμπινγκ για τον οικείο κλάδο παραγωγής της τρίτης χώρας στο σύνολό του· αυτό σημαίνει ότι για την αξιολόγηση της ζημίας δεν λαμβάνονται μόνο υπόψη οι συνέπειες των υποτιθέμενων πρακτικών ντάμπινγκ για τις εξαγωγές που πραγματοποιεί ο οικείος κλάδος παραγωγής προς τη χώρα εισαγωγής, ούτε καν μόνο οι συνέπειές τους για τις συνολικές εξαγωγές του οικείου κλάδου παραγωγής.

14.4 Η απόφαση περί της προόδου ή μη της διαδικασίας σε σχέση με συγκεκριμένη υπόθεση λαμβάνεται από τη χώρα εισαγωγής. Αν η χώρα εισαγωγής αποφασίσει ότι είναι διατεθειμένη να προβεί στη λήψη μέτρων, η πρωτοβουλία για την παραπομπή του θέματος στο Συμβούλιο Εμπορευματικών Συναλλαγών, με αίτημα τη χορήγηση έγκρισης εκ μέρους του για τη λήψη μέτρων, ανήκει στη χώρα εισαγωγής.

Άρθρο 15

Αναπτυσσόμενες χώρες-μέλη

Γίνεται δεκτό ότι κατά την αξιολόγηση των αιτήσεων για τη θέσπιση μέτρων αντιντάμπινγκ βάσει της παρούσας συμφωνίας, οι ανεπτυγμένες χώρες-μέλη οφείλουν να λαμβάνουν ιδιαιτέρως υπόψη τις ειδικές ανάγκες των αναπτυσσομένων χωρών-μελών. Πριν από την επιβολή δασμών αντιντάμπινγκ διερευνώνται οι δυνατότητες λήψης εποικοδομητικών μέτρων για τη διευθέτηση του προβλήματος, όπως τα προβλεπόμενα από την παρούσα συμφωνία, εφόσον τυχόν επιβολή δασμών αντιντάμπινγκ θα είχε επιπτώσεις για τα θεμελιώδη συμφέροντα των αναπτυσσομένων χωρών-μελών.

ΜΕΡΟΣ ΙΙ

Άρθρο 16

Επιτροπή Πρακτικών Αντιντάμπινγκ

16.1 Συστήνεται Επιτροπή Πρακτικών Αντιντάμπινγκ (καλούμενη στην παρούσα συμφωνία "η επιτροπή"), απαρτιζόμενη από τους αντιπροσώπους όλων των μελών. Η επιτροπή εκλέγει τον πρόεδρό της και συνεδριάζει τουλάχιστον δύο φορές τον χρόνο, καθώς και στις λοιπές περιπτώσεις που προβλέπονται από συναφείς διατάξεις της παρούσας συμφωνίας, μετά από αίτηση οποιουδήποτε μέλους. Η επιτροπή φροντίζει για την εκτέλεση των καθηκόντων που της έχουν ανατεθεί βάσει της παρούσας συμφωνίας ή από τα μέλη και παρέχει στα μέλη τη δυνατότητα να διενεργούν διαβουλεύσεις σχετικά με το σύνολο των θεμάτων που άπτονται της λειτουργίας της συμφωνίας και της προαγωγής των στόχων της. Η γραμματεία του ΠΟΕ εκτελεί χρέη γραμματείας της επιτροπής.

16.2 Όταν κρίνεται σκόπιμο, η επιτροπή δύναται να συστήνει όργανα που θα την υποβοηθούν στο έργο της.

16.3 Κατά την εκτέλεση των καθηκόντων τους, η επιτροπή και τα τυχόν όργανα που την επικουρούν δύνανται να έρχονται σε συνεννόηση με οποιονδήποτε κρίνουν σκόπιμο και να ζητούν αντίστοιχα πληροφορίες από οποιανδήποτε πηγή. Παρόλα αυτά, πριν η επιτροπή ή ένα από τα όργανα που την επικουρούν διατυπώσει αίτημα για την παροχή πληροφοριών από κάποιον φορέα που υπάγεται στη δικαιοδοσία ενός μέλους, οφείλει να ενημερώσει το οικείο μέλος. Για τον σκοπό αυτό, είναι απαραίτητη η συγκατάθεση του εν λόγω μέλους και κάθε εταιρείας με την οποία πρόκειται να επιδιωχθούν συνεννοήσεις.

16.4 Τα μέλη γνωστοποιούν αμελλητί στην επιτροπή όλα τα προκαταρκτικά ή οριστικά μέτρα αντιντάμπινγκ που θεσπίζουν. Τα στοιχεία που έχουν γνωστοποιηθεί με αυτόν τον τρόπο φυλάσσονται στη γραμματεία, όπου και μπορούν να τα εξετάζουν τα λοιπά μέλη. Τα μέλη υποβάλλουν επίσης ανά εξάμηνο εκθέσεις για τα μέτρα αντιντάμπινγκ που ενδεχομένως θέσπισαν κατά τη διάρκεια του προηγηθέντος εξαμήνου. Για την υποβολή των εξαμηνιαίων εκθέσεων χρησιμοποιείται το συμφωνηθέν τυποποιημένο έντυπο.

16.5 Κάθε μέλος ενημερώνει την επιτροπή σχετικά με τα εξής: (α) τις αρχές που είναι αρμόδιες για την έναρξη και διεξαγωγή των ερευνών που προβλέπονται στο άρθρο 5, και (β) τις εσωτερικές διαδικασίες που εφαρμόζονται για την έναρξη και διεξαγωγή των σχετικών ερευνών.

Άρθρο 17

Διαβουλεύσεις και επίλυση διαφορών

17.1 Με την επιφύλαξη τυχόν αντίθετων ρυθμίσεων της παρούσας συμφωνίας, το μνημόνιο συμφωνίας για την επίλυση των διαφορών εφαρμόζεται για τη διενέργεια διαβουλεύσεων και για την επίλυση των διαφορών στο πλαίσιο της παρούσας συμφωνίας.

17.2 Κάθε μέλος λαμβάνει υπόψη του με πνεύμα καλής θέλησης τις απόψεις που έχει εκφράσει ένα άλλο μέλος σχετικά με οποιοδήποτε θέμα που άπτεται της λειτουργίας της παρούσας συμφωνίας και παρέχει τις κατάλληλες ευκαιρίες για τη διενέργεια σχετικών διαβουλεύσεων.

17.3 Αν ένα μέλος θεωρεί ότι οποιοδήποτε όφελος, το οποίο απορρέει για αυτό, είτε άμεσα είτε έμμεσα, από την παρούσα συμφωνία εξουδετερώνεται ολικώς ή μερικώς, ή ότι παρεμποδίζεται η επίτευξη οιουδήποτε στόχου, εξαιτίας ενεργειών κάποιου άλλου μέλους ή μελών, έχει το δικαίωμα να ζητήσει γραπτώς τη διενέργεια διαβουλεύσεων με το εκάστοτε μέλος ή μέλη, προκειμένου να εξευρεθεί αμοιβαία ικανοποιητική λύση στο πρόβλημα. Κάθε μέλος λαμβάνει υπόψη του με πνεύμα καλής θέλησης τις αιτήσεις που υποβάλλουν τα άλλα μέλη για τη διενέργεια διαβουλεύσεων.

17.4 Σε περίπτωση που το μέλος το οποίο ζήτησε τη διενέργεια διαβουλεύσεων θεωρεί ότι οι διαβουλεύσεις που διενεργήθηκαν βάσει της παραγράφου 3 δεν έχουν επιτρέψει την επίτευξη αμοιβαία αποδεκτής λύσης και εφόσον οι αρμόδιες αρχές του εισάγοντος μέλους έχουν προβεί στη λήψη μέτρων οριστικού χαρακτήρα, τα οποία αφορούν την επιβολή οριστικών δασμών αντιντάμπινγκ ή την αποδοχή αναλήψεων υποχρεώσεων ως προς τις τιμές, δύναται να παραπέμψει το θέμα στο Όργανο Επίλυσης Διαφορών ("ΟΕΔ"). Όταν ένα προσωρινό μέτρο έχει σοβαρές συνέπειες, και το μέλος που ζήτησε τη διενέργεια διαβουλεύσεων θεωρεί ότι το εν λόγω μέτρο ελήφθη κατά παράβαση των διατάξεων του άρθρου 7, παράγραφος 1, και στην περίπτωση αυτή το εν λόγω μέλος δύναται να παραπέμψει το θέμα στο ΟΕΔ.

17.5 Κατόπιν αιτήσεως του καταγγέλλοντος μέρους, το ΟΕΔ προβαίνει στη σύσταση ειδικής ομάδας (πάνελ) για την εξέταση της υπόθεσης. Εν προκειμένω λαμβάνονται υπόψη:

(i) γραπτή δήλωση του μέλους που έχει υποβάλει την αίτηση, στην οποία επεξηγείται ο τρόπος με τον οποίον κάποιο όφελος, το οποίο απορρέει για αυτό είτε άμεσα είτε έμμεσα από την παρούσα συμφωνία εξουδετερώνεται ολικώς ή μερικώς ή με τον οποίον παρεμποδίζεται η επίτευξη των στόχων της συμφωνίας· και

(ii) τα στοιχεία που έχουν προσκομιστεί στις αρχές του εισάγοντος μέλους σύμφωνα με τις διαδικασίες που προβλέπονται για το σκοπό αυτό από την εσωτερική του νομοθεσία.

17.6 Για την εξέταση του θέματος περί του οποίου γίνεται λόγος στην παράγραφο 5 ισχύουν τα εξής:

(i) κατά την αξιολόγηση των δεδομένων της υπόθεσης, η ειδική ομάδα αποφαίνεται κατά πόσον είναι ορθά τα συμπεράσματα στα οποία κατέληξαν οι αρχές, όσον αφορά τα πραγματικά περιστατικά της υπόθεσης, και κατά πόσον η αξιολόγηση των εν λόγω πραγματικών περιστατικών εκ μέρους των αρχών έγινε με τρόπο αμερόληπτο και αντικειμενικό. Αν κρίνεται ότι τα συμπεράσματα τα σχετικά με τα πραγματικά περιστατικά είναι ορθά και ότι η αξιολόγησή τους έγινε με τρόπο αμερόληπτο και αντικειμενικό, η ισχύς της αξιολόγησης δεν ανατρέπεται, ακόμη και αν η ειδική ομάδα έχει καταλήξει σε διαφορετικά συμπεράσματα.

(ii) Η ειδική ομάδα ερμηνεύει τις σχετικές διατάξεις της συμφωνίας σύμφωνα με τους εθιμικούς ερμηνευτικούς κανόνες που ισχύουν στο δημόσιο διεθνές δίκαιο. Όταν η ειδική ομάδα διαπιστώνει ότι κάποια συναφής διάταξη της συμφωνίας επιδέχεται περισσοτέρων επιτρεπτών ερμηνειών, οφείλει να συμπεράνει ότι το συγκεκριμένο μέτρο που έχει ληφθεί από τις αρχές είναι σύμφωνο με τη συμφωνία, υπό την προϋπόθεση ότι η λήψη του μέτρου στηρίζεται σε κάποια από τις εν λόγω επιτρεπτές ερμηνείες.

17.7 Οι εμπιστευτικού χαρακτήρα πληροφορίες που έχουν τεθεί στη διάθεση της ειδικής ομάδας δεν επιτρέπεται να δίδονται στη δημοσιότητα χωρίς τη ρητή έγκριση του προσώπου, του φορέα ή της αρχής που έχει προσκομίσει την εκάστοτε πληροφορία. Όταν η ειδική ομάδα έχει λάβει αίτηση για την κοινοποίηση μιας τέτοιου είδους πληροφορίας, αλλά δεν εξασφαλίζει την έγκριση που απαιτείται για την κοινοποίηση, τότε παρέχεται αντί της πληροφορίας μη εμπιστευτικού χαρακτήρα περίληψή της, για την οποία έχει χορηγήσει την έγκρισή του το πρόσωπο, ο φορέας ή η αρχή που την έχει προσκομίσει.

ΜΕΡΟΣ ΙΙΙ

Άρθρο 18

Τελικές διατάξεις

18.1 Δεν επιτρέπεται η λήψη συγκεκριμένων μέτρων έναντι των εξαγωγών με πρακτικές ντάμπινγκ που πραγματοποιεί ένα άλλο μέλος παρά μόνο συμφώνως προς τις διατάξεις της GATT του 1994, όπως αυτή ερμηνεύεται από την παρούσα συμφωνία.[24]

18.2 Η διατύπωση επιφυλάξεων σε σχέση με οποιαδήποτε διάταξη της παρούσας συμφωνίας προϋποθέτει τη συγκατάθεση των υπολοίπων μελών.

18.3 Με την επιφύλαξη των παραγράφων 3.1 και 3.2, οι διατάξεις της παρούσας συμφωνίας εφαρμόζονται για τις έρευνες και τις διαδικασίες επανεξέτασης μέτρων που βρίσκονται ήδη σε ισχύ, οι οποίες κινούνται μετά από αίτηση που υπεβλήθη κατά την ημερομηνία έναρξης της ισχύος ως προς ένα μέλος της συμφωνίας για τον ΠΟΕ ή μετά από αυτήν.

18.3.1 Για τον υπολογισμό των περιθωρίων ντάμπινγκ στο πλαίσιο διαδικασιών επιστροφής χρηματικών ποσών δυνάμει του άρθρου 9, παράγραφος 3, εφαρμόζονται οι κανόνες που ίσχυαν κατά τον τελευταίο καθορισμό ή την τελευταία επανεξέταση του ντάμπινγκ.

18.3.2 Για τους σκοπούς του άρθρου 11, παράγραφος 3, τεκμαίρεται ότι τα ήδη ισχύοντα μέτρα αντιντάμπινγκ επεβλήθησαν σε χρόνο που δεν είναι μεταγενέστερος της ημερομηνίας έναρξης ισχύος ως προς ένα μέλος της συμφωνίας για τον ΠΟΕ, εκτός από τις περιπτώσεις κατά τις οποίες η ισχύουσα κατά την εν λόγω ημερομηνία εσωτερική νομοθεσία κάποιου μέλους συμπεριελάμβανε ήδη διάταξη με περιεχόμενο ανάλογο της διάταξης της προαναφερθείσας παραγράφου.

18.4 Κάθε μέλος λαμβάνει όλα τα αναγκαία μέτρα γενικής ή ειδικής φύσεως, ώστε να διασφαλίσει ότι, το αργότερο κατά την ημερομηνία έναρξης ισχύος ως προς αυτό της συμφωνίας για τον ΠΟΕ, οι εσωτερικοί του νόμοι, κανονισμοί και διοικητικές διαδικασίες θα συνάδουν με τις διατάξεις της παρούσας συμφωνίας, όπως ενδεχομένως ισχύουν σε σχέση με το εκάστοτε μέλος.

18.5 Κάθε μέλος τηρεί ενήμερη την επιτροπή σχετικά με οποιαδήποτε μεταβολή των εσωτερικών του νόμων και κανονισμών που άπτονται του αντικειμένου της παρούσας συμφωνίας, καθώς και σχετικά με τυχόν μεταβολές, όσον αφορά την εφαρμογή των εν λόγω νόμων και κανονισμών.

18.6 Η επιτροπή εξετάζει ανά έτος την εφαρμογή και λειτουργία της παρούσας συμφωνίας, έχοντας ως γνώμονα τους στόχους της. Η επιτροπή ενημερώνει ανά έτος το Συμβούλιο Εμπορευματικών Συναλλαγών σχετικά με τις τυχόν εξελίξεις που σημειώθηκαν κατά το χρονικό διάστημα που κάλυψε η εξέταση.

18.7 Τα παραρτήματα της παρούσας συμφωνίας αποτελούν αναπόσπαστο μέρος αυτής.

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24 Αυτό δεν σημαίνει ότι απαγορεύεται η λήψη, σε ορισμένες περιπτώσεις, μέτρων βάσει άλλων σχετικών διατάξεων της GATT του 1994.

ΠΑΡΑΡΤΗΜΑ Ι

ΔΙΑΔΙΚΑΣΙΕΣ ΣΧΕΤΙΚΕΣ ΜΕ ΤΙΣ ΕΠΙΤΟΠΙΕΣ ΕΡΕΥΝΕΣ ΠΟΥ ΠΡΟΒΛΕΠΟΝΤΑΙ ΣΤΟ ΑΡΘΡΟ 6, ΠΑΡΑΓΡΑΦΟΣ 7

1. Κατά την έναρξη κάθε έρευνας, οι αρχές του εξάγοντος μέλους και οι εταιρείες για τις οποίες είναι γνωστό ότι εξαρτούν συμφέροντα από την υπόθεση πρέπει να ενημερώνονται σχετικά με την πρόθεση διεξαγωγής επιτοπίων ερευνών.

2. Εάν, σε εξαιρετικές περιπτώσεις, προγραμματίζεται η συμμετοχή στο κλιμάκιο που πρόκειται να διενεργήσει τις έρευνες και κάποιων εμπειρογνωμόνων που δεν υπηρετούν στο Δημόσιο, πρέπει να ενημερώνονται σχετικά οι εταιρείες και οι αρχές του μέλους εξαγωγής. Οι εμπειρογνώμονες που δεν υπηρετούν στο Δημόσιο υπέχουν καθήκον εχεμύθειας, ενώ για περιπτώσεις παραβίασης του καθήκοντος αυτού πρέπει να προβλέπονται ουσιαστικές κυρώσεις.

3. Πρέπει να αποτελεί πάγια πρακτική η εξασφάλιση της ρητής συγκατάθεσης των ενδιαφερομένων εταιρειών στο εξάγον μέλος, πριν από τον οριστικό προγραμματισμό της επίσκεψης.

4. Αφ' ης στιγμής εξασφαλίζεται η συγκατάθεση των ενδιαφερομένων εταιρειών, οι αρμόδιες για τη διεξαγωγή της έρευνας αρχές γνωστοποιούν στις αρχές του εξάγοντος μέλους τα ονόματα και τις διευθύνσεις των εταιρειών τις οποίες αφορά η επίσκεψη, καθώς και τις συμφωνηθείσες για τον σκοπό αυτό ημερομηνίες.

5. Οι εταιρείες τις οποίες αφορά η επίσκεψη ειδοποιούνται σχετικά ικανό χρονικό διάστημα πριν από την πραγματοποίηση της επίσκεψης.

6. Επισκέψεις με αντικείμενο την παροχή εξηγήσεων σχετικά με το ερωτηματολόγιο πραγματοποιούνται μόνο μετά τη διατύπωση σχετικού αιτήματος από εξαγωγό εταιρεία. Οι επισκέψεις αυτού του είδους επιτρέπονται μόνο εφόσον: (α) οι αρχές του εισάγοντος μέλους έχουν ενημερώσει σχετικά τους εκπροσώπους του οικείου μέλους, και (β) αυτοί οι τελευταίοι δεν έχουν αντίρρηση για την πραγματοποίηση της επίσκεψης.

7. Δεδομένου ότι βασικός σκοπός μιας επιτόπιας έρευνας είναι η επαλήθευση των προσκομισθέντων στοιχείων ή η συγκέντρωση κάποιων λεπτομερέστερων στοιχείων, η επιτόπια έρευνα πρέπει να διεξάγεται μετά τη λήψη της απάντησης στο ερωτηματολόγιο, εκτός αν η ενδιαφερόμενη εταιρεία δεν έχει αντίρρηση για το αντίθετο και επιπλέον η κυβέρνηση του εξάγοντος μέλους έχει ενημερωθεί από τις αρμόδιες για τη διεξαγωγή της έρευνας αρχές σχετικά με τη σκοπούμενη επίσκεψη και δεν προβάλλει σχετικές αντιρρήσεις. Επίσης, πρέπει να αποτελεί πάγια πρακτική να ενημερώνονται οι ενδιαφερόμενες εταιρείες, πριν από την επίσκεψη, σχετικά με το γενικό χαρακτήρα των στοιχείων που πρόκειται να αποτελέσουν αντικείμενο του ελέγχου, καθώς και σχετικά με οποιαδήποτε περαιτέρω πληροφορία κρίνεται αναγκαία, αν και αυτό δεν σημαίνει ότι δεν είναι δυνατό να ζητούνται κατά η διάρκεια των επιτόπιων ερευνών περαιτέρω στοιχεία που κρίνονται χρήσιμα με βάση το υλικό που έχει ήδη συγκεντρωθεί.

8. Τυχόν απορίες ή ερωτήσεις τις οποίες διατυπώνουν οι αρχές ή οι εταιρείες των εξαγόντων μελών και οι οποίες έχουν σημασία για την επιτυχή διεξαγωγή επιτόπιας έρευνας απαιτείται, στο μέτρο του δυνατού, να απαντώνται πριν από την πραγματοποίηση της επίσκεψης.

ΠΑΡΑΡΤΗΜΑ ΙΙ

Η ΕΝΝΟΙΑ ΤΩΝ "ΚΑΛΥΤΕΡΩΝ ΔΙΑΘΕΣΙΜΩΝ ΣΤΟΙΧΕΙΩΝ" ΣΤΟ ΑΡΘΡΟ 6, ΠΑΡΑΓΡΑΦΟΣ 8

1. Το συντομότερο δυνατόν μετά την έναρξη της έρευνας, οι αρχές που διεξάγουν την έρευνα παρέχουν λεπτομερείς διευκρινίσεις σχετικά με τα στοιχεία που ζητούνται από κάθε ενδιαφερόμενο, καθώς και με τη μορφή υπό την οποία κάθε ενδιαφερόμενος οφείλει να υποβάλει τα ζητούμενα στοιχεία. Οι αρχές οφείλουν ακόμη να φροντίζουν, ώστε να γίνεται σαφές στον ενδιαφερόμενο ότι σε περίπτωση που τα ζητούμενα στοιχεία δεν προσκομιστούν εντός ευλόγου χρονικού διαστήματος, οι αρχές αποκτούν το δικαίωμα να διατυπώσουν συμπεράσματα βάσει των στοιχείων που έχουν στη διάθεσή τους, στα οποία συμπεριλαμβάνονται τα στοιχεία που περιέχονται στην υποβληθείσα από τον εγχώριο κλάδο παραγωγής αίτηση, με την οποία ζητήθηκε η έναρξη έρευνας.

2. Οι αρχές δύνανται επίσης να ζητούν από οιονδήποτε ενδιαφερόμενο να παράσχει την απάντησή του υπό κάποια συγκεκριμένη μορφή (π.χ. ταινία ηλεκτρονικού υπολογιστή) ή σε συγκεκριμένη γλώσσα ηλεκτρονικού υπολογιστή. Όταν ζητείται κάτι τέτοιο, οι αρχές οφείλουν να λαμβάνουν υπόψη τις δυνατότητες που θα ήταν εύλογο να αναμένει κανείς από κάποιον ενδιαφερόμενο, ο οποίος καλείται να παράσχει στοιχεία υπό καθορισμένη μορφή ή σε συγκεκριμένη γλώσσα ηλεκτρονικού υπολογιστή. Το σύστημα πληροφορικής που ζητείται να χρησιμοποιηθεί για την απάντηση του ενδιαφερομένου δεν επιτρέπεται να είναι διαφορετικό από αυτό που χρησιμοποιεί ο ίδιος ο ενδιαφερόμενος. Οι αρχές δεν θα πρέπει να επιμένουν για την παροχή μηχανογραφημένης απάντησης, αν ο εκάστοτε ενδιαφερόμενος δεν διαθέτει μηχανογραφημένο σύστημα λογιστικής και αν η παρουσίαση των στοιχείων με τη μορφή που ζητούν οι αρχές συνεπάγεται υπέρμετρη πρόσθετη επιβάρυνση για τον ενδιαφερόμενο, π.χ. απαιτεί υπέρμετρο επιπλέον κόστος και κόπο. Οι αρχές δεν πρέπει να εμμένουν στο αίτημά τους για την παροχή στοιχείων με συγκεκριμένο μέσο ή σε συγκεκριμένη γλώσσα ηλεκτρονικού υπολογιστή, αν ο ενδιαφερόμενος δεν διαθέτει μηχανογραφημένο σύστημα λογιστικής, το οποίο να στηρίζεται στη χρήση του εν λόγω μέσου ή της συγκεκριμένης γλώσσας ηλεκτρονικού υπολογιστή και αν η παρουσίαση των στοιχείων με τη μορφή που ζητούν οι αρχές συνεπάγεται υπέρμετρη πρόσθετη επιβάρυνση για τον ενδιαφερόμενο, π.χ. απαιτεί υπέρμετρο επιπλέον κόστος και κόπο.

3. Κατά τη διατύπωση των συμπερασμάτων λαμβάνονται υπόψη όλα τα στοιχεία τα οποία είναι δυνατό να επαληθευτούν, τα οποία πληρούν ορισμένες προϋποθέσεις, ώστε να είναι δυνατή η χρησιμοποίησή τους στο πλαίσιο της έρευνας χωρίς υπερβολικές δυσχέρειες, τα οποία προσκομίστηκαν εγκαίρως και τα οποία, κατά περίπτωση, υποβάλλονται με τη μορφή ή στη γλώσσα ηλεκτρονικού υπολογιστή που καθόρισαν οι αρχές. Σε περίπτωση που κάποιος ενδιαφερόμενος δεν προσκομίσει τα ζητούμενα στοιχεία με τη μορφή ή στη γλώσσα ηλεκτρονικού υπολογιστή που έχουν υποδείξει οι αρχές, αλλά οι αρχές διαπιστώνουν ότι πληρούνται οι προϋποθέσεις που καθορίζονται στην παράγραφο 2, γίνεται δεκτό ότι η αδυναμία παροχής της απάντησης με τη μορφή ή στη γλώσσα ηλεκτρονικού υπολογιστή που έχουν υποδείξει οι αρχές δεν αποτελεί σοβαρό εμπόδιο για την πρόοδο της έρευνας.

4. Όταν οι αρχές δεν διαθέτουν τη δυνατότητα επεξεργασίας κάποιων στοιχείων που υποβάλλονται με συγκεκριμένο μέσο (π.χ. ταινία ηλεκτρονικού υπολογιστή), τα εν λόγω στοιχεία απαιτείται να προσκομίζονται υπό μορφή έγγραφου υλικού ή υπό οιαδήποτε άλλη μορφή κρίνεται κατάλληλη από τις αρχές.

5. Ακόμη και όταν τα προσκομιζόμενα στοιχεία δεν κρίνονται ως απολύτως ενδεδειγμένα από κάθε άποψη, οι αρχές δεν δύνανται εξ αυτού του λόγου να αρνούνται να τα λάβουν υπόψη, υπό την προϋπόθεση ότι ο ενδιαφερόμενος επέδειξε κάθε δυνατή επιμέλεια για την προσήκουσα υποβολή των στοιχείων.

6. Σε περίπτωση που δεν γίνονται δεκτά κάποια αποδεικτικά στοιχεία ή κάποιες πληροφορίες, η πλευρά που υπέβαλε τα εν λόγω στοιχεία ή τις εν λόγω πληροφορίες ενημερώνεται αμέσως σχετικά με τους λόγους της απόρριψης, και της παραχωρείται η δυνατότητα να παράσχει συμπληρωματικές εξηγήσεις εντός εύλογης προθεσμίας, λαμβανομένων δεόντως υπόψη των προθεσμιών που ισχύουν για την έρευνα. Αν οι εξηγήσεις δεν κρίνονται ικανοποιητικές από τις αρχές, οι λόγοι της απόρριψης των σχετικών αποδεικτικών στοιχείων ή πληροφοριών απαιτείται να αναφέρονται κατά τη δημοσίευση των συμπερασμάτων επί της υπόθεσης.

7. Όταν οι αρχές είναι υποχρεωμένες να στηρίξουν τα συμπεράσματά τους, συμπεριλαμβανομένων των σχετικών με την κανονική αξία, σε στοιχεία που έχουν προέλθει από κάποια πηγή δευτερεύουσας σημασίας, όπως είναι τα στοιχεία που διαλαμβάνονται στην αίτηση για την έναρξη της έρευνας, ενεργούν με ιδιαίτερη περίσκεψη. Στις περιπτώσεις αυτές, οι αρχές οφείλουν, στο μέτρο του δυνατού, να επαληθεύουν τα εν λόγω στοιχεία με βάση τα στοιχεία που διαθέτουν από άλλες, ανεξάρτητες πηγές, όπως είναι οι δημοσιευμένοι τιμοκατάλογοι, τα επίσημα στοιχεία για τις εισαγωγές και τις τελωνειακές στατιστικές, καθώς και τα στοιχεία που έχουν προσκομίσει άλλοι ενδιαφερόμενοι κατά τη διάρκεια της έρευνας. Είναι πάντως σαφές ότι, αν κάποιος ενδιαφερόμενος αρνείται να συνεργασθεί, με αποτέλεσμα οι αρχές να στερούνται τη δυνατότητα πρόσβασης σε χρήσιμα στοιχεία, η κατάσταση αυτή ενδέχεται να συμβάλει στη διαμόρφωση κάποιου αποτελέσματος, το οποίο θα ήταν περισσότερο ευνοϊκό για τη συγκεκριμένη πλευρά αν αυτή είχε επιδείξει διάθεση συνεργασίας.

ΣΥΜΦΩΝΙΑ ΓΙΑ ΤΗΝ ΕΦΑΡΜΟΓΗ ΤΟΥ ΑΡΘΡΟΥ VII ΤΗΣ ΓΕΝΙΚΗΣ ΣΥΜΦΩΝΙΑΣ ΔΑΣΜΩΝ ΚΑΙ ΕΜΠΟΡΙΟΥ ΤΟΥ 1994

ΓΕΝΙΚΗ ΕΙΣΑΓΩΓΗ

1. Η πρώτη βάση για τον καθορισμό της δασμολογητέας αξίας στο πλαίσιο της παρούσας συμφωνίας είναι η "συναλλακτική αξία" όπως ορίζεται στο άρθρο 1. Το άρθρο αυτό πρέπει να συνδυάζεται με το άρθρο 8, το οποίο προβλέπει, μεταξύ άλλων, προσαρμογές της πράγματι πληρωθείσας ή πληρωτέας τιμής, όταν ορισμένα ειδικά στοιχεία, τα οποία θεωρούνται ότι αποτελούν μέρος της δασμολογητέας αξίας, βαρύνουν τον αγοραστή αλλά δεν περιλαμβάνονται στην πράγματι πληρωθείσα ή πληρωτέα για τα εισαγόμενα εμπορεύματα τιμή. Το άρθρο 8 προβλέπει ομοίως ότι περιλαμβάνονται στη συναλλακτική αξία, ορισμένες παροχές του αγοραστή προς όφελος του πωλητή υπό μορφή συγκεκριμένων εμπορευμάτων ή υπηρεσιών και όχι υπό μορφή χρημάτων. Τα άρθρα 2 μέχρι και 7 αναφέρουν τις μεθόδους που πρέπει να χρησιμοποιούνται για τον καθορισμό της δασμολογητέας αξίας, αν ο καθορισμός αυτός δεν μπορεί να γίνει κατ'εφαρμογή των διατάξεων του άρθρου 1.

2. Όταν η δασμολογητέα αξία δεν μπορεί να καθοριστεί κατ'εφαρμογή των διατάξεων του άρθρου 1, η τελωνειακή υπηρεσία και ο εισαγωγέας οφείλουν κανονικά να διαβουλεύονται για να προσδιορίσουν τη βάση της αξίας κατ'εφαρμογή των διατάξεων των άρθρων 2 ή 3. Είναι δυνατό να συμβεί, παραδείγματος χάρη, να κατέχει ο εισαγωγέας πληροφορίες που αφορούν τη δασμολογητέα αξία πανομοιότυπων ή ομοειδών εισαγομένων εμπορευμάτων, οι οποίες δεν παρέχονται αμέσως στην τελωνειακή υπηρεσία του τόπου εισαγωγής. Αντίθετα, η τελωνειακή υπηρεσία μπορεί να έχει πληροφορίες που αφορούν τη δασμολογητέα αξία πανομοιότυπων ή ομοειδών εισαγομένων εμπορευμάτων στις οποίες ο εισαγωγέας δεν έχει εύκολα πρόσβαση. Η διενέργεια διαβουλεύσεων μεταξύ των δύο μερών καθιστά δυνατή την ανταλλαγή πληροφοριών, με τήρηση των υποχρεώσεων περί του εμπορικού απορρήτου, ώστε να καθοριστεί η ορθή βάση για τον υπολογισμό της δασμολογητέας αξίας.

3. Τα άρθρα 5 και 6 παρέχουν δύο βάσεις καθορισμού της δασμολογητέας αξίας, όταν η αξία αυτή δεν είναι δυνατόν να καθοριστεί με βάση τη συναλλακτική αξία των εισαγομένων εμπορευμάτων ή πανομοιότυπων ή ομοειδών εισαγομένων εμπορευμάτων. Δυνάμει του άρθρου 5 παράγραφος 1, η δασμολογητέα αξία καθορίζεται με βάση την τιμή, στην οποία πωλούνται τα εμπορεύματα στην κατάσταση που εισήχθησαν στη χώρα εισαγωγής σε αγοραστή ο οποίος δεν συνδέεται με τον πωλητή. Ο εισαγωγέας έχει ομοίως το δικαίωμα, με αίτησή του, να ζητήσει να γίνει εκτίμηση, κατ'εφαρμογή των διατάξεων του άρθρου 5, των εμπορευμάτων τα οποία αποτελούν αντικείμενο περαιτέρω επεξεργασίας μετά την εισαγωγή. Δυνάμει του άρθρου 6 η δασμολογητέα αξία καθορίζεται βάσει της υπολογιζομένης αξίας. Οι δύο αυτές μέθοδοι παρουσιάζουν ορισμένες δυσκολίες και, για το λόγο αυτό, ο εισαγωγέας έχει το δικαίωμα, δυνάμει των διατάξεων του άρθρου 4, να επιλέξει τη σειρά με την οποία θα γίνει χρήση των δύο μεθόδων.

4. Το άρθρο 7 αναφέρει τον τρόπο καθορισμού της δασμολογητέας αξίας στις περιπτώσεις που κανένα από τα προηγούμενα άρθρα δεν το επιτρέπει.

Τα μέλη,

Έχοντας υπόψη τις πολυμερείς εμπορικές διαπραγματεύσεις,

Επιθυμώντας να επιτύχουν τους στόχους της GATT του 1994 και να εξασφαλίσουν συμπληρωματικά πλεονεκτήματα για το διεθνές εμπόριο των αναπτυσσομένων χωρών·

Αναγνωρίζοντας τη σημασία των διατάξεων του άρθρου VII της GATT του 1994 και επιθυμώντας να επεξεργασθούν κανόνες για την εφαρμογή τους, ώστε να εξασφαλίσουν μεγαλύτερη ομοιομορφία και βεβαιότητα στην υλοποίησή τους·

Αναγνωρίζοντας την ανάγκη για ένα δίκαιο, ομοιόμορφο και ουδέτερο σύστημα καθορισμού της δασμολογητέας αξίας των εμπορευμάτων, το οποίο να αποκλείει τη χρήση αυθαίρετων ή πλασματικών δασμολογητέων αξιών·

Αναγνωρίζοντας ότι η βάση του καθορισμού της δασμολογητέας αξίας των εμπορευμάτων θα πρέπει να είναι, κατά το δυνατό, η συναλλακτική αξία των υπό εκτίμηση εμπορευμάτων·

Αναγνωρίζοντας ότι η δασμολογητέα αξία είναι ανάγκη να καθορίζεται με κριτήρια απλά και δίκαια, σύμφωνα με την εμπορική πρακτική και ότι οι διαδικασίες καθορισμού της επιβάλλεται να είναι γενικής εφαρμογής, χωρίς διακρίσεις μεταξύ πηγών εφοδιασμού·

Αναγνωρίζοντας ότι οι διαδικασίες καθορισμού της δασμολογητέας αξίας δεν επιτρέπεται να χρησιμοποιούνται για την καταπολέμηση του ντάμπινγκ·

Συμφωνούν τα ακόλουθα :

ΜΕΡΟΣ Ι
ΚΑΝΟΝΕΣ ΚΑΘΟΡΙΣΜΟΥ ΤΗΣ ΔΑΣΜΟΛΟΓΗΤΕΑΣ ΑΞΙΑΣ

Άρθρο 1

1. Η δασμολογητέα αξία των εισαγομένων εμπορευμάτων είναι η συναλλακτική αξία, δηλαδή η πράγματι πληρωθείσα ή πληρωτέα για τα εμπορεύματα τιμή, όταν αυτά πωλούνται προς εξαγωγή με προορισμό τη χώρα εισαγωγής μετά από προσαρμογή που πραγματοποιείται σύμφωνα με το άρθρο 8, εφόσον :

α) δεν υφίστανται περιορισμοί, όσον αφορά τη μεταβίβαση ή τη χρησιμοποίηση των εμπορευμάτων από τον αγοραστή, εκτός από τους περιορισμούς, οι οποίοι :

i) επιβάλλονται ή απαιτούνται από το νόμο ή από τις δημόσιες αρχές της χώρας εισαγωγής,

ii) περιορίζουν τη γεωγραφική ζώνη στην οποία δύνανται να μεταπωληθούν τα εμπορεύματα, ή

iii) δεν επηρεάζουν ουσιωδώς την αξία των εμπορευμάτων·

β) η πώληση ή η τιμή δεν εξαρτάται από προϋποθέσεις ή παροχές, των οποίων η αξία δεν είναι δυνατό να καθοριστεί, όσον αφορά τα υπό εκτίμηση εμπορεύματα·

γ) κανένα μέρος του προϊόντος κάθε μεταγενέστερης μεταπώλησης, μεταβίβασης ή χρησιμοποίησης των εμπορευμάτων από τον αγοραστή δεν περιέρχεται αμέσως ή εμμέσως στον πωλητή, εκτός αν είναι δυνατό να γίνει κατάλληλη προσαρμογή δυνάμει του άρθρου 8· και

δ) ο αγοραστής και ο πωλητής δεν συνδέονται μεταξύ τους, ή, εάν συνδέονται, η συναλλακτική αξία είναι αποδεκτή για δασμολογικούς σκοπούς δυνάμει της παραγράφου 2.

2. α) Για να καθοριστεί αν η συναλλακτική αξία είναι αποδεκτή για την εφαρμογή της παραγράφου 1, το γεγονός ότι ο αγοραστής και ο πωλητής συνδέονται μεταξύ τους κατά την έννοια του άρθρου 15 δεν συνιστά αυτό καθ'εαυτό επαρκή αιτία ώστε να θεωρηθεί η συναλλακτική αξία ως απαράδεκτη. Σε τέτοια περίπτωση, εξετάζονται οι περιστάσεις περί την πώληση και η συναλλακτική αξία γίνεται δεκτή, εφόσον οι σχέσεις αυτές δεν έχουν επηρεάσει την τιμή. Αν, αφού ληφθούν υπόψη οι πληροφορίες που παρέχει ο εισαγωγέας ή οι οποίες επιτυγχάνονται από άλλες πηγές, η τελωνειακή υπηρεσία έχει λόγους να θεωρεί ότι οι σχέσεις αυτές επηρέασαν την τιμή, ανακοινώνει τους λόγους αυτούς στον εισαγωγέα και του παρέχει εύλογη δυνατότητα απάντησης. Κατόπιν αιτήσεως του εισαγωγέα, οι λόγοι του ανακοινώνονται εγγράφως·

β) σε μια πώληση μεταξύ συνδεομένων μεταξύ τους προσώπων, η συναλλακτική αξία γίνεται αποδεκτή και τα εμπορεύματα εκτιμώνται σύμφωνα με την παράγραφο 1, όταν ο εισαγωγέας αποδεικνύει ότι η εν λόγω αξία προσεγγίζει πολύ μια από τις κατωτέρω αναφερόμενες αξίες, οι οποίες υφίστανται κατά την ίδια χρονική στιγμή ή περίπου κατά την ίδια χρονική στιγμή :

i) συναλλακτική αξία όσον αφορά πωλήσεις, προς αγοραστές μη συνδεόμενους, πανομοιότυπων ή ομοειδών εμπορευμάτων προς εξαγωγή με προορισμό την ίδια χώρα εισαγωγής·
ii) δασμολογητέα αξία πανομοιότυπων ή ομοειδών εμπορευμάτων, όπως καθορίζεται κατ'εφαρμογή του άρθρου 5·
iii) δασμολογητέα αξία πανομοιότυπων ή ομοειδών εμπορευμάτων, όπως καθορίζεται κατ'εφαρμογή του άρθρου 6.

Κατά την εφαρμογή των προαναφερθέντων κριτηρίων, λαμβάνονται δεόντως υπόψη οι αποδεικνυόμενες διαφορές εμπορικών επιπέδων, ποσοτήτων, στοιχείων που απαριθμούνται στο άρθρο 8, εξόδων που βαρύνουν τον πωλητή, όσον αφορά πωλήσεις στις οποίες δεν συνδέονται μεταξύ τους ο αγοραστής και ο πωλητής και εξόδων που δεν βαρύνουν τον πωλητή, όσον αφορά πωλήσεις στις οποίες συνδέονται μεταξύ τους ο αγοραστής και ο πωλητής.

γ) Τα κριτήρια που αναφέρονται στην παράγραφο 2, στοιχείο β) πρέπει να χρησιμοποιούνται με πρωτοβουλία του εισαγωγέα και μόνο για σκοπούς σύγκρισης. Δεν δύναται να καθιερωθούν αξίες υποκατάστασης δυνάμει της παραγράφου 2, στοιχείο β).

'Αρθρο 2

1. α) Αν η δασμολογητέα αξία των εισαγομένων εμπορευμάτων δεν μπορεί να καθοριστεί κατ'εφαρμογή των διατάξεων του άρθρου 1, η δασμολογητέα αξία είναι η συναλλακτική αξία πανομοιότυπων εμπορευμάτων, τα οποία πωλούνται για εξαγωγή με προορισμό την

ίδια χώρα εισαγωγής και εξάγονται κατά την ίδια χρονική στιγμή ή περίπου κατά την ίδια χρονική στιγμή με τα υπό εκτίμηση εμπορεύματα.

β) Κατά την εφαρμογή του παρόντος άρθρου, η δασμολογητέα αξία καθορίζεται βάσει της συναλλακτικής αξίας πανομοιότυπων εμπορευμάτων, τα οποία πωλούνται στο ίδιο εμπορικό επίπεδο και στην ίδια ουσιαστικώς ποσότητα με τα υπό εκτίμηση εμπορεύματα. Ελλείψει τέτοιων πωλήσεων, θα πρέπει να γίνεται χρήση της συναλλακτικής αξίας πανομοιότυπων εμπορευμάτων, τα οποία πωλούνται σε διαφορετικό εμπορικό επίπεδο ή/και σε διαφορετική ποσότητα, προσαρμοζόμενη ώστε να ληφθούν υπόψη οι διαφορές που είναι δυνατό να οφείλονται στο εμπορικό επίπεδο ή/και στην ποσότητα, υπό την προϋπόθεση ότι οι προσαρμογές αυτές, ανεξάρτητα από το αν καταλήγουν σε αύξηση ή μείωση της αξίας, είναι δυνατό να βασίζονται σε προσκομιζόμενα αποδεικτικά στοιχεία, τα οποία να αποδεικνύουν σαφώς ότι οι προσαρμογές είναι εύλογες και ακριβείς.

2. Όταν τα έξοδα που αναφέρονται στο άρθρο 8, παράγραφος 2 περιλαμβάνονται στη συναλλακτική αξία, η αξία αυτή προσαρμόζεται για να ληφθούν υπόψη σημαντικές διαφορές που είναι δυνατό να υπάρχουν μεταξύ των εξόδων που αφορούν, αφενός, τα εισαγόμενα εμπορεύματα και, αφετέρου, τα πανομοιότυπα μ'αυτά εμπορεύματα, συνεπεία διαφορών στις αποστάσεις και στους τρόπους μεταφοράς.

3. Αν κατά την εφαρμογή του παρόντος άρθρου διαπιστωθούν περισσότερες από μια συναλλακτικές αξίες πανομοιότυπων εμπορευμάτων, λαμβάνεται υπόψη η κατώτερη συναλλακτική αξία για τον καθορισμό της δασμολογητέας αξίας των εισαγομένων εμπορευμάτων.

Άρθρο 3

1. α) Αν η δασμολογητέα αξία των εισαγόμενων εμπορευμάτων δεν μπορεί να καθοριστεί κατ'εφαρμογή των διατάξεων των άρθρων 1 και 2, η δασμολογητέα αξία είναι η συναλλακτική αξία ομοειδών εμπορευμάτων, τα οποία πωλούνται προς εξαγωγή με προορισμό την ίδια χώρα εισαγωγής και τα οποία εξάγονται κατά την ίδια χρονική στιγμή ή περίπου κατά την ίδια χρονική στιγμή με τα υπό εκτίμηση εμπορεύματα·

β) Κατά την εφαρμογή του παρόντος άρθρου, η δασμολογητέα αξία καθορίζεται βάσει της συναλλακτικής αξίας ομοειδών εμπορευμάτων που πωλούνται στο ίδιο εμπορικό επίπεδο και στην ίδια ουσιαστικώς ποσότητα με τα υπό εκτίμηση εμπορεύματα. Ελλείψει τέτοιων πωλήσεων, θα πρέπει να λαμβάνεται υπόψη η συναλλακτική αξία ομοειδών εμπορευμάτων που πωλούνται σε διαφορετικό εμπορικό επίπεδο ή/και σε διαφορετική ποσότητα, προσαρμοζόμενη ώστε να ληφθούν υπόψη διαφορές που είναι δυνατό να οφείλονται στο εμπορικό επίπεδο ή/και στην ποσότητα, υπό την προϋπόθεση ότι οι προσαρμογές αυτές, ανεξάρτητα από το αν καταλήγουν σε αύξηση ή σε μείωση της αξίας, είναι δυνατό να βασίζονται σε προσκομιζόμενα αποδεικτικά στοιχεία τα οποία να αποδεικνύουν σαφώς ότι οι προσαρμογές είναι εύλογες και ακριβείς.

2. Όταν τα έξοδα που προβλέπονται στο άρθρο 8, παράγραφος 2 περιλαμβάνονται στη συναλλακτική αξία, η αξία αυτή προσαρμόζεται για να ληφθούν υπόψη σημαντικές διαφορές που είναι δυνατό να υπάρχουν μεταξύ των εξόδων που αφορούν αφενός τα εισαγόμενα εμπορεύματα και αφετέρου,

τα ομοειδή μ'αυτά, συνεπεία διαφορών στις αποστάσεις και στους τρόπους μεταφοράς.

3. Αν, κατά την εφαρμογή του παρόντος άρθρου, διαπιστωθούν περισσότερες από μια συναλλακτικές αξίες ομοειδών εμπορευμάτων, λαμβάνεται υπόψη η κατώτερη συναλλακτική αξία για τον καθορισμό της δασμολογητέας αξίας των εισαγόμενων εμπορευμάτων.

'Αρθρο 4

Αν η δασμολογητέα αξία των εισαγόμενων εμπορευμάτων δεν μπορεί να καθοριστεί κατ'εφαρμογή των διατάξεων των άρθρων 1, 2 και 3 η δασμολογητέα αξία καθορίζεται κατ'εφαρμογή των διατάξεων του άρθρου 5 ή, όταν η δασμολογητέα αξία δεν μπορεί να καθοριστεί κατ'εφαρμογή του άρθρου αυτού, κατ'εφαρμογή των διατάξεων του άρθρου 6· ωστόσο, κατόπιν αιτήσεως του εισαγωγέα, η σειρά εφαρμογής των άρθρων 5 και 6 αντιστρέφεται.

'Αρθρο 5

1. α) Αν τα εισαγόμενα εμπορεύματα ή πανομοιότυπα ή ομοειδή εισαγόμενα εμπορεύματα πωλούνται στη χώρα εισαγωγής στην κατάσταση που εισήχθησαν, η δασμολογητέα αξία των εισαγόμενων εμπορευμάτων, η οποία καθορίζεται κατ'εφαρμογή του παρόντος άρθρου, βασίζεται στην τιμή μονάδας που αντιστοιχεί στις πωλήσεις των εισαγόμενων εμπορευμάτων ή πανομοιότυπων ή ομοειδών εισαγόμενων εμπορευμάτων, οι οποίες αντιπροσωπεύουν συνολικά τη μεγαλύτερη ποσότητα και γίνονται προς πρόσωπα που δεν συνδέονται με τους πωλητές, κατά τη χρονική στιγμή ή περίπου κατά τη χρονική στιγμή εισαγωγής των υπό εκτίμηση εμπορευμάτων, με την επιφύλαξη της αφαίρεσης των παρακάτω στοιχείων :

   i) των συνήθως καταβαλλόμενων ή συμφωνούμενων προμηθειών ή περιθωρίων που ισχύουν γενικά για τα κέρδη και τα γενικά έξοδα για πωλήσεις στη χώρα αυτή εισαγόμενων εμπορευμάτων της αυτής φύσης ή του αυτού είδους·

   ii) των συνήθων εξόδων μεταφοράς και ασφάλισης, καθώς και των συναφών εξόδων που γίνονται στη χώρα εισαγωγής·

   iii) κατά περίπτωση, εξόδων που προβλέπονται στο άρθρο 8 παράγραφος 2· και

   iv) των δασμών και λοιπών εθνικών φορολογικών επιβαρύνσεων που καταβάλλονται στη χώρα εισαγωγής λόγω της εισαγωγής ή της πώλησης των εμπορευμάτων.

   β) Αν ούτε τα εισαγόμενα εμπορεύματα, ούτε πανομοιότυπα ή ομοειδή εισαγόμενα εμπορεύματα πωλούνται κατά τη χρονική στιγμή ή περίπου κατά τη χρονική στιγμή εισαγωγής των υπό εκτίμηση εμπορευμάτων, η δασμολογητέα αξία βασίζεται, με την επιφύλαξη κατά τα λοιπά της παραγράφου 1, στοιχείο α), στην τιμή μονάδας, στην οποία πωλούνται τα εισαγόμενα εμπορεύματα ή πανομοιότυπα ή ομοειδή εισαγόμενα εμπορεύματα στη χώρα εισαγωγής στην κατάσταση που εισήχθησαν κατά την πιο πρόσφατη, μετά την εισαγωγή των υπό εκτίμηση εμπορευμάτων, ημερομηνία, οπωσδήποτε όμως εντός 90 ημερών από την εισαγωγή αυτή.

2. Αν ούτε τα εισαγόμενα εμπορεύματα, ούτε πανομοιότυπα ή ομοειδή εισαγόμενα εμπορεύματα πωλούνται στη χώρα εισαγωγής, στην κατάσταση που εισήχθησαν, η δασμολογητέα αξία βασίζεται, κατόπιν αιτήσεως του εισαγωγέα στην τιμή μονάδας που αντιστοιχεί στις πωλήσεις εισαγόμενων εμπορευμάτων, οι οποίες αντιπροσωπεύουν συνολικά τη μεγαλύτερη ποσότητα και γίνονται, κατόπιν περαιτέρω επεξεργασίας, πρός πρόσωπα, στη χώρα εισαγωγής που δεν συνδέονται με τους πωλητές, αφού ληφθεί δεόντως υπόψη η αξία που προστίθεται λόγω της επεξεργασίας και οι αφαιρέσεις που προβλέπονται στην παράγραφο 1, στοιχείο α).

'Αρθρο 6

1. Η δασμολογητέα αξία των εισαγόμενων εμπορευμάτων που καθορίζεται κατ'εφαρμογή του παρόντος άρθρου βασίζεται σε υπολογιζόμενη αξία. Η υπολογιζόμενη αξία ισούται προς το άθροισμα :

α) του κόστους ή της αξίας των υλών και των εργασιών κατασκευής ή άλλων εργασιών, που υπεισέρχονται στην παραγωγή των εισαγόμενων εμπορευμάτων·

β) ενός ποσού για τα κέρδη και τα γενικά έξοδα ίσου προς το ποσό που υπεισέρχεται γενικά στις πωλήσεις εμπορευμάτων της ίδιας φύσης ή του ίδιου είδους με τα υπό εκτίμηση εμπορεύματα, οι οποίες γίνονται από παραγωγούς της χώρας εξαγωγής προς εξαγωγή στη χώρα εισαγωγής.

γ) του κόστους ή της αξίας κάθε άλλης δαπάνης, η οποία πρέπει να ληφθεί υπόψη ανάλογα με την επιλογή ως προς την εκτίμηση, στην οποία προβαίνει κάθε μέλος δυνάμει του άρθρου 8, παράγραφος 2.

2. Κανένα μέλος δεν μπορεί να απαιτεί ή να υποχρεώνει ένα πρόσωπο που δεν κατοικεί στο έδαφός του να προσκομίζει προς εξέταση λογιστικά στοιχεία ή άλλα έγγραφα ή να επιτρέπει την εξέταση λογιστικών στοιχείων ή άλλων εγγράφων, για τον καθορισμό της υπολογιζομένης αξίας. Εντούτοις, οι πληροφορίες που παρέχονται από τον παραγωγό των εμπορευμάτων για τον καθορισμό της δασμολογητέας αξίας κατ'εφαρμογή του παρόντος άρθρου είναι δυνατό να επαληθεύονται σε άλλη χώρα από τις αρχές της χώρας εισαγωγής, με τη σύμφωνη γνώμη του παραγωγού και υπό την προϋπόθεση ότι οι αρχές αυτές προειδοποιούν εντός επαρκούς προθεσμίας την κυβέρνηση της εν λόγω χώρας, η κυβέρνηση δε αυτή δεν αντιτίθεται στην έρευνα.

'Αρθρο 7

1. Αν η δασμολογητέα αξία των εισαγόμενων εμπορευμάτων δεν μπορεί να καθοριστεί κατ'εφαρμογή των διατάξεων των άρθρων 1 μέχρι και 6, καθορίζεται με εύλογα μέσα σύμφωνα με τις αρχές και τις γενικές διατάξεις της παρούσας συμφωνίας και του άρθρου VII της GATT του 1994 και βάσει των διαθέσιμων στη χώρα εισαγωγής στοιχείων.

2. Η δασμολογητέα αξία που καθορίζεται κατ'εφαρμογή του παρόντος άρθρου δεν βασίζεται:

(α) στην τιμή πώλησης, στη χώρα εισαγωγής, εμπορευμάτων που παράγονται στη χώρα αυτή·

(β) σε σύστημα που προβλέπει την αποδοχή για δασμολογικούς σκοπούς, της υψηλότερης μεταξύ δύο εναλλακτικών αξιών·

(γ) στην τιμή εμπορευμάτων στην εσωτερική αγορά της χώρας εξαγωγής·

(δ) στο κόστος παραγωγής, διάφορο από τις υπολογιζόμενες αξίες που έχουν καθοριστεί για πανομοιότυπα ή ομοειδή εμπορεύματα σύμφωνα με το άρθρο 6·

(ε) στην τιμή εμπορευμάτων που πωλούνται προς εξαγωγή με προορισμό άλλη χώρα εκτός από τη χώρα εισαγωγής·

(στ) σε ελάχιστες δασμολογητέες αξίες, ή

(ζ) σε αυθαίρετες ή πλασματικές αξίες.

3. Κατόπιν αιτήσεώς του, ο εισαγωγέας ενημερώνεται εγγράφως για τη δασμολογητέα αξία που έχει καθοριστεί κατ'εφαρμογή των διατάξεων του παρόντος άρθρου και για τη μέθοδο που χρησιμοποιείται για τον καθορισμό της.

Άρθρο 8

1. Για τον καθορισμό της δασμολογητέας αξίας κατ'εφαρμογή του άρθρου 1, στην πράγματι πληρωθείσα ή πληρωτέα για τα εισαγόμενα εμπορεύματα τιμή προστίθενται :

(α) τα ακόλουθα στοιχεία, στο μέτρο που βαρύνουν τον αγοραστή αλλά δεν έχουν περιληφθεί στην πράγματι πληρωθείσα ή πληρωτέα για τα εμπορεύματα τιμή :

(i) προμήθειες και έξοδα μεσιτείας, με εξαίρεση τις προμήθειες αγοράς,

(ii) κόστος των ειδών συσκευασίας, τα οποία από τελωνειακής πλευράς, θεωρούνται ότι αποτελούν ένα σύνολο με το εμπόρευμα,

(iii) κόστος της συσκευασίας, το οποίο περιλαμβάνει τόσο τα εργατικά, όσο και τα υλικά·

(β) η αξία, επιμεριζόμενη με τον κατάλληλο τρόπο, των παρακάτω προϊόντων και υπηρεσιών, εφόσον παρέχονται άμεσα ή έμμεσα από τον αγοραστή, αδαπάνως ή με μειωμένο κόστος, και χρησιμοποιούνται κατά την παραγωγή και την πώληση προς εξαγωγή των εισαγόμενων εμπορευμάτων, εφόσον η αξία αυτή δεν έχει περιληφθεί στην πράγματι πληρωθείσα ή πληρωτέα τιμή :

(i) ύλες, συστατικά, μέρη και παρόμοια στοιχεία που έχουν ενσωματωθεί στα εισαγόμενα εμπορεύματα,

(ii) εργαλεία, μήτρες, καλούπια και παρόμοια είδη που χρησιμοποιούνται κατά την παραγωγή των εισαγόμενων εμπορευμάτων,

(iii) ύλες που έχουν καταναλωθεί κατά την παραγωγή των εισαγόμενων εμπορευμάτων,

(iv) εργασίες μηχανικής ή μηχανολογίας, μελέτης, τέχνης, σχεδιασμού, σχεδίων και ιχνογραφημάτων οι οποίες γίνονται εκτός της χώρας εισαγωγής και είναι αναγκαίες για την παραγωγή των εισαγόμενων εμπορευμάτων·

γ) τα πάσης φύσεως δικαιώματα από παραχώρηση άδειας εκμετάλλευσης σχετικά με τα υπό εκτίμηση εμπορεύματα, τα οποία, κατά τους όρους της πώλησης των υπό εκτίμηση εμπορευμάτων, υποχρεούται να καταβάλει ο αγοραστής είτε άμεσα είτε έμμεσα, στο μέτρο που αυτά τα δικαιώματα δεν έχουν περιληφθεί στην πράγματι πληρωθείσα ή πληρωτέα τιμή·

δ) η αξία κάθε μέρους του προϊόντος μεταγενέστερης μεταπώλησης, μεταβίβασης ή χρησιμοποίησης των εισαγόμενων εμπορευμάτων που περιέρχεται άμεσα ή έμμεσα στον πωλητή.

2. Κατά την κατάρτιση της νομοθεσίας του, κάθε μέρος λαμβάνει μέτρα για να περιλάβει στη δασμολογητέα αξία, ή για να αποκλείσει από αυτήν εν όλω ή εν μέρει τα εξής στοιχεία :

(α) τα έξοδα μεταφοράς των εισαγόμενων εμπορευμάτων μέχρι το λιμένα ή τον τόπο εισαγωγής·

(β) τα έξοδα φόρτωσης, εκφόρτωσης και εργασιών διαφύλαξης των εμπορευμάτων που είναι συναφή με τη μεταφορά των εισαγόμενων εμπορευμάτων, μέχρι το λιμένα ή τον τόπο εισαγωγής· και

(γ) το κόστος της ασφάλισης.

3. Κάθε στοιχείο που προστίθεται κατ'εφαρμογή του παρόντος άρθρου στην πράγματι πληρωθείσα ή πληρωτέα τιμή βασίζεται αποκλειστικά σε αντικειμενικά δεδομένα που είναι δυνατό να αποτιμηθούν.

4. Για τον καθορισμό της δασμολογητέας αξίας, κανένα στοιχείο δεν προστίθεται στην πράγματι πληρωθείσα ή πληρωτέα τιμή, με εξαίρεση τα στοιχεία που προβλέπονται στο παρόν άρθρο.

'Αρθρο 9

1. 'Οταν είναι αναγκαία η μετατροπή ενός νομίσματος για τον καθορισμό της δασμολογητέας αξίας, η τιμή συναλλάγματος που χρησιμοποιείται είναι η τιμή η οποία έχει δημοσιευθεί δεόντως από τις αρμόδιες αρχές της ενδιαφερόμενης χώρας εισαγωγής και αντιπροσωπεύει, κατά τρόπο όσο το δυνατό ακριβέστερο, για κάθε περίοδο που καλύπτεται από μια τέτοια δημοσίευση, την τρέχουσα αξία του νομίσματος αυτού στις εμπορικές συναλλαγές, εκφραζόμενη στο νόμισμα της χώρας εισαγωγής.

2. Η τιμή μετατροπής που χρησιμοποιείται είναι η ισχύουσα κατά το χρόνο εξαγωγής ή το χρόνο εισαγωγής, ανάλογα με ρύθμιση που προβλέπεται από κάθε μέλος.

'Αρθρο 10

Κάθε πληροφορία εμπιστευτικού χαρακτήρα ή η οποία παρέχεται εμπιστευτικά για τον υπολογισμό της δασμολογητέας αξίας, χρησιμοποιείται ως αυστηρά εμπιστευτική από τις ενδιαφερόμενες αρχές, οι οποίες δεν την κοινολογούν χωρίς ρητή άδεια του προσώπου ή της κυβέρνησης που την παρέσχε, παρά μόνο στο μέτρο που είναι υποχρεωμένες να πράξουν τούτο στο πλαίσιο δικαστικών διαδικασιών.

'Αρθρο 11

1. Η νομοθεσία κάθε μέρους προβλέπει, για τον εισαγωγέα ή κάθε άλλο πρόσωπο υπόχρεο προς καταβολή των δασμών, δικαίωμα προσφυγής που δεν επισύρει καμία ποινή και αφορά κάθε καθορισμό της δασμολογητέας αξίας.

2. Είναι δυνατό να προβλεφθεί αρχικό δικαίωμα προσφυγής που δεν επισύρει καμία ποινή ενώπιον τελωνειακής υπηρεσίας ή ενώπιον ανεξάρτητου οργάνου, αλλά η νομοθεσία κάθε μέλους υποχρεούται να προβλέπει δικαίωμα προσφυγής που δεν επισύρει καμία ποινή ενώπιον δικαστικής αρχής.

3. Η απόφαση που λαμβάνεται όσον αφορά την προσφυγή κοινοποιείται στον προσφεύγοντα και η αιτιολόγηση της απόφασης διατυπώνεται γραπτώς. Ο προσφεύγων ενημερώνεται επίσης για ενδεχόμενο δικαίωμα για μεταγενέστερη προσφυγή.

'Αρθρο 12

Οι νόμοι, οι κανονιστικές διατάξεις, οι δικαστικές και οι διοικητικές αποφάσεις γενικής ισχύος με τις οποίες τίθεται σε εφαρμογή η παρούσα συμφωνία, δημοσιεύονται από την ενδιαφερόμενη χώρα εισαγωγής σύμφωνα με το άρθρο X της GATT του 1994.

'Αρθρο 13

Αν, κατά τον καθορισμό της δασμολογητέας αξίας εισαγόμενων εμπορευμάτων, καθίσταται αναγκαία η αναβολή του οριστικού καθορισμού της αξίας αυτής, ο εισαγωγέας μπορεί, παρά ταύτα, να παραλάβει τα εμπορεύματά του από το τελωνείο, υπό τον όρο ότι θα παράσχει, αν του ζητηθεί, επαρκή ασφάλεια με τη μορφή εγγύησης, χρηματικής παρακαταθήκης ή άλλης κατάλληλης μορφής ασφάλειας, η οποία να καλύπτει την οριστική καταβολή των δασμών που είναι δυνατό να οφείλονται τελικά για τα εμπορεύματα. Η νομοθεσία κάθε μέλους προβλέπει διατάξεις που εφαρμόζονται στις περιπτώσεις αυτές.

'Αρθρο 14

Οι σημειώσεις που παρατίθενται στο παράρτημα Ι της παρούσας συμφωνίας αποτελούν αναπόσπαστο μέρος αυτής και τα άρθρα της παρούσας συμφωνίας πρέπει να ερμηνεύονται και να εφαρμόζονται σε συνδυασμό με τις αντίστοιχες σημειώσεις. Τα παραρτήματα II και III αποτελούν επίσης αναπόσπαστο μέρος της παρούσας συμφωνίας.

'Αρθρο 15

1. Στην παρούσα συμφωνία :

(α) ως "δασμολογητέα αξία των εισαγόμενων εμπορευμάτων" νοείται η αξία των εμπορευμάτων που καθορίζεται με σκοπό την είσπραξη δασμών κατ'αξία για τα εισαγόμενα εμπορεύματα·

(β) ως "χώρα εισαγωγής" νοείται η χώρα ή το τελωνειακό έδαφος εισαγωγής·

(γ) ως "παραγόμενα" νοούνται επίσης καλλιεργούμενα, κατασκευαζόμενα και εξορυσσόμενα.

2. Στην παρούσα σημφωνία :

(α) ως "πανομοιότυπα εμπορεύματα" νοούνται εμπορεύματα τα οποία είναι όμοια από κάθε άποψη, περιλαμβανομένων και των φυσικών χαρακτηριστικών, της ποιότητας και της φήμης. Δευτερεύουσες διαφορές δεν παρακωλύουν τον χαρακτηρισμό των εμπορευμάτων, που είναι κατά τα λοιπά σύμφωνα με τον ορισμό, ως πανομοιότυπων·

(β) ως "ομοειδή εμπορεύματα" νοούνται εμπορεύματα, τα οποία, χωρίς να είναι όμοια από κάθε άποψη, παρουσιάζουν παρόμοια χαρακτηριστικά και αποτελούνται από παρόμοιες ύλες, πράγμα που τους επιτρέπει να επιτελούν τις ίδιες λειτουργίες και να είναι δυνατό να εναλλάσσονται από εμπορικής πλευράς. Η ποιότητα των εμπορευμάτων, η φήμη τους και η ύπαρξη βιομηχανικού ή εμπορικού σήματος περιλαμβάνονται στα στοιχεία που πρέπει να λαμβάνονται υπόψη για να καθοριστεί αν τα εμπορεύματα είναι ομοειδή·

(γ) οι εκφράσεις "πανομοιότυπα εμπορεύματα" και "ομοειδή εμπορεύματα" δεν εφαρμόζονται στα εμπορεύματα που ενσωματώνουν ή περιλαμβάνουν, κατά περίπτωση, εργασίες μηχανικής ή μηχανολογίας, μελέτης, τέχνης ή σχεδιασμού ή σχέδια και ιχνογραφήματα, για τα οποία δεν έχει γίνει καμία προσαρμογή κατ'εφαρμογή του άρθρου 8, παράγραφος 1, στοιχείο β), περίπτωση iv λόγω του ότι οι εργασίες αυτές πραγματοποιήθηκαν στη χώρα εισαγωγής·

(δ) εμπορεύματα θεωρούνται ως "πανομοιότυπα εμπορεύματα" ή "ομοειδή εμπορεύματα" μόνο αν έχουν παραχθεί στην ίδια χώρα με τα υπό εκτίμηση εμπορεύματα·

(ε) εμπορεύματα παραγόμενα από διαφορετικό πρόσωπο λαμβάνονται υπόψη μόνο αν δεν υπάρχουν, κατά περίπτωση, πανομοιότυπα ή ομοειδή εμπορεύματα παραγόμενα από το ίδιο πρόσωπο με τα υπό εκτίμηση εμπορεύματα.

3. Στην παρούσα συμφωνία, ως "εμπορεύματα της αυτής φύσης ή του αυτού είδους" νοούνται τα εμπορεύματα που κατατάσσονται σε μια ομάδα ή μια σειρά εμπορευμάτων, τα οποία παράγονται από ένα ειδικό τομέα ενός κλάδου παραγωγής και περιλαμβάνουν τα πανομοιότυπα ή ομοειδή εμπορεύματα.

4. Για τους σκοπούς της παρούσας συμφωνίας, πρόσωπα θεωρούνται ως συνδεόμενα μεταξύ τους, μόνον αν :

(α) το ένα μετέχει στη διεύθυνση ή στο διοικητικό συμβούλιο της επιχείρησης του άλλου, και αντιστρόφως·

(β) έχουν από νομική άποψη την ιδιότητα των εταίρων·

(γ) το ένα είναι εργοδότης του άλλου·

(δ) ένα οποιοδήποτε πρόσωπο έχει στην κυριότητά του, ελέγχει ή κατέχει άμεσα ή έμμεσα το 5% ή περισσότερο των μετοχών ή μεριδίων με δικαίωμα ψήφου, του ενός και του άλλου·

(ε) το ένα από αυτά ελέγχει το άλλο άμεσα ή έμμεσα·

(στ) και τα δύο ελέγχονται άμεσα ή έμμεσα από ένα τρίτο πρόσωπο·

(ζ) και τα δύο μαζί ελέγχουν άμεσα ή έμμεσα ένα τρίτο πρόσωπο· ή

(η) είναι μέλη της ίδιας οικογένειας.

5. Τα πρόσωπα που συνδέονται οικονομικά μεταξύ τους λόγω του ότι το ένα είναι ο αποκλειστικός αντιπρόσωπος, διανομέας ή κατ'αποκλειστικότητα εμπορευόμενος του άλλου, ανεξάρτητα από το πώς κατονομάζεται το άλλο τούτο πρόσωπο, θεωρούνται ως συνδεόμενα μόνο αν εμπίπτουν σε ένα από τα κριτήρια που αναφέρονται στην παράγραφο 4.

'Αρθρο 16

Μετά από έγγραφη αίτηση, ο εισαγωγέας έχει το δικαίωμα να ζητήσει από την τελωνειακή υπηρεσία της χώρας εισαγωγής έγγραφες διευκρινίσεις για τον τρόπο καθορισμού της δασμολογητέας αξίας των εμπορευμάτων που εισήγαγε.

'Αρθρο 17

Καμία διάταξη της παρούσας συμφωνίας δεν θεωρείται ότι περιορίζει ή θέτει υπό αμφισβήτηση το δικαίωμα τελωνειακής υπηρεσίας να βεβαιωθεί για το αληθές ή το ακριβές κάθε βεβαίωσης, εγγράφου ή δήλωσης που υποβάλλεται για τον καθορισμό της δασμολογητέας αξίας.

ΜΕΡΟΣ ΙΙ

ΔΙΑΧΕΙΡΙΣΗ ΤΗΣ ΣΥΜΦΩΝΙΑΣ, ΔΙΑΒΟΥΛΕΥΣΕΙΣ ΚΑΙ ΕΠΙΛΥΣΗ ΤΩΝ ΔΙΑΦΟΡΩΝ

'Αρθρο 18

'Οργανα

1. Δημιουργείται Επιτροπή Δασμολογητέας Αξίας (καλούμενη "η επιτροπή"), η οποία αποτελείται από εκπροσώπους καθενός από τα μέλη. Η επιτροπή εκλέγει τον πρόεδρό της και συνέρχεται κανονικά μια φορά κατ'έτος ή όπως ορίζεται στις αντίστοιχες διατάξεις της παρούσας συμφωνίας, ώστε να παρέχει στα μέλη τη δυνατότητα διεξαγωγής διαβουλεύσεων στα θέματα που αφορούν τη διαχείριση από κάθε μέλος του συστήματος καθορισμού της δασμολογητέας αξίας, στο μέτρο που η διαχείριση θα ήταν δυνατό να επηρεάσει την εφαρμογή της παρούσας συμφωνίας ή την επίτευξη των στόχων της και ασκεί όποιες άλλες αρμοδιότητες της αναθέσουν, ενδεχομένως, τα μέλη. Η Γραμματεία της επιτροπής εξυπηρετείται από τη Γραμματεία του ΠΟΕ.

2. Δημιουργείται Τεχνική Επιτροπή Δασμολογητέας Αξίας (καλούμενη στην παρούσα συμφωνία "η τεχνική επιτροπή"), που τίθεται υπό την αιγίδα του Συμβουλίου Τελωνειακής Συνεργασίας, το οποίο αποκαλείται στην παρούσα συμφωνία "ΣΤΣ", η οποία ασκεί τις αρμοδιότητες που αναφέρονται στο παράρτημα ΙΙ της παρούσας συμφωνίας και λειτουργεί, σύμφωνα με τους διαδικαστικούς κανόνες που προβλέπονται στο εν λόγω παράρτημα.

'Αρθρο 19

Διαβουλεύσεις και επίλυση των διαφορών

1. Με εξαίρεση την περίπτωση που προβλέπεται κάτι διαφορετικό στην παρούσα συμφωνία, η συμφωνία για την επίλυση των διαφορών εφαρμόζεται στις διαβουλεύσεις και την επίλυση των διαφορών που προκύπτουν από την παρούσα συμφωνία.

2. Σε περίπτωση που ένα μέλος θεωρεί ότι ένα πλεονέκτημα που προκύπτει γι'αυτό άμεσα ή έμμεσα από την παρούσα συμφωνία αναιρείται εν όλω ή εν μέρει, ή ότι κινδυνεύει η πραγματοποίηση ενός από τους στόχους της εν λόγω συμφωνίας, λόγω ενεργειών ενός ή περισσοτέρων μελών, δύναται, με σκοπό την επίτευξη αμοιβαίως ικανοποιητικής λύσης του θέματος, να ζητήσει τη διεξαγωγή διαβουλεύσεων με το ή τα εν λόγω μέλη. Κάθε μέλος εξετάζει με κατανόηση κάθε αίτηση διαβουλεύσεων ενός άλλου μέλους.

3. Η τεχνική επιτροπή παρέχει, κατόπιν αιτήσεως, συμβουλές και βοήθεια στα μέλη που διεξάγουν διαβουλεύσεις.

4. Κατόπιν αιτήσεως κάποιου διαδίκου ή με δική της πρωτοβουλία η ειδική ομάδα (πάνελ), που συνιστάται για να εξετάσει κάποια διαφορά όσον αφορά τις διατάξεις της παρούσας συμφωνίας, μπορεί να ζητήσει από την τεχνική επιτροπή να εξετάσει τα θέματα που απαιτούν τεχνικές γνώσεις. Η ειδική ομάδα καθορίζει τις αρμοδιότητες της τεχνικής επιτροπής, όσον αφορά τη συγκεκριμένη διαφορά και τάσσει προθεσμία για την υποβολή της έκθεσης της τεχνικής επιτροπής, την οποία λαμβάνει δεόντως υπόψη. Σε περίπτωση που η τεχνική επιτροπή δεν είναι σε θέση να επιτύχει συναίνεση επί θέματος που υποβάλλεται σ'αυτή σύμφωνα με την παρούσα παράγραφο, η ειδική ομάδα επιτρέπει στους διαδίκους να εκθέσουν ενώπιόν της τις απόψεις τους.

5. Οι εμπιστευτικές πληροφορίες που παρέχονται στην ειδική ομάδα δεν κοινολογούνται χωρίς επίσημη σχετική άδεια εκ μέρους του προσώπου, του φορέα ή της αρχής που τις παρέσχε. Όταν οι πληροφορίες αυτές ζητούνται από την ειδική ομάδα ενώ απαγορεύεται η διάδοσή τους από αυτή, παρέχεται μια εμπιστευτική περίληψη αυτών μετά από άδεια του προσώπου, του φορέα ή της αρχής που τις παρέσχε.

ΜΕΡΟΣ ΙΙΙ

ΕΙΔΙΚΗ ΚΑΙ ΔΙΑΚΡΙΤΙΚΗ ΜΕΤΑΧΕΙΡΙΣΗ

Άρθρο 20

1. Οι αναπτυσσόμενες χώρες μέλη που δεν αποτελούν συμβαλλόμενα μέρη της συμφωνίας για την εφαρμογή του άρθρου VII της Γενικής Συμφωνίας Δασμών και Εμπορίου της 12ης Απριλίου 1979, δύνανται να αναβάλουν την εφαρμογή των διατάξεων της παρούσας συμφωνίας για περίοδο που δεν υπερβαίνει τα πέντε έτη από την ημέρα έναρξης ισχύος της συμφωνίας για τον ΠΟΕ ως προς τα εν λόγω μέλη. Οι αναπτυσσόμενες χώρες μέλη που θα επιλέξουν την αναβολή εφαρμογής της εν λόγω συμφωνίας γνωστοποιούν την απόφασή τους στο Γενικό Διευθυντή του ΠΟΕ.

2. Πέραν των διατάξεων της παραγράφου 1, οι αναπτυσσόμενες χώρες μέλη που δεν αποτελούν συμβαλλόμενα μέρη της συμφωνίας για την εφαρμογή του άρθρου VII της Γενικής Συμφωνίας Δασμών και Εμπορίου, της 12ης Απριλίου 1979, δύνανται να αναβάλουν την εφαρμογή του άρθρου 1, παράγραφος 2, στοιχείο β), περίπτωση iii) και του άρθρου 6 για περίοδο που δεν υπερβαίνει τα τρία έτη από την ημέρα θέσης σε εφαρμογή όλων των άλλων διατάξεων της συμφωνίας. Οι αναπτυσσόμενες χώρες μέλη της συμφωνίας που θα επιλέξουν την αναβολή της εφαρμογής των διατάξεων που αναφέρονται στην παρούσα παράγραφο, γνωστοποιούν την απόφασή τους στο Γενικό Διευθυντή του ΠΟΕ.

3. Οι ανεπτυγμένες χώρες μέλη της παρούσας συμφωνίας παρέχουν τεχνική βοήθεια κατά τρόπο που συμφωνείται από κοινού, στις αναπτυσσόμενες χώρες μέλη, οι οποίες ζητούν τη βοήθεια αυτή. Σ' αυτό το πλαίσιο οι ανεπτυγμένες χώρες μέλη της συμφωνίας καταρτίζουν προγράμματα τεχνικής βοήθειας, τα οποία δύνανται να περιλαμβάνουν, μεταξύ άλλων την εκπαίδευση του προσωπικού, βοήθεια για την κατάρτιση των μέτρων εφαρμογής, πρόσβαση σε πληροφοριακές πηγές σχετικά με τις μεθόδους στο θέμα καθορισμού της δασμολογητέας αξίας και συμβουλές στο θέμα εφαρμογής των διατάξεων της παρούσας συμφωνίας.

ΜΕΡΟΣ IV

ΤΕΛΙΚΕΣ ΔΙΑΤΑΞΕΙΣ

Άρθρο 21

Επιφυλάξεις

Δεν επιτρέπεται να διατυπωθούν επιφυλάξεις για τις διατάξεις της παρούσας συμφωνίας χωρίς τη συναίνεση των λοιπών μελών.

Άρθρο 22

Εθνική νομοθεσία

1. Κάθε μέλος εξασφαλίζει, το αργότερο μέχρι την ημερομηνία έναρξης ισχύος ως προς αυτό της παρούσας συμφωνίας, ότι οι νόμοι, οι κανονιστικές διατάξεις και οι διοικητικές διαδικασίες του συμφωνούν με τις διατάξεις της παρούσας συμφωνίας.

2. Κάθε μέλος ενημερώνει την επιτροπή για κάθε τροποποίηση των νόμων και των κανονιστικών διατάξεών του σε σχέση με τις διατάξεις της παρούσας συμφωνίας, καθώς και για την εφαρμογή αυτών των νόμων και κανονιστικών διατάξεων.

Άρθρο 23

Επανεξέταση

Η επιτροπή προβαίνει κατ'έτος σε επανεξέταση της λειτουργίας και της εφαρμογής της παρούσας συμφωνίας λαμβάνοντας υπόψη τους στόχους της. Η επιτροπή ενημερώνει κατ'έτος το Συμβούλιο Εμπορευματικών Συναλλαγών για τα γεγονότα που μεσολάβησαν κατά τη διάρκεια της χρονικής περιόδου που καλύπτει η εξέταση αυτή.

Άρθρο 24

Γραμματεία

Η Γραμματεία της παρούσας συμφωνίας εξασφαλίζεται από τη Γραμματεία του ΠΟΕ, εκτός ως προς ό,τι αφορά τις αρμοδιότητες που ανατίθενται ειδικά στην τεχνική επιτροπή, της οποίας η Γραμματεία εξασφαλίζεται από τη Γραμματεία του ΣΤΣ.

ΠΑΡΑΡΤΗΜΑ Ι
ΕΡΜΗΝΕΥΤΙΚΕΣ ΣΗΜΕΙΩΣΕΙΣ
Γενική Σημείωση

Διαδοχική εφαρμογή των μεθόδων εκτίμησης

1. Τα άρθρα 1 μέχρι και 7 ορίζουν τον τρόπο, κατά τον οποίο πρέπει να καθορίζεται η δασμολογητέα αξία των εισαγόμενων εμπορευμάτων κατ'εφαρμογή των διατάξεων της παρούσας συμφωνίας. Οι μέθοδοι εκτίμησης αναφέρονται κατά τη σειρά εφαρμογής τους. Η πρώτη μέθοδος για τον καθορισμό της δασμολογητέας αξίας ορίζεται στο άρθρο 1 και τα εισαγόμενα εμπορεύματα πρέπει να εκτιμώνται σύμφωνα με τις διατάξεις του άρθρου αυτού όποτε πληρούνται οι προβλεπόμενες προϋποθέσεις.

2. Όταν η δασμολογητέα αξία δεν μπορεί να καθοριστεί κατ'εφαρμογή των διατάξεων του άρθρου 1, συντρέχει περίπτωση εφαρμογής διαδοχικά των επόμενων άρθρων, μέχρι το πρώτο μεταξύ αυτών άρθρο που θα καταστήσει δυνατό τον καθορισμό της δασμολογητέας αξίας. Με την επιφύλαξη των διατάξεων του άρθρου 4, μόνο όταν η δασμολογητέα αυτή αξία δεν μπορεί να καθοριστεί κατ'εφαρμογή ενός ορισμένου άρθρου, επιτρέπεται η εφαρμογή των διατάξεων του αμέσως επομένου άρθρου κατά τη σειρά εφαρμογής.

3. Σε περίπτωση που ο εισαγωγέας δε ζητεί αντιστροφή της σειράς των άρθρων 5 και 6, πρέπει να τηρείται η κανονική σειρά εφαρμογής. Αν διατυπωθεί τέτοιο αίτημα, αλλά αποδεικνύεται στη συνέχεια αδύνατος ο καθορισμός της δασμολογητέας αξίας κατ'εφαρμογή των διατάξεων του άρθρου 6, η δασμολογητέα αξία πρέπει να καθοριστεί κατ'εφαρμογή των διατάξεων του άρθρου 5 αν τούτο είναι δυνατό.

4. Αν η δασμολογητέα αξία δεν μπορεί να καθοριστεί κατ'εφαρμογή κανενός από τα άρθρα 1 μέχρι και 6, πρέπει να καθοριστεί κατ'εφαρμογή των διατάξεων του άρθρου 7.

Εφαρμογή γενικά αποδεκτών λογιστικών αρχών

1. Οι "γενικά αποδεκτές λογιστικές αρχές" είναι εκείνες, για τις οποίες, σε μια χώρα και σε μια δεδομένη στιγμή, υφίσταται αναγνωρισμένη συναίνεση ή σημαντική υποστήριξη από έγκυρες πηγές και βάσει των οποίων καθορίζεται ποιοι οικονομικοί πόροι και υποχρεώσεις θα καταχωρίζονται ως ενεργητικό και παθητικό, ποιες μεταβολές του παθητικού και του ενεργητικού πρέπει να καταχωρίζονται, πως πρέπει να γίνεται η μέτρηση του ενεργητικού και του παθητικού, καθώς και των επερχόμενων μεταβολών, ποιες πληροφορίες πρέπει να ανακοινώνονται και με ποιον τρόπο και ποια δημοσιονομικά δελτία πρέπει να συντάσσονται. Οι κανόνες αυτοί είναι δυνατό να αποτελούν ευρείες κατευθυντήριες αρχές γενικής εφαρμογής, καθώς και λεπτομερείς πρακτικές και διαδικασίες.

2. Για τους σκοπούς της παρούσας συμφωνίας η τελωνειακή υπηρεσία κάθε μέλους χρησιμοποιεί πληροφορίες που διαμορφώνονται κατά τρόπο συμβιβάσιμο με τις γενικά αποδεκτές λογιστικές αρχές στην αντίστοιχη χώρα εν όψει του οικείου άρθρου. Παραδείγματος χάρη, τα συνήθη κέρδη και γενικά έξοδα, κατά την έννοια των διατάξεων του άρθρου 5, καθορίζονται βάσει πληροφοριών που διαμορφώνονται κατά τρόπο συμβιβάσιμο με τις γενικά αποδεκτές λογιστικές αρχές στη χώρα εισαγωγής. Αντίθετα, τα συνήθη κέρδη και γενικά έξοδα, κατά την έννοια των διατάξεων του άρθρου 6, καθορίζονται βάσει πληροφοριών που διαμορφώνονται κατά τρόπο συμβιβάσιμο με τις γενικά αποδεκτές λογιστικές αρχές στη χώρα παραγωγής. Άλλο παράδειγμα : ο προσδιορισμός ενός στοιχείου αναφερομένου στο άρθρο 8, παράγραφος 1, στοιχείο β) περίπτωση ii, ο οποίος πραγματοποιείται στη χώρα εισαγωγής γίνεται βάσει πληροφοριών που χρησιμοποιούνται κατά τρόπο συμβιβάσιμο με τις γενικά αποδεκτές λογιστικές αρχές στη χώρα αυτή.

Σημείωση για το άρθρο 1

Πράγματι πληρωθείσα ή πληρωτέα τιμή

1. Η πράγματι πληρωθείσα ή πληρωτέα τιμή είναι η συνολική πληρωμή που έγινε ή πρόκειται να γίνει από τον αγοραστή προς τον πωλητή, ή υπέρ του πωλητή, για τα εισαγόμενα εμπορεύματα. Η πληρωμή δεν είναι αναγκαίο να γίνεται σε χρήμα. Είναι δυνατό να πραγματοποιηθεί με πιστωτικούς τίτλους ή αξιόγραφα. Μπορεί να πραγματοποιηθεί άμεσα ή έμμεσα. Ένα παράδειγμα έμμεσης πληρωμής είναι η ολική ή μερική εξόφληση από τον αγοραστή ενός χρέους του πωλητή.

2. Οι δραστηριότητες τις οποίες αναλαμβάνει ο αγοραστής για δικό του λογαριασμό, εκτός από τις δραστηριότητες για τις οποίες προβλέπεται προσαρμογή στο άρθρο 8, δεν θεωρούνται ως έμμεση πληρωμή στον πωλητή, έστω και αν είναι δυνατό να θεωρηθεί ότι ο πωλητής επωφελείται από αυτές. Από αυτό προκύπτει ότι για τον καθορισμό της δασμολογητέας αξίας το κόστος των δραστηριοτήτων αυτών δεν προστίθεται στην πράγματι πληρωθείσα ή πληρωτέα τιμή.

3. Η δασμολογητέα αξία δεν περιλαμβάνει τα έξοδα ή τις επιβαρύνσεις που αναφέρονται κατωτέρω, υπό τον όρο ότι διακρίνονται από την πράγματι πληρωθείσα ή πληρωτέα για τα εισαγόμενα εμπορεύματα τιμή :

(α) έξοδα σχετικά με εργασίες κατασκευής, εγκατάστασης, συναρμολόγησης, συντήρησης ή τεχνικής βοήθειας, οι οποίες πραγματοποιούνται μετά την εισαγωγή όσον αφορά τα εισαγόμενα εμπορεύματα, όπως εγκαταστάσεις, μηχανές ή εξοπλισμός·

(β) κόστος μεταφοράς μετά την εισαγωγή·

(γ) δασμοί και φορολογικές επιβαρύνσεις της χώρας εισαγωγής.

4. Η πράγματι πληρωθείσα ή πληρωτέα τιμή νοείται ως η τιμή των εισαγόμενων εμπορευμάτων. Έτσι, η μεταφορά από τον αγοραστή στον πωλητή μερισμάτων και άλλες πληρωμές που δεν αφορούν τα εισαγόμενα εμπορεύματα δεν αποτελούν μέρος της δασμολογητέας αξίας.

Παράγραφος 1, στοιχείο α), περίπτωση iii

Μεταξύ των περιορισμών που δεν καθιστούν απαράδεκτη μια πράγματι πληρωθείσα ή πληρωτέα τιμή περιλαμβάνονται και οι περιορισμοί που δεν επηρεάζουν ουσιωδώς την αξία των εμπορευμάτων. Τούτο μπορεί να συμβεί, παραδείγματος χάρη, όταν ένας πωλητής ζητεί από ένα αγοραστή αυτοκινήτων να μη τα μεταπωλήσει ή να μη τα εκθέσει πριν από ορισμένη ημερομηνία, η οποία χαρακτηρίζει την έναρξη του έτους για τα αντίστοιχα μοντέλα αυτοκινήτων.

Παράγραφος 1, στοιχείο β)

1. Αν η πώληση ή η τιμή εξαρτώνται από όρους ή παροχές των οποίων η αξία, στην περίπτωση των υπό εκτίμηση εμπορευμάτων, δεν είναι δυνατό να καθοριστεί, η συναλλακτική αξία δεν γίνεται αποδεκτή για δασμολογικούς σκοπούς. Είναι δυνατό, να πρόκειται, παραδείγματος χάρη, για τις ακόλουθες περιπτώσεις :

(α) ο πωλητής καθορίζει την τιμή των εισαγόμενων εμπορευμάτων σε συνάρτηση με τον όρο ότι ο αγοραστής θα αγοράσει και άλλα εμπορεύματα σε ορισμένες ποσότητες·

(β) η τιμή των εισαγόμενων εμπορευμάτων εξαρτάται από την ή τις τιμές, στις οποίες ο αγοραστής των εισαγόμενων εμπορευμάτων πωλεί άλλα εμπορεύματα στον πωλητή των εν λόγω εισαγόμενων εμπορευμάτων·

(γ) η τιμή καθορίζεται βάσει ενός τρόπου πληρωμής που δεν έχει σχέση με τα εισαγόμενα εμπορεύματα : παραδείγματος χάρη, όταν τα εισαγόμενα εμπορεύματα είναι ημιτελή προϊόντα, τα οποία διατίθενται από τον πωλητή υπό τον όρο ότι θα δεχθεί ορισμένη ποσότητα ετοίμων προϊόντων.

2. Ωστόσο, όροι ή παροχές σχετικά με την παραγωγή ή την εμπορία των εισαγόμενων εμπορευμάτων δεν έχουν σαν αποτέλεσμα την απόρριψη της συναλλακτικής αξίας. Παραδείγματος χάρη, το γεγονός ότι ο αγοραστής παρέχει στον πωλητή εργασίες μηχανικής ή μηχανολογίας ή σχέδια εκτελούμενα στη χώρα εισαγωγής δεν έχει σαν αποτέλεσμα την απόρριψη της συναλλακτικής αξίας για την εφαρμογή του άρθρου 1. Ομοίως, αν ο αγοραστής αναλαμβάνει για δικό του λογαριασμό, έστω και στο πλαίσιο συμφωνίας με τον πωλητή, δραστηριότητες που αφορούν την εμπορία των εισαγόμενων εμπορευμάτων, η αξία των δραστηριοτήτων αυτών δεν αποτελεί μέρος της δασμολογητέας αξίας και οι εν λόγω δραστηριότητες δεν έχουν σαν αποτέλεσμα την απόρριψη της συναλλακτικής αξίας.

Παράγραφος 2

1. Η παράγραφος 2, στοιχεία α) και β) προβλέπει διάφορα μέσα για να προσδιορίζεται αν μια συναλλακτική αξία μπορεί να γίνει αποδεκτή.

2. Η παράγραφος 2, στοιχείο α) προβλέπει ότι, όταν ο αγοραστής και ο πωλητής συνδέονται μεταξύ τους, εξετάζονται οι περιστάσεις περί την πώληση και η συναλλακτική αξία γίνεται δεκτή ως δασμολογητέα αξία, εφόσον οι σχέσεις αυτές δεν έχουν επηρεάσει την τιμή. Τούτο δεν σημαίνει ότι οι περιστάσεις της πώλησης απαιτείται να εξετάζονται κάθε φορά που ο αγοραστής και ο πωλητής συνδέονται μεταξύ τους. Η εξέταση αυτή απαιτείται μόνο όταν υπάρχει αμφιβολία ως προς το αν πρέπει να γίνει αποδεκτή η τιμή. Όταν η τελωνειακή υπηρεσία δεν έχει καμία αμφιβολία ότι η τιμή πρέπει να γίνει αποδεκτή, η τιμή αυτή πρέπει να γίνει αποδεκτή χωρίς υποχρέωση για τον εισαγωγέα παροχής συμπληρωματικών πληροφοριών. Παραδείγματος χάρη, η τελωνειακή υπηρεσία είναι δυνατό να έχει εξετάσει προγενέστερα το ζήτημα των σχέσεων, ή να κατέχει ήδη λεπτομερείς πληροφορίες ως προς τον αγοραστή και τον πωλητή και να έχει ήδη πειστεί, βάσει της εξέτασης αυτής ή των πληροφοριών αυτών, ότι οι σχέσεις δεν έχουν επηρεάσει την τιμή.

3. Όταν η τελωνειακή υπηρεσία δεν είναι σε θέση να αποδεχθεί τη συναλλακτική αξία χωρίς συμπληρωματική έρευνα, πρέπει να δίδει στον εισαγωγέα τη δυνατότητα παροχής όλων των άλλων λεπτομερών πληροφοριών που θα ήταν δυνατό να χρειασθούν προκειμένου να καταστεί δυνατή η εξέταση των περιστάσεων της πώλησης. Από την άποψη αυτή, η τελωνειακή υπηρεσία πρέπει να είναι έτοιμη να εξετάσει τις χρήσιμες όψεις της συναλλαγής, περιλαμβανομένου και του τρόπου, κατά τον οποίο ο αγοραστής και ο πωλητής οργανώνουν τις εμπορικές τους σχέσεις και του τρόπου, κατά τον οποίο καθορίστηκε η εν λόγω τιμή, με σκοπό να προσδιορίσει αν οι σχέσεις έχουν επηρεάσει την τιμή. Αν είναι δυνατό να αποδειχθεί ότι ο αγοραστής και ο πωλητής, αν και συνδεόμενοι κατά την έννοια του άρθρου 15, αγοράζουν και πωλούν ο ένας στον άλλον σαν να μην είναι συνδεδεμένοι μεταξύ τους, αποδεικνύει ότι οι σχέσεις δεν έχουν

επηρεάσει την τιμή. Παραδείγματος χάρη, αν η τιμή διαμορφωθεί κατά τρόπο συμβιβάσιμο με τις κανονικές πρακτικές καθορισμού των τιμών στον εν λόγω κλάδο παραγωγής, ή με τον τρόπο, κατά τον οποίο ο πωλητής διαμορφώνει τις τιμές του για πωλήσεις προς αγοραστές που δεν συνδέονται μ'αυτόν, τούτο αποδεικνύει ότι οι σχέσεις δεν έχουν επηρεάσει την τιμή. Ομοίως, εφόσον αποδειχθεί ότι η τιμή επαρκεί για την κάλυψη όλων των εξόδων και για την εξασφάλιση κέρδους αντιπροσωπευτικού του συνολικού κέρδους, το οποίο πραγματοποιεί η επιχείρηση κατά τη διάρκεια αντιπροσωπευτικής περιόδου (παραδείγματος χάρη σε ετήσια βάση) για πωλήσεις εμπορευμάτων της αυτής φύσης ή του αυτού είδους, αποδεικνύεται ότι δεν έχει επηρεαστεί η τιμή.

4. Η παράγραφος 2, στοιχείο β) προβλέπει ότι ο εισαγωγέας έχει τη δυνατότητα να αποδείξει ότι η συναλλακτική αξία προσεγγίζει πολύ μια αξία "κριτήριο", την οποία έχει αποδεχθεί προγενέστερα η τελωνειακή υπηρεσία και ότι, κατά συνέπεια, είναι αποδεκτή σύμφωνα με τις διατάξεις του άρθρου 1. Όταν πληρούται ένα από τα κριτήρια που προβλέπονται στην παράγραφο 2, στοιχείο β), δεν είναι αναγκαίο να εξεταστεί το ζήτημα της επιρροής που προβλέπεται στην παράγραφο 2, στοιχείο α). Αν η τελωνειακή υπηρεσία κατέχει ήδη επαρκείς πληροφορίες ώστε να έχει πειστεί, χωρίς λεπτομερέστερες έρευνες, ότι πληρούται ένα από τα κριτήρια που προβλέπονται στην παράγραφο 2, στοιχείο β), δεν υπάρχει λόγος να απαιτήσει από τον εισαγωγέα ν'αποδείξει ότι πληρούται το κριτήριο αυτό. Στην παράγραφο 2, στοιχείο β), η έκφραση "αγοραστές μη συνδεόμενοι" σημαίνει αγοραστές που δεν συνδέονται με τον πωλητή σε καμία ειδική περίπτωση.

Παράγραφος 2, στοιχείο β)

Πρέπει να ληφθούν υπόψη ορισμένα στοιχεία για να καθοριστεί αν μια αξία "προσεγγίζει πολύ" μια άλλη αξία. Τέτοια στοιχεία είναι ιδίως η φύση των εισαγόμενων εμπορευμάτων, η φύση του οικείου κλάδου παραγωγής, η εποχή, κατά τη διάρκεια της οποίας εισάγονται τα εμπορεύματα και αν η διαφορά αξίας είναι εμπορικώς σημαντική. Επειδή τα στοιχεία αυτά είναι δυνατό να ποικίλλουν από τη μια περίπτωση στην άλλη, θα ήταν αδύνατο να εφαρμοστεί σε όλες τις περιπτώσεις ένας ομοιόμορφος κανόνας, όπως ο κανόνας ενός σταθερού ποσοστού. Παραδείγματος χάρη, για να προσδιοριστεί αν η συναλλακτική αξία προσεγγίζει πολύ τις αξίες κριτήρια που αναφέρονται στο άρθρο 1, παράγραφος 2, στοιχείο β), μια μικρή διαφορά αξίας θα ήταν δυνατό να είναι απαράδεκτη σε περίπτωση ορισμένου τύπου εμπορευμάτων, ενώ μια σημαντική διαφορά θα ήταν ίσως δυνατό να γίνει αποδεκτή σε περίπτωση άλλου τύπου εμπορευμάτων.

Σημείωση για το άρθρο 2

1. Κατά την εφαρμογή του άρθρου 2, η τελωνειακή υπηρεσία αναφέρεται, όποτε είναι δυνατό, σε πώληση πανομοιότυπων εμπορευμάτων, η οποία πραγματοποιείται στο ίδιο εμπορικό επίπεδο και αφορά την ίδια ουσιαστικώς ποιότητα με την πώληση των υπό εκτίμηση εμπορευμάτων. Ελλείψει τέτοιων πωλήσεων, είναι δυνατό να γίνει αναφορά σε πώληση πανομοιότυπων εμπορευμάτων, η οποία πραγματοποιείται σε μια από τις ακόλουθες τρεις περιπτώσεις :

(α) πώληση στο ίδιο εμπορικό επίπεδο, αλλά που αφορά διαφορετική ποσότητα·

(β) πώληση σε διαφορετικό εμπορικό επίπεδο, αλλά που αφορά την ίδια ουσιαστικώς ποσότητα· ή

(γ) πώληση σε διαφορετικό εμπορικό επίπεδο, που αφορά διαφορετική ποσότητα.

2. Αν διαπιστώθηκε πώληση σε οποιαδήποτε από τις τρεις αυτές περιπτώσεις, γίνονται προσαρμογές για να ληφθεί υπόψη, κατά περίπτωση :

(α) αποκλειστικά ο παράγοντας ποσότητα·

(β) αποκλειστικά ο παράγοντας εμπορικό επίπεδο· ή

(γ) ταυτόχρονα ο παράγοντας εμπορικό επίπεδο και ο παράγοντας ποσότητα.

3. Η έκφραση "ή/και" παρέχει την ευχέρεια αναφοράς σε πωλήσεις και διενέργειας των αναγκαίων προσαρμογών σε οποιαδήποτε από τις τρεις περιπτώσεις που περιγράφονται παρακάτω.

4. Για την εφαρμογή του άρθρου 2, η συναλλακτική αξία πανομοιότυπων εισαγόμενων εμπορευμάτων νοείται ως η δασμολογητέα αξία, προσαρμοζόμενη σύμφωνα με τις διατάξεις των παραγράφων 1, στοιχείο β) και 2, η οποία έχει γίνει ήδη αποδεκτή δυνάμει του άρθρου 1.

5. Προϋπόθεση κάθε προσαρμογής που πραγματοποιείται λόγω διαφορών εμπορικού επιπέδου ή ποσότητας είναι ότι η προσαρμογή αυτή, ανεξάρτητα από το αν συνεπάγεται την αύξηση ή την μείωση της αξίας, γίνεται μόνο βάσει προσκομιζόμενων αποδεικτικών στοιχείων, τα οποία αποδεικνύουν σαφώς ότι η προσαρμογή είναι εύλογη και ακριβής, παραδείγματος χάρη, γίνεται με βάση ισχύοντες τιμοκαταλόγους, στους οποίους περιλαμβάνονται τιμές που αφορούν διαφορετικά επίπεδα ή διαφορετικές ποσότητες. Παραδείγματος χάρη, αν τα υπό εκτίμηση εμπορεύματα αποτελούν μια αποστολή δέκα μονάδων, ενώ τα μόνα πανομοιότυπα εισαχθέντα εμπορεύματα, για τα οποία υπάρχει συναλλακτική αξία πωλήθηκαν σε ποσότητες των 500 μονάδων, αναγνωρίζεται δε ότι ο πωλητής χορηγεί εκπτώσεις λόγω ποσότητας, η αναγκαία προσαρμογή είναι δυνατό να γίνει με αναφορά στον τιμοκατάλογο του πωλητή και με χρήση της τιμής που ισχύει για πώληση δέκα μονάδων. Δεν είναι απαραίτητη, για το σκοπό αυτό, η ύπαρξη πώλησης δέκα μονάδων εφόσον αποδεικνύεται, από πωλήσεις που αφορούν διαφορετικές ποσότητες, ότι ο τιμοκατάλογος είναι ειλικρινής. Ελλείψει πάντως τέτοιου αντικειμενικού κριτηρίου, δεν μπορεί να καθοριστεί η δασμολογητέα αξία σύμφωνα με τις διατάξεις του άρθρου 2.

Σημείωση για το άρθρο 3

1. Κατά την εφαρμογή του άρθρου 3, η τελωνειακή υπηρεσία αναφέρεται όποτε είναι τούτο δυνατό, σε πώληση ομοειδών εμπορευμάτων, η οποία πραγματοποιείται στο ίδιο εμπορικό επίπεδο και αφορά την ίδια ουσιαστικώς ποσότητα με την πώληση των υπό εκτίμηση προϊόντων. Ελλείψει τέτοιων πωλήσεων, είναι δυνατό να γίνει αναφορά σε πώληση ομοειδών εμπορευμάτων, η οποία πραγματοποιείται σε οποιαδήποτε από τις ακόλουθες τρεις περιπτώσεις :

(α) πώληση στο ίδιο εμπορικό επίπεδο, αλλά που αφορά διαφορετική ποσότητα·

(β) πώληση σε διαφορετικό εμπορικό επίπεδο. αλλά που αφορά την ίδια ουσιαστικώς ποσότητα·

(γ) πώληση σε διαφορετικό εμπορικό επίπεδο, που αφορά διαφορετική ποσότητα.

2. Αν διαπιστώθηκε πώληση σε οποιαδήποτε από τις τρεις αυτές περιπτώσεις, γίνονται προσαρμογές για να ληφθεί υπόψη, κατά περίπτωση :

(α) αποκλειστικώς ο παράγοντας ποσότητα·

(β) αποκλειστικώς ο παράγοντας εμπορικό επίπεδο·

(γ) ταυτόχρονα ο παράγοντας εμπορικό επίπεδο και ο παράγοντας "ποσότητα".

3. Η έκφραση "ή/και" παρέχει την ευχέρεια αναφοράς σε πωλήσεις και διενέργειας των αναγκαίων προσαρμογών σε οποιαδήποτε από τις τρεις περιπτώσεις που περιγράφονται παραπάνω.

4. Για την εφαρμογή του άρθρου 3, η συναλλακτική αξία ομοειδών εισαγόμενων εμπορευμάτων νοείται ως η δασμολογητέα αξία, προσαρμοζόμενη σύμφωνα με τις διατάξεις των παραγράφων 1 στοιχείο β) και 2, η οποία έχει γίνει ήδη αποδεκτή δυνάμει του άρθρου 1.

5. Προϋπόθεση κάθε προσαρμογής που πραγματοποιείται λόγω διαφορών εμπορικού επιπέδου ή ποσότητας είναι ότι η προσαρμογή αυτή, ανεξάρτητα από το αν συνεπάγεται την αύξηση ή τη μείωση της αξίας, γίνεται μόνο βάσει προσκομιζόμενων αποδεικτικών στοιχείων, τα οποία αποδεικνύουν σαφώς ότι η προσαρμογή είναι εύλογη και ακριβής, παραδείγματος χάρη, γίνεται με βάση ισχύοντες τιμοκαταλόγους στους οποίους περιλαμβάνονται τιμές που αφορούν διαφορετικά επίπεδα ή διαφορετικές ποσότητες.
Παραδείγματος χάρη, αν τα υπό εκτίμηση εισαγόμενα εμπορεύματα αποτελούν μια αποστολή δέκα μονάδων, ενώ τα μόνα ομοειδή εισαχθέντα εμπορεύματα, για τα οποία υπάρχει συναλλακτική αξία, πωλήθηκαν σε ποσότητες των 500 μονάδων, αναγνωρίζεται δε ότι ο πωλητής χορηγεί εκπτώσεις λόγω ποσότητας, η αναγκαία προσαρμογή θα είναι δυνατό να γίνει με αναφορά στον τιμοκατάλογο του πωλητή και με χρήση της τιμής που ισχύει για πώληση 10 μονάδων. Δεν είναι απαραίτητη, για το σκοπό αυτό, η ύπαρξη πώλησης δέκα μονάδων, εφόσον αποδεικνύεται, από πωλήσεις που αφορούν διαφορετικές ποσότητες, ότι ο τιμοκατάλογος είναι ειλικρινής. Ελλείψει, πάντως, τέτοιου αντικειμενικού κριτηρίου, δεν μπορεί να καθοριστεί η δασμολογητέα αξία σύμφωνα με τις διατάξεις του άρθρου 3.

Σημείωση για το άρθρο 5

1. Ως "τιμή μονάδας που αντιστοιχεί στις πωλήσεις ..., οι οποίες αντιπροσωπεύουν συνολικά τη μεγαλύτερη ποσότητα" νοείται η τιμή, στην οποία πωλείται ο μεγαλύτερος αριθμός μονάδων επί πωλήσεων προς πρόσωπα που δεν συνδέονται με τα πρόσωπα από τα οποία αγοράζουν τα εν λόγω εμπορεύματα, στο πρώτο μετά την εισαγωγή εμπορικό επίπεδο, στο οποίο πραγματοποιούνται οι πωλήσεις αυτές.

2. Παραδείγματος χάρη : εμπορεύματα πωλούνται βάσει τιμοκαταλόγου, ο οποίος περιλαμβάνει ευνοϊκές τιμές μονάδας για αγορές σχετικά μεγάλων ποσοτήτων.

Ποσότητα κατά πώληση	Τιμή μονάδας	Αριθμός πωλήσεων	Συνολική ποσότητα πωλουμένη σε κάθε τιμή
1 έως 10 μονάδες	100	10 πωλήσεις 5 μονάδων 5 πωλήσεις 3 μονάδων	65

11 έως 25 μονάδες	95	5 πωλήσεις 11 μονάδων	55
πλέον των 25 μονάδων	90	1 πώληση 30 μονάδων	80
		1 πώληση 50 μονάδων	

Ο μεγαλύτερος αριθμός μονάδων που πωλούνται σε δεδομένη τιμή είναι 80· κατά συνέπεια, η τιμή μονάδας που αντιστοιχεί στις πωλήσεις, οι οποίες αντιπροσωπεύουν συνολικά τη μεγαλύτερη ποσότητα είναι 90.

3. Άλλο παράδειγμα : πραγματοποιούνται δύο πωλήσεις. Στην πρώτη, πωλούνται 500 μονάδες με τιμή 95 νομισματικών μονάδων η κάθε μια. Στη δεύτερη, 400 μονάδες πωλούνται με τιμή 90 νομισματικών μονάδων η κάθε μια. Στο παράδειγμα αυτό, ο μεγαλύτερος αριθμός μονάδων που πωλούνται σε δεδομένη τιμή είναι 500· κατά συνέπεια, η τιμή μονάδας που αντιστοιχεί στην πώληση, η οποία αντιπροσωπεύει συνολικά τη μεγαλύτερη ποσότητα είναι 95.

4. Τρίτο παράδειγμα : στην ακόλουθη περίπτωση, διάφορες ποσότητες πωλούνται σε διάφορες τιμές :

α) Πωλήσεις

Ποσότητα κατά την πώληση	Τιμή μονάδας
40 μονάδες	100
30 μονάδες	90
15 μονάδες	100
50 μονάδες	95
25 μονάδες	105
35 μονάδες	90
5 μονάδες	100

β) Συνολικά ποσά

Συνολική πωληθείσα ποσότητα	Τιμή μονάδας
65	90
50	95
60	100
25	105

Στο παράδειγμα αυτό, ο μεγαλύτερος αριθμός μονάδων που πωλούνται σε δεδομένη τιμή είναι 65· κατά συνέπεια, η τιμή μονάδας που αντιστοιχεί στις πωλήσεις, οι οποίες αντιπροσωπεύουν συνολικά τη μεγαλύτερη ποσότητα είναι 90.

5. Πώληση που πραγματοποιείται στη χώρα εισαγωγής, όπως περιγράφεται στην ανωτέρω παράγραφο 1, προς πρόσωπο που παρέχει άμεσα ή έμμεσα και αδαπάνως ή με μειωμένο κόστος, οποιοδήποτε από τα στοιχεία που αναφέρονται στο άρθρο 8, παράγραφος 1, στοιχείο β), προκειμένου να χρησιμοποιηθεί τούτο στην παραγωγή και την πώληση προς εξαγωγή των εισαγόμενων εμπορευμάτων, δεν πρέπει να λαμβάνεται υπόψη κατά τον προσδιορισμό της τιμής μονάδας για την εφαρμογή του άρθρου 5.

6. Πρέπει να σημειωθεί ότι τα "κέρδη και γενικά έξοδα" που προβλέπονται στο άρθρο 5, παράγραφος 1 πρέπει να νοούνται ως ένα σύνολο. Το ποσό που πρέπει να λαμβάνεται υπόψη από την αφαίρεση αυτή θα πρέπει να καθορίζεται βάσει των πληροφοριών που παρέχονται από τον

εισαγωγέα ή εξ ονόματός του, εκτός αν τα ποσά του εισαγωγέα δεν συμφωνούν με τα ποσά που αντιστοιχούν κανονικά στις πωλήσεις στη χώρα εισαγωγής εισαγόμενων εμπορευμάτων της αυτής φύσης ή του αυτού είδους. Όταν τα ποσά του εισαγωγέα δεν συμφωνούν με τα τελευταία αυτά ποσά, το ποσό που πρέπει να λαμβάνεται υπόψη για τα κέρδη και τα γενικά έξοδα μπορεί να βασίζεται σε κατάλληλες πληροφορίες, εκτός από εκείνες οι οποίες έχουν παρασχεθεί από τον εισαγωγέα ή εξ ονόματός του.

7. Τα "γενικά έξοδα" περιλαμβάνουν το άμεσο και έμμεσο κόστος εμπορίας των εν λόγω εμπορευμάτων.

8. Οι τοπικοί φόροι, οι οποίοι καταβάλλονται λόγω της πώλησης των εμπορευμάτων και για τους οποίους δεν γίνεται αφαίρεση δυνάμει των διατάξεων του άρθρου 5, παράγραφος 1, στοιχείο α), περίπτωση iv), πρέπει να αφαιρούνται σύμφωνα με τις διατάξεις του άρθρου 5, παράγραφος 1, στοιχείο α) περίπτωση i).

9. Για να προσδιορισθούν οι προμήθειες ή τα συνήθη κέρδη και τα γενικά έξοδα σύμφωνα με τις διατάξεις του άρθρου 5, παράγραφος 1, το ζήτημα αν ορισμένα εμπορεύματα είναι "της αυτής φύσης ή του αυτού είδους" με άλλα εμπορεύματα πρέπει να επιλύεται σε κάθε περίπτωση χωριστά, λαμβανομένων υπόψη των περιστάσεων. Θα πρέπει να γίνεται εξέταση των πωλήσεων, στη χώρα εισαγωγής, της πιο περιορισμένης ομάδας ή σειράς εισαγόμενων εμπορευμάτων της αυτής φύσης ή του αυτού είδους, στην οποία περιλαμβάνονται και τα υπό εκτίμηση εμπορεύματα, για τα οποία δύνανται να παρασχεθούν οι αναγκαίες πληροφορίες. Για την εφαρμογή του άρθρου 5, τα "εμπορεύματα της αυτής φύσης ή του αυτού είδους" περιλαμβάνουν τα εμπορεύματα που εισάγονται από την ίδια χώρα με τα υπό εκτίμηση εμπορεύματα, καθώς και τα εμπορεύματα που εισάγονται από άλλες χώρες.

10. Για την εφαρμογή του άρθρου 5, παράγραφος 1, στοιχείο β), η "πιο πρόσφατη ημερομηνία" είναι η ημερομηνία κατά την οποία τα εισαγόμενα εμπορεύματα ή πανομοιότυπα ή ομοειδή εισαγόμενα εμπορεύματα πωλούνται σε ποσότητα επαρκή, ώστε να είναι δυνατός ο προσδιορισμός της τιμής μονάδας.

11. Όταν γίνεται χρήση της μεθόδου εκτίμησης του άρθρου 5, παράγραφος 2, οι αφαιρέσεις που γίνονται για να ληφθεί υπόψη η προστιθέμενη, λόγω περαιτέρω κατεργασίας αξία, βασίζονται σε δεδομένα αντικειμενικά και δυνάμενα ν'αποτιμηθούν σχετικά με το κόστος της εργασίας αυτής. Οι υπολογισμοί πραγματοποιούνται βάσει των τύπων, τρόπων και μεθόδων κατασκευής που γίνονται δεκτοί στον οικείο κλάδο παραγωγής καθώς και βάσει των λοιπών πρακτικών του κλάδου αυτού.

12. Αναγνωρίζεται ότι η μέθοδος εκτίμησης που προβλέπεται στο άρθρο 5, παράγραφος 2, δεν μπορεί κανονικά να εφαρμοστεί σε περίπτωση που μετά από περαιτέρω κατεργασία, τα εισαγόμενα εμπορεύματα απώλεσαν την ταυτότητά τους. Ωστόσο, είναι δυνατό να υφίστανται περιπτώσεις κατά τις οποίες, αν και τα εισαγόμενα εμπορεύματα απώλεσαν την ταυτότητά τους, η προστιθέμενη, λόγω κατεργασίας αξία μπορεί να καθοριστεί με ακρίβεια χωρίς υπερβολική δυσκολία, Αντίθετα, είναι δυνατό να παρουσιαστούν περιπτώσεις, κατά τις οποίες τα εισαγόμενα εμπορεύματα διατηρούν την ταυτότητά τους, αλλά αποτελούν τόσο ασήμαντο μέρος των εμπορευμάτων που πωλούνται στη χώρα εισαγωγής, ώστε να μη δικαιολογείται η χρήση αυτής της μεθόδου εκτίμησης. Βάσει των προαναφερθέντων, τέτοιες περιπτώσεις πρέπει να εξετάζονται χωριστά.

Σημείωση για το άρθρο 6

1. Κατά γενικό κανόνα, η δασμολογητέα αξία καθορίζεται δυνάμει της παρούσας συμφωνίας, βάσει πληροφοριών αμέσως διαθέσιμων στη χώρα εισαγωγής. Εντούτοις, για να καθοριστεί μια υπολογιζόμενη αξία, είναι δυνατό να καταστεί αναγκαία η εξέταση εξόδων παραγωγής των υπό εκτίμηση εμπορευμάτων και άλλων πληροφοριών που επιβάλλεται να ληφθούν εκτός της χώρας εισαγωγής. Εξάλλου, στις περισσότερες περιπτώσεις, ο παραγωγός των εμπορευμάτων δεν υπάγεται στη δικαιοδοσία των αρχών της χώρας εισαγωγής. Η χρήση της μεθόδου της υπολογιζόμενης αξίας περιορίζεται, γενικώς, στις περιπτώσεις όπου ο αγοραστής και ο πωλητής συνδέονται μεταξύ τους και ο παραγωγός είναι διατεθειμένος να ανακοινώσει στις αρχές της χώρας εισαγωγής τα απαραίτητα στοιχεία για τον προσδιορισμό των εξόδων και να τους παράσχει διευκολύνσεις για κάθε μεταγενέστερο έλεγχο που θα ήταν δυνατό ν'απαιτηθεί.

2. Το "κόστος ή η αξία" που προβλέπεται στο άρθρο 6, παράγραφος 1 στοιχείο α) πρέπει να καθορίζεται βάσει πληροφοριών σχετικά με την παραγωγή των υπό εκτίμηση εμπορευμάτων, οι οποίες παρέχονται από τον παραγωγό ή εξ ονόματός του. Βασίζεται στα εμπορικά λογιστικά στοιχεία του παραγωγού, υπό τον όρο ότι τα λογιστικά αυτά στοιχεία συμβιβάζονται με τις γενικά αποδεκτές λογιστικές αρχές που εφαρμόζονται στη χώρα παραγωγής των εμπορευμάτων.

3. Το "κόστος ή η αξία" περιλαμβάνει το κόστος των στοιχείων που αναφέρονται στο άρθρο 8, παράγραφος 1, στοιχείο α), περιπτώσεις ii) και iii). Περιλαμβάνει επίσης την αξία, επιμεριζόμενη δεόντως με τις πρέπουσες αναλογίες σύμφωνα με τη σημείωση για το άρθρο 8, κάθε στοιχείου που αναφέρεται στην παράγραφο 1, στοιχείο β) του εν λόγω άρθρου το οποίο έχει παρασχεθεί, άμεσα ή έμμεσα, από τον αγοραστή για να χρησιμοποιηθεί κατά την παραγωγή των εισαγόμενων εμπορευμάτων. Η αξία των εργασιών που αναφέρονται στο άρθρο 8, παράγραφος 1, στοιχείο β) περίπτωση iv), οι οποίες εκτελούνται εντός της χώρας εισαγωγής περιλαμβάνεται μόνο στο μέτρο που οι εργασίες αυτές επιβαρύνουν τον παραγωγό. Εννοείται ότι δεν πρέπει να υπολογίζεται δύο φορές, κατά τον καθορισμό της υπολογιζόμενης αξίας, το κόστος ή η αξία κανενός από τα στοιχεία που προβλέπονται στην παράγραφο αυτή.

4. Το "ποσό για τα κέρδη και τα γενικά έξοδα" που προβλέπεται στο άρθρο 6, παράγραφος 1, στοιχείο β) καθορίζεται βάσει πληροφοριών που παρέχονται από τον παραγωγό ή εξ ονόματός του, εκτός αν τα ποσά που αυτός ανακοινώνει δεν συμφωνούν με εκείνα που αντιστοιχούν κανονικά στις πωλήσεις εμπορευμάτων της αυτής φύσης ή του αυτού είδους με τα υπό εκτίμηση εμπορεύματα, οι οποίες πραγματοποιούνται από παραγωγούς της χώρας εξαγωγής προς εξαγωγή στη χώρα εισαγωγής.

5. Πρέπει να σημειωθεί, ως προς το θέμα αυτό, ότι το "ποσό για τα κέρδη και τα γενικά έξοδα" πρέπει να θεωρείται ως σύνολο. Κατά συνέπεια, αν σε μια ειδική περίπτωση, το κέρδος του παραγωγού είναι ασήμαντο και τα γενικά του έξοδα μεγάλα, το κέρδος του και τα γενικά του έξοδα, λαμβανόμενα ως σύνολο, δύνανται παρά ταύτα να είναι σύμφωνα με εκείνα που αντιστοιχούν κανονικά στις πωλήσεις εμπορευμάτων της αυτής φύσης ή του αυτού είδους. Τούτο θα ήταν δυνατό να συμβεί, παραδείγματος χάρη, αν ένα προϊόν εισάγεται για πρώτη φορά στην αγορά της χώρας εισαγωγής και ο παραγωγός αρκείται σε κέρδος μηδενικό ή ασήμαντο να αντισταθμίσει τα υψηλά γενικά έξοδα που προκαλούνται από την εισαγωγή αυτή. Όταν ο παραγωγός δύναται να αποδείξει ότι έχει ασήμαντο κέρδος επί των πωλήσεων των εισαγόμενων εμπορευμάτων λόγω

ειδικών εμπορικών περιστάσεων, λαμβάνονται υπόψη τα ποσά των πραγματικών κερδών του, υπό τον όρο ότι ο παραγωγός προβάλλει βάσιμους εμπορικούς λόγους για τη δικαιολόγησή τους και η πολιτική τιμών που ακολουθεί εκφράζει τη συνήθη πολιτική τιμών του οικείου κλάδου παραγωγής. Τούτο μπορεί να συμβεί, παραδείγματος χάρη, σε περίπτωση που οι παραγωγοί αναγκάζονται να μειώσουν προσωρινά τις τιμές τους λόγω απρόβλεπτης ελάττωσης της ζήτησης ή σε περίπτωση που πωλούν εμπορεύματα για να συμπληρώσουν μια σειρά εμπορευμάτων παραγόμενων στη χώρα εισαγωγής, αρκούνται δε σε ασήμαντο κέρδος για να διατηρήσουν την ανταγωνιστικότητά τους. Όταν τα ποσά των κερδών και των γενικών εξόδων που παρέχονται από τον παραγωγό δεν είναι σύμφωνα με εκείνα που αντιστοιχούν κανονικά στις πωλήσεις εμπορευμάτων της αυτής φύσης ή του αυτού είδους με τα υπό εκτίμηση εμπορεύματα, οι οποίες πραγματοποιούνται από παραγωγούς της χώρας εξαγωγής προς εξαγωγή στη χώρα εισαγωγής, το ποσό των κερδών και γενικών εξόδων μπορεί να βασίζεται σε κατάλληλες πληροφορίες πλην εκείνων που παρέχονται από τον παραγωγό των εμπορευμάτων ή εξ ονόματός του.

6. Όταν για τον καθορισμό της υπολογιζόμενης αξίας, γίνεται χρήση άλλων πληροφοριών, εκτός από εκείνες που έχουν παρασχεθεί από τον παραγωγό ή για λογαριασμό του, οι αρχές της χώρας εισαγωγής ενημερώνουν τον εισαγωγέα, κατόπιν αιτήσεώς του, για την πηγή των πληροφοριών αυτών, για τα στοιχεία που χρησιμοποιήθηκαν και για τους υπολογισμούς που πραγματοποιήθηκαν βάσει των στοιχείων αυτών, με την επιφύλαξη των διατάξεων του άρθρου 10.

7. Τα "γενικά έξοδα" που προβλέπονται στο άρθρο 6, παράγραφος 1, στοιχείο β) περιέχουν το άμεσο και έμμεσο κόστος παραγωγής και πώλησης των προς εξαγωγή εμπορευμάτων που δεν περιλαμβάνονται βάσει του άρθρου 6, παράγραφος 1, στοιχείο α).

8. Για να προσδιορισθεί αν ορισμένα εμπορεύματα είναι "της αυτής φύσης ή του αυτού είδους" με άλλα εμπορεύματα πρέπει να εξετάζεται κάθε περίπτωση χωριστά, λαμβανομένων υπόψη των περιστάσεων. Για να καθοριστούν τα συνήθη κέρδη και τα γενικά έξοδα σύμφωνα με τις διατάξεις του άρθρου 6, γίνεται εξέταση των πωλήσεων προς εξαγωγή στη χώρα εισαγωγής της πιο περιορισμένης ομάδας ή σειράς εμπορευμάτων, στην οποία περιλαμβάνονται τα υπό εκτίμηση εμπορεύματα, για τα οποία είναι δυνατό να παρασχεθούν οι αναγκαίες πληροφορίες. Για την εφαρμογή του άρθρου 6, τα "εμπορεύματα της αυτής φύσης ή του αυτού είδους" πρέπει να προέρχονται από την ίδια χώρα με τα υπό εκτίμηση εμπορεύματα.

Σημείωση για το άρθρο 7

1. Οι δασμολογητέες αξίες που καθορίζονται κατ'εφαρμογή των διατάξεων του άρθρου 7 είναι ανάγκη να βασίζονται όσο το δυνατό περισσότερο σε δασμολογητέες αξίες που έχουν καθοριστεί προγενέστερα.

2. Οι μέθοδοι εκτίμησης των οποίων πρέπει να γίνεται χρήση δυνάμει του άρθρου 7 επιβάλλεται να είναι οι οριζόμενες στα άρθρα 1 μέχρι και 6, αλλά μια εύλογη ελαστικότητα κατά την εφαρμογή των μεθόδων αυτών θα ήταν σύμφωνη με τους στόχους και τις διατάξεις του άρθρου 7.

3. Μερικά παραδείγματα θα καταδείξουν τι σημαίνει εύλογη ελαστικότητα:

(α) Εμπορεύματα πανομοιότυπα : Η διάταξη, κατά την οποία τα πανομοιότυπα εμπορεύματα πρέπει να εξάγονται κατά την ίδια χρονική στιγμή ή περίπου κατά την ίδια χρονική στιγμή με τα υπό

εκτίμηση εμπορεύματα θα ήταν δυνατό να ερμηνευθεί με ελαστικότητα· πανομοιότυπα εισαγόμενα εμπορεύματα, τα οποία παράγονται σε άλλη χώρα, πλην της χώρας εξαγωγής των υπό εκτίμηση εμπορευμάτων, θα ήταν δυνατό να αποτελέσουν τη βάση καθορισμού της δασμολογητέας αξίας· θα ήταν δυνατό να γίνει χρήση της δασμολογητέας αξίας πανομοιότυπων εισαγόμενων εμπορευμάτων, η οποία έχει ήδη καθοριστεί κατ'εφαρμογή των διατάξεων των άρθρων 5 ή 6.

(β) Εμπορεύματα ομοειδή : Η διάταξη, κατά την οποία τα ομοειδή εμπορεύματα πρέπει να εξάγονται κατά την ίδια στιγμή ή περίπου κατά την ίδια χρονική στιγμή με τα υπό εκτίμηση εμπορεύματα θα ήταν δυνατό να ερμηνευθεί με ελαστικότητα· ομοειδή εισαγόμενα εμπορεύματα παραγόμενα σε άλλη χώρα πλην της χώρας εξαγωγής των υπό εκτίμηση εμπορευμάτων, θα ήταν δυνατό ν'αποτελέσουν τη βάση καθορισμού της δασμολογητέας αξίας· θα ήταν δυνατό να γίνει χρήση της δασμολογητέας αξίας ομοειδών εισαγόμενων εμπορευμάτων, η οποία έχει ήδη καθοριστεί κατ'εφαρμογή των άρθρων 5 ή 6.

(γ) Επαγωγική μέθοδος : Η διάταξη, κατά την οποία τα εμπορεύματα πρέπει να έχουν πωληθεί στην κατάσταση που εισήχθησαν, η οποία περιλαμβάνεται στο άρθρο 5, παράγραφος 1, στοιχείο α), θα ήταν δυνατό να ερμηνεύεται με ελαστικότητα· η προθεσμία των "90 ημερών" θα ήταν δυνατό να εφαρμόζεται με ελαστικότητα.

Σημείωση για το άρθρο 8

Παράγραφος 1, στοιχείο α), περίπτωση i)

Ως "προμήθειες αγοράς" νοούνται τα ποσά που καταβάλλονται από τον εισαγωγέα στον αντιπρόσωπό του για τις υπηρεσίες που συνίστανται στην αντιπροσώπευσή του στο εξωτερικό για την αγορά των υπό εκτίμηση εμπορευμάτων.

Παράγραφος 1, στοιχείο β), περίπτωση ii)

1. Δύο παράγοντες υπεισέρχονται στον επιμερισμό των στοιχείων που καθορίζονται στο άρθρο 8, παράγραφος 1, στοιχείο β) περίπτωση ii), επί των εισαγόμενων εμπορευμάτων, δηλαδή η αξία του ίδιου του στοιχείου και ο τρόπος με τον οποίο πρέπει να επιμερίζεται η αξία αυτή επί των εισαγόμενων εμπορευμάτων. Ο επιμερισμός των στοιχείων αυτών πρέπει να γίνεται με εύλογο τρόπο, κατάλληλο για τις περιστάσεις και σύμφωνο με τις γενικές αποδεκτές λογιστικές αρχές.

2. Όσον αφορά την αξία του στοιχείου, αν ο εισαγωγέας αποκτά το εν λόγω στοιχείο από έναν πωλητή, με τον οποίο δεν συνδέεται, αντί ορισμένης τιμής, η τιμή αυτή συνιστά την αξία του στοιχείου. Αν το στοιχείο παρήχθη από τον εισαγωγέα ή από πρόσωπο συνδεόμενο με αυτόν, την αξία του στοιχείου αυτού αποτελεί το κόστος της παραγωγής του. Αν το στοιχείο έχει χρησιμοποιηθεί προγενέστερα από τον εισαγωγέα, ανεξάρτητα από το αν το απέκτησε ή το παρήγαγε ο ίδιος ή όχι, το αρχικό κόστος κτήσης ή παραγωγής θα πρέπει να μειωθεί για να ληφθεί υπόψη η χρησιμοποίηση αυτή, προκειμένου να προσδιορισθεί η αξία του στοιχείου.

3. Μετά τον καθορισμό της αξίας του στοιχείου, καθίσταται αναγκαίος ο επιμερισμός της στα εισαγόμενα εμπορεύματα. Υπάρχουν πολλές δυνατότητες γ'αυτό. Παραδείγματος χάρη, η αξία θα ήταν δυνατό να καταλογισθεί εξ

ολοκλήρου στην πρώτη αποστολή, αν ο εισαγωγέας επιθυμεί να πληρώσει τους δασμούς εφάπαξ, για το σύνολο της αξίας. Άλλο παράδειγμα : ο εισαγωγέας μπορεί να ζητήσει τον επιμερισμό της αξίας στον αριθμό των μονάδων που παρήχθησαν μέχρι τη χρονική στιγμή της πρώτης αποστολής. Άλλο ένα παράδειγμα : ο εισαγωγέας μπορεί να ζητήσει τον επιμερισμό της αξίας στο σύνολο της προβλεπόμενης παραγωγής, αν υφίστανται συμβάσεις ή οριστικές αναλήψεις υποχρεώσεων για την παραγωγή αυτή. Η μέθοδος επιμερισμού, της οποίας γίνεται χρήση, εξαρτάται από τα έγγραφα στοιχεία που παρέχει ο εισαγωγέας.

4. Προς διευκρίνιση των προαναφερομένων, δύναται να ληφθεί υπόψη η περίπτωση ενός εισαγωγέα, ο οποίος παρέχει στον παραγωγό καλούπι προς χρησιμοποίηση για την παραγωγή εμπορευμάτων προς εισαγωγή και ο οποίος συνάπτει με αυτόν σύμβαση αγοράς που αφορά 10.000 μονάδες. Κατά τη χρονική στιγμή άφιξης της πρώτης αποστολής, που περιλαμβάνει 1.000 μονάδες, ο παραγωγός έχει ήδη παραγάγει 4.000 μονάδες. Ο εισαγωγέας μπορεί να ζητήσει από την τελωνειακή υπηρεσία να επιμερίσει την αξία του καλουπιού σε 1.000, 4.000 ή 10.000 μονάδες.

Παράγραφος 1, στοιχείο β), περίπτωση iv)

1. Οι αξίες που πρέπει να προστίθενται για τα στοιχεία' που καθορίζονται στο άρθρο 8, παράγραφος 1, στοιχείο β) περίπτωση iv) βασίζονται σε δεδομένα αντικειμενικά που δύνανται να αποτιμηθούν. Για να περιορισθεί στο ελάχιστο η εργασία, τόσο του εισαγωγέα όσο και της τελωνειακής υπηρεσίας όσον αφορά τον καθορισμό των αξιών που πρέπει να προστεθούν, επιβάλλεται να χρησιμοποιούνται, όσο είναι δυνατό, δεδομένα αμέσως διαθέσιμα στο πλαίσιο του συστήματος εμπορικών βιβλίων του αγοραστή.

2. Για τα στοιχεία που παρέχονται από τον αγοραστή και τα οποία αυτός έχει αγοράσει ή μισθώσει, η αξία που πρέπει να προστεθεί είναι το κόστος της αγοράς ή της μίσθωσης. Για τα στοιχεία που ανήκουν στην περιουσία του Δημοσίου δεν συντρέχει περίπτωση καμίας άλλης προσθήκης εκτός από την προσθήκη του κόστους των αντιγράφων.

3. Η ευκολία με την οποία μπορεί να επιτευχθεί ο υπολογισμός των αξιών που πρέπει να προστεθούν, εξαρτάται από τη δομή της συγκεκριμένης επιχείρησης, τη διαχειριστική πρακτική της και τις λογιστικές της μεθόδους.

4. Παραδείγματος χάρη, είναι δυνατό μια επιχείρηση που εισάγει διάφορα προϊόντα από πολλές χώρες να τηρεί λογιστικά στοιχεία για το κέντρο σχεδιασμού της, το οποίο βρίσκεται εκτός της χώρας εισαγωγής, έτσι ώστε να έχει ακριβή εικόνα των εξόδων που πρέπει να επιμερισθούν σε δεδομένο προϊόν. Σε τέτοια περίπτωση, είναι δυνατό να γίνει άμεση προσαρμογή με κατάλληλο τρόπο, κατ'εφαρμογή των διατάξεων του άρθρου 8.

5. Αφετέρου, είναι δυνατό μια επιχείρηση να καταχωρίζει τα έξοδα του κέντρου σχεδιασμού της, το οποίο βρίσκεται εκτός της χώρας εισαγωγής, στα γενικά έξοδα, χωρίς να τα επιμερίζει σε ορισμένα προϊόντα. Σε τέτοια περίπτωση, θα ήταν δυνατό να γίνει, κατ'εφαρμογή των διατάξεων του άρθρου 8, κατάλληλη προσαρμογή όσον αφορά τα εισαγόμενα εμπορεύματα, με καταλογισμό του συνολικού ποσού εξόδων του κέντρου σχεδιασμού στο σύνολο της παραγωγής που απολαύει των υπηρεσιών του κέντρου αυτού και με πρόσθεση των καταλογισθέντων με τον τρόπο αυτό εξόδων στην τιμή των εισαγόμενων εμπορευμάτων ανάλογα με τον αριθμό των μονάδων.

6. Σε περίπτωση παραλλαγών των περιστάσεων που προαναφέρθηκαν, είναι αυτονόητο ότι καθίσταται αναγκαίο να ληφθούν υπόψη διαφορετικοί παράγοντες για τον προσδιορισμό της κατάλληλης μεθόδου επιμερισμού.

7. Σε περίπτωση που στην παραγωγή του εν λόγω στοιχείου υπεισέρχεται ορισμένος αριθμός χωρών και η παραγωγή αυτή κλιμακώνεται σε ορισμένη χρονική περίοδο, η προσαρμογή περιορίζεται στην αξία που πράγματι προστίθεται στο στοιχείο αυτό εκτός της χώρας εισαγωγής.

Παράγραφος 1, στοιχείο γ)

1. Τα πάσης φύσεως δικαιώματα από παραχώρηση άδειας εκμετάλλευσης που προβλέπονται στο άρθρο 8, παράγραφος 1, στοιχείο γ) δύνανται να περιλαμβάνουν, μεταξύ άλλων, τις πληρωμές που πραγματοποιούνται βάσει διπλωμάτων ευρεσιτεχνίας, βιομηχανικών ή εμπορικών σημάτων και δικαιωμάτων αναπαραγωγής. Εντούτοις, κατά τον καθορισμό της δασμολογητέας αξίας, τα έξοδα τα σχετικά με το δικαίωμα αναπαραγωγής των εισαγόμενων εμπορευμάτων στη χώρα εισαγωγής δεν προστίθενται στην πράγματι πληρωθείσα ή πληρωτέα τιμή για τα εισαγόμενα εμπορεύματα.

2. Οι πληρωμές που γίνονται από τον αγοραστή σε αντιπαροχή του δικαιώματος διανομής ή μεταπώλησης των εισαγόμενων εμπορευμάτων δεν προστίθενται στην πράγματι πληρωθείσα ή πληρωτέα για τα εισαγόμενα εμπορεύματα τιμή, αν οι πληρωμές αυτές δεν αποτελούν όρο της πώλησης προς εξαγωγή στη χώρα εισαγωγής των εισαγόμενων εμπορευμάτων.

Παράγραφος 3

Όταν δεν υφίστανται δεδομένα αντικειμενικά και δυνάμενα ν'αποτιμηθούν όσον αφορά τα στοιχεία, τα οποία πρέπει να προστεθούν σύμφωνα με τις διατάξεις του άρθρου 8, η συναλλακτική αξία δεν είναι δυνατό να καθοριστεί κατ'εφαρμογή των διατάξεων του άρθρου 1. Τούτο δύναται να συμβεί, παραδείγματος χάρη, στην ακόλουθη περίπτωση : καταβάλλεται δικαίωμα από παραχώρηση άδειας εκμετάλλευσης βάσει της τιμής πώλησης ενός λίτρου δεδομένου προϊόντος στη χώρα εισαγωγής, το οποίο εισήχθη σε χιλιόγραμμα και μεταποιήθηκε σε διάλυμα μετά την εισαγωγή. Αν, το δικαίωμα αυτό βασίζεται εν μέρει σε άλλα στοιχεία που δεν έχουν καμία σχέση με τα εν λόγω εμπορεύματα (παραδείγματος χάρη, όταν τα εισαγόμενα εμπορεύματα αναμιγνύονται σε συστατικά εθνικής καταγωγής και δεν είναι πια δυνατό ν'αναγνωρισθεί χωριστά η ταυτότης του καθενός ή όταν το συγκεκριμένο δικαίωμα δεν είναι δυνατό να διαχωρισθεί από ειδικούς οικονομικούς διακανονισμούς μεταξύ του αγοραστή και του πωλητή), δεν θα πρέπει να προστεθεί στοιχείο αντίστοιχο προς το δικαίωμα αυτό. Ωστόσο, αν το ποσό του δικαιώματος από παραχώρηση άδειας εκμετάλλευσης βασίζεται μόνο στα εισαγόμενα εμπορεύματα και μπορεί να αποτιμηθεί ευχερώς είναι δυνατό να προστεθεί ένα στοιχείο στην πράγματι πληρωθείσα ή πληρωτέα τιμή.

Σημείωση για το άρθρο 9

Για την εφαρμογή του άρθρου 9, η "χρονική στιγμή της εισαγωγής" μπορεί να είναι η χρονική στιγμή της διασάφησης.

Σημείωση για το άρθρο 11

1. Το άρθρο 11 παρέχει στον εισαγωγέα δικαίωμα προσφυγής για τον καθορισμό της δασμολογητέας αξίας που έγινε από την τελωνειακή υπηρεσία, όσον αφορά τα υπό εκτίμηση εμπορεύματα. Μπορεί να ασκηθεί

προσφυγή αρχικά ενώπιον μιας ανώτερης αρχής της τελωνειακής υπηρεσίας αλλά ο εισαγωγέας έχει το δικαίωμα σε τελευταίο βαθμό, να ασκεί περαιτέρω προσφυγή ενώπιον των δικαστικών αρχών.

2. "Που δεν επισύρει καμία ποινή" σημαίνει ότι ο εισαγωγέας δεν υπόκειται σε πρόστιμο ούτε απειλείται με πρόστιμο απλώς και μόνο διότι επέλεξε την άσκηση του δικαιώματός του για προσφυγή. Τα κανονικά δικαστικά έξοδα και οι δικηγορικές αμοιβές δεν θεωρούνται ως πρόστιμο.

3. Ωστόσο, καμία από τις διατάξεις του άρθρου 11, δεν εμποδίζει κάποιο μέλος να απαιτήσει την ολοσχερή εξόφληση των επιβληθέντων δασμών πριν από την άσκηση της προσφυγής.

Σημείωση για το άρθρο 15

Παράγραφος 4

Για την εφαρμογή του άρθρου 15, ο όρος "πρόσωπα" εφαρμόζεται, κατά περίπτωση, και στα νομικά πρόσωπα.

Παράγραφος 4, στοιχείο ε)

Για την εφαρμογή της παρούσας συμφωνίας, ένα πρόσωπο θεωρείται ότι ελέγχει ένα άλλο όταν είναι, de jure ή de facto, σε θέση να ασκεί επί του άλλου τούτου προσώπου εξουσία καταναγκασμού ή κατεύθυνσης.

ΠΑΡΑΡΤΗΜΑ ΙΙ

ΤΕΧΝΙΚΗ ΕΠΙΤΡΟΠΗ ΔΑΣΜΟΛΟΓΗΤΕΑΣ ΑΞΙΑΣ

1. Σύμφωνα με το άρθρο 18 της παρούσας συμφωνίας, η τεχνική επιτροπή συγκροτείται υπό την αιγίδα του Συμβουλίου Τελωνειακής Συνεργασίας με σκοπό να εξασφαλίσει, στο τεχνικό επίπεδο, ομοιομορφία ερμηνείας και εφαρμογής της παρούσας συμφωνίας.

2. Η τεχνική επιτροπή είναι αρμόδια :

(α) να εξετάζει τα ειδικά τεχνικά προβλήματα που παρουσιάζονται στην τρέχουσα διαχείριση των συστημάτων καθορισμού της δασμολογητέας αξίας των μελών και να γνωμοδοτεί συμβουλευτικά όσον αφορά τις κατάλληλες λύσεις, βάσει των παρουσιαζόμενων περιστατικών·

(β) να μελετά, κατόπιν αιτήσεως, τους νόμους, τις διαδικασίες και την πρακτική όσον αφορά τον καθορισμό της δασμολογητέας αξίας που υπάγονται στην παρούσα συμφωνία και να συντάσσει εκθέσεις για τα αποτελέσματα των μελετών αυτών·

(γ) να συντάσσει και να διανέμει ετήσιες εκθέσεις για τις τεχνικές πτυχές της εφαρμογής και της λειτουργίας της παρούσας συμφωνίας·

(δ) να παρέχει, για κάθε ζήτημα που αφορά τον καθορισμό της δασμολογητέας αξίας των εισαγόμενων εμπορευμάτων, πληροφορίες και γνώμες που είναι δυνατό να ζητηθούν από κάθε μέλος ή από την επιτροπή. Αυτές οι πληροφορίες και γνώμες είναι δυνατό να πάρουν τη μορφή συμβουλευτικών γνωμοδοτήσεων, σχολίων ή επεξηγηματικών σημειώσεων·

(ε) να διευκολύνει, κατόπιν αιτήσεως, τη χορήγηση τεχνικής βοηθείας στα μέλη με σκοπό την προώθηση της αποδοχής της παρούσας συμφωνίας σε διεθνές επίπεδο· και

(στ) να ασκεί κάθε άλλη κάθε άλλη αρμοδιότητα που είναι δυνατό να της ανατεθεί από την επιτροπή.

(ζ) να εξετάζει τα θέματα τα οποία υποβάλλονται σ' αυτή από την ειδική ομάδα, σύμφωνα με το άρθρο 19 της παρούσας συμφωνίας·

Γενικά

3. Η τεχνική επιτροπή προσπαθεί να φέρει σε πέρας, εντός ευλόγως συντόμου προθεσμίας, τις εργασίες της επί ειδικών θεμάτων, ιδίως δε επί θεμάτων που της έχουν υποβληθεί από τα μέλη, από την επιτροπή ή από την ειδική ομάδα. όπως προβλέπεται στο άρθρο 19, παράγραφος 4, η ειδική ομάδα τάσσει προθεσμία για την παραλαβή της έκθεσης της τεχνικής επιτροπής και η τεχνική επιτροπή υποχρεούται να υποβάλει την έκθεση εντός της εν λόγω προθεσμίας.

4. Κατά τις δραστηριότητές της, η τεχνική επιτροπή επικουρείται δεόντως από τη Γραμματεία του Συμβουλίου Τελωνειακής Συνεργασίας (ΣΤΣ).

Εκπροσώπηση

5. Κάθε μέλος έχει το δικαίωμα να εκπροσωπείται στην τεχνική επιτροπή.

Κάθε μέλος μπορεί να ορίσει έναν τακτικό αντιπρόσωπο και έναν ή περισσότερους αναπληρωματικούς αντιπροσώπους για να το εκπροσωπούν στην τεχνική επιτροπή. Κάθε μέλος που εκπροσωπείται έτσι στην τεχνική επιτροπή καλείται στη συνέχεια "μέλος της τεχνικής επιτροπής". Οι εκπρόσωποι των μελών της τεχνικής επιτροπής δύνανται να επικουρούνται από συμβούλους. Η Γραμματεία του ΠΟΕ μπορεί επίσης να παρίσταται στις συνεδριάσεις της επιτροπής με την ιδιότητα του παρατηρητή.

6. Τα μέλη του ΣΤΣ που δεν είναι μέλη του ΠΟΕ δύνανται να εκπροσωπούνται στις συνεδριάσεις της τεχνικής επιτροπής από έναν τακτικό αντιπρόσωπο και έναν ή περισσότερους αναπληρωματικούς αντιπροσώπους. Οι αντιπρόσωποι αυτοί παρίστανται ως παρατηρητές στις συνεδριάσεις της τεχνικής επιτροπής.

7. Με την επιφύλαξη της έγκρισης από τον πρόεδρο της τεχνικής επιτροπής, ο Γενικός Γραμματέας του Συμβουλίου Τελωνειακής Συνεργασίας (καλούμενος στη συνέχεια "ο Γενικός Γραμματέας") μπορεί να καλεί εκπροσώπους κυβερνήσεων που δεν είναι ούτε μέλη του ΠΟΕ, ούτε μέλη του ΣΤΣ καθώς και εκπροσώπους διεθνών κυβερνητικών και εμπορικών οργανώσεων, για να παρίστανται ως παρατηρητές στις συνεδριάσεις της τεχνικής επιτροπής.

8. Οι πράξεις ορισμού εκπροσώπων, αναπληρωτών και συμβούλων στις συνεδριάσεις της τεχνικής επιτροπής απευθύνονται στο Γενικό Γραμματέα.

Συνεδριάσεις της τεχνικής επιτροπής

9. Η τεχνική επιτροπή συνεδριάζει όποτε τούτο είναι αναγκαίο, αλλά τουλάχιστον δύο φορές κατ'έτος. Η ημερομηνία κάθε συνεδρίασης ορίζεται από την τεχνική επιτροπή κατά την προηγούμενή της σύνοδο. Η ημερομηνία της συνεδρίασης μπορεί να τροποποιηθεί, είτε κατόπιν αιτήσεως ενός μέλους της τεχνικής επιτροπής που υποστηρίζεται από την πλειοψηφία των μελών της επιτροπής αυτής, είτε, για επείγουσες περιπτώσεις, κατόπιν αιτήσεως του προέδρου. Παρά τις διατάξεις της πρώτης πρότασης της παρούσας παραγράφου, η τεχνική επιτροπή συνεδριάζει, όταν χρειάζεται, για να εξετάσει θέματα που υποβάλλονται σ'αυτή από την ειδική ομάδα σύμφωνα με τις διατάξεις του άρθρου 19 της παρούσας συμφωνίας.

10. Οι συνεδριάσεις της τεχνικής επιτροπής πραγματοποιούνται στην έδρα του Συμβουλίου Τελωνειακής Συνεργασίας εκτός αν υπάρχει αντίθετη απόφαση.

11. Εκτός από επείγουσες περιπτώσεις, ο Γενικός Γραμματέας ειδοποιεί, 30 ημέρες τουλάχιστον πριν από την έναρξη κάθε συνόδου της τεχνικής επιτροπής, όλα τα μέλη της επιτροπής και τους συμμετέχοντες που προβλέπονται στις παραγράφους 6 και 7.

Ημερησία διάταξη

12. Από τον Γενικό Γραμματέα καταρτίζεται προσωρινή ημερήσια διάταξη κάθε συνόδου, η οποία κοινοποιείται στα μέλη της τεχνικής επιτροπής και στους συμμετέχοντες που προβλέπονται στις παραγράφους 6 και 7, τριάντα ημέρες τουλάχιστον πριν από την έναρξη της συνόδου, εκτός από επείγουσες περιπτώσεις. Η ημερήσια αυτή διάταξη περιλαμβάνει όλα τα θέματα των οποίων η εγγραφή έχει εγκριθεί από την τεχνική επιτροπή κατά την προηγούμενή της σύνοδο, όλα τα θέματα που έχουν εγγραφεί από τον πρόεδρο με δική του πρωτοβουλία και όλα τα θέματα των οποίων ζητείται η εγγραφή από το Γενικό Γραμματέα, από την επιτροπή ή από κάθε μέλος της τεχνικής επιτροπής.

13. Η τεχνική επιτροπή καταρτίζει την ημερήσια διάταξη κατά την έναρξη κάθε συνόδου. Κατά τη διάρκεια της συνόδου, η ημερήσια διάταξη μπορεί να τροποποιηθεί οποτεδήποτε από την τεχνική επιτροπή.

Σύνθεση του προεδρείου και εσωτερικός κανονισμός

14. Η τεχνική επιτροπή επιλέγει μεταξύ των εκπροσώπων των μελών της έναν πρόεδρο και έναν ή περισσοτέρους αντιπροέδρους. Η θητεία του προέδρου και των αντιπροέδρων είναι ετήσια. Ο πρόεδρος και οι αντιπρόεδροι, των οποίων ή λήγει η θητεία, δύναται να επανεκλεγούν. Η θητεία του προέδρου ή του αντιπροέδρου που παύει να είναι εκπρόσωπος ενός μέλους της τεχνικής επιτροπής λήγει αυτομάτως.

15. Αν ο πρόεδρος είναι απών κατά τη διάρκεια μιας συνόδου ή μέρος συνόδου, η προεδρία εξασφαλίζεται από έναν αντιπρόεδρο που έχει τις ίδιες εξουσίες και τα ίδια καθήκοντα με τον πρόεδρο.

16. Ο πρόεδρος της συνόδου μετέχει στις συζητήσεις της τεχνικής επιτροπής υπό την ιδότητα του προέδρου και όχι υπό την ιδιότητα του αντιπροσώπου ενός μέλους της τεχνικής επιτροπής.

17. Πέρα από την άσκηση των εξουσιών που του ανατίθενται με άλλες διατάξεις του παρόντος εσωτερικού κανονισμού, ο πρόεδρος κηρύσσει την έναρξη και τη λήξη κάθε συνόδου, διευθύνει τις συζητήσεις, δίδει το λόγο και, σύμφωνα με τον παρόντα εσωτερικό κανονισμό κατευθύνει τις εργασίες. Ο πρόεδρος μπορεί επίσης να ανακαλέσει στην τάξη έναν ομιλητή, αν οι παρατηρήσεις του τελευταίου τούτου δεν είναι οι αρμόζουσες.

18. Κατά τη συζήτηση, για οποιοδήποτε θέμα, κάθε αντιπροσωπεία μπορεί να εγείρει θέμα διαδικασίας. Στην περίπτωση αυτή, ο πρόεδρος αποφαίνεται αμέσως. Αν αμφισβητείται η απόφασή του, ο πρόεδρος τη θέτει σε ψηφοφορία. Διατηρείται ως έχει αν δεν ανατραπεί.

19. Ο Γενικός Γραμματέας ή τα μέλη της Γραμματείας που ορίζει ο ίδιος, εξασφαλίζουν τη γραμματεία των συνεδριάσεων της τεχνικής επιτροπής.

Απαρτία και ψηφοφορία

20. Υπάρχει απαρτία όταν παρίστανται οι εκπρόσωποι που αποτελούν την πλειοψηφία των μελών της τεχνικής επιτροπής.

21. Κάθε μέλος της τεχνικής επιτροπής διαθέτει μια ψήφο. Όλες οι αποφάσεις της τεχνικής επιτροπής λαμβάνονταν με πλειοψηφία των δύο τρίτων τουλάχιστον των παρόντων μελών. Ανεξάρτητα από το αποτέλεσμα της ψηφοφορίας επί ορισμένου θέματος, η τεχνική επιτροπή έχει την ευχέρεια να υποβάλει πλήρη έκθεση επί του θέματος αυτού στην επιτροπή και στο ΣΤΣ, αναφέροντας τις διάφορες απόψεις που διατυπώθηκαν κατά τη διάρκεια των σχετικών συζητήσεων. Παρά τις προαναφερθείσες διατάξεις της παρούσας παραγράφου, όταν πρόκειται για θέματα που υποβάλλει στην τεχνική επιτροπή κάποια ειδική ομάδα, αυτή λαμβάνει απόφαση με συναίνεση. Όταν δεν επιτυγχάνεται συμφωνία στην τεχνική επιτροπή για θέμα που έχει υποβάλει ειδική ομάδα, η τεχνική επιτροπή συντάσσει έκθεση, στην οποία αναφέρει λεπτομερώς τα πραγματικά περιστατικά και τις απόψεις των μελών.

Γλώσσες και έγγραφα

22. Οι επίσημες γλώσσες της τεχνικής επιτροπής είναι η γαλλική, η

αγγλική και η ισπανική. Οι ομιλίες ή οι δηλώσεις που γίνονται σε μια από τις τρεις αυτές γλώσσες μεταφράζονται αμέσως στις άλλες επίσημες γλώσσες, εκτός αν συμφωνήσουν όλες οι αντιπροσωπείες να παραιτηθούν από τη μετάφραση αυτή. Οι ομιλίες ή οι δηλώσεις που γίνονται σε άλλη γλώσσα μεταφράζονται στη γαλλική, την αγγλική και την ισπανική με την επιφύλαξη των ίδιων προϋποθέσεων, αλλά στην περίπτωση αυτή, τη μετάφραση στη γαλλική, την αγγλική και την ισπανική παρέχει η ενδιαφερόμενη αντιπροσωπεία. Η γαλλική, η αγγλική και η ισπανική είναι οι μόνες γλώσσες που χρησιμοποιούνται στα επίσημα έγγραφα της τεχνικής επιτροπής. Τα υπομνήματα και η αλληλογραφία που υποβάλλονται στην τεχνική επιτροπή προς εξέταση πρέπει να συντάσσονται σε μια από τις επίσημες γλώσσες.

23. Η τεχνική επιτροπή συντάσσει έκθεση για κάθε σύνοδό της και, αν ο πρόεδρος το κρίνει αναγκαίο, πρακτικά ή αναλυτικό υπολογισμό των συνεδριάσεών της. Ο πρόεδρος ή το πρόσωπο που ορίζεται από αυτόν υποβάλλει έκθεση για τις εργασίες της τεχνικής επιτροπής σε κάθε σύνοδο της επιτροπής και σε κάθε σύνοδο του ΣΤΣ.

ΠΑΡΑΡΤΗΜΑ ΙΙΙ

1. Η προθεσμία των πέντε ετών που προβλέπεται στο άρθρο 20, παράγραφος 1 για την εφαρμογή της συμφωνίας από τις αναπτυσσόμενες χώρες μέλη θα ήταν δυνατό, στην πράξη, να αποδειχθεί ανεπαρκής για ορισμένες από αυτές. Στην περίπτωση αυτή, μια αναπτυσσόμενη χώρα μέλος μπορεί, πριν από το τέλος της χρονικής περιόδου που προβλέπεται στο άρθρο 20, παράγραφος 1, να ζητήσει την παράτασή της. Εννοείται ότι τα μέλη εξετάζουν ένα τέτοιο αίτημα με κατανόηση, αν η αναπτυσσόμενη χώρα μέλος για την οποία πρόκειται δύναται να δικαιολογήσει δεόντως το διαβημά της.

2. Οι αναπτυσσόμενες χώρες, οι οποίες εκτιμούν σήμερα τα εμπορεύματα βάσει ελαχίστων αξιών που καθορίζονται επίσημα είναι δυνατό να επιθυμούν να διατυπώσουν επιφύλαξη που να τους επιτρέπει τη διατήρηση των αξιών αυτών σε περιορισμένη έκταση και μεταβατικό επίπεδο σύμφωνα με ρήτρες και όρους που συμφωνούν τα μέλη.

3. Οι αναπτυσσόμενες χώρες, οι οποίες κρίνουν ότι η αντιστροφή όσον αφορά τη σειρά της εφαρμογής που προβλέπεται στο άρθρο 4 της συμφωνίας, αν το ζητήσει ο εισαγωγέας, μπορεί να τους δημιουργήσει πραγματικές δυσκολίες, είναι δυνατό να επιθυμούν να διατυπώσουν επιφύλαξη στο άρθρο 4, με την εξής διατύπωση :

> "Η κυβέρνηση ..... διατηρεί το δικαίωμα να αποφασίσει ότι η αντίστοιχη διάταξη του άρθρου 4 της συμφωνίας εφαρμόζεται μόνο εφόσον οι τελωνειακές αρχές είναι σύμφωνες ως προς την αίτηση αντιστροφής της σειράς εφαρμογής των άρθρων 5 και 6".

Αν αναπτυσσόμενες χώρες διατυπώσουν τέτοια επιφύλαξη, τα μέλη συναινούν σ'αυτήν βάσει του άρθρου 21 της συμφωνίας.

4. Οι αναπτυσσόμενες χώρες είναι δυνατόν να επιθυμούν να διατυπώσουν επιφύλαξη όσον αφορά το άρθρο 5, παράγραφος 2 της συμφωνίας, με την εξής διατύπωση :

> "Η κυβέρνηση ..... διατηρεί το δικαίωμα να αποφασίσει ότι οι διατάξεις του άρθρου 5, παράγραφος 2 της συμφωνίας εφαρμόζονται σύμφωνα με τις διατάξεις της σχετικής με αυτές σημείωσης, ανεξάρτητα από την ύπαρξη αίτησης ή μη του εισαγωγέως".

Αν οι αναπτυσσόμενες χώρες διατυπώσουν τέτοια επιφύλαξη, τα μέλη συναινούν σ'αυτήν βάσει των διατάξεων του άρθρου 21 της συμφωνίας.

5. Ορισμένες αναπτυσσόμενες χώρες είναι δυνατό να αντιμετωπίζουν προβλήματα όσον αφορά την εφαρμογή των διατάξεων του άρθρου 1 της συμφωνίας όταν πρόκειται για εισαγωγές που πραγματοποιούνται στις χώρες αυτές από αποκλειστικούς αντιπροσώπους, διανομείς ή κατ'αποκλειστικότητα εμπορευόμενους. Τα μέλη της συμφωνίας συμφωνούν ότι, αν δημιουργηθούν στην πράξη προβλήματα τέτοιας φύσης στις αναπτυσσόμενες χώρες μέλη που εφαρμόζουν τη συμφωνία, θα μελετηθεί το θέμα, κατόπιν αιτήσεως των εν λόγω μελών, για να εξευρεθούν οι κατάλληλες λύσεις.

6. Το άρθρο 17 αναγνωρίζει ότι, για την εφαρμογή της συμφωνίας, οι τελωνειακές υπηρεσίες είναι δυνατό να χρειάζονται να ερευνήσουν την αλήθεια ή την ακρίβεια, εγγράφου ή δήλωσης που τους υποβάλλεται με σκοπό τον καθορισμό της δασμολογητέας αξίας. Το άρθρο αναγνωρίζει ότι δύνανται να διεξαχθούν έρευνες, για να εξακριβωθεί, παραδείγματος χάρη, ότι τα στοιχεία εκτίμησης της αξίας που δηλώθηκαν ή προσκομίσθηκαν στο τελωνείο για το σκοπό καθορισμού της δασμολογητέας αξίας είναι πλήρη και ακριβή. Τα μέλη, επιφυλασσομένων των νόμων και των εθνικών τους διαδικασιών, έχουν δικαίωμα να υπολογίζουν στην πλήρη συνεργασία των εισαγωγέων για τις έρευνες αυτές.

7. Η πράγματι πληρωθείσα ή πληρωτέα τιμή περιλαμβάνει όλες τις πληρωμές που γίνονται ή πρόκειται να γίνουν, ως όρους της πώλησης των εισαγόμενων εμπορευμάτων, από τον αγοραστή στον πωλητή, ή από τον αγοραστή σε τρίτο πρόσωπο προς εκπλήρωση υποχρέωσης του πωλητή.

ΣΥΜΦΩΝΙΑ ΓΙΑ ΤΟΝ ΕΛΕΓΧΟ ΠΡΙΝ ΑΠΟ ΤΗΝ ΑΠΟΣΤΟΛΗ

Τα μέλη,

Σχοντας υπόψη ότι οι Υπουργοί συμφώνησαν, στις 20 Σεπτεμβρίου 1986, ότι οι πολυμερείς εμπορικές διαπραγματεύσεις στο πλαίσιο του Γύρου της Ουρουγουάης αποβλέπουν στην επίτευξη μεγαλύτερης απελευθέρωσης και επέκτασης του παγκόσμιου εμπορίου, στην ενίσχυση του ρόλου της GATT και στην αύξηση της ικανότητας του συστήματος της GATT να προσαρμόζεται στις εξελίξεις του διεθνούς οικονομικού περιβάλλοντος·

Σχοντας υπόψη ότι ορισμένες αναπτυσσόμενες χώρες μέλη εφαρμόζουν ελέγχους πριν από την αποστολή·

Αναγνωρίζοντας την ανάγκη των αναπτυσσομένων χωρών να ελέγχουν στο μεγαλύτερο δυνατό βαθμό την ποιότητα, την ποσότητα ή τις τιμές των εισαγόμενων προϊόντων·

Γνωρίζοντας ότι τέτοια προγράμματα είναι ανάγκη να εφαρμόζονται χωρίς να δημιουργούν περιττές καθυστερήσεις ή άνιση μεταχείριση·

Σχοντας υπόψη ότι ο εν λόγω έλεγχος διενεργείται εξ ορισμού στο έδαφος του μέλους εξαγωγής·

Αναγνωρίζοντας την ανάγκη δημιουργίας εγκεκριμένου διεθνούς πλαισίου δικαιωμάτων και υποχρεώσεων τόσο των μελών χρηστών όσο και των μελών εξαγωγέων·

Αναγνωρίζοντας ότι οι αρχές και οι υποχρεώσεις της GATT του 1994 ισχύουν για τις δραστηριότητες των φορέων ελέγχου πριν από την αποστολή, οι οποίοι έχουν εξουσιοδοτηθεί σχετικά από τις κυβερνήσεις των μελών του ΠΟΕ·

Αναγνωρίζοντας ότι είναι σκόπιμο να υπάρξει διαφάνεια των πράξεων των φορέων ελέγχου πριν από την αποστολή καθώς και των εφαρμοζόμενων σχετικά νόμων και ρυθμίσεων·

Επιθυμώντας να επιδιώξουν την ταχεία, αποτελεσματική και δίκαιη επίλυση των διαφορών μεταξύ των εξαγωγέων και των φορέων ελέγχου πριν από την αποστολή, που απορρέουν από την παρούσα συμφωνία·

Συμφωνούν τα ακόλουθα:

Άρθρο 1
Πεδίο εφαρμογής - ορισμοί

1. Η παρούσα συμφωνία ισχύει για όλες τις δραστηριότητες ελέγχου πριν από την αποστολή που διενεργούνται στο έδαφος των μελών, όταν οι δραστηριότητες αυτές έχουν ανατεθεί με σύμβαση ή με εντολή από την κυβέρνηση ή οποιοδήποτε δημόσιο φορέα μέλους.

2. Με τον όρο "μέλος χρήστης" νοείται το μέλος του οποίου η κυβέρνηση ή κάποιος δημόσιος φορέας αναθέτει με σύμβαση ή με εντολή τη διενέργεια δραστηριοτήτων ελέγχου πριν από την αποστολή.

3. Οι δραστηριότητες ελέγχου πριν από την αποστολή περιλαμβάνουν τον έλεγχο της ποιότητας, της ποσότητας, των τιμών, συμπεριλαμβανομένης της τιμής συναλλάγματος και των οικονομικών όρων ή/και τη δασμολογική κατάταξη εμπορευμάτων που πρόκειται να εξαχθούν στο έδαφος του μέλους χρήστη.

4. Με τον όρο "φορέας ελέγχου πριν από την αποστολή" νοείται οποιοσδήποτε φορέας στον οποίο ανατίθεται με σύμβαση ή με εντολή από κάποιο μέλος η διενέργεια δραστηριοτήτων ελέγχου πριν από την αποστολή.[1]

Άρθρο 2
Υποχρεώσεις των μελών χρηστών

Μη διακριτική μεταχείριση

1. Τα μέλη χρήστες διασφαλίζουν ότι οι δραστηριότητες ελέγχου πριν από την αποστολή διενεργούνται με τρόπο που δεν εισάγει διακρίσεις και ότι τα σχετικά κριτήρια και οι διαδικασίες εφαρμόζονται αντικειμενικά και ισχύουν κατά τον ίδιο τρόπο για όλους τους εξαγωγείς, οι οποίοι θίγονται από τις δραστηριότητες αυτές. Υποχρεούνται ακόμη να εξασφαλίζουν την ομοιόμορφη διεξαγωγή του ελέγχου από όλους τους ελεγκτές των φορέων ελέγχου πριν από την αποστολή, στους οποίους αυτά έχουν αναθέσει το συγκεκριμένο έργο με σύμβαση ή με εντολή.

Κυβερνητικές απαιτήσεις

2. Τα μέλη χρήστες διασφαλίζουν ότι κατά τη διάρκεια του ελέγχου πριν από την αποστολή εφαρμόζονται, στον απαιτούμενο βαθμό, όσον αφορά τους νόμους, τις ρυθμίσεις και τις απαιτήσεις τους, οι διατάξεις του άρθρου III, παράγραφος 4 της GATT του 1994.

Τόπος διενέργειας του ελέγχου

3. Τα μέλη χρήστες διασφαλίζουν ότι οι δραστηριότητες ελέγχου πριν από την αποστολή, συμπεριλαμβανομένης της έκδοσης έκθεσης απολογισμού ή σημειώματος που γνωστοποιεί τη μη έκδοση τέτοιας έκθεσης, διενεργούνται στο τελωνειακό έδαφος από το οποίο εξάγονται τα εμπορεύματα ή, αν δεν μπορεί να διενεργηθεί έλεγχος στο εν λόγω τελωνειακό έδαφος λόγω της πολύπλοκης φύσης των σχετικών εμπορευμάτων, ή αν και τα δύο μέρη συμφωνούν, στο τελωνειακό έδαφος στο οποίο κατασκευάζονται τα εμπορεύματα.

Πρότυπα

4. Τα μέλη χρήστες διασφαλίζουν ότι οι έλεγχοι της ποσότητας και της ποιότητας διενεργούνται σύμφωνα με τα πρότυπα που καθορίζουν ο πωλητής και ο αγοραστής στη σύμβαση αγοράς και ότι, σε περίπτωση που αυτά δεν υπάρχουν, ισχύουν τα σχετικά διεθνή πρότυπα.[2]

Διαφάνεια

5. Τα μέλη χρήστες διασφαλίζουν ότι ο έλεγχος πριν από την αποστολή γίνεται με τρόπο που να εγγυάται τη διαφάνεια.

6. Τα μέλη χρήστες διασφαλίζουν ότι οι φορείς ελέγχου πριν από την αποστολή, όταν έρχονται για πρώτη φορά σε επαφή με τους εξαγωγείς, παρέχουν σ'αυτούς όλες τις αναγκαίες πληροφορίες που απαιτούνται για τη συμμόρφωσή τους με τις απαιτήσεις του ελέγχου. Η εν λόγω παροχή των

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1 Εννοείται ότι η διάταξη αυτή δεν υποχρεώνει τα μέλη να επιτρέπουν σε δημόσιους φορείς άλλων μελών να διενεργούν ελέγχους πριν από την αποστολή στο έδαφός τους.

2 Τα διεθνή πρότυπα είναι αυτά που εγκρίνονται από δημόσιους ή μη δημόσιους φορείς στους οποίους είναι δυνατό να συμμετέχουν όλα τα μέλη και των οποίων μια από τις αναγνωρισμένες δραστηριότητες είναι η τυποποίηση.

πληροφοριών πραγματοποιείται μετά από σχετική αίτηση των εξαγωγέων. Οι πληροφορίες αυτές αναφέρουν τους νόμους και τις ρυθμίσεις των μελών χρηστών, όσον αφορά τις δραστηριότητες ελέγχου πριν από την αποστολή και περιλαμβάνουν επίσης τις διαδικασίες και τα κριτήρια που εφαρμόζονται για τον έλεγχο και την επαλήθευση των τιμών και της τιμής συναλλάγματος, τα δικαιώματα των εξαγωγέων έναντι των φορέων ελέγχου και τις διαδικασίες άσκησης ένδικων μέσων που καθορίζονται στην παράγραφο 21. Οι αποστολές δεν υπόκεινται σε πρόσθετες διαδικαστικές απαιτήσεις ή σε αλλαγές των ισχυουσών διαδικασιών, εφόσον ο ενδιαφερόμενος εξαγωγέας δεν ενημερωθεί σχετικά κατά τον καθορισμό της ημερομηνίας διεξαγωγής του ελέγχου. Ωστόσο, σε επείγουσες περιπτώσεις, όπως αυτές που αναφέρονται στα άρθρα XX και XXI της GATT του 1994, τέτοιες πρόσθετες απαιτήσεις ή αλλαγές είναι δυνατό να επιβληθούν σε κάποια αποστολή προτού ενημερωθεί σχετικά ο εξαγωγέας. Αυτή η ευνοϊκή μεταχείριση δεν απαλλάσσει, ωστόσο, τους εξαγωγείς από τις υποχρεώσεις τους όσον αφορά τη συμμόρφωσή τους με τις ρυθμίσεις των μελών χρηστών για την εισαγωγή.

7. Τα μέλη χρήστες διασφαλίζουν ότι οι πληροφορίες που αναφέρονται στην παράγραφο 6 παρέχονται στους εξαγωγείς με τον κατάλληλο τρόπο και ότι τα γραφεία ελέγχου πριν από την αποστολή που διατηρούν οι φορείς ελέγχου λειτουργούν ως κέντρα παροχής πληροφοριών, όταν υπάρχουν τέτοιες πληροφορίες.

8. Τα μέλη χρήστες υποχρεούνται να δημοσιεύουν αμέσως όλους τους ισχύοντες νόμους και τις ρυθμίσεις για τις δραστηριότητες ελέγχου πριν από την αποστολή, έτσι ώστε να παρέχουν τη δυνατότητα στα άλλα μέλη και τους εμπόρους να ενημερώνονται σχετικά.

Προστασία εμπιστευτικών εμπορικών πληροφοριών

9. Τα μέλη χρήστες διασφαλίζουν ότι οι φορείς ελέγχου πριν από την αποστολή αντιμετωπίζουν όλες τις πληροφορίες που λαμβάνονται κατά τη διενέργεια του ελέγχου πριν από την αποστολή ως εμπορικό απόρρητο εφόσον αυτές δεν έχουν ήδη δημοσιευθεί, διαδοθεί γενικά σε τρίτα μέρη ή κατά κάποιο τρόπο δημοσιοποιηθεί. Τα μέλη χρήστες διασφαλίζουν ότι οι φορείς ελέγχου πριν από την αποστολή τηρούν διαδικασίες για το σκοπό αυτό.

10. Τα μέλη χρήστες παρέχουν, μετά από σχετική αίτηση, πληροφορίες στα μέλη για τα μέτρα που λαμβάνουν με σκοπό την εφαρμογή της παραγράφου 9. Οι διατάξεις της παρούσας παραγράφου δεν υποχρεώνουν τα μέλη να αποκαλύπτουν εμπιστευτικές πληροφορίες, η αποκάλυψη των οποίων θα έθετε σε κίνδυνο την αποτελεσματικότητα των προγραμμάτων ελέγχου πριν από την αποστολή ή θα έθιγε τα νόμιμα εμπορικά συμφέροντα συγκεκριμένων επιχειρήσεων του δημόσιου ή του ιδιωτικού τομέα.

11. Τα μέλη χρήστες διασφαλίζουν ότι οι φορείς ελέγχου πριν από την αποστολή δεν διαδίδουν εμπιστευτικές εμπορικές πληροφορίες σε τρίτους· οι φορείς ελέγχου πριν από την αποστολή έχουν το δικαίωμα, κατ'εξαίρεση, να ανακοινώνουν τις πληροφορίες αυτές στους κυβερνητικούς φορείς οι οποίοι τους ανέθεσαν, με σύμβαση ή εντολή, τον έλεγχο. Τα μέλη χρήστες διασφαλίζουν ότι οι εμπιστευτικές πληροφορίες τις οποίες λαμβάνουν από φορείς ελέγχου πριν από την αποστολή, στους οποίους έχουν αναθέσει με σύμβαση ή εντολή τον έλεγχο, φυλάσσονται με τον κατάλληλο τρόπο. Οι φορείς ελέγχου πριν από την αποστολή ανακοινώνουν εμπιστευτικές εμπορικές πληροφορίες στις κυβερνήσεις που τους έχουν αναθέσει, με σύμβαση ή εντολή, τον έλεγχο μόνο εφόσον οι πληροφορίες αυτές απαιτούνται συνήθως για την έκδοση πιστωτικών τίτλων ή για άλλους τύπους πληρωμής καθώς και για τελωνειακούς σκοπούς, την έκδοση αδειών εισαγωγής ή τον έλεγχο συναλλάγματος.

12. Τα μέλη χρήστες διασφαλίζουν ότι οι φορείς ελέγχου πριν από την αποστολή δεν ζητούν από τους εξαγωγείς την παροχή πληροφοριών για:

(α) στοιχεία κατασκευής που αφορούν μεθόδους για τις οποίες υπάρχει δικαίωμα ευρεσιτεχνίας, υποχρέωση μη αποκάλυψης ή έχει εκδοθεί άδεια ή μεθόδους για τις οποίες εκκρεμεί η αναγνώριση δικαιώματος ευρεσιτεχνίας·

(β) μη δημοσιευθέντα τεχνικά στοιχεία άλλα από αυτά που απαιτούνται για την απόδειξη της συμμόρφωσης με τεχνικούς κανόνες και πρότυπα·

(γ) εσωτερικά στοιχεία καθορισμού της τιμής, συμπεριλαμβανομένου του κόστους κατασκευής·

(δ) τα επίπεδα κέρδους,

(ε) τους όρους των συμβολαίων μεταξύ των εξαγωγέων και των προμηθευτών τους, εκτός αν ο φορέας δεν είναι διαφορετικά σε θέση να πραγματοποιήσει τον εν λόγω έλεγχο. Σ'αυτές τις περιπτώσεις, ο φορέας ζητεί απλώς τις πληροφορίες που απαιτούνται για το σκοπό αυτό.

13. Οι πληροφορίες που αναφέρονται στην παράγραφο 12, τις οποίες οι φορείς ελέγχου πριν από την αποστολή δεν ζητούν, είναι δυνατό να παρέχονται οικειοθελώς από τον εξαγωγέα με σκοπό τη διαλεύκανση κάποιας συγκεκριμένης περίπτωσης.

Σύγκρουση συμφερόντων

14. Τα μέλη χρήστες διασφαλίζουν ότι οι φορείς ελέγχου πριν από την αποστολή, γνωρίζοντας τις διατάξεις για την προστασία των εμπιστευτικών εμπορικών πληροφοριών που αναφέρονται στις παραγράφους 9 έως 13, εφαρμόζουν διαδικασίες προς αποφυγή της σύγκρουσης συμφερόντων:

(α) μεταξύ των φορέων ελέγχου πριν από την αποστολή και οποιουδήποτε φορέα που συνδέεται με τους εν λόγω φορείς ελέγχου πριν από την αποστολή, συμπεριλαμβανομένων των φορέων από τους οποίους οι τελευταίοι εξαρτούν οικονομικό ή εμπορικό συμφέρον ή εκείνων οι οποίοι εξαρτούν οικονομικό ή εμπορικό συμφέρον από τους φορείς ελέγχου πριν από την αποστολή, και των οποίων τα φορτία πρόκειται να ελέγξουν οι φορείς ελέγχου πριν από την αποστολή,

(β) μεταξύ φορέων ελέγχου πριν από την αποστολή και οποιουδήποτε άλλου φορέα, συμπεριλαμβανομένων άλλων φορέων που υπόκεινται σε έλεγχο πριν από την αποστολή, εξαιρουμένων των δημοσίων φορέων που αναθέτουν με σύμβαση ή με εντολή τη διενέργεια των ελέγχων,

(γ) με τμήματα των φορέων ελέγχου πριν από την αποστολή που έχουν αναλάβει δραστηριότητες άλλες από αυτές που απαιτούνται για τη διενέργεια των ελέγχων.

Καθυστερήσεις

15. Τα μέλη χρήστες διασφαλίζουν ότι οι φορείς ελέγχου πριν από την

αποστολή αποφεύγουν τις αδικαιολόγητες καθυστερήσεις κατά τον έλεγχο των αποστολών. Τα μέλη χρήστες διασφαλίζουν ότι, μόλις κάποιος φορέας ελέγχου πριν από την αποστολή και κάποιος εξαγωγέας συμφωνήσουν για την ημερομηνία ελέγχου, ο φορέας ελέγχου πριν από την αποστολή διενεργεί τον έλεγχο τη συγκεκριμένη ημερομηνία, εκτός αν αυτός προγραμματιστεί εκ νέου από κοινού από τον εξαγωγέα και το φορέα ελέγχου πριν από την αποστολή ή αν ο εξαγωγέας εμποδίσει το φορέα ελέγχου να διενεργήσει τον έλεγχο ή λόγω *ανωτέρας βίας*[3].

16. Τα μέλη χρήστες διασφαλίζουν ότι, μετά την παραλαβή των τελικών εγγράφων και την ολοκλήρωση του ελέγχου, οι φορείς ελέγχου πριν από την αποστολή, εντός πέντε εργασίμων ημερών, είτε συντάσσουν έκθεση απολογισμού είτε παρέχουν εμπεριστατωμένες γραπτές διευκρινήσεις για τους λόγους μη σύνταξης αυτής. Τα μέλη χρήστες διασφαλίζουν ότι στη δεύτερη περίπτωση οι φορείς ελέγχου πριν από την αποστολή προσφέρουν στους εξαγωγείς τη δυνατότητα να γνωστοποιήσουν τις απόψεις τους γραπτώς και, εφόσον αυτοί το επιθυμούν, να ζητήσουν τη διενέργεια νέου ελέγχου την πλησιέστερη αμοιβαία αποδεκτή ημερομηνία.

17. Τα μέλη χρήστες διασφαλίζουν ότι, εφόσον το ζητούν οι εξαγωγείς, οι φορείς ελέγχου πριν από την αποστολή διενεργούν, πριν από την ημερομηνία του υλικού ελέγχου, προκαταρκτικό έλεγχο των τιμών· και, ενδεχομένως, της τιμής συναλλάγματος, βάσει της σύμβασης μεταξύ του εξαγωγέα και του εισαγωγέα, του προτιμολογίου και, κατά περίπτωση, της αίτησης για την έκδοση άδειας εισαγωγής. Τα μέλη χρήστες διασφαλίζουν ότι η τιμή ή τιμή συναλλάγματος που έγιναν αποδεκτές από το φορέα ελέγχου πριν από την αποστολή βάσει αυτού του προκαταρκτικού ελέγχου δεν ανακαλείται υπό την προϋπόθεση ότι τα εμπορεύματα είναι σύμφωνα με τα έγγραφα εισαγωγής ή/και την άδεια εισαγωγής. Αυτά διασφαλίζουν ότι μετά την ολοκλήρωση του προκαταρκτικού ελέγχου οι φορείς ελέγχου πριν από την αποστολή ενημερώνουν αμέσως γραπτώς τους εξαγωγείς είτε για την αποδοχή είτε για τη μη αποδοχή, δικαιολογημένη λεπτομερώς, της τιμής ή/και της τιμής συναλλάγματος.

18. Τα μέλη χρήστες διασφαλίζουν ότι, για να αποφευχθούν οι καθυστερήσεις κατά την πληρωμή, οι φορείς ελέγχου πριν από την αποστολή διαβιβάζουν στους εξαγωγείς ή στους ορισθέντες αντιπροσώπους των εξαγωγέων έκθεση απολογισμού το ταχύτερο δυνατό.

19. Τα μέλη χρήστες διασφαλίζουν ότι σε περίπτωση τυπογραφικού λάθους στην έκθεση απολογισμού, οι φορείς ελέγχου πριν από την αποστολή διορθώνουν το λάθος και διαβιβάζουν τις διορθωμένες πληροφορίες στους ενδιαφερομένους το ταχύτερο δυνατό.

Έλεγχος των τιμών

20. Τα μέλη χρήστες διασφαλίζουν ότι, για να αποφευχθούν η υπερτιμολόγηση, η υποτιμολόγηση και οι περιπτώσεις απάτης, οι φορείς ελέγχου πριν από την αποστολή ελέγχουν την τιμή του εμπορεύματος[4] σύμφωνα με τις παρακάτω κατευθυντήριες γραμμές:

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3 Εννοείται ότι για την εφαρμογή της παρούσας συμφωνίας, ως "ανωτέρα βία" νοείται "ο μη δυνάμενος να αντιμετωπιστεί εξαναγκασμός ή πίεση, η μη δυνάμενη να προβλεφθεί εξέλιξη γεγονότων που δικαιολογεί τη μη εκτέλεση της σύμβασης".

4 Οι υποχρεώσεις των μελών χρηστών όσον αφορά τις υπηρεσίες των φορέων ελέγχου πριν από την αποστολή σε σχέση με τον καθορισμό της δασμολογητέας αξίας είναι οι υποχρεώσεις που αυτά έχουν αποδεχθεί στο πλαίσιο της Συμφωνίας του 1994 και των άλλων πολυμερών εμπορικών συμφωνιών που περιλαμβάνονται στο παράρτημα 1Α της συμφωνίας για τον ΠΟΕ.

(α) οι φορείς ελέγχου πριν από την αποστολή έχουν τη δυνατότητα να απορρίψουν συμβατική τιμή που συμφωνήθηκε μεταξύ κάποιου εξαγωγέα και κάποιου εισαγωγέα, αν είναι σε θέση να αποδείξουν ότι το συμπέρασμα για μη ικανοποιητική τιμή βασίζεται σε διαδικασία ελέγχου που είναι σύμφωνη με τα κριτήρια που καθορίζονται στα στοιχεία (β) έως (ε)·

(β) ο φορέας ελέγχου πριν από την αποστολή βασίζει τη σύγκριση των τιμών για τον έλεγχο της τιμής εξαγωγής στην τιμή (στις τιμές) πανομοιότυπων ή ομοειδών εμπορευμάτων που προορίζονται για εξαγωγή από την ίδια χώρα εξαγωγής κατά τον ίδιο χρόνο ή περίπου κατά τον ίδιο χρόνο, υπό ανταγωνιστικές και συγκρίσιμες συνθήκες πώλησης, σύμφωνα με τις συνήθεις εμπορικές πρακτικές και χωρίς εκπτώσεις. Η σύγκριση αυτή βασίζεται στα εξής:

(i) εφαρμόζονται μόνον οι τιμές που εξασφαλίζουν έγκυρη βάση σύγκρισης, λαμβανομένων υπόψη των σχετικών οικονομικών συνθηκών που ισχύουν στη χώρα εισαγωγής και στη χώρα ή τις χώρες που χρησιμοποιούνται για τη σύγκριση των τιμών·

(ii) ο φορέας ελέγχου πριν από την αποστολή δεν βασίζεται στην τιμή εμπορευμάτων που προορίζονται για εξαγωγή σε διάφορες χώρες εισαγωγής για να επιβάλει αυθαίρετα τη χαμηλότερη τιμή στο φορτίο·

(iii) ο φορέας ελέγχου πριν από την αποστολή λαμβάνει υπόψη τα ειδικά στοιχεία που αναφέρονται στο στοιχείο (γ),

(iv) σε οποιοδήποτε στάδιο της διαδικασίας που περιγράφηκε παραπάνω, ο φορέας ελέγχου πριν από την αποστολή παρέχει στον εξαγωγέα τη δυνατότητα να δικαιολογήσει την τιμή·

(γ) κατά τη διενέργεια του ελέγχου, οι φορείς ελέγχου πριν από την αποστολή λαμβάνουν δεόντως υπόψη τους όρους της σύμβασης πώλησης και τους γενικά ισχύοντες παράγοντες προσαρμογής όσον αφορά τη συναλλαγή· οι παράγοντες αυτοί περιλαμβάνουν, χωρίς όμως να περιορίζονται σ'αυτά, το εμπορικό επίπεδο και την ποσότητα της πώλησης, τις περιόδους και τους όρους παράδοσης, τις ρήτρες κλιμάκωσης των τιμών, τις προδιαγραφές ποιότητας, τα ειδικά χαρακτηριστικά του σχεδιασμού, τις ειδικές προδιαγραφές συσκευασίας ή αποστολής, το μέγεθος της παραγγελίας, τις πωλήσεις μικρής έκτασης, τις εποχιακές τάσεις, τα τέλη για την έκδοση άδειας ή για άλλα δικαιώματα πνευματικής ιδιοκτησίας και τις υπηρεσίες που παρέχονται στο πλαίσιο της σύμβασης, αν αυτές δεν τιμολογούνται, σύμφωνα με τη συνήθη πρακτική, χωριστά· περιλαμβάνουν επίσης ορισμένα στοιχεία για την τιμή που εφαρμόζει ο εξαγωγέας, όπως η συμβατική σχέση μεταξύ του εισαγωγέα και του εξαγωγέα·

(δ) ο έλεγχος των εξόδων μεταφοράς συνδέεται μόνο με τη συμφωνηθείσα τιμή για το μεταφορικό μέσο στη χώρα εξαγωγής, όπως αναφέρεται στη σύμβαση πώλησης·

(ε) τα παρακάτω στοιχεία δεν χρησιμοποιούνται για τον έλεγχο της τιμής:

(i) η τιμή πώλησης στη χώρα εισαγωγής των εμπορευμάτων που παράγονται στην εν λόγω χώρα·

(ii) η τιμή των εμπορευμάτων που προορίζονται για εξαγωγή από χώρα άλλη από τη χώρα εξαγωγής·

(iii) το κόστος παραγωγής,
(iv) αυθαίρετες ή πλασματικές τιμές ή αξίες.

Διαδικασίες προσφυγής

21. Τα μέλη χρήστες διασφαλίζουν ότι οι φορείς ελέγχου πριν από την αποστολή θεσπίζουν διαδικασίες για την υποβολή και την εξέταση παραπόνων που διατυπώνουν οι εξαγωγείς και τη λήψη σχετικών αποφάσεων, οι πληροφορίες δε για τις διαδικασίες αυτές παρέχονται στους εξαγωγείς σύμφωνα με τις διατάξεις των παραγράφων 6 και 7. Τα μέλη χρήστες διασφαλίζουν επίσης ότι οι διαδικασίες εξελίσσονται και τηρούνται σύμφωνα με τις ακόλουθες κατευθυντήριες γραμμές:

(α) οι φορείς ελέγχου πριν από την αποστολή ορίζουν έναν ή περισσότερους υπαλλήλους διαθέσιμους κατά τη διάρκεια των κανονικών ωρών λειτουργίας σε κάθε πόλη ή λιμένα, όπου διατηρούν γραφείο ελέγχου πριν από την αποστολή, να παραλαμβάνουν και να εξετάζουν τις προσφυγές και τα παράπονα των εξαγωγέων καθώς και να λαμβάνουν τις σχετικές αποφάσεις·

(β) οι εξαγωγείς γνωστοποιούν γραπτώς στον αρμόδιο υπάλληλο τα γεγονότα για τη συγκεκριμένη συναλλαγή, τη φύση του παράπονου και την προτεινόμενη λύση·

(γ) ο αρμόδιος υπάλληλος εξετάζει ευνοϊκά τα παράπονα των εξαγωγέων και λαμβάνει σχετική απόφαση το ταχύτερο δυνατό, αφού λάβει τα στοιχεία τεκμηρίωσης που αναφέρονται στο στοιχείο (β).

Παρέκκλιση

22. Κατά παρέκκλιση των διατάξεων του άρθρου 2, τα μέλη χρήστες προβλέπουν ότι, με εξαίρεση τις τμηματικές αποστολές, οι αποστολές των οποίων η αξία είναι μικρότερη από την ελάχιστη αξία που ισχύει για τέτοιες αποστολές, όπως ορίζονται από το μέλος χρήστη ελέγχονται μόνο σε εξαιρετικές περιπτώσεις. Αυτή η ελάχιστη αξία περιλαμβάνεται στις πληροφορίες που παρέχουν οι εξαγωγείς βάσει των διατάξεων της παραγράφου 6.

Άρθρο 3
Υποχρεώσεις των μελών εξαγωγής

Μη διακριτική μεταχείριση

1. Τα μέλη εξαγωγής διασφαλίζουν ότι οι νόμοι και οι κανονιστικές διατάξεις τους για τον έλεγχο πριν από την αποστολή εφαρμόζονται κατά τρόπο που δεν δημιουργεί διακρίσεις.

Διαφάνεια

2. Τα μέλη εξαγωγής δημοσιεύουν αμέσως όλους τους ισχύοντες νόμους και τις κανονιστικές διατάξεις για τις δραστηριότητες ελέγχου πριν από την αποστολή, έτσι ώστε να επιτρέπουν στις λοιπές κυβερνήσεις και στους εμπόρους να ενημερώνονται σχετικά.

Τεχνική βοήθεια

3. Τα μέλη εξαγωγής προτείνουν στα μέλη χρήστες την παροχή, μετά από σχετική αίτηση, τεχνικής βοήθειας με σκοπό την επίτευξη των στόχων της παρούσας συμφωνίας στο πλαίσιο αμοιβαία αποδεκτών όρων.[5]

Άρθρο 4
Διαδικασίες ανεξάρτητης εξέτασης

Τα μέλη ενθαρρύνουν τους φορείς ελέγχου πριν από την αποστολή και τους εξαγωγείς να επιλύουν αμοιβαία τις διαφορές τους. Ωστόσο, δύο εργάσιμες ημέρες μετά την υποβολή του παραπόνου σύμφωνα με τις διατάξεις του άρθρου 2, παράγραφος 21 οποιοδήποτε από τα μέρη μπορεί να υποβάλει τη διαφορά σε ανεξάρτητη εξέταση. Τα μέλη λαμβάνουν, στο πλαίσιο των δυνατοτήτων τους, τα κατάλληλα μέτρα για να εξασφαλίσουν την καθιέρωση και την τήρηση των παρακάτω διαδικασιών:

(α) οι διαδικασίες αυτές διευθύνονται από ανεξάρτητο φορέα του οποίου η σύσταση πραγματοποιείται από κοινού από οργάνωση που αντιπροσωπεύει τους φορείς ελέγχου πριν από την αποστολή και οργάνωση που αντιπροσωπεύει τους εξαγωγείς για τους σκοπούς της παρούσας συμφωνίας·

(β) ο ανεξάρτητος φορέας που αναφέρεται στο στοιχείο (α) καταρτίζει κατάσταση εμπειρογνωμόνων που περιλαμβάνει:

(i) ομάδα μελών που ορίζεται από οργάνωση, που εκπροσωπεί τους φορείς ελέγχου πριν από την αποστολή·

(ii) ομάδα μελών που ορίζεται από οργάνωση που εκπροσωπεί τους εξαγωγείς·

(iii) ομάδα ανεξάρτητων εμπορικών εμπειρογνωμόνων, που ορίζεται από τον ανεξάρτητο φορέα που αναφέρεται στο στοιχείο (α).

Η γεωγραφική κατανομή των εμπειρογνωμόνων της κατάστασης αυτής πρέπει να είναι τέτοια, ώστε να επιτρέπει την επίλυση το ταχύτερο δυνατό, των διαφορών που δημιουργούνται στο πλαίσιο των διαδικασιών αυτών. Η κατάσταση αυτή καταρτίζεται εντός δύο μηνών από τη θέση σε ισχύ της συμφωνίας για τον ΠΟΕ και ενημερώνεται μια φορά το έτος. Η κατάσταση τίθεται στη διάθεση του κοινού. Κοινοποιείται στη Γραμματεία και διαβιβάζεται σε όλα τα μέλη.

(γ) ο εξαγωγέας ή ο φορέας ελέγχου πριν από την αποστολή που επιθυμεί να υποβάλει κάποια διαφορά προς εξέταση έρχεται σε επαφή με τον ανεξάρτητο φορέα που αναφέρεται στο εδάφιο (α) και ζητεί τη σύσταση ειδικής ομάδας (πάνελ). Ο ανεξάρτητος φορέας είναι υπεύθυνος για τη σύσταση της ειδικής ομάδας η οποία αποτελείται από τρία μέλη. Τα μέλη της ειδικής ομάδας επιλέγονται έτσι ώστε να αποφεύγονται περιττά έξοδα και καθυστερήσεις. Το πρώτο μέλος επιλέγεται από την ομάδα (i) της προαναφερθείσας κατάστασης από τον ενδιαφερόμενο φορέα ελέγχου πριν από την αποστολή, υπό τον όρο ότι το μέλος αυτό δεν συνδέεται με τον εν λόγω φορέα. Το δεύτερο μέλος επιλέγεται από

5 Εννοείται ότι μια τέτοια τεχνική βοήθεια μπορεί να δοθεί σε διμερή, πλειομερή ή πολυμερή βάση.

την ομάδα (ii) της προαναφερθείσας κατάστασης από τον ενδιαφερόμενο εξαγωγέα, υπό τον όρο ότι το μέλος αυτό δεν συνδέεται με τον εξαγωγέα. Το τρίτο μέλος επιλέγεται από την ομάδα (iii) της προαναφερθείσας κατάστασης από τον ανεξάρτητο φορέα που αναφέρεται στο στοιχείο (α). Δεν επιτρέπεται η προβολή αντιρρήσεων για οποιονδήποτε από τους εμπορικούς εμπειρογνώμονες που επιλέγεται από την ομάδα (iii) της προαναφερθείσας κατάστασης·

(δ) ο ανεξάρτητος εμπορικός εμπειρογνώμονας που επιλέγεται από την ομάδα (iii) της προαναφερθείσας κατάστασης εκτελεί χρέη προέδρου της ειδικής ομάδας. Ο ανεξάρτητος εμπορικός εμπειρογνώμονας λαμβάνει τις αναγκαίες αποφάσεις για να εξασφαλίσει την όσο το δυνατό ταχύτερη επίλυση της διαφοράς από την ειδική ομάδα· για παράδειγμα, αποφασίζει αν συντρέχουν οι λόγοι να συνέλθουν τα μέλη της ομάδας και, αν αυτό συμβαίνει, πού θα πραγματοποιηθεί η συνάντηση, λαμβανομένου υπόψη του τόπου ελέγχου στη συγκεκριμένη περίπτωση·

(ε) αν οι διάδικοι συμφωνούν, είναι δυνατό να επιλεγεί ανεξάρτητος εμπορικός εμπειρογνώμονας από την ομάδα (iii) της προαναφερθείσας κατάστασης από τον ανεξάρτητο φορέα που αναφέρεται στο στοιχείο (α) για να εξετάσει τη σχετική διαφορά. Ο εμπειρογνώμονας αυτός λαμβάνει τις αποφάσεις που απαιτούνται για να εξασφαλίσει την όσο το δυνατό ταχύτερη επίλυση της διαφοράς, λαμβάνοντας για παράδειγμα υπόψη τον τόπο ελέγχου στη συγκεκριμένη περίπτωση·

(στ) στόχος της εξέτασης πρέπει να είναι το αν κατά τη διάρκεια του ελέγχου που δημιούργησε τη διαφορά οι διάδικοι συμμορφώθηκαν με τις διατάξεις της παρούσας συμφωνίας. Οι διαδικασίες επιβάλλεται να είναι ταχείες και να παρέχουν τη δυνατότητα και στα δύο μέλη να εκθέσουν τις απόψεις τους προφορικώς ή γραπτώς·

(ζ) οι αποφάσεις της τριμελούς ειδικής ομάδας λαμβάνονται με πλειοψηφία. Η απόφαση επί της διαφοράς εκδίδεται εντός οκτώ εργασίμων ημερών από την ημερομηνία αίτησης για ανεξάρτητη εξέταση και κοινοποιείται στους διαδίκους. Η εν λόγω προθεσμία μπορεί να παραταθεί μετά από συμφωνία των διαδίκων. Η ειδική ομάδα ή ο ανεξάρτητος εμπορικός εμπειρογνώμονας κατανέμουν τα έξοδα, βάσει των ιδιαίτερων στοιχείων της υπόθεσης·

(η) η απόφαση της ειδικής ομάδας είναι δεσμευτική για το φορέα ελέγχου πριν από την αποστολή και τον εξαγωγέα που αποτελούν τους διαδίκους της υπόθεσης.

Άρθρο 5
Γνωστοποίηση

Τα μέλη υποβάλλουν στη Γραμματεία αντίγραφα των νόμων και των κανονιστικών τους ρυθμίσεων που θέτουν σε ισχύ την παρούσα συμφωνία, καθώς και αντίγραφα κάθε άλλου νόμου και κανονιστικής διάταξης που έχει σχέση με τον έλεγχο πριν από την αποστολή, όταν αρχίσει να ισχύει η συμφωνία για τον ΠΟΕ έναντι του ενδιαφερομένου μέλους. Δεν επιβάλλονται αλλαγές των νόμων και των κανονιστικών διατάξεων όσον αφορά τον έλεγχο πριν από την αποστολή προτού αυτές δημοσιευθούν επίσημα. Αμέσως μετά τη δημοσίευσή τους οι αλλαγές αυτές ανακοινώνονται στη Γραμματεία. Η Γραμματεία ενημερώνει τα μέλη για την ύπαρξη των πληροφοριών αυτών.

Άρθρο 6
Επανεξέταση

Κατά το τέλος του δεύτερου έτους από την ημερομηνία θέσης σε ισχύ της συμφωνίας για τον ΠΟΕ και στη συνέχεια ανά τριετία, η υπουργική συνδιάσκεψη επανεξετάζει τις διατάξεις, την εφαρμογή και τη λειτουργία της παρούσας συμφωνίας, λαμβάνοντας υπόψη τους στόχους της και την πείρα που έχει αποκτηθεί από τη λειτουργία της. Στο πλαίσιο της επανεξέτασης αυτής η υπουργική συνδιάσκεψη έχει τη δυνατότητα να τροποποιεί τις διατάξεις της συμφωνίας.

Άρθρο 7
Διαβουλεύσεις

Τα μέλη διενεργούν διαβουλεύσεις με τα λοιπά μέλη μετά από σχετική αίτηση για κάθε θέμα που άπτεται της εφαρμογής της παρούσας συμφωνίας. Σε τέτοιες περιπτώσεις ισχύουν για την παρούσα συμφωνία οι διατάξεις του άρθρου XXII της GATT του 1994, όπως διαμορφώθηκαν και ισχύουν στο πλαίσιο του μνημονίου συμφωνίας για την επίλυση των διαφορών.

Άρθρο 8
Επίλυση των διαφορών

Κάθε διαφορά μεταξύ των μελών σχετικά με τη λειτουργία της παρούσας συμφωνίας υποβάλλεται στις διατάξεις του άρθρου XXIII της GATT του 1994, όπως διαμορφώθηκαν και ισχύουν στο πλαίσιο του μνημονίου συμφωνίας για την επίλυση των διαφορών.

Άρθρο 9
Τελικές διατάξεις

1. Τα μέλη λαμβάνουν τα αναγκαία μέτρα για την εφαρμογή της παρούσας συμφωνίας.

2. Τα μέλη διασφαλίζουν ότι οι νόμοι και οι κανονιστικές τους διατάξεις δεν αντιτίθενται στις διατάξεις της παρούσας συμφωνίας.

ΣΥΜΦΩΝΙΑ ΓΙΑ ΤΟΥΣ ΚΑΝΟΝΕΣ ΚΑΤΑΓΩΓΗΣ

Τα μέλη,

Εχοντας υπόψη ότι οι Υπουργοί συμφώνησαν, στις 20 Σεπτεμβρίου 1986, ότι οι πολυμερείς εμπορικές διαπραγματεύσεις στο πλαίσιο του Γύρου της Ουρουγουάης αποβλέπουν στην επίτευξη μεγαλύτερης απελευθέρωσης και επέκτασης του παγκόσμιου εμπορίου, στην ενίσχυση του ρόλου της GATT και στην αύξηση της ικανότητας του συστήματος της GATT να προσαρμόζεται στις εξελίξεις του διεθνούς οικονομικού περιβάλλοντος·

Επιθυμώντας να προωθήσουν τους στόχους της GATT του 1994·

Αναγνωρίζοντας ότι η θέσπιση και η εφαρμογή σαφών και ευπρόβλεπτων κανόνων καταγωγής διευκολύνουν τη ροή του διεθνούς εμπορίου·

Επιθυμώντας να διασφαλίσουν ότι οι κανόνες καταγωγής δεν δημιουργούν από μόνοι τους περιττά εμπόδια στο εμπόριο·

Επιθυμώντας να διασφαλίσουν ότι οι κανόνες καταγωγής δεν καταργούν ούτε εξασθενίζουν τα δικαιώματα των μελών στο πλαίσιο της GATT του 1994·

Αναγνωρίζοντας ότι είναι σκόπιμο να εξασφαλιστεί η διαφάνεια των νόμων, των κανονισμών και των πρακτικών, όσον αφορά τους κανόνες καταγωγής·

Επιθυμώντας να διασφαλίσουν ότι οι κανόνες καταγωγής συντάσσονται και εφαρμόζονται με αντικειμενικό, διαφανή, ευπρόβλεπτο, συνεπή και ουδέτερο τρόπο,

Αναγνωρίζοντας την ύπαρξη μηχανισμού διαβουλεύσεων και διαδικασιών για την ταχεία, αποτελεσματική και δίκαιη επίλυση των διαφορών που προκύπτουν στο πλαίσιο της παρούσας συμφωνίας,

Επιθυμώντας να εναρμονίσουν και να διευκρινίσουν τους κανόνες καταγωγής,

Συμφωνούν τα ακόλουθα:

ΜΕΡΟΣ Ι
ΟΡΙΣΜΟΙ ΚΑΙ ΠΕΔΙΟ ΕΦΑΡΜΟΓΗΣ

Άρθρο 1
Κανόνες καταγωγής

1. Για την εφαρμογή των μερών Ι έως IV της παρούσας συμφωνίας, οι κανόνες καταγωγής θεωρούνται ως νόμοι, κανονισμοί και διοικητικές ρυθμίσεις γενικής εφαρμογής, που ισχύουν σε κάθε μέλος για τον προσδιορισμό της χώρας καταγωγής των προϊόντων υπό την προϋπόθεση ότι οι εν λόγω κανόνες καταγωγής δεν συνδέονται με συμβατικά ή αυτόνομα εμπορικά καθεστώτα που περιλαμβάνουν την παραχώρηση δασμολογικών προτιμήσεων οι οποίες επεκτείνονται πέραν της εφαρμογής του άρθρου Ι, παράγραφος 1 της GATT του 1994.

2. Οι κανόνες καταγωγής που αναφέρονται στην παράγραφο 1 περιλαμβάνουν όλους τους κανόνες καταγωγής που περιέχονται σε μη προτιμησιακές πράξεις εμπορικής πολιτικής όπως π.χ. : τη μεταχείριση του μάλλον ευνοουμένου κράτους βάσει των άρθρων I, II, III, XI και XIII της GATT του 1994, τους δασμούς αντιντάμπινγκ και τους αντισταθμιστικούς δασμούς βάσει του άρθρου VI της GATT του 1994, τα μέτρα διασφάλισης βάσει του άρθρου XIX της GATT του 1994, τις απαιτήσεις επίθεσης σήματος καταγωγής βάσει του άρθρου IX της GATT του 1994, καθώς και κάθε ποσόστωση ή ποσοτικό περιορισμό που δημιουργεί διακρίσεις. Αυτοί περιλαμβάνουν επίσης κανόνες καταγωγής που εφαρμόζονται για τις δημόσιες συμβάσεις και τις εμπορικές στατιστικές[1].

ΜΕΡΟΣ ΙΙ
ΡΥΘΜΙΣΕΙΣ ΠΟΥ ΔΙΕΠΟΥΝ ΤΗΝ ΕΦΑΡΜΟΓΗ ΤΩΝ ΚΑΝΟΝΩΝ ΚΑΤΑΓΩΓΗΣ

Άρθρο 2
Ρυθμίσεις που ισχύουν κατά τη μεταβατική περίοδο

Μέχρις ότου ολοκληρωθεί το πρόγραμμα εργασίας για την εναρμόνιση των κανόνων καταγωγής που παρατίθενται στο μέρος IV, τα μέλη διασφαλίζουν ότι:

(α) όταν εκδίδουν διοικητικούς κανόνες γενικής εφαρμογής, οι προϋποθέσεις που απαιτείται να πληρούνται καθορίζονται σαφώς. Ιδίως:

(i) σε περιπτώσεις όπου ισχύει το κριτήριο μεταβολής της δασμολογικής κατάταξης, ο κανόνας καταγωγής και κάθε εξαίρεση του κανόνα αυτού, απαιτείται να καθορίζει σαφώς τις διακρίσεις ή τις κλάσεις της δασμολογικής ονοματολογίας τις οποίες αφορά ο κανόνας·

(ii) σε περιπτώσεις όπου ισχύει το κριτήριο του κατ'αξία ποσοστού, η μέθοδος υπολογισμού του εν λόγω ποσοστού αναφέρεται επίσης στους κανόνες καταγωγής·

(iii) σε περιπτώσεις όπου ισχύει το κριτήριο εργασίας κατασκευής ή μεταποίησης, η εργασία που προσδίδει την καταγωγή στο σχετικό εμπόρευμα ορίζεται σαφώς·

(β) παρά το μέτρο ή την πράξη εμπορικής πολιτικής προς την οποία συνδέονται, οι κανόνες καταγωγής δεν χρησιμεύουν ως μέσα άμεσης ή έμμεσης επιδίωξης εμπορικών στόχων·

(γ) οι κανόνες καταγωγής δεν επιφέρουν από μόνοι τους περιορισμούς, στρεβλώσεις ή διακοπές του διεθνούς εμπορίου. Δεν επιβάλλουν αδικαιολόγητα αυστηρές απαιτήσεις ούτε απαιτούν την πλήρωση προϋποθέσεων που δεν συνδέονται με την κατασκευή ή τη μεταποίηση ως προαπαιτούμενο για τον καθορισμό της χώρας καταγωγής. Ωστόσο, το κόστος που δεν συνδέεται αμέσως με την κατασκευή ή τη μεταποίηση μπορεί να λαμβάνεται υπόψη για την εφαρμογή κριτηρίου ποσοστού κατ'αξία, σύμφωνα με το στοιχείο (α),

(δ) οι κανόνες καταγωγής που εφαρμόζονται στις εισαγωγές και τις εξαγωγές δεν είναι περισσότερο αυστηροί από τους κανόνες

1 Εννοείται ότι η διάταξη αυτή δεν θίγει τις αποφάσεις που λαμβάνονται για τον καθορισμό της "εγχώριας βιομηχανίας" ή των "ομοειδών προϊόντων της εγχώριας βιομηχανίας" ή παρόμοιων όρων όταν υπάρχει περίπτωση εφαρμογής τους.

καταγωγής που εφαρμόζονται με σκοπό τον καθορισμό του αν κάποιο εμπόρευμα αποτελεί εγχώριο προϊόν και δεν δημιουργούν διακρίσεις μεταξύ άλλων μελών, ανεξάρτητα από το *αν οι κατασκευαστές του σχετικού εμπορεύματος συνδέονται ή όχι μεταξύ τους[2].

(ε) οι κανόνες καταγωγής εφαρμόζονται με τρόπο συνεπή, ομοιόμορφο, αντικειμενικό και λογικό·

(στ) οι κανόνες καταγωγής τους βασίζονται σε θετικά κριτήρια. Οι κανόνες καταγωγής που ορίζουν τι δεν προσδίδει την καταγωγή (αρνητικό κριτήριο) επιτρέπονται μόνον στο πλαίσιο διευκρίνισης θετικού κριτηρίου ή σε μεμονωμένες περιπτώσεις, όταν δεν είναι αναγκαίος ο θετικός προσδιορισμός της καταγωγής·

(ζ) οι νόμοι, κανονισμοί, δικαστικές και διοικητικές αποφάσεις τους γενικής εφαρμογής που έχουν σχέση με κανόνες καταγωγής δημοσιεύονται σαν να υπέκειντο στις διατάξεις του άρθρου X, παράγραφος 1 της GATT του 1994, και σύμφωνα με αυτές·

(η) μετά από αίτηση εξαγωγέα, εισαγωγέα ή άλλου νομιμοποιούμενου προσώπου, οι εκτιμήσεις όσον αφορά την καταγωγή παρέχονται το ταχύτερο δυνατό και οπωσδήποτε όχι αργότερα από 150 ημέρες[3] μετά την αίτηση για τέτοια εκτίμηση, υπό την προϋπόθεση ότι έχουν προσκομιστεί όλα τα αναγκαία στοιχεία. Οι αιτήσεις για τις εκτιμήσεις αυτές υποβάλλονται προτού αρχίσει το εμπόριο του σχετικού εμπορεύματος και είναι δυνατό να γίνουν αποδεκτές σε οποιοδήποτε μεταγενέστερο χρονικό σημείο. Οι εκτιμήσεις αυτές εξακολουθούν να ισχύουν επί τρία έτη υπό τον όρο ότι τα πραγματικά περιστατικά και οι συνθήκες, συμπεριλαμβανομένων των κανόνων καταγωγής, που αποτέλεσαν τη βάση για τη διαμόρφωσή τους παραμένουν σε συγκρίσιμα επίπεδα. Εφόσον ενημερωθούν εγκαίρως τα ενδιαφερόμενα μέρη, οι εκτιμήσεις αυτές παύουν να ισχύουν μόλις εκδοθεί απόφαση αντίθετη προς αυτές στο πλαίσιο επανεξέτασης σύμφωνα με το στοιχείο (ι). Οι συγκεκριμένες εκτιμήσεις δημοσιεύονται με την επιφύλαξη των διατάξεων του στοιχείου (κ)·

(θ) όταν οι κανόνες καταγωγής τροποποιούνται ή όταν θεσπίζονται νέοι κανόνες καταγωγής, δεν τους εφαρμόζουν αναδρομικά όπως ορίζεται στους νόμους και τους κανονισμούς τους και με την επιφύλαξη αυτών·

(ι) κάθε δράση διοικητικής μορφής την οποία αναλαμβάνουν σε σχέση με τον καθορισμό της καταγωγής επανεξετάζεται αμέσως από τα τακτικά, διαιτητικά ή διοικητικά δικαστήρια ή διαδικασίες, ανεξάρτητα από την αρχή που πραγματοποιεί αυτόν τον καθορισμό, με ενδεχόμενο αποτέλεσμα την τροποποίηση ή την ανατροπή του καθορισμού·

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2 Όσον αφορά τους κανόνες καταγωγής που ισχύουν για τις δημόσιες συμβάσεις, η παρούσα διάταξη δεν δημιουργεί υποχρεώσεις πέραν αυτών που έχουν ήδη αναλάβει τα μέλη στο πλαίσιο της GATT του 1994.

3 Όσον αφορά αιτήσεις που υποβλήθηκαν κατά το πρώτο έτος μετά την ημερομηνία θέσης σε ισχύ της συμφωνίας για τον ΠΟΕ, τα μέλη υποχρεούνται να αποφαίνονται σχετικά το ταχύτερο δυνατό.

(κ) όλες οι πληροφορίες οι οποίες είναι εκ φύσεως εμπιστευτικές ή παρέχονται εμπιστευτικά για την εφαρμογή των κανόνων καταγωγής θεωρούνται αυστηρά εμπιστευτικές από τις σχετικές αρχές, οι οποίες υποχρεούνται να μην τις διαδίδουν χωρίς τη συγκεκριμένη άδεια του προσώπου ή της κυβέρνησης που τις παρέσχε, εκτός αν αναγκάζονται να το πράξουν στο πλαίσιο δικαστικής εξέτασης.

Άρθρο 3
Ρυθμίσεις που ισχύουν μετά τη μεταβατική περίοδο

Σχοντας υπόψη το σκοπό όλων των μελών να επιτύχουν, στο πλαίσιο του προγράμματος εργασίας για την εναρμόνιση που περιγράφεται στο μέρος IV, τη θέσπιση εναρμονισμένων κανόνων καταγωγής, τα μέλη διασφαλίζουν, κατά την εφαρμογή του προγράμματος εργασίας για την εναρμόνιση, ότι:

(α) εφαρμόζουν κανόνες καταγωγής με ίσους όρους για όλους τους σκοπούς που περιλαμβάνονται στο άρθρο 1·

(β) σύμφωνα με τους κανόνες καταγωγής τους, η χώρα που πρόκειται να ορισθεί ως χώρα καταγωγής συγκεκριμένων εμπορευμάτων είναι είτε η χώρα όπου τα εμπορεύματα έχουν παραχθεί πλήρως ή, όταν στην παραγωγή του εμπορεύματος συμμετέχουν περισσότερες από μια χώρα, η χώρα στην οποία διενεργείται η τελευταία ουσιαστική μεταποίηση·

(γ) οι κανόνες καταγωγής που εφαρμόζουν στις εισαγωγές και τις εξαγωγές δεν είναι περισσότερο αυστηροί από τους κανόνες καταγωγής που εφαρμόζονται για να καθοριστεί αν κάποιο εμπόρευμα αποτελεί εγχώριο προϊόν και δεν δημιουργούν διακρίσεις μεταξύ άλλων μελών, ανεξάρτητα από το αν οι κατασκευαστές του σχετικού εμπορεύματος συνδέονται ή όχι μεταξύ τους·

(δ) οι κανόνες καταγωγής εφαρμόζονται με τρόπο συνεπή, ομοιόμορφο, αντικειμενικό και λογικό,

(ε) οι νόμοι τους, κανονισμοί, δικαστικές και διοικητικές αποφάσεις γενικής εφαρμογής που έχουν σχέση με κανόνες καταγωγής δημοσιεύονται σαν να υπέκειντο στις διατάξεις του άρθρου X, παράγραφος 1 της GATT του 1994, και σύμφωνα με αυτές·

(στ) μετά από αίτηση εξαγωγέα, εισαγωγέα ή άλλου νομιμοποιούμενου προσώπου, οι εκτιμήσεις όσον αφορά την καταγωγή παρέχονται το ταχύτερο δυνατό και οπωσδήποτε όχι αργότερα από 150 ημέρες μετά την αίτηση για τέτοια εκτίμηση υπό την προϋπόθεση ότι έχουν προσκομιστεί όλα τα αναγκαία στοιχεία. Οι αιτήσεις για τις εκτιμήσεις αυτές υποβάλλονται προτού αρχίσει το εμπόριο του σχετικού εμπορεύματος και είναι δυνατό να γίνουν αποδεκτές σε οποιοδήποτε μεταγενέστερο χρονικό σημείο. Οι εκτιμήσεις αυτές εξακολουθούν να ισχύουν επί τρία έτη υπό τον όρο ότι τα πραγματικά περιστατικά και οι συνθήκες, συμπεριλαμβανομένων των κανόνων καταγωγής, που αποτέλεσαν τη βάση για τη διαμόρφωσή τους παραμένουν σε συγκρίσιμα επίπεδα. Εφόσον ενημερωθούν εγκαίρως τα ενδιαφερόμενα μέρη, οι εκτιμήσεις αυτές παύουν να ισχύουν μόλις εκδοθεί απόφαση αντίθετη προς αυτές στο πλαίσιο επανεξέτασης σύμφωνα με το στοιχείο (ι). Οι συγκεκριμένες εκτιμήσεις δημοσιεύονται με την επιφύλαξη των διατάξεων του στοιχείου (κ)·

(ζ) όταν οι κανόνες καταγωγής τροποποιούνται ή όταν θεσπίζονται νέοι κανόνες καταγωγής, δεν τους εφαρμόζουν αναδρομικά όπως ορίζεται στους νόμους και τους κανονισμούς τους και με την επιφύλαξη αυτών·

(η) κάθε δράση διοικητικής μορφής την οποία αναλαμβάνουν σε σχέση με τον καθορισμό της καταγωγής επανεξετάζεται αμέσως από τα τακτικά, διαιτητικά ή διοικητικά δικαστήρια ή διαδικασίες, ανεξάρτητα από την αρχή που πραγματοποιεί αυτόν τον καθορισμό, με ενδεχόμενο την τροποποίηση ή την ανατροπή του καθορισμού,

(θ) όλες οι πληροφορίες οι οποίες είναι εκ φύσεως εμπιστευτικές ή παρέχονται εμπιστευτικά για την εφαρμογή των κανόνων καταγωγής θεωρούνται αυστηρά εμπιστευτικές από τις σχετικές αρχές, οι οποίες υποχρεούνται να μην τις διαδίδουν χωρίς τη συγκεκριμένη άδεια του προσώπου ή της κυβέρνησης που τις παρέσχε, εκτός αν αναγκάζονται να το πράξουν στο πλαίσιο δικαστικής εξέτασης.

ΜΕΡΟΣ III
ΔΙΑΔΙΚΑΣΤΙΚΕΣ ΡΥΘΜΙΣΕΙΣ ΓΙΑ ΤΗ ΓΝΩΣΤΟΠΟΙΗΣΗ, ΤΗΝ ΕΠΑΝΕΞΕΤΑΣΗ, ΤΙΣ ΔΙΑΒΟΥΛΕΥΣΕΙΣ ΚΑΙ ΤΗΝ ΕΠΙΛΥΣΗ ΤΩΝ ΔΙΑΦΟΡΩΝ

Άρθρο 4
Όργανα

1. Δημιουργείται Επιτροπή Κανόνων Καταγωγής (καλούμενη στην παρούσα συμφωνία "η επιτροπή") αποτελούμενη από εκπροσώπους κάθε μέλους. Η επιτροπή εκλέγει τον πρόεδρό της και συνέρχεται όταν παρίσταται σχετική ανάγκη, τουλάχιστον όμως μια φορά κατ'έτος, με σκοπό την παροχή στα μέλη της δυνατότητας να διενεργούν διαβουλεύσεις επί θεμάτων σχετικών με τη λειτουργία των μερών I, II, III και IV ή με την προώθηση των στόχων που θέτουν αυτά τα μέρη καθώς και την εκτέλεση των αρμοδιοτήτων που της έχουν ανατεθεί βάσει της παρούσας συμφωνίας ή από το Συμβούλιο Εμπορευματικών Συναλλαγών. Η επιτροπή ζητεί, όταν χρειάζεται, πληροφορίες και συμβουλές από την τεχνική επιτροπή που αναφέρεται στην παράγραφο 2 για θέματα σχετικά με την παρούσα συμφωνία. Η επιτροπή μπορεί επίσης να ζητεί από την τεχνική επιτροπή την εκτέλεση και άλλων εργασιών που θεωρεί αναγκαίες για την προώθηση των προαναφερθέντων στόχων της παρούσας συμφωνίας. Η Γραμματεία του ΠΟΕ εκτελεί χρέη γραμματείας της επιτροπής.

2. Δημιουργείται Τεχνική Επιτροπή Κανόνων Καταγωγής (καλούμενη στην παρούσα συμφωνία "η τεχνική επιτροπή") υπό την εποπτεία του Συμβουλίου Τελωνειακής Συνεργασίας (ΣΤΣ), όπως ορίζεται στο παράρτημα I. Η τεχνική επιτροπή ασχολείται με τις εργασίες τεχνικής μορφής που αναφέρονται στο μέρος IV και περιγράφονται στο παράρτημα I. Η τεχνική επιτροπή ζητεί, όταν χρειάζεται, πληροφορίες και συμβουλές από την επιτροπή για θέματα σχετικά με την παρούσα συμφωνία. Η τεχνική επιτροπή μπορεί επίσης να ζητεί από την επιτροπή την εκτέλεση και άλλων εργασιών που θεωρεί αναγκαίες για την προώθηση των προαναφερθέντων στόχων της συμφωνίας. Η Γραμματεία του ΣΤΣ εκτελεί χρέη Γραμματείας της τεχνικής επιτροπής.

Άρθρο 5
Πληροφορίες και διαδικασίες για την τροποποίηση και τη θέσπιση νέων κανόνων καταγωγής

1. Κάθε μέλος παρέχει στη Γραμματεία, εντός 90 ημερών μετά την ημερομηνία θέσης σε ισχύ της συμφωνίας για τον ΠΟΕ έναντι αυτού, τους κανόνες καταγωγής, τις δικαστικές και διοικητικές αποφάσεις γενικής

εφαρμογής που έχουν σχέση με κανόνες καταγωγής και ισχύουν σ'αυτό την εν λόγω ημερομηνία. Αν δεν έχει γνωστοποιηθεί, εκ παραδρομής, κάποιος κανόνας καταγωγής, το ενδιαφερόμενο μέλος υποχρεούται να τον κοινοποιήσει μόλις η έλλειψή του γίνει γνωστή. Η Γραμματεία διαβιβάζει στα μέλη καταλόγους με τα λαμβανόμενα διαθέσιμα πληροφοριακά στοιχεία.

2. Κατά την περίοδο που αναφέρεται στο άρθρο 2, τα μέλη που θεσπίζουν τροποποιήσεις, εκτός από τις ασήμαντες αλλαγές, των κανόνων καταγωγής ή επιβάλλουν νέους κανόνες καταγωγής οι οποίοι περιλαμβάνουν, για τους σκοπούς του παρόντος άρθρου, κανόνα καταγωγής που αναφέρεται στην παράγραφο 1 και δεν ενημερώνουν σχετικά τη Γραμματεία, δημοσιεύουν σχετική ανακοίνωση 60 τουλάχιστον ημέρες πριν από τη θέση σε ισχύ του τροποποιημένου ή νέου κανόνα, έτσι ώστε τα ενδιαφερόμενα μέρη να είναι σε θέση να γνωρίζουν την πρόθεση τροποποίησης ή θέσπισης νέου κανόνα καταγωγής, εντός αν υπάρχουν ή ενδέχεται να υπάρξουν εξαιρετικές περιστάσεις για κάποιο μέλος. Σ'αυτές τις εξαιρετικές περιπτώσεις, τα μέλη δημοσιεύουν τον τροποποιημένο ή τον νέο κανόνα το ταχύτερο δυνατό.

Άρθρο 6
Επανεξέταση

1. Η επιτροπή επανεξετάζει ετησίως την εφαρμογή και τη λειτουργία των μερών II και III της παρούσας συμφωνίας, όσον αφορά τους στόχους της. Η επιτροπή ενημερώνει ετησίως το Συμβούλιο Εμπορευματικών Συναλλαγών για τις εξελίξεις κατά την περίοδο που καλύπτει η εν λόγω επανεξέταση.

2. Η επιτροπή επανεξετάζει τις διατάξεις των μερών I, II και III και προτείνει τις τροποποιήσεις που είναι αναγκαίες για τη συμμόρφωση με τα αποτελέσματα του προγράμματος εργασίας για την εναρμόνιση.

3. Η επιτροπή, σε συνεργασία με την τεχνική επιτροπή, καθορίζει μηχανισμό για την εξέταση και την πρόταση τροποποιήσεων του προγράμματος εργασίας για την εναρμόνιση, λαμβάνοντας υπόψη τους στόχους και τις αρχές που περιλαμβάνονται στο άρθρο 9. Πιθανόν να πρόκειται για περιπτώσεις όπου οι κανόνες χρειάζεται να γίνουν περισσότερο λειτουργικοί ή να προσαρμοστούν ώστε να λάβουν υπόψη τις νέες μεθόδους παραγωγής όπως αυτές επηρεάζονται από οποιαδήποτε τεχνολογική αλλαγή.

Άρθρο 7
Διαβουλεύσεις

Οι διατάξεις του άρθρου XXII της GATT του 1994, όπως διαμορφώθηκαν και ισχύουν στο πλαίσιο του μνημονίου συμφωνίας για την επίλυση των διαφορών εφαρμόζονται στην παρούσα συμφωνία.

Άρθρο 8
Επίλυση των διαφορών

Οι διατάξεις του άρθρου XXIII της GATT του 1994, όπως διαμορφώθηκαν και ισχύουν στο πλαίσιο του μνημονίου συμφωνίας για την επίλυση των διαφορών εφαρμόζονται στην παρούσα συμφωνία.

ΜΕΡΟΣ IV
ΕΝΑΡΜΟΝΙΣΗ ΤΩΝ ΚΑΝΟΝΩΝ ΚΑΤΑΓΩΓΗΣ
Άρθρο 9

Στόχοι και αρχές

1. Σχοντας ως στόχο την εναρμόνιση των κανόνων καταγωγής και, μεταξύ άλλων, την εξασφάλιση μεγαλύτερης βεβαιότητας κατά τη διεξαγωγή του παγκόσμιου εμπορίου, η υπουργική συνδιάσκεψη εκτελεί από κοινού με το ΣΤΣ το πρόγραμμα εργασίας με βάση τις παρακάτω αρχές:

(α) οι κανόνες καταγωγής είναι ανάγκη να εφαρμόζονται με τον ίδιο τρόπο για όλους τους σκοπούς που παρατίθενται στο άρθρο 1·

(β) οι κανόνες καταγωγής απαιτείται να προβλέπουν ότι η χώρα που ορίζεται ως χώρα καταγωγής κάποιου συγκεκριμένου προϊόντος είναι αυτή στην οποία παράγεται πλήρως το εμπόρευμα ή, σε περίπτωση που στην παραγωγή του συμμετέχουν περισσότερες της μιας χώρες, αυτή στην οποία πραγματοποιείται η τελευταία ουσιαστική μεταποίηση·

(γ) οι κανόνες καταγωγής επιβάλλεται να είναι αντικειμενικοί, κατανοητοί και ευπρόβλεπτοι,

(δ) παρά το μέτρο ή την πράξη προς την οποία συνδέονται, οι κανόνες καταγωγής δεν χρησιμεύουν ως μέσα άμεσης ή έμμεσης επιδίωξης εμπορικών στόχων. Αυτοί δεν επιφέρουν από μόνοι τους περιορισμούς, στρεβλώσεις ή διακοπές του διεθνούς εμπορίου. Δεν επιβάλλουν αδικαιολόγητα αυστηρές απαιτήσεις ούτε απαιτούν την πλήρωση προϋποθέσεων που δεν συνδέονται με την κατασκευή ή τη μεταποίηση για τον καθορισμό της χώρας καταγωγής. Ωστόσο, το κόστος που δεν συνδέεται αμέσως με την κατασκευή ή τη μεταποίηση μπορεί να λαμβάνεται υπόψη για την εφαρμογή κριτηρίου ποσοστού κατ'αξία,

(ε) οι κανόνες καταγωγής εφαρμόζονται με τρόπο συνεπή, ομοιόμορφο, αντικειμενικό και λογικό,

(στ) οι κανόνες καταγωγής απαιτείται να έχουν συνοχή,

(ζ) οι κανόνες καταγωγής είναι ανάγκη να βασίζονται σε θετικά κριτήρια. Τα αρνητικά κριτήρια επιτρέπονται μόνον όταν πρόκειται να διευκρινίσουν θετικό κριτήριο.

Πρόγραμμα εργασίας

2. (α) Το πρόγραμμα εργασίας θα αρχίσει να εφαρμόζεται αμέσως μετά τη θέση σε ισχύ της συμφωνίας για τον ΠΟΕ και θα ολοκληρωθεί εντός τριών ετών από την έναρξη εφαρμογής του.

(β) Η επιτροπή και η τεχνική επιτροπή που προβλέπεται στο άρθρο 4 είναι τα κατάλληλα όργανα για να φέρουν σε πέρας αυτό το έργο.

(γ) Για να υπάρξει εκτεταμένη συμμετοχή του ΣΤΣ σ'αυτές τις εργασίες, η επιτροπή ζητεί από την τεχνική επιτροπή να της κοινοποιήσει τις ερμηνείες και τις γνώμες της που απορρέουν από τις εργασίες που περιγράφονται παρακάτω, βάσει των αρχών που περιλαμβάνονται στην παράγραφο 1. Για να εξασφαλιστεί η έγκαιρη ολοκλήρωση του προγράμματος εργασίας για την εναρμόνιση, η εργασία αυτή είναι ανάγκη να διενεργηθεί με βάση

τους τομείς προϊόντων, όπως αυτοί εμφανίζονται στα διάφορα κεφάλαια ή τμήματα της ονοματολογίας του εναρμονισμένου συστήματος (ΕΣ).

(i) *Πλήρως παραχθέντα προϊόντα και ελάχιστες εργασίες ή μεταποιήσεις*

Η τεχνική επιτροπή εξασφαλίζει εναρμονισμένους ορισμούς όσον αφορά :

- τα εμπορεύματα, τα οποία πρέπει να θεωρούνται ως παραχθέντα πλήρως σε κάποια χώρα. Η εργασία αυτή χρειάζεται να είναι όσο το δυνατό λεπτομερέστερη.
- τις ελάχιστες εργασίες ή επεξεργασίες, οι οποίες δεν προσδίδουν από μόνες τους την καταγωγή στα εμπορεύματα.

Τα αποτελέσματα αυτής της εργασίας υποβάλλονται στην επιτροπή εντός τριών μηνών από την παραλαβή της σχετικής αίτησης της επιτροπής.

(ii) *Ουσιαστική μεταποίηση - Μεταβολή της δασμολογικής κατάταξης*

Η τεχνική επιτροπή εξετάζει και μελετά, με βάση το κριτήριο της ουσιαστικής μεταποίησης, τη δυνατότητα χρησιμοποίησης της έννοιας της αλλαγής δασμολογικής διάκρισης ή κλάσης κατά την επεξεργασία κανόνων καταγωγής για συγκεκριμένα προϊόντα ή τομέα προϊόντων και, ενδεχομένως, της ελάχιστης αλλαγής στο πλαίσιο της ονοματολογίας, η οποία ανταποκρίνεται σ'αυτό το κριτήριο. Η τεχνική επιτροπή κατανέμει την προαναφερθείσα εργασία κατά τομείς προϊόντων λαμβάνοντας υπόψη τα κεφάλαια ή τα τμήματα της ονοματολογίας του ΕΣ, έτσι ώστε να υποβάλλει τα αποτελέσματα της εργασίας αυτής στην επιτροπή κάθε τρεις μήνες τουλάχιστον. Η τεχνική επιτροπή ολοκληρώνει την εργασία αυτή εντός ενός έτους και τριών μηνών από την παραλαβή της σχετικής αίτησης της επιτροπής.

(iii) *Ουσιαστική μεταποίηση - Συμπληρωματικά κριτήρια*

Μόλις ολοκληρωθεί η εργασία που αναφέρεται στο σημείο (ii) για κάθε τομέα προϊόντων ή κατηγορία μεμονωμένου προϊόντος, όταν η αποκλειστική χρησιμοποίηση της ονοματολογίας του ΕΣ δεν επιτρέπει να υποστηριχθεί, ότι πραγματοποιήθηκε ουσιαστική μεταποίηση, η τεχνική επιτροπή:

- εξετάζει και επεξεργάζεται, βάσει του κριτηρίου της ουσιαστικής μεταποίησης, τη δυνατότητα χρησιμοποίησης, αποκλειστικά ή συμπληρωματικά, άλλων κριτηρίων, συμπεριλαμβανομένων ποσοστών κατ'αξία[4] ή/και εργασιών κατασκευής ή μεταποίησης[5], κατά την επεξεργασία των κανόνων καταγωγής για συγκεκριμένα προϊόντα ή τομέα προϊόντων
- έχει την ευχέρεια να παρέχει διευκρινίσεις όσον αφορά τις προτάσεις της,

4 Αν προβλέπεται κριτήριο κατ'αξία, η μέθοδος για τον υπολογισμό του ποσοστού αυτού περιλαμβάνεται επίσης στους κανόνες καταγωγής.

5 Αν προβλέπεται το κριτήριο εργασιών κατασκευής ή μεταποίησης, καθορίζεται σαφώς η εργασία που προσδίδει την καταγωγή στο σχετικό προϊόν.

χωρίζει τις παραπάνω εργασίες με βάση τα προϊόντα λαμβάνοντας υπόψη τα κεφάλαια ή τα τμήματα της ονοματολογίας του ΕΣ, με σκοπό την υποβολή των αποτελεσμάτων των εργασιών της στην επιτροπή τουλάχιστον ανά τρίμηνο. Η τεχνική επιτροπή ολοκληρώνει την προαναφερθείσα εργασία εντός δύο ετών και τριών μηνών από την παραλαβή της αίτησης της επιτροπής.

Ρόλος της επιτροπής

3. Με βάση τις αρχές που αναφέρονται στην παράγραφο 1:

(α) η επιτροπή εξετάζει τις ερμηνείες και τις γνώμες της τεχνικής επιτροπής σε περιοδική βάση σύμφωνα με τα χρονοδιαγράμματα που παρέχονται στην παράγραφο 2, στοιχείο (γ), σημεία (i), (ii) και (iii) με σκοπό την υιοθέτηση αυτών των ερμηνειών και γνωμών. Η επιτροπή έχει την ευχέρεια να ζητεί από την τεχνική επιτροπή να επεξεργαστεί περισσότερο τα αποτελέσματα των εργασιών της ή/και να αναπτύξει νέες προσεγγίσεις. Για να βοηθήσει την τεχνική επιτροπή, η επιτροπή θα ήταν σκόπιμο να γνωστοποιεί τους λόγους για τους οποίους ζητεί συμπληρωματικές εργασίες και, ενδεχομένως, να προτείνει εναλλακτικές λύσεις·

(β) μετά την ολοκλήρωση των εργασιών που αναφέρονται στην παράγραφο 2, στοιχείο (γ), σημεία (i), (ii) και (iii), η επιτροπή εξετάζει τη γενική συνοχή των αποτελεσμάτων.

Αποτελέσματα του προγράμματος εργασίας για την εναρμόνιση και παρεπόμενες εργασίες

4. Η υπουργική συνδιάσκεψη διατυπώνει τα αποτελέσματα του προγράμματος εργασίας για την εναρμόνιση σε παράρτημα που αποτελεί αναπόσπαστο μέρος της παρούσας συμφωνίας[6]. Η υπουργική συνδιάσκεψη καθορίζει χρονοδιάγραμμα για τη θέση σε ισχύ του εν λόγω παραρτήματος.

ΠΑΡΑΡΤΗΜΑ Ι
ΤΕΧΝΙΚΗ ΕΠΙΤΡΟΠΗ ΚΑΝΟΝΩΝ ΚΑΤΑΓΩΓΗΣ

Αρμοδιότητες

1. Οι αρμοδιότητες της τεχνικής επιτροπής περιλαμβάνουν τα εξής:

(α) μετά από αίτηση οποιουδήποτε μέλους της τεχνικής επιτροπής, η εξέταση ειδικών τεχνικών προβλημάτων που προκύπτουν από την καθημερινή εφαρμογή των κανόνων καταγωγής των μελών και η έκδοση γνώμης συμβουλευτικού χαρακτήρα, όσον αφορά τις κατάλληλες λύσεις που βασίζονται επί των γνωστοποιούμενων γεγονότων·

(β) η παροχή πληροφοριών και συμβουλών επί οποιουδήποτε θέματος για τον προσδιορισμό της καταγωγής των εμπορευμάτων που είναι δυνατό να ζητεί οποιοδήποτε μέλος της επιτροπής·

(γ) η εκπόνηση και η κοινοποίηση περιοδικών εκθέσεων για τις τεχνικές πτυχές της λειτουργίας και του καθεστώτος της παρούσας συμφωνίας, και

6 Ταυτόχρονα, εξετάζονται οι ρυθμίσεις που αφορούν την επίλυση των διαφορών όσον αφορά τη δασμολογική κατάταξη.

(δ) η ετήσια επανεξέταση των τεχνικών πτυχών της εφαρμογής και της λειτουργίας των μερών II και III.

2. Η τεχνική επιτροπή ασκεί επίσης τις αρμοδιότητες που της αναθέτει ενδεχομένως η επιτροπή.

3. Η τεχνική επιτροπή προσπαθεί να ολοκληρώσει, σε λογικά σύντομο χρονικό διάστημα, τις εργασίες της επί ειδικών θεμάτων, ιδίως εκείνων που φέρονται ενώπιόν της από τα μέλη της ή την επιτροπή.

Εκπροσώπηση

4. Κάθε μέλος έχει το δικαίωμα να εκπροσωπείται στην τεχνική επιτροπή. Κάθε μέλος μπορεί να ορίζει έναν τακτικό αντιπρόσωπο και έναν ή περισσότερους αναπληρωματικούς αντιπροσώπους για να το εκπροσωπούν στην τεχνική επιτροπή. Το μέλος που εκπροσωπείται κατ'αυτόν τον τρόπο στην τεχνική επιτροπή καλείται στο εξής "μέλος" της τεχνικής επιτροπής. Οι αντιπρόσωποι των μελών της τεχνικής επιτροπής είναι δυνατό να συνοδεύονται από συμβούλους κατά τη διάρκεια των συνεδριάσεων της τεχνικής επιτροπής. Η Γραμματεία του ΠΟΕ μπορεί επίσης να παρακολουθεί τις συνεδριάσεις αυτές ως παρατηρητής.

5. Τα μέλη του ΣΤΣ τα οποία δεν αποτελούν μέλη του ΠΟΕ είναι δυνατό να εκπροσωπούνται στις συνεδριάσεις της τεχνικής επιτροπής από έναν τακτικό αντιπρόσωπο και έναν ή περισσότερους αναπληρωματικούς αντιπροσώπους. Οι αντιπρόσωποι αυτοί παρακολουθούν τις συνεδριάσεις της τεχνικής επιτροπής ως παρατηρητές.

6. Υπό την προϋπόθεση της έγκρισης εκ μέρους του προέδρου της τεχνικής επιτροπής, ο Γενικός Γραμματέας του ΣΤΣ (αποκαλούμενος εφεξής "ο Γενικός Γραμματέας") έχει την ευχέρεια να καλεί εκπροσώπους των κυβερνήσεων που δεν αποτελούν μέλη του ΠΟΕ ούτε μέλη του ΣΤΣ και εκπροσώπους διεθνών δημοσίων και εμπορικών οργανισμών να συμμετάσχουν στην τεχνική επιτροπή ως παρατηρητές.

7. Ο ορισμός αντιπροσώπων, αναπληρωματικών αντιπροσώπων και συμβούλων που συμμετέχουν στις συνεδριάσεις της τεχνικής επιτροπής ανακοινώνεται στο Γενικό Γραμματέα.

Συνεδριάσεις

8. Η τεχνική επιτροπή συνεδριάζει όταν χρειάζεται, τουλάχιστον όμως μια φορά το έτος.

Διαδικασίες

9. Η τεχνική επιτροπή εκλέγει τον πρόεδρό της και θεσπίζει τις διαδικασίες της.

ΠΑΡΑΡΤΗΜΑ II

ΚΟΙΝΗ ΔΗΛΩΣΗ ΓΙΑ ΤΟΥΣ ΠΡΟΤΙΜΗΣΙΑΚΟΥΣ ΚΑΝΟΝΕΣ ΚΑΤΑΓΩΓΗΣ

1. Αναγνωρίζοντας ότι ορισμένα μέλη εφαρμόζουν προτιμησιακούς κανόνες καταγωγής, διαφορετικούς από τους μη προτιμησιακούς κανόνες καταγωγής, τα μέλη συμφωνούν τα ακόλουθα.

2. Για τους σκοπούς της παρούσας κοινής δήλωσης, οι προτιμησιακοί κανόνες καταγωγής θεωρούνται ως νόμοι, κανονισμοί και διοικητικές ρυθμίσεις γενικής εφαρμογής, που ισχύουν σε κάθε μέλος και ορίζουν αν τα εμπορεύματα δύνανται να υπάγονται σε προτιμησιακή μεταχείριση στο

πλαίσιο συμβατικών ή αυτόνομων εμπορικών καθεστώτων, που οδηγούν στην παραχώρηση δασμολογικών προτιμήσεων, οι οποίες επεκτείνονται πέραν της εφαρμογής του άρθρου Ι, παράγραφος 1 της GATT του 1994.

3. Τα μέλη συμφωνούν να διασφαλίζουν ότι:

(α) όταν εκδίδουν διοικητικές ρυθμίσεις γενικής εφαρμογής, οι προϋποθέσεις που απαιτείται να πληρούνται καθορίζονται σαφώς. Ιδίως:

(i) σε περιπτώσεις όπου ισχύει το κριτήριο μεταβολής της δασμολογικής κατάταξης, ένας τέτοιος προτιμησιακός κανόνας καταγωγής και κάθε εξαίρεση του κανόνα αυτού, απαιτείται να καθορίζει σαφώς τις διακρίσεις ή τις κλάσεις της δασμολογικής ονοματολογίας, τις οποίες αφορά ο κανόνας·

(ii) σε περιπτώσεις όπου ισχύει το κριτήριο του κατ'αξία ποσοστού, η μέθοδος υπολογισμού του εν λόγω ποσοστού αναφέρεται επίσης στους κανόνες καταγωγής·

(iii) σε περιπτώσεις όπου ισχύει το κριτήριο των εργασιών κατασκευής ή μεταποίησης, η εργασία που προσδίδει την προτιμησιακή καταγωγή ορίζεται σαφώς

(β) οι προτιμησιακοί κανόνες καταγωγής τους βασίζονται σε θετικό κριτήριο. Οι προτιμησιακοί κανόνες καταγωγής που ορίζουν τι δεν προσδίδει την καταγωγή (αρνητικό κριτήριο) επιτρέπονται μόνον στο πλαίσιο διευκρίνισης θετικού κριτηρίου ή σε μεμονωμένες περιπτώσεις, όταν δεν είναι αναγκαίος ο θετικός προσδιορισμός της προτιμησιακής καταγωγής·

(γ) οι νόμοι τους, κανονισμοί, δικαστικές και διοικητικές αποφάσεις γενικής εφαρμογής που έχουν σχέση με προτιμησιακούς κανόνες καταγωγής δημοσιεύονται σαν να υπέκειντο στις διατάξεις του άρθρου Χ, παράγραφος 1 της GATT του 1994, και σύμφωνα με αυτές·

(δ) μετά από αίτηση εξαγωγέα, εισαγωγέα ή άλλου νομιμοποιούμενου προσώπου, οι εκτιμήσεις όσον αφορά την προτιμησιακή καταγωγή παρέχονται το ταχύτερο δυνατό και οπωσδήποτε όχι αργότερα από 150 ημέρες[7] μετά την αίτηση για τέτοια εκτίμηση υπό την προϋπόθεση ότι έχουν προσκομιστεί όλα τα αναγκαία στοιχεία. Οι αιτήσεις για τις εκτιμήσεις αυτές υποβάλλονται προτού αρχίσει το εμπόριο του σχετικού εμπορεύματος και είναι δυνατό να γίνουν αποδεκτές σε οποιοδήποτε μεταγενέστερο χρονικό σημείο. Οι εκτιμήσεις αυτές εξακολουθούν να ισχύουν επί τρία έτη υπό τον όρο ότι τα πραγματικά περιστατικά και οι συνθήκες, συμπεριλαμβανομένων των προτιμησιακών κανόνων καταγωγής, που αποτέλεσαν τη βάση για τη διαμόρφωσή τους παραμένουν σε συγκρίσιμα επίπεδα. Εφόσον ενημερωθούν εγκαίρως τα ενδιαφερόμενα μέρη οι εκτιμήσεις αυτές παύουν να ισχύουν μόλις εκδοθεί απόφαση αντίθετη προς αυτές στο πλαίσιο επανεξέτασης σύμφωνα με το στοιχείο (στ). Οι συγκεκριμένες εκτιμήσεις δημοσιεύονται με την επιφύλαξη των διατάξεων του στοιχείου (ζ),

[7] Στις περιπτώσεις αιτήσεις που υποβλήθηκαν κατά το πρώτο έτος μετά την ημερομηνία θέσης σε ισχύ της συμφωνίας για τον ΠΟΕ, τα μέλη υποχρεούνται να εκδίδουν τις εκτιμήσεις αυτές το ταχύτερο δυνατό.

(ε) όταν οι κανόνες καταγωγής τροποποιούνται ή όταν θεσπίζονται νέοι κανόνες καταγωγής, αυτά δεν τους εφαρμόζουν αναδρομικά όπως ορίζεται στους νόμους και τις κανονιστικές τους διατάξεις και με την επιφύλαξη αυτών,

(στ) κάθε δράση διοικητικής μορφής την οποία αναλαμβάνουν σε σχέση με τον καθορισμό της προτιμησιακής καταγωγής επανεξετάζεται αμέσως από τα τακτικά, διαιτητικά ή διοικητικά δικαστήρια ή διαδικασίες, ανεξάρτητα από τη φύση της αρχής που πραγματοποιεί αυτόν τον καθορισμό, με ενδεχόμενο την τροποποίηση ή την ανατροπή του καθορισμού,

(ζ) όλες οι πληροφορίες οι οποίες είναι εκ φύσεως εμπιστευτικές ή παρέχονται εμπιστευτικά για την εφαρμογή των προτιμησιακών κανόνων καταγωγής θεωρούνται αυστηρά εμπιστευτικές από τις σχετικές αρχές, οι οποίες υποχρεούνται να μην τις διαδίδουν χωρίς τη συγκεκριμένη άδεια του προσώπου ή της κυβέρνησης που τις παρέσχε, εκτός αν αναγκάζονται να το πράξουν στο πλαίσιο δικαστικής εξέτασης.

4. Τα μέλη συμφωνούν να παρέχουν αμέσως στη Γραμματεία τους προτιμησιακούς κανόνες καταγωγής, συμπεριλαμβάνομένης κατάστασης των προτιμησιακών διευθετήσεων στις οποίες αυτοί εφαρμόζονται, και τις δικαστικές και τις διοικητικές αποφάσεις γενικής εφαρμογής που συνδέονται με τους προτιμησιακούς τους κανόνες καταγωγής που ισχύουν κατά την ημερομηνία θέσης σε ισχύ της συμφωνίας για τον ΠΟΕ έναντι του ενδιαφερομένου μέλους. Ακόμη, τα μέλη συμφωνούν να γνωστοποιούν κάθε τροποποίηση των προτιμησιακών τους κανόνων καταγωγής ή τους νέους προτιμησιακούς κανόνες καταγωγής το ταχύτερο δυνατό στη Γραμματεία. Οι καταστάσεις με τις πληροφορίες που λαμβάνονται και είναι διαθέσιμες στη Γραμματεία διαβιβάζονται από αυτή στα μέλη.

ΣΥΜΦΩΝΙΑ ΓΙΑ ΤΙΣ ΑΥΤΟΜΑΤΕΣ ΕΚΔΟΣΕΙΣ ΑΔΕΙΩΝ ΕΙΣΑΓΩΓΗΣ

Τα μέλη,

Έχοντας υπόψη τις πολυμερείς εμπορικές διαπραγματεύσεις·

Επιθυμώντας να προωθήσουν τους στόχους της GATT του 1994·

Λαμβάνοντας υπόψη τις ιδιαίτερες εμπορικές, αναπτυξιακές και χρηματοδοτικές ανάγκες των αναπτυσσομένων χωρών,

Αναγνωρίζοντας ότι η αυτόματη έκδοση αδειών εισαγωγής είναι χρήσιμη για ορισμένους σκοπούς και ότι δεν επιτρέπεται να χρησιμοποιείται για τον περιορισμό του εμπορίου·

Αναγνωρίζοντας ότι οι άδειες εισαγωγής είναι δυνατό να χρησιμοποιούνται για την εφαρμογή μέτρων όπως εκείνα που λαμβάνονται βάσει των σχετικών διατάξεων της GATT του 1994·

Αναγνωρίζοντας ότι οι διατάξεις της GATT του 1994 εφαρμόζονται στις διαδικασίες έκδοσης αδειών εισαγωγής·

Επιθυμώντας να διασφαλίσουν ότι οι διαδικασίες έκδοσης αδειών εισαγωγής δεν εφαρμόζονται κατά τρόπο που να αντιβαίνει στις αρχές και τις υποχρεώσεις που απορρέουν από την GATT του 1994·

Αναγνωρίζοντας ότι η ακατάλληλη χρήση των διαδικασιών έκδοσης αδειών εισαγωγής μπορεί να εμποδίζει τη ροή του διεθνούς εμπορίου·

Με την πεποίθηση ότι η έκδοση αδειών εισαγωγής, ιδίως η μη αυτόματη έκδοση αδειών εισαγωγής είναι ανάγκη να πραγματοποιείται με διαφανή και ευπρόβλεπτο τρόπο,

Αναγνωρίζοντας ότι οι διαδικασίες μη αυτόματης έκδοσης αδειών εισαγωγής δεν επιτρέπεται να δημιουργούν διοικητικά βάρη μεγαλύτερα από αυτά που είναι απολύτως αναγκαία για την εφαρμογή του αντίστοιχου μέτρου·

Επιθυμώντας να απλουστεύσουν και να καταστήσουν διαφανείς τις διοικητικές διαδικασίες και πρακτικές που εφαρμόζονται στο διεθνές εμπόριο καθώς και να διασφαλίσουν τη δίκαιη και θεμιτή εφαρμογή και διαχείριση τέτοιων διαδικασιών και πρακτικών·

Επιθυμώντας να εξασφαλίσουν ένα μηχανισμό διαβουλεύσεων και την ταχεία, αποτελεσματική και δίκαιη επίλυση των διαφορών που δημιουργούνται στο πλαίσιο της παρούσας συμφωνίας,

Συμφωνούν τα ακόλουθα:

Άρθρο 1
Γενικές διατάξεις

1. Για την εφαρμογή της παρούσας συμφωνίας, οι διατυπώσεις έκδοσης αδειών εισαγωγής ορίζονται ως διοικητικές διαδικασίες[1], που χρησιμοποιούνται για την εφαρμογή των καθεστώτων έκδοσης αδειών εισαγωγής, τα οποία ορίζουν ως προκαταρκτική προϋπόθεση της εισαγωγής στο τελωνειακό έδαφος του μέλους εισαγωγής, την υποβολή στο αρμόδιο διοικητικό όργανο αίτησης ή άλλου εγγράφου (διαφορετικού από αυτά που απαιτούνται για τελωνειακούς σκοπούς).

2. Τα μέλη διασφαλίζουν ότι οι διοικητικές διαδικασίες, που χρησιμοποιούνται για την εφαρμογή των καθεστώτων έκδοσης αδειών εισαγωγής, είναι σύμφωνες προς τις σχετικές διατάξεις της GATT του 1994, των παραρτημάτων της και των πρωτοκόλλων της, όπως ερμηνεύονται από την παρούσα συμφωνία, για να εμποδίζονται οι στρεβλώσεις του εμπορίου, οι οποίες ενδέχεται να προκύψουν από ακατάλληλη εφαρμογή των διαδικασιών αυτών, λαμβανομένων υπόψη των στόχων της οικονομικής ανάπτυξης και των χρηματοδοτικών και εμπορικών αναγκών των αναπτυσσομένων χωρών μελών.[2]

3. Οι κανόνες που ισχύουν για τις διαδικασίες έκδοσης αδειών εισαγωγής είναι ουδέτεροι στην εφαρμογή τους και εφαρμόζονται με ισότητα και δικαιοσύνη.

4. (α) Οι κανόνες και όλες οι πληροφορίες που αφορούν τις διαδικασίες υποβολής των αιτήσεων, περιλαμβανομένων των όρων υπό τους οποίους πρόσωπα, επιχειρήσεις ή οργανισμοί νομιμοποιούνται να υποβάλλουν τέτοιες αιτήσεις, το αρμόδιο διοικητικό όργανο καθώς και οι κατάλογοι των προϊόντων που υπόκεινται σε καθεστώς άδειας εισαγωγής, δημοσιεύονται κατά τρόπο που γνωστοποιείται στην Επιτροπή Έκδοσης Αδειών Εισαγωγής που προβλέπεται στο άρθρο 4 (καλούμενη στην παρούσα συμφωνία "η επιτροπή"), έτσι ώστε να επιτρέπεται στις κυβερνήσεις[3] και τους εμπόρους να ενημερώνονται σχετικά. Η δημοσίευση αυτή πραγματοποιείται όταν υπάρχει σχετική δυνατότητα στην πράξη, 21 ημέρες πριν από την πραγματική ημερομηνία αυτής της απαίτησης αλλά εν πάση περιπτώσει όχι αργότερα από την ημερομηνία αυτή. Κάθε εξαίρεση, παρέκκλιση ή τροποποίηση των κανόνων έκδοσης αδειών ή της κατάστασης των προϊόντων που υποβάλλονται σε άδειες εισαγωγής δημοσιεύονται επίσης κατά τον ίδιο τρόπο και εντός των ίδιων προθεσμιών που αναφέρονται παραπάνω. Αντίγραφα των δημοσιευμάτων αυτών απαιτείται επίσης να τίθενται στη διάθεση της Γραμματείας.

(β) Στα μέλη που επιθυμούν να διατυπώσουν σχόλια εγγράφως παρέχεται η ευκαιρία, μετά από σχετική αίτηση, να συζητήσουν τα εν λόγω σχόλια. Το ενδιαφερόμενο μέλος παρέχει τη δέουσα προσοχή στα σχόλια αυτά καθώς και στα αποτελέσματα της συζήτησης.

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1 Οι διαδικασίες που περιγράφονται με τον όρο "άδειες" καθώς και άλλες παρόμοιες διοικητικές διαδικασίες.

2 Καμία διάταξη της παρούσας συμφωνίας δεν μπορεί να θεωρηθεί ότι υπονοεί ότι η βάση, η έκταση εφαρμογής ή η διάρκεια ισχύος κάποιου μέτρου που εφαρμόζεται στο πλαίσιο διαδικασίας έκδοσης αδειών τίθεται υπό αμφισβήτηση από την παρούσα συμφωνία.

3 Για την εφαρμογή της παρούσας συμφωνίας ο όρος "κυβερνήσεις" θεωρείται ότι περιλαμβάνει τις αρμόδιες αρχές των Ευρωπαϊκών Κοινοτήτων.

5. Τα έντυπα αίτησης και, όπου υπάρχει τέτοια περίπτωση, τα έντυπα ανανέωσης είναι όσο το δυνατό πιο απλά. Τα έγγραφα και οι πληροφορίες που κρίνονται απολύτως αναγκαίες για την καλή λειτουργία του καθεστώτος έκδοσης αδειών είναι δυνατό να ζητούνται με σχετική αίτηση.

6. Οι διαδικασίες υποβολής της αίτησης και, όπου υπάρχει τέτοια περίπτωση, της ανανέωσης είναι όσο το δυνατό πιο απλές. Παρέχεται στους αιτούντες εύλογη προθεσμία για την υποβολή των αιτήσεων προς έκδοση άδειας. Όταν υπάρχει ημερομηνία λήξης, η προθεσμία αυτή ανέρχεται σε 21 τουλάχιστον ημέρες με δυνατότητα παράτασης σε περιπτώσεις κατά τις οποίες παραλήφθηκε μικρός αριθμός αιτήσεων εντός της ταχθείσας περιόδου. Οι αιτούντες απευθύνονται σε ένα μόνο διοικητικό όργανο για την αίτηση. Όταν είναι απολύτως απαραίτητο οι αιτούντες να απευθύνονται σε περισσότερα του ενός διοικητικά όργανα, αυτοί δεν χρειάζεται να απευθύνονται σε περισσότερα από τρία διοικητικά όργανα.

7. Καμία αίτηση δεν απορρίπτεται λόγω ύπαρξης ασήμαντων σφαλμάτων στην τεκμηρίωση, τα οποία δεν αλλοιώνουν τις βασικές πληροφορίες που περιέχονται σ'αυτή. Για τις παραλείψεις ή τα σφάλματα στα έγγραφα ή τις διαδικασίες, που είναι προφανές ότι πραγματοποιήθηκαν χωρίς να υπάρχει δόλος ή σοβαρή αμέλεια , δεν επιβάλλεται πρόστιμο μεγαλύτερο από το αναγκαίο ποσό που θα χρησίμευε ως απλή προειδοποίηση.

8. Οι εισαγωγές εμπορευμάτων που συνοδεύονται από σχετική άδεια δεν είναι δυνατό να απαγορεύονται λόγω ασήμαντων διακυμάνσεων της αξίας, της ποσότητας ή του βάρους σε σχέση με τα στοιχεία της άδειας λόγω διαφορών που προκύπτουν κατά τη μεταφορά, που δημιουργούνται από τη φόρτωση εμπορευμάτων χύμα ή άλλων ασήμαντων διαφορών που συμβιβάζονται με τη συνήθη εμπορική πρακτική.

9. Τα αναγκαία ποσά συναλλάγματος για τον διακανονισμό των εισαγωγών που υποβάλλονται σε καθεστώς άδειας τίθενται στη διάθεση των κατόχων των αδειών κατά τον ίδιο τρόπο με εκείνον που ισχύει για τους εισαγωγείς εμπορευμάτων, για τα οποία δεν απαιτείται άδεια εισαγωγής.

10. Όσον αφορά τις εξαιρέσεις για λόγους ασφαλείας, εφαρμόζονται οι διατάξεις του άρθρου XXI της GATT του 1994.

11. Οι διατάξεις της παρούσας συμφωνίας δεν υποχρεώνουν τα μέλη να αποκαλύπτουν εμπιστευτικές πληροφορίες, η γνωστοποίηση των οποίων θα δημιουργούσε εμπόδια στην εφαρμογή των νόμων, θα ήταν αντίθετη στο δημόσιο συμφέρον ή θα ζημίωνε τα νόμιμα εμπορικά συμφέροντα συγκεκριμένων δημοσίων ή ιδιωτικών επιχειρήσεων.

Άρθρο 2
Αυτόματη έκδοση αδειών εισαγωγής[4]

1. Αυτόματη έκδοση αδειών εισαγωγής υπάρχει όταν η έγκριση της αίτησης είναι εξασφαλισμένη σε όλες τις περιπτώσεις και πληροί τις προϋποθέσεις της παραγράφου 2, στοιχείο (α).

4 Οι διαδικασίες έκδοσης αδειών εισαγωγής που απαιτούν τη σύσταση εγγύησης που δεν έχει περιοριστικά αποτελέσματα για τις εισαγωγές θεωρείται ότι εμπίπτουν στο πεδίο εφαρμογής των παραγράφων 1 και 2.

2. Οι παρακάτω διατάξεις[5] εφαρμόζονται, μαζί με τις διατάξεις του άρθρου 1, παράγραφοι 1 έως 11 και της παραγράφου 1 του παρόντος άρθρου, στις διαδικασίες αυτόματης έκδοσης αδειών εισαγωγής:

(α) η εφαρμογή των διαδικασιών αυτόματης έκδοσης αδειών πραγματοποιείται με τέτοιον τρόπο ώστε να μην επιβάλλει περιορισμούς στις εισαγωγές που υπόκεινται σε διαδικασίες αυτόματης έκδοσης αδειών εισαγωγής. Οι διαδικασίες αυτόματης έκδοσης αδειών είναι δυνατό να έχουν περιοριστικά αποτελέσματα για το εμπόριο εκτός αν, μεταξύ άλλων:

(i) κάθε πρόσωπο, επιχείρηση ή οργανισμός που πληροί τις νόμιμες προϋποθέσεις που επιβάλλει το μέλος εισαγωγής για τη διενέργεια πράξεων εισαγωγής που αφορούν προϊόντα τα οποία υπόκεινται σε αυτόματη έκδοση αδειών, νομιμοποιούνται εξ ίσου να ζητήσουν και να λάβουν άδειες εισαγωγής·

(ii) οι αιτήσεις για χορήγηση αδειών είναι δυνατό να υποβάλλονται οποιαδήποτε εργάσιμη ημέρα πριν από τον εκτελωνισμό των εμπορευμάτων·

(iii) οι αιτήσεις για έκδοση αδειών που υποβάλλονται σωστά και με όλους τους τύπους εγκρίνονται αμέσως μόλις παραληφθούν, εφόσον αυτό είναι διοικητικά δυνατό, αλλιώς εντός προθεσμίας δέκα εργασίμων ημερών το αργότερο.

(β) Τα μέλη αναγνωρίζουν ότι η αυτόματη έκδοση αδειών είναι δυνατό να είναι αναγκαία, όταν δεν υφίστανται άλλες κατάλληλες διαδικασίες. Η αυτόματη έκδοση αδειών μπορεί να συνεχίζεται εφόσον εξακολουθούν να ισχύουν οι περιστάσεις, οι οποίες οδήγησαν στη θέσπισή της ή εφόσον οι σκοποί της διοίκησης οι οποίοι αποτέλεσαν την αφορμή για τη θέσπισή της δεν είναι δυνατό να επιτευχθούν κατά προσφορότερο τρόπο.

Άρθρο 3
Μη αυτόματη έκδοση αδειών εισαγωγής

1. Οι παρακάτω διατάξεις εφαρμόζονται, ταυτόχρονα με αυτές του άρθρου 1, παράγραφοι 1 έως 11, στις διαδικασίες μη αυτόματης έκδοσης αδειών εισαγωγής. Οι διαδικασίες μη αυτόματης έκδοσης αδειών εισαγωγής καθορίζονται ως διαδικασίες έκδοσης αδειών εισαγωγής που δεν εμπίπτουν στον ορισμό που περιέχεται στο άρθρο 2, παράγραφος 1.

2. Η μη αυτόματη έκδοση αδειών απαγορεύεται να ασκεί στο εισαγωγικό εμπόριο περιορισμούς ή στρεβλώσεις πέραν των αποτελεσμάτων που προκαλούνται από την επιβολή του περιορισμού. Οι διαδικασίες μη αυτόματης έκδοσης αδειών αντιστοιχούν ως προς το πεδίο εφαρμογής και τη διάρκεια ισχύος στο μέτρο στην επιβολή του οποίου αποβλέπουν και πρέπει να απαιτούν τη διοικητική επιβάρυνση που είναι απολύτως αναγκαία για την εφαρμογή του μέτρου.

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5 Κάθε αναπτυσσόμενη χώρα μέλος, εκτός από αυτές που αποτελούσαν συμβαλλόμενα μέρη της συμφωνίας για την Εκδοση Αδειών Εισαγωγής, της 12ης Απριλίου 1979, η οποία αντιμετωπίζει ιδιαίτερα προβλήματα όσον αφορά τις προϋποθέσεις που καθορίζονται στο στοιχείο (α), σημεία (ii) και (iii) μπορεί, μετά από σχετική ανακοίνωση στην Επιτροπή, να καθυστερήσει την εφαρμογή αυτών των παραγράφων κατά δύο έτη το πολύ από την ημερομηνία θέσης σε ισχύ της συμφωνίας για τον ΠΟΕ έναντι του εν λόγω μέλους.

3. Στην περίπτωση που απαιτούνται διατυπώσεις έκδοσης αδειών για σκοπούς άλλους από την εφαρμογή ποσοτικών περιορισμών, τα μέλη παρέχουν επαρκείς πληροφορίες στα λοιπά μέλη και στους εμπόρους, ώστε να επιτυγχάνεται ενημέρωση αυτών, όσον αφορά τους λόγους χορήγησης ή/και κατανομής των αδειών.

4. Όταν κάποιο μέλος παρέχει τη δυνατότητα σε πρόσωπα, επιχειρήσεις ή όργανα να ζητούν την παραχώρηση εξαιρέσεων ή παρεκκλίσεων όσον αφορά τις διατυπώσεις έκδοσης αδειών, αναφέρει το γεγονός αυτό στις πληροφορίες που παρέχει στο πλαίσιο του άρθρου 1, παράγραφος 4 καθορίζοντας τον τρόπο με τον οποίο διατυπώνεται το σχετικό αίτημα και, στο μέγιστο δυνατό βαθμό, τις συνθήκες υπό τις οποίες γίνεται η εξέταση των εν λόγω αιτήσεων.

5. (α) Τα μέλη παρέχουν, μετά από σχετική αίτηση οποιουδήποτε μέλους το οποίο ενδιαφέρεται για το εμπόριο του σχετικού προϊόντος, όλες τις σχετικές πληροφορίες για:

(i) την εφαρμογή των περιορισμών·

(ii) τις άδειες εισαγωγής που χορηγήθηκαν κατά τη διάρκεια μιας πρόσφατης περιόδου·

(iii) την κατανομή των αδειών αυτών μεταξύ των προμηθευτριών χωρών·

(iv) όταν αυτό είναι πρακτικά δυνατό, στατιστικά στοιχεία για τις εισαγωγές (όσον αφορά την αξία ή/και τον όγκο) όσον αφορά τα προϊόντα για τα οποία απαιτείται η έκδοση άδειας εισαγωγής. Οι αναπτυσσόμενες χώρες μέλη δεν υποχρεούνται να αναλάβουν πρόσθετα διοικητικά ή δημοσιονομικά βάρη σχετικά με το θέμα αυτό.

(β) Τα μέλη που εφαρμόζουν ποσοστώσεις με σύστημα αδειών δημοσιεύουν τη συνολική ποσότητα ή/και αξία των ποσοστώσεων που εφαρμόζουν, τις ημερομηνίες ανοίγματος και κλεισίματος και κάθε τροποποίηση που αναφέρεται σ'αυτές, εντός των προθεσμιών που καθορίζονται στο άρθρο 1, παράγραφος 4 και με τέτοιο τρόπο ώστε οι κυβερνήσεις και οι έμποροι να ενημερώνονται σχετικά·

(γ) στην περίπτωση ποσοστώσεων που έχουν κατανεμηθεί μεταξύ των προμηθευτριών χωρών, το μέλος που εφαρμόζει τον περιορισμό ενημερώνει το συντομότερο δυνατό όλα τα λοιπά μέρη που ενδιαφέρονται να προμηθεύσουν το εν λόγω προϊόν για τα μερίδια της ποσόστωσης που κατανέμονται για την τρέχουσα περίοδο, σε ποσότητα ή σε αξία, στις διάφορες προμηθεύτριες χώρες και ανακοινώνει όλες τις χρήσιμες για το θέμα αυτό πληροφορίες, εντός των προθεσμιών που καθορίζονται στο άρθρο 1, παράγραφος 4 και με τέτοιο τρόπο, ώστε οι κυβερνήσεις και οι έμποροι να ενημερώνονται σχετικά·

(δ) στις περιπτώσεις κατά τις οποίες απαιτείται η πρόβλεψη για άνοιγμα, το ταχύτερο δυνατό, ποσόστωσης, οι πληροφορίες που αναφέρονται στο άρθρο 1, παράγραφος 4 επιβάλλεται να δημοσιεύονται εντός των προθεσμιών που καθορίζονται στο άρθρο 1, παράγραφος 4 και με τέτοιο τρόπο ώστε οι κυβερνήσεις και οι έμποροι να ενημερώνονται σχετικά,

(ε) κάθε πρόσωπο, επιχείρηση ή όργανο που πληροί τις νόμιμες και διοικητικές προϋποθέσεις που επιβάλλει η χώρα εισαγωγής, νομιμοποιείται με ίσους όρους, να υποβάλει αίτηση και να λαμβάνεται υπόψη κατά τη χορήγηση των αδειών. Αν κάποια αίτηση για έκδοση άδειας δεν εγκριθεί, ο αιτών μπορεί να ζητήσει να του ανακοινωθούν οι σχετικοί λόγοι και έχει δικαίωμα να ασκήσει προσφυγή ή να ζητήσει επανεξέταση σύμφωνα με τη νομοθεσία ή τις εσωτερικές διαδικασίες του μέλους εισαγωγής·

(στ) ο χρόνος εξέτασης των αιτήσεων, με εξαίρεση τις περιπτώσεις που αυτό είναι αδύνατο για λόγους για τους οποίους δεν ευθύνεται το μέλος, δεν υπερβαίνει τις 30 ημέρες εφόσον οι αιτήσεις εξετάζονται με βάση τη σειρά παραλαβής τους, δηλ. κατά προτεραιότητα και τις 60 ημέρες, εφόσον θεωρείται ότι όλες οι αιτήσεις παραλήφθηκαν ταυτόχρονα. Στην τελευταία περίπτωση, ο χρόνος για την εξέταση των αιτήσεων θεωρείται ότι αρχίζει την ημερομηνία που ακολουθεί την ημερομηνία λήξης της ταχθείσας προθεσμίας για την υποβολή των αιτήσεων·

(ζ) η διάρκεια ισχύος των αδειών είναι εύλογη και όχι τόσο σύντομη ώστε να παρεμποδίζει τις εισαγωγές. Δεν εμποδίζει τις εισαγωγές εμπορευμάτων που προέρχονται από μεγάλες αποστάσεις, εκτός στις ειδικές περιπτώσεις που οι εισαγωγές είναι απαραίτητες για την αντιμετώπιση απρόβλεπτων βραχυπρόθεσμων αναγκών·

(η) κατά τη διαχείριση των ποσοστώσεων, τα μέλη δεν εμποδίζουν την πραγματοποίηση των εισαγωγών σύμφωνα με τις άδειες που έχουν εκδοθεί, και δεν αποθαρρύνουν την πλήρη χρησιμοποίηση των ποσοστώσεων·

(θ) κατά την έκδοση των αδειών, τα μέλη λαμβάνουν υπόψη ότι είναι επιθυμητό να εκδίδονται άδειες που να ανταποκρίνονται σε ποσότητα προϊόντων η οποία παρουσιάζει οικονομικό ενδιαφέρον·

(ι) κατά την κατανομή των αδειών, τα μέλη υποχρεούνται να εξετάζουν τις επιδόσεις του αιτούντα όσον αφορά τις εισαγωγές. Εξετάζεται συγκεκριμένα αν οι άδειες που είχαν χορηγηθεί σε αιτούντες κατά το παρελθόν είχαν χρησιμοποιηθεί στο σύνολό τους κατά τη διάρκεια πρόσφατης αντιπροσωπευτικής περιόδου. Σε περιπτώσεις που οι άδειες δεν χρησιμοποιήθηκαν πλήρως, τα μέλη εξετάζουν τους λόγους που οδήγησαν σ'αυτό και τους λαμβάνουν υπόψη κατά την κατανομή νέων αδειών. Δίδεται επίσης προσοχή στην εξασφάλιση εύλογου αριθμού αδειών υπέρ των νέων εισαγωγέων, λαμβανομένης υπόψη της επιθυμίας έκδοσης αδειών για προϊόντα σε ποσότητες που παρουσιάζουν οικονομικό ενδιαφέρον. Δίδεται σχετικά ιδιαίτερη προσοχή στους εισαγωγείς που εισάγουν προϊόντα καταγωγής αναπτυσσομένων χωρών μελών και, ιδίως, λιγότερο ανεπτυγμένων χωρών μελών.

(κ) στην περίπτωση ποσοστώσεων των οποίων η διαχείριση γίνεται με άδειες και οι οποίες δεν έχουν κατανεμηθεί μεταξύ προμηθευτριών χωρών, οι κάτοχοι αδειών[6] έχουν ελευθερία να επιλέγουν την προέλευση των εισαγόμενων προϊόντων. Στην περίπτωση ποσοστώσεων που έχουν κατανεμηθεί μεταξύ προμηθευτριών χωρών, η άδεια προβλέπει ρητά την ή τις χώρες προέλευσης·

6 Αποκαλούμενοι μερικές φορές "κάτοχοι ποσοστώσεων".

(λ) κατά την εφαρμογή των διατάξεων του άρθρου 1, παράγραφος 8, οι μελλοντικές κατανομές αδειών είναι δυνατό να προσαρμόζονται για να συμψηφίζουν τις εισαγωγές που πραγματοποιήθηκαν καθ'υπέρβαση ενός προηγούμενου επιπέδου αδειών.

Αρθρο 4
Οργανα

Δημιουργείται Επιτροπή Εκδοσης Αδειών Εισαγωγής αποτελούμενη από εκπροσώπους όλων των μελών. Η επιτροπή εκλέγει τον πρόεδρό και τον Αντιπρόεδρό της και συνέρχεται όταν είναι αναγκαίο για να παρέχει στα μέλη τη δυνατότητα να διεξάγουν διαβουλεύσεις για κάθε θέμα σχετικά με τη λειτουργία της συμφωνίας και την επιδίωξη των στόχων της.

Αρθρο 5
Γνωστοποίηση

1. Τα μέλη τα οποία καθιερώνουν διαδικασίες έκδοσης αδειών ή τροποποιούν τέτοιες διαδικασίες γνωστοποιούν τις ενέργειές τους στην επιτροπή εντός 60 ημερών από τη σχετική δημοσίευση.

2. Οι γνωστοποιήσεις σχετικά με την καθιέρωση διαδικασιών έκδοσης αδειών εισαγωγής περιλαμβάνουν τα παρακάτω στοιχεία:

(α) κατάσταση των προϊόντων για τα οποία απαιτείται έκδοση άδειας εισαγωγής·

(β) αρμόδια πρόσωπα για την παροχή πληροφοριών σχετικά με τις προϋποθέσεις επιλεξιμότητας·

(γ) διοικητικό όργανο ή όργανα αρμόδια για την υποβολή των αιτήσεων·

(δ) ημερομηνία και όνομα εντύπου στο οποίο δημοσιεύονται οι διαδικασίες έκδοσης αδειών·

(ε) μνεία σχετικά με το αν πρόκειται για διαδικασία αυτόματης ή μη αυτόματης έκδοσης αδειών, σύμφωνα με τους ορισμούς που δίδονται στα άρθρα 2 και 3·

(στ) στην περίπτωση των διαδικασιών αυτόματης έκδοσης αδειών, αναφορά των διοικητικών λόγων που την επιβάλλουν·

(ζ) στην περίπτωση διαδικασιών μη αυτόματης έκδοσης αδειών, αναφορά του μέτρου που εφαρμόζεται μέσω της εν λόγω διαδικασίας, και

(η) αναμενόμενη διάρκεια της διαδικασίας έκδοσης αδειών, εφόσον αυτή μπορεί να υπολογιστεί με κάποια πιθανότητα· σε αντίθετη περίπτωση, αναφορά των λόγων για τους οποίους δεν είναι δυνατή η παροχή αυτής της πληροφορίας.

3. Οι γνωστοποιήσεις σχετικά με τροποποίηση των διαδικασιών έκδοσης αδειών εισαγωγής είναι ανάγκη να αναφέρουν τα στοιχεία που προαναφέρθηκαν εφόσον αυτά τροποποιούνται.

4. Τα μέλη γνωστοποιούν στην επιτροπή το έντυπο ή τα έντυπα στα οποία πρόκειται να δημοσιευθούν οι πληροφορίες που ζητούνται στο άρθρο 1, παράγραφος 4.

5. Κάθε ενδιαφερόμενο μέλος που θεωρεί ότι κάποιο άλλο μέλος δεν ανακοίνωσε τη θέσπιση διαδικασίας έκδοσης αδειών ή την τροποποίηση αυτής, σύμφωνα με τις διατάξεις των παραγράφων 1 έως 3 μπορεί να γνωστοποιήσει το θέμα στο εν λόγω άλλο μέλος. Αν δεν ακολουθήσει αμέσως μετά γνωστοποίηση, το μέλος αυτό έχει το δικαίωμα να ανακοινώσει το ίδιο τη διαδικασία έκδοσης αδειών ή την τροποποίησή της, συμπεριλαμβανομένης κάθε σχετικής και διαθέσιμης πληροφορίας.

Άρθρο 6
Διαβουλεύσεις και επίλυση διαφορών

Οι διαβουλεύσεις και η επίλυση διαφορών, όσον αφορά οποιοδήποτε θέμα που θίγει τη λειτουργία της παρούσας συμφωνίας, υπόκεινται στις διατάξεις των άρθρων XXII και XXIII της GATT του 1994, όπως διαμορφώθηκαν και ισχύουν στο πλαίσιο του μνημονίου συμφωνίας για την επίλυση των διαφορών.

Άρθρο 7
Επανεξέταση

1. Η επιτροπή επανεξετάζει όταν χρειάζεται, αλλά τουλάχιστον μια φορά ανά διετία, την εφαρμογή και τη λειτουργία της παρούσας συμφωνίας, λαμβάνοντας υπόψη τους στόχους της και τα δικαιώματα και τις υποχρεώσεις που περιέχονται σ'αυτή.

2. Η Γραμματεία ετοιμάζει έκθεση για τα πραγματικά περιστατικά βασισμένη σε πληροφορίες που παρέχονται βάσει του άρθρου 5, σε απαντήσεις στα ερωτήματα που περιλαμβάνονται στο ετήσιο ερωτηματολόγιο για τις διαδικασίες έκδοσης αδειών εισαγωγής[7] και σε άλλες σχετικές έγκυρες πληροφορίες τις οποίες διαθέτει· η έκθεση αυτή αποτελεί τη βάση για την επανεξέταση, ενώ προσφέρει περίληψη των προαναφερθεισών πληροφοριών, αναφέροντας ιδίως τις αλλαγές ή τις εξελίξεις κατά την εξεταζόμενη περίοδο, περιλαμβάνει δε και κάθε άλλη πληροφορία που θα συμφωνηθεί στο πλαίσιο της επιτροπής.

3. Τα μέλη αναλαμβάνουν την υποχρέωση να συμπληρώνουν το ετήσιο ερωτηματολόγιο για τις διαδικασίες έκδοσης αδειών εισαγωγής αμέσως και στο σύνολό του.

4. Η επιτροπή ενημερώνει το Συμβούλιο Εμπορευματικών Συναλλαγών για τις εξελίξεις κατά τη διάρκεια της περιόδου που καλύπτεται από αυτή την επανεξέταση.

Άρθρο 8
Τελικές διατάξεις

Επιφυλάξεις

1. Δεν είναι δυνατό να διατυπωθούν επιφυλάξεις για καμία από τις διατάξεις της παρούσας συμφωνίας χωρίς τη συναίνεση των λοιπών μελών.

Εσωτερική νομοθεσία

2. (α) Κάθε μέλος διασφαλίζει, το αργότερο την ημερομηνία θέσης σε ισχύ της συμφωνίας για τον ΠΟΕ ώς προς αυτό, τη συμμόρφωση των νόμων, κανονισμών και διοικητικών του διαδικασιών με τι διατάξεις της παρούσας συμφωνίας.

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7 Κυκλοφόρησε αρχικά ως έγγραφο της GATT του 1947 L/3515, της 23ης Μαρτίου 1971.

(β) Κάθε μέλος ενημερώνει την επιτροπή για κάθε αλλαγή των νόμων και κανονισμών που βασίζονται στην παρούσα συμφωνία καθώς και για τον τρόπο εφαρμογής των εν λόγω νόμων και κανονισμών.

ΣΥΜΦΩΝΙΑ ΓΙΑ ΤΙΣ ΕΠΙΔΟΤΗΣΕΙΣ ΚΑΙ ΤΑ ΑΝΤΙΣΤΑΘΜΙΣΤΙΚΑ ΜΕΤΡΑ

Τα μέλη συμφωνούν τα ακόλουθα:

ΜΕΡΟΣ Ι: ΓΕΝΙΚΕΣ ΔΙΑΤΑΞΕΙΣ

Άρθρο 1

Ορισμός της έννοιας "επιδότηση"

1.1 Για τους σκοπούς της παρούσας συμφωνίας, γίνεται δεκτό ότι συντρέχει περίπτωση επιδότησης εφόσον:

(α)(1) παρέχεται χρηματοδότηση από το Δημόσιο ή από οποιονδήποτε κρατικό φορέα που λειτουργεί στην επικράτεια ενός μέλους (καλούμενο στην παρούσα συμφωνία "το Δημόσιο"), και ειδικότερα στις ακόλουθες περιπτώσεις:

(i) όταν το Δημόσιο ενεργεί κατά τρόπο που συνεπάγεται άμεση μεταφορά κεφαλαίων (π.χ. υπό μορφή επιχορηγήσεων, δανείων ή εισφοράς στο κεφάλαιο) ή δυνητική άμεση μεταφορά κεφαλαίων ή υποχρεώσεων (π.χ. παροχή εγγύησης για δάνεια)·

(ii) όταν το Δημόσιο παραιτείται από κάποια απαίτηση ή δεν εισπράττει κάποια οφειλή που πρέπει κανονικά να αποδοθεί σε αυτό (π.χ. μέσω της παροχής φορολογικών κινήτρων, όπως είναι οι πιστώσεις φόρου)[1]·

(iii) όταν το Δημόσιο παρέχει αγαθά ή υπηρεσίες, με εξαίρεση τη γενικότερη υποδομή, ή όταν αγοράζει αγαθά·

(iv) όταν το Δημόσιο συνεισφέρει ποσά σε κάποιο σύστημα χρηματοδοτήσεων ή όταν αναθέτει ή δίδει εντολή σε έναν ιδιωτικό φορέα να ενεργήσει μία ή περισσότερες από τις πράξεις που περιγράφονται στις περιπτώσεις (i) έως (iii) ανωτέρω, οι οποίες κανονικά υπάγονται στην αρμοδιότητα του Δημοσίου, και εφόσον η διενέργεια των εν λόγω πράξεων δεν διαφέρει κατ'ουσίαν από τη συνήθη διενέργεια πράξεων εκ μέρους του Δημοσίου·

ή

(α)(2) όταν παρέχεται στήριξη του εισοδήματος ή των τιμών υπό οιαδήποτε μορφή, κατά την έννοια του άρθρου XVI της GATT του 1994·

και

1 Σε συμφωνία με τις διατάξεις του άρθρου XVI της GATT του 1994 (σημείωση στο άρθρο XVI) και με τις διατάξεις των παραρτημάτων I έως III της παρούσας συμφωνίας, δεν θεωρείται μορφή επιδότησης η απαλλαγή ενός εξαγόμενου προϊόντος από δασμούς ή φόρους που επιβαρύνουν το ομοειδές προϊόν, όταν αυτό προορίζεται για εγχώρια κατανάλωση, ούτε η παραίτηση από την είσπραξη τέτοιου είδους δασμών ή φόρων μέχρι ενός ποσού που δεν υπερβαίνει το ύψος της αναλογούσας οφειλής.

(β) με τον τρόπο αυτό προσπορίζεται κάποιο όφελος.

1.2 Επιδότηση, η οποία υπάγεται στον ορισμό της παραγράφου 1, υπόκειται στις διατάξεις του μέρους ΙΙ ή στις διατάξεις του μέρους ΙΙΙ ή V μόνο εφόσον η επιδότηση αυτή έχει ατομικό χαρακτήρα με βάση τις διατάξεις του άρθρου 2.

Άρθρο 2

Ατομικός χαρακτήρας

2.1 Προκειμένου να διαπιστωθεί κατά πόσον μία επιδότηση, η οποία ανταποκρίνεται στον ορισμό του άρθρου 1, παράγραφος 1, παρέχεται ατομικά προς συγκεκριμένη επιχείρηση ή ομάδα επιχειρήσεων ή προς συγκεκριμένο κλάδο παραγωγής ή ομάδα κλάδων παραγωγής (στην παρούσα συμφωνία προς "συγκεκριμένες επιχειρήσεις"), που υπάγεται στην αρμοδιότητα της αρχής που παρέχει την επιδότηση, είναι εφαρμοστέες οι ακόλουθες αρχές:

(α) Μία επιδότηση θεωρείται ότι έχει ατομικό χαρακτήρα, όταν η αρχή που την παρέχει ή η νομοθετική διάταξη βάσει της οποίας ενεργεί η αρχή που παρέχει την επιδότηση ορίζει ρητώς ότι την επιδότηση είναι δυνατό να λάβουν μόνο συγκεκριμένες επιχειρήσεις.

(β) Γίνεται δεκτό ότι μία επιδότηση δεν έχει ατομικό χαρακτήρα, όταν η αρχή που την παρέχει ή η νομοθετική διάταξη βάσει της οποίας ενεργεί η αρχή που παρέχει την επιδότηση θέτει αντικειμενικά κριτήρια ή προϋποθέσεις[2], με βάση τα οποία αποφασίζεται κατά πόσον δεδομένη επιχείρηση δικαιούται να λάβει την επιδότηση, και ορίζει το ύψος της, υπό την προϋπόθεση όμως ότι το δικαίωμα λήψης της επιδότησης γεννάται αυτομάτως και ότι τα σχετικά κριτήρια και προϋποθέσεις τηρούνται απαρεγκλίτως. Τα εφαρμοζόμενα κριτήρια και προϋποθέσεις πρέπει να καθορίζονται σαφώς στον οικείο νόμο, κανονισμό ή άλλο επίσημο έγγραφο, ούτως ώστε να είναι δυνατός ο έλεγχος της εφαρμογής τους.

(γ) Ακόμη και σε περιπτώσεις κατά τις οποίες εκ πρώτης όψεως από την εφαρμογή των αρχών που καθορίζονται στα στοιχεία (α) και (β) προκύπτει ότι δεδομένη επιδότηση δεν έχει ατομικό χαρακτήρα, αλλά υπάρχουν ενδείξεις ότι στην πραγματικότητα η επιδότηση έχει ατομικό χαρακτήρα, είναι δυνατό να συνεκτιμηθούν ορισμένοι άλλοι παράγοντες. Τέτοιοι παράγοντες είναι οι εξής: η αξιοποίηση ενός προγράμματος επιδοτήσεων εκ μέρους περιορισμένου αριθμού συγκεκριμένων επιχειρήσεων· η σε μεγάλο ποσοστό συμμετοχή σε ένα πρόγραμμα επιδοτήσεων συγκεκριμένων επιχειρήσεων· η παροχή δυσανάλογα υψηλών επιδοτήσεων προς συγκεκριμένες επιχειρήσεις· και ο τρόπος με τον οποίο η αρμόδια για την παροχή της επιδότησης αρχή άσκησε τη διακριτική ευχέρεια που διέθετε, προκειμένου να αποφασίσει για την παροχή ή μη επιδότησης.[3] Κατά την εφαρμογή της παρούσας παραγράφου, συνεκτιμάται ο βαθμός διαφοροποίησης των οικονομικών δραστηριοτήτων που υπάγονται στην αρμοδιότητα της αρχής που έχει κάθε φορά την ευθύνη για την παροχή των

2 Με τον όρο "αντικειμενικά κριτήρια ή προϋποθέσεις" νοούνται κριτήρια ή προϋποθέσεις που έχουν ουδέτερο χαρακτήρα, δεν ευνοούν συγκεκριμένες επιχειρήσεις σε βάρος άλλων, στηρίζονται σε οικονομικά δεδομένα και εφαρμόζονται οριζοντίως, όπως είναι π.χ. ο αριθμός των απασχολουμένων ή το μέγεθος της εκάστοτε επιχείρησης.

3 Για τον σκοπό αυτό, λαμβάνονται υπόψη ιδίως στοιχεία σχετικά με τη συχνότητα απόρριψης ή έγκρισης των αιτήσεων παροχής επιδότησης, καθώς και οι λόγοι στους οποίους στηρίζονται οι εν λόγω αποφάσεις.

επιδοτήσεων, καθώς και ο χρόνος που χρειάστηκε για την εφαρμογή του οικείου προγράμματος επιδοτήσεων.

2.2 Εχουν ατομικό χαρακτήρα οι επιδοτήσεις που παρέχονται αποκλειστικά προς συγκεκριμένες επιχειρήσεις, οι οποίες έχουν την έδρα τους σε καθορισμένη γεωγραφική περιοχή, υπαγόμενη στην αρμοδιότητα της αρχής που παρέχει την επιδότηση. Γίνεται δεκτό ότι, για τους σκοπούς της παρούσας συμφωνίας, δεν θεωρείται μορφή επιδότησης ατομικού χαρακτήρα ο καθορισμός ή η μεταβολή φορολογικών συντελεστών γενικής ισχύος από διοικητική αρχή οποιασδήποτε βαθμίδας, η οποία διαθέτει τη σχετική εξουσία.

2.3 Γίνεται δεκτό ότι έχει ατομικό χαρακτήρα κάθε επιδότηση η οποία υπάγεται στις διατάξεις του άρθρου 3.

2.4 Κάθε κρίση σχετικά με τον ατομικό ή μη χαρακτήρα μιας επιδότησης, βάσει των διατάξεων του παρόντος άρθρου, πρέπει να τεκμηριώνεται με σαφήνεια βάσει θετικών αποδεικτικών στοιχείων.

ΜΕΡΟΣ ΙΙ: ΑΠΑΓΟΡΕΥΜΕΝΕΣ ΕΠΙΔΟΤΗΣΕΙΣ

Άρθρο 3

Απαγόρευση

3.1 Με την επιφύλαξη των προβλεπομένων στη συμφωνία για τη γεωργία, απαγορεύονται οι ακόλουθες μορφές επιδοτήσεων, κατά την έννοια του άρθρου 1:

(α) οι επιδοτήσεις για την παροχή των οποίων τίθεται, είτε από το νόμο, είτε στην πράξη[4], ως μόνη ή παράλληλη προϋπόθεση η επίτευξη κάποιας εξαγωγικής επίδοσης, συμπεριλαμβανομένων των μορφών επιδοτήσεων που περιγράφονται στο παράρτημα Ι[5].

(β) οι επιδοτήσεις για την παροχή των οποίων τίθεται, είτε ως μόνη, είτε ως παράλληλη προϋπόθεση, ότι πρέπει να έχουν χρησιμοποιηθεί εγχώρια και όχι εισαγόμενα προϊόντα.

3.2 Τα μέλη δεν επιτρέπεται να προβαίνουν ή να ευμένουν στη χορήγηση των επιδοτήσεων για τις οποίες γίνεται λόγος στην παράγραφο 1.

Άρθρο 4

Μέσα παροχής έννομης προστασίας

4.1 Όποτε ένα μέλος έχει λόγους να πιστεύει ότι κάποιο άλλο μέλος προβαίνει ή εμμένει στην παροχή μιας απαγορευμένης μορφής επιδότησης, το μέλος αυτό δύναται να ζητήσει τη διενέργεια διαβουλεύσεων με το οικείο άλλο μέλος.

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4 Η προϋπόθεση αυτή συντρέχει όταν από τα πραγματικά δεδομένα προκύπτει ότι, και αν ακόμη ο νόμος δεν εξαρτά την παροχή της επιδότησης από την επίτευξη κάποιας εξαγωγικής επίδοσης, ωστόσο στην πράξη η παροχή της συναρτάται από κάποιον πραγματικό ή προσδοκώμενο όγκο εξαγωγών ή από την πραγματοποίηση εσόδων ορισμένου ύψους από εξαγωγές. Το γεγονός καθαυτό ότι δεδομένη επιδότηση παρέχεται προς επιχειρήσεις που πραγματοποιούν εξαγωγές δεν αρκεί από μόνο του για να της προσδώσει το χαρακτήρα εξαγωγικής επιδοτήσεως κατά την έννοια της παρούσας διάταξης.

5 Δεν απαγορεύονται βάσει της παρούσας ή οποιασδήποτε άλλης διάταξης της παρούσας συμφωνίας τα μέτρα για τα οποία ορίζεται στο παράρτημα Ι ότι δεν αποτελούν μορφές εξαγωγικών επιδοτήσεων.

4.2 Στην αίτηση για τη διενέργεια διαβουλεύσεων, η οποία υποβάλλεται βάσει της παραγράφου 1, πρέπει να μνημονεύονται τα διαθέσιμα αποδεικτικά στοιχεία, τα οποία έχουν σχέση με την ύπαρξη και το χαρακτήρα της επίμαχης επιδότησης.

4.3 Εφόσον υποβληθεί αίτηση για τη διενέργεια διαβουλεύσεων βάσει της παραγράφου 1, το μέλος για το οποίο υπάρχουν ενδείξεις ότι προβαίνει ή εμμένει στην παροχή της επίμαχης επιδότησης φροντίζει για την έναρξη των σχετικών διαβουλεύσεων το συντομότερο δυνατόν. Σκοπός των διαβουλεύσεων είναι η αποσαφήνιση των πραγματικών δεδομένων της υπόθεσης και η εξεύρεση αμοιβαία αποδεκτής λύσης.

4.4 Σε περίπτωση που δεν επιτευχθεί αμοιβαία αποδεκτή λύση εντός 30 ημερών[6] από την υποβολή της αίτησης για τη διενέργεια διαβουλεύσεων, οποιοδήποτε από τα μέλη που μετέχουν στις διαβουλεύσεις αυτές δύναται να παραπέμψει το θέμα στο Όργανο Επίλυσης Διαφορών ("ΟΕΔ") με αίτημα την άμεση συγκρότηση ειδικής ομάδας (πάνελ), εκτός αν το ΟΕΔ ταχθεί με ομόφωνη απόφασή του κατά της συγκρότησης ειδικής ομάδας.

4.5 Αφ' ης στιγμής συγκροτηθεί, η ειδική ομάδα δύναται να ζητήσει τη συνδρομή της Διαρκούς Ομάδας Εμπειρογνωμόνων[7] (η οποία καλείται στην παρούσα συμφωνία "ΔΟΕ"), προκειμένου να αποφασισθεί κατά πόσον το επίμαχο μέτρο αποτελεί απαγορευμένη μορφή επιδότησης. Εφόσον της υποβληθεί σχετικό αίτημα, η ΔΟΕ εξετάζει πάραυτα τα αποδεικτικά στοιχεία τα σχετικά με την ύπαρξη και το χαρακτήρα του επίμαχου μέτρου και παρέχει τη δυνατότητα στο μέλος το οποίο προβαίνει ή εμμένει στην εφαρμογή του μέτρου να αποδείξει ότι το εν λόγω μέτρο δεν αποτελεί απαγορευμένη μορφή επιδότησης. Η ΔΟΕ διαβιβάζει τα συμπεράσματά της στην ειδική ομάδα εντός προθεσμίας που έχει καθορίσει αυτή η τελευταία. Τα συμπεράσματα της ΔΟΕ σχετικά με το κατά πόσον το επίμαχο μέτρο αποτελεί ή όχι απαγορευμένη μορφή επιδότησης γίνονται δεκτά από την ειδική ομάδα χωρίς τροποποιήσεις.

4.6 Η ειδική ομάδα υποβάλλει την τελική της έκθεση στα διάδικα μέλη. Η έκθεση κοινοποιείται στο σύνολο των μελών εντός 90 ημερών από την ημερομηνία συγκρότησης της ειδικής ομάδας και καθορισμού των καθηκόντων της.

4.7 Σε περίπτωση που διαπιστωθεί ότι το επίμαχο μέτρο αποτελεί απαγορευμένη μορφή επιδότησης, η ειδική ομάδα συστήνει στο μέλος που παρέχει την επιδότηση να την καταργήσει αμελλητί. Για τον σκοπό αυτό, η ειδική ομάδα καθορίζει, όταν διατυπώνει τη σύστασή της, προθεσμία εντός της οποίας πρέπει να καταργηθεί το μέτρο.

4.8 Εντός 30 ημερών από την κοινοποίηση της έκθεσης και ειδικής ομάδας προς το σύνολο των μελών, το ΟΕΔ εγκρίνει την έκθεση, εκτός αν κάποιο από τα διάδικα μέλη ενημερώσει επίσημα το ΟΕΔ σχετικά με την απόφασή του να ασκήσει έφεση ή αν το ΟΕΔ αποφασίσει ομόφωνα να μην εγκρίνει την έκθεση.

4.9 Σε περίπτωση άσκησης έφεσης κατά της έκθεσης της ειδικής ομάδας, το δευτεροβάθμιο δικαιοδοτικό όργανο εκδίδει την απόφασή του σχετικά εντός 30 ημερών από την ημερομηνία κατά την οποία το οικείο διάδικο μέλος γνωστοποίησε επίσημα την πρόθεσή του να ασκήσει έφεση. Σε περίπτωση που το δευτεροβάθμιο δικαιοδοτικό όργανο θεωρεί ότι δεν είναι σε θέση να εκδώσει την έκθεσή του εντός 30 ημερών, ενημερώνει γραπτώς το ΟΕΔ σχετικά με τους λόγους της καθυστέρησης, ενώ παράλληλα αναφέρει

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6 Κάθε προθεσμία που τάσσεται στο παρόν άρθρο είναι δυνατό να παρατείνεται με αμοιβαία συμφωνία.

7 Τα σχετικά με τη σύσταση του εν λόγω οργάνου προβλέπονται από το άρθρο 24.

κατά προσέγγιση το χρονικό διάστημα που θα χρειασθεί μέχρι την υποβολή της έκθεσης. Η διαδικασία δεν επιτρέπεται σε καμία περίπτωση να υπερβεί τις 60 ημέρες. Η έκθεση του δευτεροβάθμιου δικαιοδοτικού οργάνου εγκρίνεται από το ΟΕΔ και γίνεται άνευ όρων αποδεκτή από τους διαδίκους εκτός αν το ΟΕΔ αποφασίσει με συναίνεση να μην εγκρίνει την έκθεση του δευτεροβάθμιου δικαιοδοτικού οργάνου εντός 20 ημερών από την κοινοποίησή της στα μέλη.[8]

4.10 Σε περίπτωση που η σύσταση την οποία έχει διατυπώσει το ΟΕΔ δεν υλοποιηθεί εντός της προθεσμίας που έχει τάξει για το σκοπό αυτό η ειδική ομάδα η οποία άρχεται από την ημερομηνία έγκρισης της έκθεσης της ειδικής ομάδας ή της έκθεσης του δευτεροβάθμιου δικαιοδοτικού οργάνου, το ΟΕΔ παρέχει έγκριση στο καταγγέλλον μέλος για τη λήψη των κατάλληλων[9] αντιμέτρων, εκτός αν το ΟΕΔ απορρίψει το σχετικό αίτημα με συναίνεση.

4.11 Σε περίπτωση που ένα διάδικο μέλος ζητεί τη διεξαγωγή διαιτησίας βάσει του άρθρου 22, παράγραφος 6 του Μνημονίου Συμφωνίας για την Επίλυση των Διαφορών ("ΜΣΕΔ"), ο διαιτητής αποφαίνεται σχετικά με την καταλληλότητα ή μη των αντιμέτρων.[10]

4.12 Για τους σκοπούς των διαδικασιών επίλυσης διαφορών, οι οποίες διεξάγονται δυνάμει του παρόντος άρθρου, εξαιρουμένων των προθεσμιών που ορίζονται ρητώς στο παρόν άρθρο, οι προθεσμίες που ισχύουν βάσει του ΜΣΕΔ για τη διεξαγωγή των εν λόγω διαδικασιών ισούται με το ήμισυ των προθεσμιών που καθορίζονται στο προαναφερθέν κείμενο.

ΜΕΡΟΣ ΙΙΙ: ΕΠΙΔΟΤΗΣΕΙΣ ΓΙΑ ΤΙΣ ΟΠΟΙΕΣ ΕΙΝΑΙ ΔΥΝΑΤΟ ΝΑ ΖΗΤΗΘΕΙ ΕΝΝΟΜΗ ΠΡΟΣΤΑΣΙΑ

Άρθρο 5

Αρνητικές συνέπειες

Απαγορεύεται στα μέλη να βλάπτουν τα συμφέροντα των υπολοίπων μελών παρέχοντας οποιαδήποτε από τις επιδοτήσεις για τις οποίες γίνεται λόγος στο άρθρο 1, παράγραφοι 1 και 2. Ειδικότερα, απαγορεύεται στα μέλη:

(α) να προξενούν ζημία στον εγχώριο κλάδο παραγωγής κάποιου άλλου μέλους[11].

(β) να αναιρούν ολικώς ή μερικώς τα οφέλη που απορρέουν αμέσως ή εμμέσως για τα υπόλοιπα μέλη βάσει της GATT του 1994, και ειδικότερα τα οφέλη που προκύπτουν από τις παραχωρήσεις τις

8 Σε περίπτωση που δεν έχει προγραμματισθεί κάποια συνεδρίαση του ΟΕΔ για το εν λόγω χρονικό διάστημα, το ΟΕΔ συγκαλείται επί τούτου.

9 Ο όρος αυτός δεν σημαίνει ότι επιτρέπονται αντίμετρα δυσανάλογης βαρύτητας με βάση το γεγονός ότι οι παρούσες διατάξεις αφορούν απαγορευμένες μορφές επιδοτήσεων.

10 Ο όρος αυτός δεν σημαίνει ότι επιτρέπονται αντίμετρα δυσανάλογης βαρύτητας με βάση το γεγονός ότι οι παρούσες διατάξεις αφορούν απαγορευμένες μορφές επιδοτήσεων.

11 Ο όρος "ζημία στον εγχώριο κλάδο παραγωγής" έχει εδώ την ίδια έννοια με αυτήν που του αποδίδεται στο μέρος V.

οποίες τα μέλη αποδέχονται βάσει του άρθρου ΙΙ της GATT του 1994[12].

(γ) να προξενούν σοβαρή ζημία στα συμφέροντα κάποιου άλλου μέλους[13].

Το παρόν άρθρο δεν ισχύει προκειμένου περί των επιδοτήσεων που εξακολουθούν να παρέχονται για τα γεωργικά προϊόντα, όπως προβλέπει το άρθρο 13 της συμφωνίας για τη γεωργία.

Άρθρο 6

Σοβαρή ζημία

6.1 Σοβαρή ζημία κατά την έννοια του άρθρου 5, παράγραφος (γ) γίνεται δεκτό ότι προξενείται στις ακόλουθες περιπτώσεις:

(α) όταν η συνολική κατ' αξίαν επιδότηση[14] ενός προϊόντος υπερβαίνει το 5%[15].

(β) σε περιπτώσεις επιδοτήσεων προς κάλυψη των απωλειών εκμετάλλευσης που έχει υποστεί ένας κλάδος παραγωγής·

(γ) σε περιπτώσεις επιδοτήσεων προς κάλυψη των απωλειών εκμετάλλευσης που έχει υποστεί μία επιχείρηση, εκτός αν πρόκειται για μέτρα που λαμβάνονται εφάπαξ και έχουν έκτακτο χαρακτήρα, τα οποία δεν είναι δυνατό να εφαρμοσθούν εκ νέου ως προς την ίδια επιχείρηση και τα οποία εφαρμόζονται με αποκλειστικό σκοπό την παραχώρηση χρόνου για την εξεύρεση μακροπρόθεσμων λύσεων και για την αποτροπή σχέων κοινωνικών προβλημάτων·

(δ) σε περιπτώσεις άμεσης άφεσης χρέους, και συγκεκριμένα άφεσης κάποιου χρέους που οφείλεται στο Δημόσιο ή μη επιστρεπτέων ενισχύσεων που παρέχονται για την αποπληρωμή κάποιου δανείου.[16]

6.2 Κατά παρέκκλιση των διατάξεων της παραγράφου 1, γίνεται δεκτό ότι δεν έχει προκληθεί σοβαρή ζημία αν το μέλος που παρέχει την επίμαχη επιδότηση αποδεικνύει ότι η επιδότηση αυτή δεν έχει προκαλέσει καμία από τις συνέπειες που απαριθμούνται στην παράγραφο 3.

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12 Ο όρος "αναιρούν ολικώς ή μερικώς" χρησιμοποιείται στην παρούσα συμφωνία με την ίδια έννοια με την οποία χρησιμοποιείται στις αντίστοιχες διατάξεις της GATT του 1994, ενώ για να διαπιστωθεί κατά πόσον υπάρχει ολική ή μερική αναίρεση εφαρμόζεται η ίδια μέθοδος που ακολουθείται και για την εφαρμογή των εν λόγω διατάξεων.

13 Ο όρος "σοβαρή ζημία στα συμφέροντα κάποιου άλλου μέλους" χρησιμοποιείται στην παρούσα συμφωνία με την ίδια έννοια με την οποία χρησιμοποιείται στο άρθρο XVI, παράγραφος 1 της GATT του 1994, και περιλαμβάνει την έννοια του κινδύνου πρόκλησης σοβαρής ζημίας.

14 Η συνολική κατ' αξίαν επιδότηση υπολογίζεται σύμφωνα με τις διατάξεις του παραρτήματος IV.

15 Το κατώτατο όριο που καθορίζεται στην παρούσα παράγραφο δεν ισχύει για τα αεροσκάφη πολιτικής αεροπορίας, δεδομένου ότι αυτά αναμένεται να υπαχθούν σε ειδικούς πολυμερείς κανόνες.

16 Τα μέλη συμφωνούν ότι, όταν ένα δάνειο που έχει χορηγηθεί με ευνοϊκούς όρους για τη χρηματοδότηση προγράμματος του τομέα αεροσκαφών πολιτικής αεροπορίας δεν αποπληρώνεται ολοσχερώς εξαιτίας του ότι οι πραγματικές πωλήσεις υπολείπονται των προβλέψεων που είχαν πραγματοποιηθεί για τις πωλήσεις, το γεγονός αυτό δεν συνεπάγεται από μόνο του την πρόκληση σοβαρής ζημίας στο πλαίσιο εφαρμογής της παρούσας παραγράφου.

6.3 Σοβαρή ζημία κατά την έννοια του άρθρου 5, παράγραφος (γ) ενδέχεται να προκαλείται εν πάση περιπτώσει όταν συντρέχει μία ή περισσότερες από τις παρακάτω περιστάσεις:

(α) η επιδότηση έχει ως συνέπεια την υποκατάσταση ή την παρεμπόδιση των εισαγωγών κάποιου ομοειδούς προϊόντος από ένα άλλο μέλος στην αγορά του επιδοτούντος μέλους·

(β) η επιδότηση έχει ως συνέπεια την υποκατάσταση ή την παρεμπόδιση των εισαγωγών κάποιου ομοειδούς προϊόντος ενός άλλου μέλους από την αγορά κάποιας τρίτης χώρας·

(γ) η επιδότηση έχει ως συνέπεια την πώληση του επιδοτούμενου προϊόντος σε τιμή αισθητά χαμηλότερη από την τιμή κάποιου ομοειδούς προϊόντος ενός άλλου μέλους στην ίδια αγορά ή δυσχεραίνει σημαντικά την αύξηση των τιμών ή οδηγεί σε συμπίεση των τιμών ή σε απώλεια πωλήσεων στην ίδια αγορά·

(δ) η επιδότηση έχει ως συνέπεια την αύξηση του μεριδίου που κατέχει το επιδοτούν μέλος στην παγκόσμια αγορά ενός συγκεκριμένου επιδοτούμενου προϊόντος ή αγαθού του πρωτογενούς τομέα[17] εν συγκρίσει με τον μέσο όρο του μεριδίου που το μέλος αυτό κατείχε κατά την προηγούμενη τριετία, ενώ η αύξηση αυτή έχει ακολουθήσει σταθερή πορεία για χρονικό διάστημα κατά το οποίο χορηγούνταν επιδοτήσεις.

6.4 Στο πλαίσιο εφαρμογής της παραγράφου 3, στοιχείο β), στις περιπτώσεις υποκατάστασης ή παρεμπόδισης εξαγωγών υπάγεται και κάθε περίπτωση κατά την οποία, με την επιφύλαξη των διατάξεων της παραγράφου 7, αποδεικνύεται ότι έχει σημειωθεί μεταβολή των αναλογούντων μεριδίων αγοράς εις βάρος του μη επιδοτούμενου ομοειδούς προϊόντος (για χρονικό διάστημα αρκετά μακρύ, ώστε να είναι αντιπροσωπευτικό και να μπορεί να χρησιμοποιηθεί ως βάση για τον σαφή καθορισμό της κατεύθυνσης προς την οποία κινείται η αγορά του εκάστοτε προϊόντος· το χρονικό αυτό διάστημα δεν είναι δυνατό, υπό κανονικές συνθήκες, να είναι κατώτερο του ενός έτους). Στον όρο "μεταβολή των αναλογούντων μεριδίων αγοράς" υπάγεται οποιαδήποτε από τις ακόλουθες καταστάσεις: (α) όταν έχει σημειωθεί αύξηση του μεριδίου αγοράς του επιδοτούμενου προϊόντος· (β) όταν το μερίδιο αγοράς του επιδοτούμενου προϊόντος διατηρείται σταθερό υπό συνθήκες οι οποίες, αν το εν λόγω προϊόν δεν επιδοτείτο, θα είχαν προκαλέσει τη μείωση του μεριδίου αγοράς του· (γ) όταν το μερίδιο αγοράς του επιδοτούμενου προϊόντος σημειώνει μεν πτώση, αλλά με ρυθμό βραδύτερο από αυτόν που θα ίσχυε αν το εν λόγω προϊόν δεν επιδοτείτο.

6.5 Στο πλαίσιο εφαρμογής της παραγράφου 3, στοιχείο γ), στις περιπτώσεις πραγματοποίησης πωλήσεων σε χαμηλότερες τιμές υπάγεται και κάθε περίπτωση κατά την οποία η πραγματοποίηση τέτοιων πωλήσεων αποδεικνύεται μέσω της σύγκρισης των τιμών του επιδοτούμενου προϊόντος με τις τιμές κάποιου μη επιδοτούμενου ομοειδούς προϊόντος, το οποίο διατίθεται στην ίδια αγορά. Η σύγκριση πρέπει να αφορά το ίδιο στάδιο εμπορίας και ανάλογα χρονικά σημεία, λαμβανομένου υπόψη οποιουδήποτε άλλου παράγοντα που επηρεάζει τη συγκρισιμότητα των τιμών. Εντούτοις, αν δεν είναι εφικτή μια τέτοια άμεση σύγκριση, η πραγματοποίηση πωλήσεων σε χαμηλότερες τιμές είναι δυνατό να αποδεικνύεται με βάση τις τιμές μονάδας κατά την εξαγωγή.

17 Εκτός αν για τις συναλλαγές με αντικείμενο το συγκεκριμένο προϊόν ή αγαθό είναι εφαρμοστέοι άλλοι ειδικοί κανόνες, οι οποίοι έχουν συμφωνηθεί σε πολυμερές επίπεδο.

6.6 Με την επιφύλαξη των διατάξεων της παραγράφου 3 του παραρτήματος V, κάθε μέλος στην αγορά του οποίου υποτίθεται ότι έχει προκληθεί σοβαρή ζημία παρέχει στα μέλη που συμμετέχουν σε διαδικασία επίλυσης διαφοράς κατ'εφαρμογήν του άρθρου 7, καθώς και στην ειδική ομάδα που έχει συγκροτηθεί δυνάμει του άρθρου 7, παράγραφος 4 όλα τα συναφή στοιχεία που είναι δυνατό να συγκεντρώσει όσον αφορά τις αυξομειώσεις των μεριδίων αγοράς των διαδίκων μελών, καθώς και τις τιμές των προϊόντων τα οποία αφορά η διαδικασία.

6.7 Γίνεται δεκτό ότι, βάσει της παραγράφου 3 δεν έχει προκληθεί σοβαρή ζημία συνεπεία της υποκατάστασης ή παρεμπόδισης εξαγωγών, όταν κατά το κρίσιμο χρονικό διάστημα συντρέχει μία ή περισσότερες από τις ακόλουθες περιστάσεις[18]:

(α) απαγόρευση ή θέση περιορισμών επί των εξαγωγών του ομοειδούς προϊόντος από το καταγγέλλον μέλος ή επί των εισαγωγών που προέρχονται από το καταγγέλλον μέλος και προορίζονται για την αγορά της οικείας τρίτης χώρας·

(β) απόφαση των αρχών του εισάγοντος μέλους, στο οποίο ισχύει εμπορικό μονοπώλιο ή σύστημα κρατικού εμπορίου όσον αφορά το οικείο προϊόν, να υποκαταστήσει για λόγους μη εμπορικούς τις εισαγωγές από το καταγγέλλον μέλος με εισαγωγές από άλλη χώρα ή χώρες·

(γ) θεομηνίες, απεργίες, προβλήματα στις μεταφορές ή άλλα γεγονότα ανωτέρας βίας, τα οποία έχουν σοβαρές συνέπειες για την παραγωγή, τις ποιότητες, τις ποσότητες ή τις τιμές του προϊόντος που διατίθεται προς εξαγωγή από το καταγγέλλον μέλος·

(δ) ύπαρξη διακανονισμών για τον περιορισμό των εξαγωγών του καταγγέλλοντος μέλους·

(ε) εκούσια μείωση των ποσοτήτων του οικείου προϊόντος οι οποίες διατίθενται προς εξαγωγή από το καταγγέλλον μέλος (συμπεριλαμβανομένης, μεταξύ άλλων, της περίπτωσης κατά την οποία επιχειρήσεις του καταγγέλλοντος μέλους προβαίνουν με ανεξάρτητη απόφασή τους στη διοχέτευση των εξαγωγών του οικείου προϊόντος προς νέες αγορές)·

(στ) αδυναμία συμμόρφωσης προς τα πρότυπα και τις λοιπές απαιτήσεις κανονιστικού χαρακτήρα που ισχύουν στη χώρα εισαγωγής.

6.8 Εφόσον δεν συντρέχει κάποια από τις περιστάσεις που μνημονεύονται στην παράγραφο 7, η πρόκληση ή μη σοβαρής ζημίας διαπιστώνεται με βάση τα στοιχεία που έχουν υποβληθεί στην ειδική ομάδα ή συγκεντρωθεί από αυτήν, συμπεριλαμβανομένων των στοιχείων που υποβάλλονται δυνάμει των διατάξεων του παραρτήματος V.

6.9 Το παρόν άρθρο δεν ισχύει προκειμένου περί των επιδοτήσεων που εξακολουθούν να παρέχονται για τα γεωργικά προϊόντα, όπως προβλέπει το άρθρο 13 της συμφωνίας για τη γεωργία.

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18 Το γεγονός ότι στην παρούσα παράγραφο μνημονεύονται ορισμένες περιστάσεις δεν προσδίδει από μόνο του στις περιστάσεις αυτές κάποια νομική σημασία, είτε βάσει της GATT του 1994, είτε βάσει της παρούσας συμφωνίας. Οι περιστάσεις αυτές δεν πρέπει να είναι μεμονωμένες, ούτε να παρατηρούνται ανά αραιά χρονικά διαστήματα, ούτε να στερούνται βαρύτητας για οποιονδήποτε λόγο.

Άρθρο 7

Μέσα παροχής έννομης προστασίας

7.1 Με την επιφύλαξη των διατάξεων του άρθρου 13 της συμφωνίας για τ γεωργία, όποτε ένα μέλος έχει λόγους να πιστεύει ότι ένα άλλο μέλος προβαίνει ή εμμένει στην παροχή οποιασδήποτε από τις επιδοτήσεις γι τις οποίες γίνεται λόγος στο άρθρο 1, με αποτέλεσμα την πρόκληση ζημίας στον εγχώριο κλάδο παραγωγής του εν λόγω μέλους, την ολική ή μερικ αναίρεση των ωφελειών που απορρέουν γι' αυτό ή την πρόκληση σοβαρής ζημίας, το εν λόγω μέλος δύναται να ζητήσει τη διεξαγωγή διαβουλεύσεω με το εκάστοτε άλλο μέλος.

7.2 Στην αίτηση για τη διενέργεια διαβουλεύσεων, η οποία υποβάλλετα βάσει της παραγράφου 1, πρέπει να μνημονεύονται τα διαθέσιμα αποδεικτικά στοιχεία, τα οποία έχουν σχέση: (α) με την ύπαρξη και τ χαρακτήρα της επίμαχης επιδότησης, και (β) με τη ζημία που έχε προκληθεί στον εγχώριο κλάδο παραγωγής, την ολική ή μερική αναίρεση τ ωφελειών ή την πρόκληση σοβαρής ζημίας[19] στα συμφέροντα του μέλους πο ζητεί τη διενέργεια διαβουλεύσεων.

7.3 Σφόσον υποβληθεί αίτηση για τη διενέργεια διαβουλεύσεων βάσει τ παραγράφου 1, το μέλος για το οποίο υπάρχουν ενδείξεις ότι προβαίνει ή εμμένει στην επίμαχη πρακτική επιδοτήσεων φροντίζει για την έναρξη τω σχετικών διαβουλεύσεων το συντομότερο δυνατόν. Σκοπός των διαβουλεύσεω είναι η αποσαφήνιση των πραγματικών δεδομένων της υπόθεσης και η εξεύρεση αμοιβαία αποδεκτής λύσης.

7.4 Σε περίπτωση που δεν επιτευχθεί αμοιβαία αποδεκτή λύση εντός 6 ημερών[20], οποιοδήποτε από τα μέλη που μετέχουν στις διαβουλεύσει αυτές δύναται να παραπέμψει το θέμα στο ΟΕΔ με αίτημα τη συγκρότηση ειδικής ομάδας, εκτός αν το ΟΕΔ ταχθεί με ομόφωνη απόφασή του κατά τη συγκρότησης ειδικής ομάδας. Η σύνθεση της ειδικής ομάδας, καθώς και τα καθήκοντά της αποφασίζονται εντός 15 ημερών από την ημερομηνία συγκρότησής της.

7.5 Η ειδική ομάδα εξετάζει την υπόθεση και υποβάλλει την τελική της έκθεση προς τα διάδικα μέλη. Η έκθεση κοινοποιείται στο σύνολο τω μελών εντός 120 ημερών από την ημερομηνία συγκρότησης της ειδικής ομάδας και καθορισμού των καθηκόντων της.

7.6 Εντός 30 ημερών από την κοινοποίηση της έκθεσης της ειδικής ομάδας στο σύνολο των μελών, το ΟΕΔ εγκρίνει την έκθεση[21], εκτός αν κάπο από τα διάδικα μέλη ενημερώσει επίσημα το ΟΕΔ σχετικά με την απόφασή του να ασκήσει έφεση ή αν το ΟΕΔ αποφασίσει ομόφωνα να μην εγκρίνει την έκθεση.

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19 Σε περίπτωση που η αίτηση αφορά κάποια επιδότηση, η οποία υποτίθεται ότι προκαλεί σοβαρή ζημία κατά την έννοια του άρθρου 6, παράγραφος 1, η υποχρέωση υποβολής των διαθέσιμων αποδεικτικών στοιχείων αναφορικά με την πρόκληση σοβαρής ζημίας είναι δυνατό να περιορίζεται στα διαθέσιμα αποδεικτικά στοιχεία τα σχετικά με το κατά πόσον πληρούνται ή όχι οι προϋποθέσεις του άρθρου 6, παράγραφος 1.

20 Κάθε προθεσμία που τάσσεται στο παρόν άρθρο είναι δυνατό να παρατείνεται με αμοιβαία συμφωνία.

21 Σε περίπτωση που δεν έχει προγραμματισθεί κάποια συνεδρίαση του ΟΕΔ για το εν λόγω χρονικό διάστημα, το ΟΕΔ συγκαλείται επί τούτου.

7.7 Σε περίπτωση άσκησης έφεσης κατά της έκθεσης της ειδικής ομάδας, το δευτεροβάθμιο δικαιοδοτικό όργανο εκδίδει την απόφασή του σχετικά εντός 60 ημερών από την ημερομηνία κατά την οποία το οικείο διάδικο μέλος γνωστοποίησε επίσημα την πρόθεσή του να ασκήσει έφεση. Σε περίπτωση που το δευτεροβάθμιο δικαιοδοτικό όργανο θεωρεί ότι δεν είναι σε θέση να εκδώσει την έκθεσή του εντός 60 ημερών, ενημερώνει γραπτώς το ΟΕΔ σχετικά με τους λόγους της καθυστέρησης, ενώ παράλληλα αναφέρει κατά προσέγγιση το χρονικό διάστημα που θα χρειασθεί μέχρι την υποβολή της έκθεσης. Η διαδικασία δεν επιτρέπεται σε καμία περίπτωση να απαιτήσει χρονικό διάστημα μεγαλύτερο των 90 ημερών. Η έκθεση του δευτεροβάθμιου δικαιοδοτικού οργάνου εγκρίνεται από το ΟΕΔ και γίνεται ανεπιφύλακτα δεκτή από τα διάδικα μέλη, εκτός αν το ΟΕΔ αποφασίσει ομόφωνα να μην εγκρίνει την έκθεση του δευτεροβάθμιου δικαιοδοτικού οργάνου εντός 20 ημερών από την κοινοποίησή της στα μέλη[22].

7.8 Όταν εγκρίνεται έκθεση της ειδικής ομάδας ή του δευτεροβάθμιου δικαιοδοτικού οργάνου, στην οποία διατυπώνεται το συμπέρασμα ότι δεδομένη επιδότηση έχει προκαλέσει βλάβη στα συμφέροντα κάποιου άλλου μέλους κατά την έννοια του άρθρου 5, το μέλος το οποίο προβαίνει ή εμμένει στην παροχή της επιδότησης λαμβάνει τα κατάλληλα μέτρα, ούτως ώστε να εξαλειφθούν οι αρνητικές της συνέπειες ή καταργεί την επιδότηση.

7.9 Σε περίπτωση που το οικείο μέλος δεν έχει λάβει τα κατάλληλα μέτρα με σκοπό την εξάλειψη των αρνητικών συνεπειών της επιδότησης ή δεν έχει προβεί στην κατάργησή της εντός έξι μηνών από την ημερομηνία έγκρισης της έκθεσης της ειδικής ομάδας ή της έκθεσης του δευτεροβάθμιου δικαιοδοτικού οργάνου εκ μέρους του ΟΕΔ, και εφόσον δεν υπάρχει κάποια συμφωνία για την καταβολή αποζημίωσης, το ΟΕΔ παρέχει άδεια στο καταγγέλλον μέλος για τη λήψη των κατάλληλων αντιμέτρων, τα οποία πρέπει να είναι ανάλογα της σοβαρότητας και του χαρακτήρα των αρνητικών συνεπειών που έχουν διαπιστωθεί, εκτός αν το ΟΕΔ απορρίψει το σχετικό αίτημα με συναίνεση.

7.10 Σε περίπτωση που ένα διάδικο μέλος έχει προσφύγει σε διαιτησία δυνάμει του άρθρου 22, παράγραφος 6 του ΜΣΕΔ, ο διαιτητής κρίνει κατά πόσον τα αντίμετρα ανταποκρίνονται στη βαρύτητα και το χαρακτήρα των αρνητικών συνεπειών που έχει διαπιστωθεί ότι προκαλούνται.

ΜΕΡΟΣ IV: ΕΠΙΔΟΤΗΣΕΙΣ ΓΙΑ ΤΙΣ ΟΠΟΙΕΣ ΔΕΝ ΕΙΝΑΙ ΔΥΝΑΤΟ ΝΑ ΖΗΤΗΘΕΙ ΕΝΝΟΜΗ ΠΡΟΣΤΑΣΙΑ

Άρθρο 8

Καθορισμός των επιδοτήσεων για τις οποίες δεν είναι δυνατό να ζητηθεί έννομη προστασία

8.1 Γίνεται δεκτό ότι δεν είναι δυνατό να ζητηθεί έννομη προστασία σε σχέση με τις ακόλουθες περιπτώσεις επιδοτήσεων[23]:

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22 Σε περίπτωση που δεν έχει προγραμματισθεί κάποια συνεδρίαση του ΟΕΔ για το εν λόγω χρονικό διάστημα, το ΟΕΔ συγκαλείται επί τούτου.

23 Γίνεται δεκτό ότι στα μέλη συνηθίζεται ευρέως η παροχή βοήθειας από το Δημόσιο για διάφορους σκοπούς και ότι το γεγονός και μόνο ότι συγκεκριμένη βοήθεια αυτής της μορφής είναι πιθανό να μην πληροί τις προϋποθέσεις που πρέπει να συντρέχουν προκειμένου μία επιδότηση να μην είναι δυνατό να αποτελέσει αντικείμενο αίτησης παροχής έννομης προστασίας βάσει των διατάξεων του παρόντος άρθρου δεν περιστέλλει αφ' εαυτού τη δυνατότητα των μελών να παρέχουν βοήθεια αυτής της μορφής.

(α) επιδοτήσεις που δεν έχουν ατομικό χαρακτήρα κατά την έννοια του άρθρου 2·

(β) επιδοτήσεις που έχουν μεν ατομικό χαρακτήρα κατά την έννοια του άρθρου 2, αλλά οι οποίες ανταποκρίνονται στο σύνολο των προϋποθέσεων που προβλέπονται στην παράγραφο 2 στοιχεία α), β) ή γ) κατωτέρω.

3.2 Κατά παρέκκλιση των διατάξεων του μέρους ΙΙΙ και του μέρους V, δεν είναι δυνατό να ζητηθεί έννομη προστασία έναντι των ακόλουθων περιπτώσεων επιδοτήσεων:

(α) περιπτώσεις βοήθειας που παρέχεται για ερευνητικές δραστηριότητες επιχειρήσεων ή ανώτερων εκπαιδευτικών ή ερευνητικών ιδρυμάτων, στο πλαίσιο συμβάσεων που έχουν συναφθεί με εταιρείες, υπό την προϋπόθεση ότι[24,25,26]:

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24 Οι διατάξεις της παρούσας παραγράφου δεν ισχύουν για τα αεροσκάφη πολιτικής αεροπορίας, δεδομένου ότι αυτά αναμένεται να υπαχθούν σε ειδικούς πολυμερείς κανόνες.

25 Το αργότερο 18 μήνες από την ημερομηνία έναρξης ισχύος της συμφωνίας για τον ΠΟΕ, η επιτροπή για τις επιδοτήσεις και τα αντισταθμιστικά μέτρα, η οποία προβλέπεται από το άρθρο 24 (καλούμενη στην παρούσα συμφωνία "η επιτροπή"), προβαίνει σε εξέταση της εφαρμογής των διατάξεων της παραγράφου 2, στοιχείο α), σκοπός της οποίας είναι η διενέργεια όλων των απαραίτητων τροποποιήσεων προς την κατεύθυνση της βελτίωσης της εφαρμογής των εν λόγω διατάξεων. Όταν μελετά το ενδεχόμενο διενέργειας ορισμένων τροποποιήσεων, η επιτροπή εξετάζει προσεκτικά τους ορισμούς των διαφόρων κατηγοριών που δίδονται στην παρούσα παράγραφο, συνεκτιμώντας για τον σκοπό αυτό την πείρα που τα μέλη έχουν αποκτήσει όσον αφορά την υλοποίηση ερευνητικών προγραμμάτων, καθώς και το έργο που επιτελείται στο πλαίσιο άλλων συναφών διεθνών οργανισμών.

26 Οι διατάξεις της παρούσας συμφωνίας δεν ισχύουν προκειμένου περί εργασιών βασικής έρευνας που διεξάγονται σε ανεξάρτητη βάση από ανώτερα εκπαιδευτικά ή ερευνητικά ιδρύματα. Ο όρος "βασική έρευνα" σημαίνει τη διεύρυνση επιστημονικών και τεχνικών γνώσεων γενικού χαρακτήρα, η οποία επιχειρείται ανεξαρτήτως βιομηχανικών ή εμπορικών στόχων.

η βοήθεια δεν καλύπτει[27] ποσοστό μεγαλύτερο του 75% του συνολικού κόστους της απαιτούμενης βιομηχανικής έρευνας[28] ή του 50% του συνολικού κόστους των εργασιών προανταγωνιστικής ανάπτυξης[29,30].

και εφόσον η παρεχόμενη βοήθεια αφορά αποκλειστικά:

(i) τις δαπάνες μισθοδοσίας (για τους ερευνητές, τους τεχνικούς και το λοιπό προσωπικό υποστήριξης που απασχολείται αποκλειστικά στην εκάστοτε ερευνητική δραστηριότητα)·

(ii) το κόστος των οργάνων, του εξοπλισμού, των γηπέδων και των κτιρίων που χρησιμοποιούνται αποκλειστικά και σε μόνιμη βάση για τις ανάγκες της εκάστοτε ερευνητικής δραστηριότητας (εκτός αν η χρήση τους διέπεται από καθεστώς του ιδιωτικού δικαίου)·

(iii) τα έξοδα για συμβούλους και παρεμφερείς υπηρεσίες που χρησιμοποιούνται αποκλειστικά για τις ανάγκες της εκάστοτε ερευνητικής δραστηριότητας, συμπεριλαμβανομένων των υπηρεσιών έρευνας, των τεχνικών γνώσεων, των ευρεσιτεχνιών, κ.τ.λ., που έχουν αποκτηθεί έναντι ανταλλάγματος από εξωτερικές πηγές·

(iv) πρόσθετα γενικά έξοδα τα οποία συνδέονται άμεσα με την εκάστοτε ερευνητική δραστηριότητα·

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27 Τα επιτρεπόμενα επίπεδα βοήθειας βάσει της παρούσας παραγράφου χωρίς να είναι δυνατό να ζητηθεί η παροχή έννομης προστασίας, καθορίζονται με βάση τις συνολικές επιλέξιμες δαπάνες που έχουν απαιτηθεί μέχρι την ολοκλήρωση του εκάστοτε έργου.

28 Ο όρος "βιομηχανική έρευνα" σημαίνει την βάσει προγράμματος ή κριτική έρευνα, η οποία αποσκοπεί στην ανακάλυψη νέων γνώσεων, με απώτερο στόχο την ενδεχόμενη αξιοποίηση των γνώσεων αυτών για την ανάπτυξη νέων προϊόντων, μεθόδων ή υπηρεσιών ή για τη σημαντική βελτίωση υφιστάμενων προϊόντων, μεθόδων ή υπηρεσιών.

29 Ο όρος "εργασίες προανταγωνιστικής ανάπτυξης" σημαίνει το μετασχηματισμό των πορισμάτων της βιομηχανικής έρευνας σε κάποιο πλάνο, προσχέδιο ή σχέδιο σε σχέση με νέα, τροποποιημένα ή βελτιωμένα προϊόντα, μεθόδους ή υπηρεσίες, είτε αυτά προορίζονται για πώληση, είτε για χρήση, συμπεριλαμβανομένης της δημιουργίας ενός πρωταρχικού προτύπου που δεν είναι δυνατό να χρησιμοποιηθεί για εμπορική χρήση. Επίσης είναι δυνατό να συμπεριλαμβάνει τη θεωρητική επινόηση και σχεδίαση εναλλακτικών προϊόντων, μεθόδων ή υπηρεσιών και την αρχική δοκιμή πρότυπων σχεδίων, υπό τον όρο ότι αυτά δεν μπορούν να υποστούν μετατροπή ή να χρησιμοποιηθούν για τους σκοπούς βιομηχανικής εφαρμογής ή εμπορικής εκμετάλλευσης. Ο όρος δεν συμπεριλαμβάνει συνήθεις ή ανά τακτά χρονικά διαστήματα μετατροπές υφιστάμενων προϊόντων, γραμμών παραγωγής, μεθόδων παραγωγής ή υπηρεσιών, ούτε άλλης μορφής πράξεις που βρίσκονται σε εξέλιξη, ακόμη και αν οι μετατροπές αυτές είναι πιθανό να αποτελούν βελτιώσεις.

30 Στην περίπτωση προγραμμάτων που συνδυάζουν βιομηχανική έρευνα και προανταγωνιστική ανάπτυξη, το επιτρεπόμενο επίπεδο βοήθειας για την οποία δεν είναι δυνατή η παροχή έννομης προστασίας δεν μπορεί να υπερβαίνει τον απλό μέσο όρο των επιτρεπόμενων επιπέδων βοήθειας για την οποία δεν είναι δυνατή η παροχή έννομης προστασίας, τα οποία ισχύουν για τις ανωτέρω δύο κατηγορίες, υπολογιζόμενο με βάση το σύνολο των επιλέξιμων δαπανών, κατά τα οριζόμενα στα σημεία (i) έως (v) της παρούσας παραγράφου.

(γ) λοιπά λειτουργικά έξοδα (π.χ. για εξοπλισμό, προμήθεια υλικών, κ.τ.λ.), τα οποία συνδέονται άμεσα με την εκάστοτε ερευνητική δραστηριότητα.

(β) περιπτώσεις βοήθειας που παρέχεται προς μειονεκτούσες περιφέρειες της επικράτειας ενός μέλους στο πλαίσιο κάποιου συνολικού προγράμματος περιφερειακής ανάπτυξης[31], η χορήγηση της οποίας στις περιφέρειες που τη δικαιούνται δεν έχει ατομικό χαρακτήρα (κατά την έννοια του άρθρου 2), υπό την προϋπόθεση ότι:

(i) κάθε μειονεκτούσα περιφέρεια πρέπει να αποτελεί σαφώς καθορισμένη και ενιαία γεωγραφική περιοχή και να έχει καθορίσιμα οικονομικά και διοικητικά χαρακτηριστικά·

(ii) η εκάστοτε περιφέρεια αξιολογείται ως μειονεκτούσα βάσει ουδέτερων και αντικειμενικών κριτηρίων[32], από τα οποία προκύπτει ότι οι δυσχέρειες τις οποίες αντιμετωπίζει οφείλονται σε παράγοντες που δεν έχουν απλώς παροδικό χαρακτήρα· τα εν λόγω κριτήρια πρέπει να καθορίζονται επακριβώς στο σχετικό νόμο, κανονισμό ή άλλο επίσημο έγγραφο, ούτως ώστε να είναι δυνατός ο έλεγχος της ορθής εφαρμογής τους·

(iii) τα ανωτέρω κριτήρια πρέπει να συμπεριλαμβάνουν μέτρηση της οικονομικής ανάπτυξης της οικείας περιφέρειας, με βάση τουλάχιστον έναν από τους παρακάτω παράγοντες:

- το κατά κεφαλήν εισόδημα ή το κατά κεφαλήν εισόδημα των νοικοκυριών ή το κατά κεφαλήν ΑΕγχΠ, το οποίο δεν πρέπει να υπερβαίνει το 85% του μέσου όρου που ισχύει για το σύνολο της επικράτειας του οικείου μέλους·

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31 Με τον όρο "συνολικό πρόγραμμα περιφερειακής ανάπτυξης" νοείται ότι πρόκειται για περιφερειακά προγράμματα επιδότησης, τα οποία εντάσσονται σε πολιτική περιφερειακής ανάπτυξης με συνεκτική εσωτερική διάρθρωση και γενική ισχύ, καθώς και ότι οι επιδοτήσεις που παρέχονται για την περιφερειακή ανάπτυξη δεν διοχετεύονται προς μεμονωμένα σημεία της εκάστοτε περιφέρειας, μη ασκώντας με τον τρόπο αυτό καμία ή σχεδόν καμία επίδραση στην ανάπτυξη μιας περιφέρειας.

32 Με τον όρο "ουδέτερα και αντικειμενικά κριτήρια" νοούνται κριτήρια με τα οποία δεν ευνοούνται ορισμένες περιφέρειες περισσότερο από ό,τι απαιτείται για την εξάλειψη ή τον περιορισμό των περιφερειακών ανισοτήτων, στο πλαίσιο της ακολουθούμενης πολιτικής περιφερειακής ανάπτυξης. Για τον σκοπό αυτό, τα περιφερειακά προγράμματα επιδοτήσεων πρέπει να προβλέπουν ανώτατα ποσά βοήθειας που είναι δυνατό να χορηγείται για κάθε επιμέρους επιδοτούμενο έργο. Τα εν λόγω ανώτατα όρια πρέπει να διαφοροποιούνται με γνώμονα το βαθμό ανάπτυξης καθεμιάς από τις περιφέρειες που λαμβάνουν τη βοήθεια, καθώς επίσης να ανταποκρίνονται στο επενδυτικό κόστος και στο κόστος της δημιουργίας θέσεων εργασίας. Εντός των εν λόγω ανώτατων ορίων, η κατανομή της βοήθειας πρέπει να είναι αρκούντως ευρεία και ισορροπημένη, ώστε να αποτρέπεται η σε μεγάλο βαθμό αξιοποίηση της επιδότησης από συγκεκριμένες επιχειρήσεις ή η χορήγηση επιδοτήσεων δυσανάλογα μεγάλου ύψους προς συγκεκριμένες επιχειρήσεις, κατά τα προβλεπόμενα στο άρθρο 2.

- το ποσοστό της ανεργίας, το οποίο επιβάλλεται να ισούται με το 110% τουλάχιστον του μέσου όρου που ισχύει για την επικράτεια του οικείου μέλους·

ο. τιμές που λαμβάνονται υπόψη βάσει των ανωτέρω είναι αυτές που καταγράφησαν σε περίοδο τριών ετών· πάντως η παραπάνω μέτρηση είναι δυνατό να προκύπτει με τη σύνθεση διαφόρων στοιχείων και να συμπεριλαμβάνει και άλλους παράγοντες.

(γ) περιπτώσεις βοήθειας για την προώθηση της προσαρμογής υφιστάμενων μονάδων[33], ώστε αυτές να ανταποκρίνονται σε νέες περιβαλλοντικές απαιτήσεις που έχουν επιβληθεί διά νόμου ή/και κανονισμών και οι οποίες συνεπάγονται μεγαλύτερους περιορισμούς και οικονομική επιβάρυνση για τις επιχειρήσεις, υπό την προϋπόθεση ότι η παρεχόμενη βοήθεια:

(i) αποτελεί μέτρο που εφαρμόζεται άπαξ και δεν πρόκειται να επαναληφθεί· και

(ii) αντιπροσωπεύει ποσοστό όχι ανώτερο του 20% του κόστους της απαιτούμενης προσαρμογής· και

(iii) δεν καλύπτει το κόστος της αντικατάστασης και εκμετάλλευσης της επένδυσης για την οποία παρέχεται η βοήθεια, το οποίο αναλαμβάνουν υποχρεωτικά και εξ ολοκλήρου οι οικείες επιχειρήσεις· και

(iv) συνδέεται άμεσα και είναι ανάλογη με τη σχεδιαζόμενη μείωση της περιβαλλοντικής επιβάρυνσης και της ρύπανσης που προκαλείται από τη λειτουργία της εκάστοτε επιχείρησης και δεν καλύπτει την μείωση του κατασκευαστικού κόστους που επιτυγχάνεται ενδεχομένως· και

(v) είναι δυνατό να χορηγηθεί προς κάθε επιχείρηση η οποία είναι σε θέση να αρχίσει να χρησιμοποιεί τον νέου τύπου εξοπλισμό ή/και τις νέες μεθόδους παραγωγής.

8.3 Όταν γίνεται επίκληση των διατάξεων της παραγράφου 2 σε σχέση με ένα πρόγραμμα επιδοτήσεων, το πρόγραμμα αυτό πρέπει να γνωστοποιείται πριν από την εφαρμογή του στην επιτροπή, σύμφωνα με τις διατάξεις του μέρους VII. Η γνωστοποίηση αυτή πρέπει να είναι αρκετά εμπεριστατωμένη, ώστε να επιτρέπει στα λοιπά μέλη να εξετάζουν κατά πόσον το πρόγραμμα ανταποκρίνεται στις προϋποθέσεις και τα κριτήρια που προβλέπονται στις σχετικές διατάξεις της παραγράφου 2. Τα μέλη υποβάλλουν επιπλέον στην επιτροπή ετήσιες αναφορές για την πορεία των γνωστοποιηθέντων προγραμμάτων, οι οποίες ειδικότερα περιέχουν στοιχεία για τη συνολική δαπάνη κάθε προγράμματος, καθώς και για πιθανές τροποποιήσεις που έχουν επέλθει σε αυτό. Τα υπόλοιπα μέλη έχουν το δικαίωμα να ζητούν

33 Ο όρος "υφιστάμενες μονάδες" σημαίνει τις μονάδες που έχουν λειτουργήσει επί δύο έτη τουλάχιστον κατά το χρόνο επιβολής των νέων περιβαλλοντικών απαιτήσεων.

πληροφορίες σχετικά με συγκεκριμένες περιπτώσεις επιδοτήσεων που χορηγούνται στο πλαίσιο ενός γνωστοποιηθέντος προγράμματος.[34]

8.4 Μετά από αίτηση ενός μέλους, η γραμματεία εξετάζει τη γνωστοποίηση που έχει υποβληθεί κατ'εφαρμογήν της παραγράφου 3 και, εφόσον είναι σκόπιμο, είναι δυνατό να ζητεί συμπληρωματικές πληροφορίες από το μέλος που παρέχει την επιδότηση σχετικά με το υπό εξέταση γνωστοποιηθέν πρόγραμμα. Η γραμματεία διαβιβάζει τα συμπεράσματά της στην επιτροπή. Η επιτροπή, εφόσον της ζητηθεί, εξετάζει, αμελλητί τα συμπεράσματα στα οποία έχει καταλήξει η γραμματεία (ή, σε περίπτωση που δεν έχει υποβληθεί αίτηση για εξέταση από τη γραμματεία, την ίδια τη γνωστοποίηση), προκειμένου να αποφανθεί κατά πόσον έχουν τηρηθεί οι προϋποθέσεις και τα κριτήρια που προβλέπονται στην παράγραφο 2. Η διαδικασία που προβλέπεται στην παρούσα παράγραφο ολοκληρώνεται το αργότερο κατά την πρώτη τακτική συνεδρίαση της επιτροπής, η οποία ακολουθεί τη γνωστοποίηση του προγράμματος επιδοτήσεων, υπό την προϋπόθεση ότι έχουν παρέλθει δύο μήνες τουλάχιστον από την εν λόγω γνωστοποίηση μέχρι την τακτική συνεδρίαση της επιτροπής. Η διαδικασία εξέτασης η οποία καθορίζεται στην παρούσα παράγραφο ακολουθείται επίσης, εφόσον διατυπωθεί σχετικό αίτημα, σε σχέση με ουσιώδεις τροποποιήσεις ενός προγράμματος, οι οποίες γνωστοποιούνται με τις ετήσιες εκθέσεις για την πορεία κάθε προγράμματος που προβλέπονται στην παράγραφο 3.

8.5 Εφόσον το ζητήσει ένα μέλος, η απόφαση της επιτροπής που προβλέπεται στην παράγραφο 4 ή η παράλειψη της επιτροπής να εκδώσει μια τέτοια απόφαση, καθώς και η παραβίαση σε μεμονωμένες περιπτώσεις των προϋποθέσεων που έχουν τεθεί στο πλαίσιο ενός γνωστοποιηθέντος προγράμματος, παραπέμπονται σε διαιτησία· η απόφαση των διαιτητών είναι δεσμευτική για τα διάδικα μέλη. Το διαιτητικό όργανο υποβάλλει τα συμπεράσματά του στα μέλη εντός 120 ημερών από την ημερομηνία παραπομπής της υπόθεσης στο διαιτητικό όργανο. Με την επιφύλαξη τυχόν αντιθέτων διατάξεων της παρούσας παραγράφου, το ΜΣΕΔ εφαρμόζεται για τους σκοπούς των διαδικασιών διαιτησίας που διενεργούνται δυνάμει της παρούσας παραγράφου.

Άρθρο 9

Διαβουλεύσεις και επιτρεπόμενα μέτρα αποκατάστασης

9.1 Εάν, κατά τη διάρκεια εφαρμογής ενός προγράμματος που προβλέπεται στο άρθρο 8, παράγραφος 2 και παρά το γεγονός ότι το εν λόγω πρόγραμμα ανταποκρίνεται στα κριτήρια που καθορίζονται στην ίδια παράγραφο, ένα μέλος έχει λόγους να πιστεύει ότι το πρόγραμμα αυτό έχει προκαλέσει σοβαρές αρνητικές συνέπειες για τον οικείο εγχώριο κλάδο παραγωγής του εν λόγω μέλους, από τις οποίες είναι πιθανό να προξενηθεί ζημία που θα ήταν δύσκολο να αποκατασταθεί, το εν λόγω μέλος δύναται να ζητήσει τη διενέργεια διαβουλεύσεων με το μέλος που προβαίνει ή εμμένει στην παροχή της επίμαχης επιδότησης.

9.2 Σε περίπτωση που έχει ζητηθεί η διενέργεια διαβουλεύσεων δυνάμει της παραγράφου 1, το μέλος που προβαίνει ή εμμένει στην εφαρμογή του επίμαχου προγράμματος επιδοτήσεων φροντίζει για την έναρξη διαβουλεύσεων σχετικά το συντομότερο δυνατόν. Σκοπός των διαβουλεύσεων είναι η αποσαφήνιση των πραγματικών δεδομένων της υπόθεσης και η εξεύρεση αμοιβαία αποδεκτής λύσης.

34 Γίνεται δεκτό ότι η παρούσα διάταξη, η οποία καθιερώνει υποχρέωση γνωστοποίησης, δεν συνεπάγεται με κανέναν τρόπο ότι τα μέλη υποχρεούνται να παρέχουν πληροφορίες εμπιστευτικού χαρακτήρα, συμπεριλαμβανομένων των πληροφοριών εμπιστευτικού χαρακτήρα που αφορούν επιχειρήσεις.

9.3 Σε περίπτωση που δεν επιτευχθεί αμοιβαία αποδεκτή λύση, μέσω των διαβουλεύσεων που έχουν διενεργηθεί βάσει της παραγράφου 2, εντός 60 ημερών από την υποβολή του αιτήματος για τη διενέργεια των διαβουλεύσεων, το μέλος που έχει ζητήσει τη διενέργεια των διαβουλεύσεων δύναται να παραπέμψει την υπόθεση στην επιτροπή.

9.4 Όταν μία υπόθεση παραπέμπεται στην επιτροπή, η επιτροπή εξετάζει πάραυτα τα πραγματικά περιστατικά της υπόθεσης, καθώς και τα αποδεικτικά στοιχεία που υπάρχουν όσον αφορά τις συνέπειες για τις οποίες γίνεται λόγος στην παράγραφο 1. Σε περίπτωση που η επιτροπή αποφανθεί ότι οι συνέπειες αυτές έχουν όντως προκληθεί, δύναται να συστήσει στο μέλος που παρέχει τις επίμαχες επιδοτήσεις να τροποποιήσει το σχετικό πρόγραμμα κατά τρόπον ώστε να αίρονται οι διαπιστωθείσες συνέπειες του προγράμματος. Η επιτροπή υποβάλλει τα συμπεράσματά της εντός 120 ημερών από την ημερομηνία παραπομπής της υπόθεσης σε αυτήν δυνάμει της παραγράφου 3. Αν δεν υπάρξει συμμόρφωση προς τη σύσταση της επιτροπής εντός εξαμήνου, η επιτροπή παρέχει άδεια στο μέλος που έχει ζητήσει τη διενέργεια των διαβουλεύσεων για τη λήψη των κατάλληλων αντιμέτρων, τα οποία πρέπει να είναι ανάλογα του είδους και της βαρύτητας των συνεπειών που έχει διαπιστωθεί ότι προκλήθηκαν.

ΜΕΡΟΣ V: ΑΝΤΙΣΤΑΘΜΙΣΤΙΚΑ ΜΕΤΡΑ

Άρθρο 10

Εφαρμογή του άρθρου VI της GATT του 1994[35]

Τα μέλη λαμβάνουν όλα τα αναγκαία μέτρα, προκειμένου να διασφαλίσουν ότι η επιβολή αντισταθμιστικών δασμών[36] επί οποιουδήποτε προϊόντος, το οποίο προέρχεται από το έδαφος οιουδήποτε μέλους και εισάγεται στο έδαφος κάποιου άλλου μέλους, συνάδει με τις διατάξεις του άρθρου VI της GATT του 1994 και με τις ρυθμίσεις της παρούσας συμφωνίας. Αντισταθμιστικοί δασμοί είναι δυνατό να επιβάλλονται μόνο

35 Η επίκληση των διατάξεων του μέρους II ή του μέρους III είναι δυνατό να γίνει εκ παραλλήλου με την επίκληση των διατάξεων του μέρους V· εντούτοις, προκειμένου περί των συνεπειών συγκεκριμένης επιδότησης για την εγχώρια αγορά του εισάγοντος μέλους, είναι δυνατή η προσφυγή σε ένα μόνο είδος μέτρου αποκατάστασης (το οποίο είναι είτε ένας αντισταθμιστικός δασμός, εφόσον πληρούνται οι προϋποθέσεις που προβλέπονται στο μέρος V, είτε κάποιο αντίμετρο, κατά τα προβλεπόμενα στα άρθρα 4 και 7). Η προσφυγή στις διατάξεις των μερών III και V δεν είναι δυνατή σε σχέση με μέτρα για τα οποία δεν είναι δυνατή η υποβολή αίτησης παροχής έννομης προστασίας σύμφωνα με τις διατάξεις του μέρους IV. Παρόλα αυτά, επιτρέπεται η διενέργεια έρευνας με αντικείμενο μέτρα τα οποία προβλέπονται στο άρθρο 8, παράγραφος 1, στοιχείο α), προκειμένου να διαπιστωθεί κατά πόσον είναι ή όχι μέτρα ατομικού χαρακτήρα κατά την έννοια του άρθρου 2. Επιπλέον, στις περιπτώσεις επιδοτήσεων για τις οποίες γίνεται λόγος στο άρθρο 8, παράγραφος 2, οι οποίες χορηγούνται στο πλαίσιο προγράμματος που δεν έχει γνωστοποιηθεί όπως προβλέπει το άρθρο 8, παράγραφος 3, είναι δυνατή η προσφυγή στις διατάξεις του μέρους III ή V, αλλά γίνεται δεκτό ότι δεν είναι δυνατή η υποβολή αίτησης παροχής έννομης προστασίας σε σχέση με μια τέτοια περίπτωση επιδότησης, υπό την προϋπόθεση ότι αυτή αποδεδειγμένα πληροί τις προϋποθέσεις που προβλέπει το άρθρο 8, παράγραφος 2.

36 Ο όρος "αντισταθμιστικός δασμός" σημαίνει κάθε ειδικό δασμό ο οποίος επιβάλλεται με σκοπό την εξουδετέρωση των συνεπειών της επιδότησης που έχει ενδεχομένως χορηγηθεί, είτε αμέσως είτε εμμέσως, για την κατασκευή, την παραγωγή ή την εξαγωγή οιουδήποτε εμπορεύματος, κατά τα προβλεπόμενα στο άρθρο VI, παράγραφος 3 της GATT του 1994.

μετά από έρευνες οι οποίες έχουν αρχίσει[37] και διενεργηθεί σύμφωνα με τις διατάξεις της παρούσας συμφωνίας και της συμφωνίας για τη γεωργία.

Άρθρο 11

Έναρξη και συνέχιση της έρευνας

11.1 Με την επιφύλαξη των ρυθμίσεων της παραγράφου 6, η έναρξη έρευνας για τη διαπίστωση της ύπαρξης, της έκτασης και των συνεπειών οποιασδήποτε υποτιθέμενης επιδότησης προϋποθέτει την υποβολή γραπτής αίτησης εκ μέρους ή για λογαριασμό του οικείου εγχώριου κλάδου παραγωγής.

11.2 Κάθε αίτηση που υποβάλλεται βάσει της παραγράφου 1 πρέπει να περιλαμβάνει επαρκή αποδεικτικά στοιχεία σχετικά με την ύπαρξη: (α) της υποτιθέμενης επιδότησης και, εφόσον είναι δυνατόν, του ύψους της, (β) της ζημίας, κατά την έννοια του άρθρου VI της GATT του 1994 και σύμφωνα με την ερμηνεία που δίδεται στην παρούσα συμφωνία, και (γ) αιτιώδους συνάφειας μεταξύ των επιδοτούμενων εισαγωγών και της υποτιθέμενης ζημίας. Απλοί ισχυρισμοί, οι οποίοι δεν τεκμηριώνονται με τα κατάλληλα αποδεικτικά στοιχεία, δεν αρκούν προκειμένου να γίνει δεκτό ότι έχουν τηρηθεί οι προϋποθέσεις που επιβάλλονται από την παρούσα παράγραφο. Κάθε αίτηση πρέπει να διαλαμβάνει τα στοιχεία που είναι ευλόγως δυνατό να συγκεντρώσει ο αιτών σχετικά με τα εξής θέματα:

(i) την ταυτότητα του αιτούντος, καθώς και ανάλυση του όγκου και της αξίας της παραγωγής του ομοειδούς προϊόντος που παράγεται εγχωρίως από τον αιτούντα. Όταν υποβάλλεται γραπτή αίτηση για λογαριασμό του εγχώριου κλάδου παραγωγής, η αίτηση πρέπει να διευκρινίζει τον κλάδο παραγωγής για λογαριασμό του οποίου υποβάλλεται η αίτηση, σύμφωνα με κατάλογο που περιλαμβάνει όλους τους γνωστούς εγχώριους παραγωγούς του ομοειδούς προϊόντος (ή τις ενώσεις εγχώριων παραγωγών του ομοειδούς προϊόντος)· επίσης πρέπει, στο μέτρο του δυνατού, να περιέχει ανάλυση του όγκου και της αξίας της εγχώριας παραγωγής του ομοειδούς προϊόντος που αντιπροσωπεύουν οι εν λόγω παραγωγοί·

(ii) πλήρη περιγραφή του προϊόντος που υποτίθεται ότι επιδοτείται, την ονομασία της· εκάστοτε χώρας ή των εκάστοτε χωρών καταγωγής ή εξαγωγής, την ταυτότητα όλων των γνωστών εξαγωγών ή αλλοδαπών παραγωγών, καθώς και κατάλογο των προσώπων που είναι γνωστό ότι εισάγουν το οικείο προϊόν·

(iii) αποδεικτικά στοιχεία σχετικά με την ύπαρξη, το ύψος και το χαρακτήρα της επίμαχης επιδότησης·

(iv) στοιχεία με τα οποία να αποδεικνύεται ότι η υποτιθέμενη ζημία που υφίσταται ο εγχώριος κλάδος παραγωγής προκαλείται από τις επιδοτούμενες εισαγωγές, ως αποτέλεσμα των παρεχόμενων επιδοτήσεων· τα αποδεικτικά στοιχεία αυτά πρέπει να περιλαμβάνουν πληροφορίες για την εξέλιξη του όγκου των εισαγωγών που υποτίθεται ότι λαμβάνουν επιδοτήσεις, για την επίδραση των εισαγωγών αυτών επί των τιμών του ομοειδούς προϊόντος στην εγχώρια αγορά, καθώς

37 Ο όρος "έχουν αρχίσει", όπως χρησιμοποιείται στη συνέχεια, αναφέρεται στη διαδικαστική πράξη με την οποία ένα μέλος εγκαινιάζει επισήμως έρευνα, όπως προβλέπει το άρθρο 11.

και για την επακόλουθη επίπτωση των εισαγωγών επί του εγχώριου κλάδου παραγωγής, όπως αυτή αποδεικνύεται με βάση συναφείς παράγοντες και δείκτες, που εκφράζουν την κατάσταση στην οποία βρίσκεται ο εγχώριος κλάδος παραγωγής, όπως αυτοί που απαριθμούνται στο άρθρο 15, παράγραφοι 2 και 4.

11.3 Οι αρχές εξετάζουν την ακρίβεια και πληρότητα των αποδεικτικών στοιχείων που διαλαμβάνονται στην αίτηση, προκειμένου να αποφανθούν κατά πόσον αυτά είναι ικανά να δικαιολογήσουν την έναρξη έρευνας.

11.4 Η έναρξη έρευνας βάσει της παραγράφου 1 δεν είναι δυνατή παρά μόνον εφόσον οι αρχές έχουν καταλήξει στο συμπέρασμα, έπειτα από εξέταση του βαθμού υποστήριξης ή αντίθεσης προς την υποβληθείσα αίτηση την οποία εκφράζουν[38] οι εγχώριοι παραγωγοί του ομοειδούς προϊόντος, ότι η αίτηση έχει υποβληθεί εκ μέρους ή για λογαριασμό του εγχώριου κλάδου παραγωγής[39]. Για να γίνει δεκτό ότι η αίτηση έχει υποβληθεί "εκ μέρους ή για λογαριασμό του εγχώριου κλάδου παραγωγής", πρέπει να υποστηρίζεται από εγχώριους παραγωγούς των οποίων η συνολική παραγωγή αντιπροσωπεύει ποσοστό μεγαλύτερο του 50% της συνολικής παραγωγής του ομοειδούς προϊόντος και παράγεται από το τμήμα εκείνο του εγχώριου κλάδου παραγωγής που έχει εκφράσει είτε την υποστήριξή του, είτε την αντίθεσή του στην αίτηση. Εντούτοις, δεν επιτρέπεται η έναρξη έρευνας όταν οι εγχώριοι παραγωγοί που υποστηρίζουν ρητώς την αίτηση αντιπροσωπεύουν ποσοστό μικρότερο του 25% της συνολικής παραγωγής του ομοειδούς προϊόντος, την οποία παράγει ο εγχώριος κλάδος παραγωγής.

11.5 Οι αρχές αποφεύγουν να δίδουν οποιαδήποτε δημοσιότητα στις αιτήσεις για την έναρξη έρευνας, εκτός αν έχει ληφθεί απόφαση για την έναρξη έρευνας.

11.6 Αν, σε εξαιρετικές περιπτώσεις, οι αρμόδιες αρχές αποφασίσουν να αρχίσουν έρευνα χωρίς να έχουν λάβει γραπτή αίτηση εκ μέρους ή για λογαριασμό του εγχώριου κλάδου παραγωγής, με την οποία να ζητείται η έναρξη μιας τέτοιας έρευνας, τότε προχωρούν στα επόμενα στάδια της διαδικασίας μόνο εφόσον διαθέτουν επαρκή αποδεικτικά στοιχεία σχετικά με την ύπαρξη της επιδότησης, την προκαλούμενη ζημία και την αιτιώδη συνάφεια, όπως ορίζεται στην παράγραφο 2, τα οποία δικαιολογούν την έναρξη έρευνας.

11.7 Τα αποδεικτικά στοιχεία τα σχετικά τόσο με την επιδότηση, όσο και με τη ζημία αξιολογούνται ταυτοχρόνως (α) για τη λήψη της απόφασης περί έναρξης ή μη έρευνας και (β) εν συνεχεία, κατά τη διάρκεια της έρευνας, με αφετηρία ημερομηνία που δεν μπορεί να είναι μεταγενέστερη της νωρίτερης ημερομηνίας κατά την οποία επιτρέπεται η εφαρμογή προσωρινών μέτρων σύμφωνα με τις διατάξεις της παρούσας συμφωνίας.

11.8 Σε περιπτώσεις κατά τις οποίες τα προϊόντα δεν εισάγονται απευθείας από τη χώρα καταγωγής, αλλά εξάγονται στο εισάγον μέλος από κάποια ενδιάμεση χώρα, εφαρμόζονται πλήρως οι διατάξεις της παρούσας συμφωνίας, ενώ για τους σκοπούς της παρούσας συμφωνίας η επίμαχη συναλλαγή ή συναλλαγές αντιμετωπίζονται σαν να είχαν πραγματοποιηθεί μεταξύ της χώρας καταγωγής και του εισάγοντος μέλους.

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38 Στην περίπτωση κατακερματισμένων κλάδων παραγωγής, οι οποίοι απαρτίζονται από εξαιρετικά μεγάλο αριθμό παραγωγών, οι αρχές δύνανται να υπολογίζουν το βαθμό υποστήριξης ή αντίθεσης δια της χρήσης δειγματοληπτικών τεχνικών, οι οποίες ανταποκρίνονται στις αρχές της στατιστικής.

39 Τα μέλη αναγνωρίζουν ότι στην επικράτεια ορισμένων μελών οι εργαζόμενοι που απασχολούνται από τους εγχώριους παραγωγούς του ομοειδούς προϊόντος ή οι εκπρόσωποι των εν λόγω εργαζομένων δύνανται να υποβάλουν αίτηση για τη διενέργεια έρευνας βάσει της παραγράφου 1 ή να εκφράσουν την υποστήριξή τους προς μια τέτοια αίτηση.

11.9 Μία αίτηση, η οποία έχει υποβληθεί βάσει της παραγράφου 1, είναι απορριπτέα και η σχετική έρευνα περατούται πάραυτα αφ' ης στιγμής οι αρμόδιες αρχές πεισθούν ότι δεν υπάρχουν επαρκή αποδεικτικά στοιχεία αναφορικά είτε με την παροχή της επιδότησης, είτε με την πρόκληση ζημίας, τα οποία να δικαιολογούν την περαιτέρω εξέταση της υπόθεσης. Η διαδικασία περατούται πάραυτα σε περιπτώσεις κατά τις οποίες το ύψος της επιδότησης είναι ασήμαντο από νομική άποψη ή όταν ο όγκος των επιδοτούμενων εισαγωγών, είτε πραγματικών, είτε δυνητικών είναι ασήμαντος, ή η ζημία αμελητέα. Για την εφαρμογή της παρούσας παραγράφου, το ύψος της επιδότησης θεωρείται ασήμαντο από νομική άποψη αν η επιδότηση αντιπροσωπεύει ποσοστό κατώτερο του 1% κατ' αξίαν.

11.10 Τυχόν έρευνα δεν αποτελεί εμπόδιο για τις διαδικασίες εκτελωνισμού.

11.11 Πέραν εξαιρετικών περιπτώσεων, η έρευνα πρέπει να ολοκληρώνεται εντός ενός έτους και πάντως όχι σε περισσότερους από 18 μήνες από την έναρξή της.

Άρθρο 12

Αποδεικτικά στοιχεία

12.1 Τα ενδιαφερόμενα μέλη και όλοι όσοι ενδιαφέρονται για μία έρευνα η οποία έχει ως αντικείμενο την επιβολή αντισταθμιστικού δασμού ενημερώνονται για τα στοιχεία τα οποία κρίνουν απαραίτητα οι αρμόδιες αρχές, και τους παραχωρείται πλήρης δυνατότητα να υποβάλουν γραπτώς όλα τα αποδεικτικά στοιχεία που θεωρούν ότι θα μπορούσαν να χρησιμεύσουν για τη διεξαγόμενη έρευνα.

12.1.1 Στους εξαγωγείς, στους αλλοδαπούς παραγωγούς και στα ενδιαφερόμενα μέλη, που λαμβάνουν τα ερωτηματολόγια που χρησιμοποιούνται στο πλαίσιο έρευνας με αντικείμενο την επιβολή αντισταθμιστικού δασμού, τάσσεται προθεσμία 30 ημερών τουλάχιστον για να απαντήσουν.[40] Αν διατυπωθεί αίτημα για παράταση της ανωτέρω τριακονθήμερης προθεσμίας, αυτό λαμβάνεται δεόντως υπόψη και, εφόσον αποδεικνύεται η ύπαρξη λόγου, η ζητούμενη παράταση πρέπει να γίνεται δεκτή όποτε αυτό είναι δυνατό.

12.1.2 Με την επιφύλαξη της υποχρέωσης προστασίας των πληροφοριών εμπιστευτικού χαρακτήρα, τα αποδεικτικά στοιχεία που έχει υποβάλει γραπτώς ένα ενδιαφερόμενο μέλος ή ένας ενδιαφερόμενος κοινοποιούνται αμελλητί στα υπόλοιπα ενδιαφερόμενα μέλη ή στους λοιπούς ενδιαφερομένους που μετέχουν στην έρευνα.

12.1.3 Αφ' ης στιγμής αρχίσει έρευνα, οι αρχές κοινοποιούν το πλήρες κείμενο της γραπτής αίτησης που τους έχει υποβληθεί βάσει του άρθρου 11, παράγραφος 1 στους γνωστούς

40 Ο γενικός κανόνας είναι ότι για τους εξαγωγείς η προθεσμία αρχίζει να τρέχει από την ημερομηνία λήψης του ερωτηματολογίου, το οποίο εν προκειμένω γίνεται δεκτό ότι λαμβάνεται μία εβδομάδα από την ημερομηνία αποστολής του σε αυτόν που καλείται να το συμπληρώσει ή από την ημερομηνία διαβίβασής του στον αρμόδιο διπλωματικό εκπρόσωπο του εξάγοντος μέλους ή σε επίσημο εκπρόσωπο του εξάγοντος εδάφους, εφόσον πρόκειται για χωριστό τελωνειακό έδαφος που συγκαταλέγεται στα μέλη του ΠΟΕ.

εξαγωγείς[41], καθώς και στις αρχές του εξάγοντος μέλους· επίσης το κοινοποιούν, εφόσον τους ζητηθεί, σε άλλους ενδιαφερόμενους που μετέχουν στη διαδικασία. Λαμβάνεται π δέουσα μέριμνα για την προστασία πληροφοριών εμπιστευτικού χαρακτήρα, κατά τα προβλεπόμενα στην παράγραφο 4.

12.2 Τα ενδιαφερόμενα μέλη και οι λοιποί ενδιαφερόμενοι έχουν επίσης το δικαίωμα, εφόσον αποδεικνύουν σχετικό λόγο, να προσκομίζουν στοιχεία προφορικώς. Όταν προσκομίζονται ορισμένα στοιχεία προφορικώς, τα ενδιαφερόμενα μέλη και οι λοιποί ενδιαφερόμενοι οφείλουν να υποβάλουν σε μεταγενέστερο χρόνο τα ίδια στοιχεία και σε γραπτή μορφή. Κάθε απόφαση των αρχών που διεξάγουν την έρευνα είναι δυνατό να στηρίζεται στα στοιχεία και μόνο, καθώς και στα επιχειρήματα τα οποία έχουν υποβληθεί γραπτώς στις αρχές και τα οποία έχουν κοινοποιηθεί στα ενδιαφερόμενα μέλη και στους λοιπούς ενδιαφερόμενους που μετέχουν στην έρευνα, λαμβανομένης δεόντως υπόψη της ανάγκης προστασίας πληροφοριών εμπιστευτικού χαρακτήρα.

12.3 Όποτε είναι εφικτό, οι αρχές παρέχουν εγκαίρως σε όλα τα ενδιαφερόμενα μέλη και στους λοιπούς ενδιαφερόμενους τη δυνατότητα να λάβουν γνώση του συνόλου των στοιχείων τα οποία παρουσιάζουν κάποια χρησιμότητα για την ανάπτυξη της επιχειρηματολογίας τους, δεν έχουν εμπιστευτικό χαρακτήρα με βάση τον ορισμό που δίδεται στην παράγραφο 4 και τα οποία χρησιμοποιούνται από τις αρχές στο πλαίσιο έρευνας με αντικείμενο την επιβολή αντισταθμιστικού δασμού· επίσης τους παρέχουν τη δυνατότητα να προετοιμάσουν την ανάπτυξη των απόψεών τους βάσει των εν λόγω στοιχείων.

12.4 Οι αρχές, όταν αποδεικνύεται η ύπαρξη σοβαρού λόγου, αντιμετωπίζουν ως εμπιστευτικού χαρακτήρα κάθε στοιχείο το οποίο από τη φύση του έχει τέτοιον χαρακτήρα (παραδείγματος χάρη, επειδή η αποκάλυψή του θα προσπόριζε ένα σημαντικό ανταγωνιστικό πλεονέκτημα σε έναν ανταγωνιστή ή επειδή η αποκάλυψή του θα είχε σοβαρές αρνητικές συνέπειες για το πρόσωπο που έχει προσκομίσει το συγκεκριμένο στοιχείο ή για το πρόσωπο από το οποίο πληροφορήθηκε το συγκεκριμένο στοιχείο αυτός που το υποβάλλει) ή το οποίο έχει υποβληθεί από κάποια πλευρά που μετέχει στην έρευνα με την επεξήγηση ότι πρόκειται για στοιχείο εμπιστευτικού χαρακτήρα. Τα στοιχεία εμπιστευτικού χαρακτήρα γνωστοποιούνται τότε μόνο, όταν η πλευρά που τα έχει προσκομίσει συγκατανεύσει ρητώς προς τον σκοπό αυτό.[42]

12.4.1 Οι αρχές ζητούν από τα ενδιαφερόμενα μέλη ή από τους λοιπούς ενδιαφερομένους που προσκομίζουν εμπιστευτικού χαρακτήρα πληροφορίες να υποβάλουν μη εμπιστευτικού χαρακτήρα περιλήψεις των ίδιων πληροφοριών. Οι εν λόγω περιλήψεις πρέπει να είναι αρκούντως περιεκτικές, ώστε να επιτρέπουν τη σε ικανοποιητικό βαθμό κατανόηση της ουσίας της εμπιστευτικού χαρακτήρα πληροφορίας που υποβάλλεται. Σε εξαιρετικές περιπτώσεις, το μέλος ή η πλευρά που υποβάλλει κάποια εμπιστευτικού χαρακτήρα πληροφορία επιτρέπεται συγχρόνως να δηλώνει ότι η εν λόγω πληροφορία δεν είναι δυνατό να παρουσιασθεί σε περιληπτική μορφή.

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41 Γίνεται δεκτό ότι όταν ο αριθμός των ενδιαφερομένων εξαγωγέων είναι ιδιαίτερα μεγάλος το πλήρες κείμενο της αίτησης πρέπει αντ' αυτού να κοινοποιείται μόνο στις αρχές του εξάγοντος μέλους ή στον οικείο επαγγελματικό συλλογικό φορέα, ο οποίος φέρει την ευθύνη να διαβιβάσει εν συνεχεία αντίγραφα του κειμένου στους ενδιαφερόμενους εξαγωγείς.

42 Τα μέλη αναγνωρίζουν ότι στο έδαφος ορισμένων μελών είναι δυνατό η γνωστοποίηση ορισμένων στοιχείων να είναι υποχρεωτική υπό ορισμένες αυστηρές προϋποθέσεις βάσει δικαστικής απόφασης για τη λήψη συντηρητικών μέτρων.

Στις εξαιρετικές αυτές περιπτώσεις πρέπει να επισημαίνονται οι λόγοι για τους οποίους δεν είναι δυνατή η περιληπτική παρουσίαση της πληροφορίας.

12.4.2 Σε περίπτωση που οι αρχές κρίνουν ότι η αίτηση παροχής εμπιστευτικής μεταχείρισης είναι απορριπτέα, και ο παρέχων την πληροφορία δεν είναι διατεθειμένος ούτε να καταστήσει ευρύτερα γνωστή την πληροφορία, ούτε να επιτρέψει την κοινοποίησή της σε γενικόλογη ή περιληπτική μορφή, οι αρχές δύνανται να μη λαμβάνουν υπόψη τους την πληροφορία αυτή, εκτός αν πείθονται βάσει αξιόπιστων αποδεικτικών στοιχείων ότι η πληροφορία ανταποκρίνεται στην πραγματικότητα.[43]

12.5 Εκτός από τις περιπτώσεις που προβλέπονται στην παράγραφο 7, οι αρχές βεβαιώνονται κατά τη διάρκεια της έρευνας για την ακρίβεια των στοιχείων που έχουν προσκομίσει τα ενδιαφερόμενα μέλη και οι λοιποί ενδιαφερόμενοι και τα οποία χρησιμεύουν ως βάση των συμπερασμάτων τους.

12.6 Οι αρχές που διεξάγουν την έρευνα δύνανται, εφόσον κρίνεται απαραίτητο, να διενεργούν έρευνες στο έδαφος άλλων μελών, υπό την προϋπόθεση ότι έχουν ειδοποιήσει εγκαίρως το οικείο μέλος σχετικά και ότι το εν λόγω μέλος δεν έχει αντίρρηση για τη διενέργεια έρευνας στο έδαφός του. Επιπλέον, οι αρχές που διεξάγουν την έρευνα δύνανται να διενεργούν έρευνες στις εγκαταστάσεις εταιρειών και να εξετάζουν τα βιβλία εταιρειών, υπό την προϋπόθεση ότι: (α) η εκάστοτε εταιρεία είναι σύμφωνη, και (β) το οικείο μέλος έχει ειδοποιηθεί σχετικά και δεν προβάλλει αντιρρήσεις. Για τις έρευνες που διενεργούνται στις εγκαταστάσεις εταιρειών είναι εφαρμοστέες οι διαδικασίες που προβλέπονται στο παράρτημα VI. Με την επιφύλαξη της υποχρέωσης προστασίας της εμπιστευτικότητας ορισμένων στοιχείων, οι αρχές δίδουν στη δημοσιότητα τα πορίσματα των ερευνών που έχουν ενδεχομένως διενεργήσει ή τα γνωστοποιούν βάσει της παραγράφου 8 στις εταιρείες στις οποίες αυτά αναφέρονται, ενώ είναι δυνατό να κοινοποιούν τα πορίσματα αυτά στους αιτούντες.

12.7 Σε περιπτώσεις κατά τις οποίες οποιοδήποτε ενδιαφερόμενο μέλος ή κάποιος ενδιαφερόμενος αρνείται να επιτρέψει την πρόσβαση στα απαραίτητα στοιχεία ή γενικά δεν προβαίνει στη γνωστοποίησή τους εντός ευλόγου χρονικού διαστήματος ή παρεμποδίζει σε σημαντικό βαθμό την έρευνα, είναι δυνατό να διατυπώνονται προκαταρκτικά και τελικά συμπεράσματα, είτε καταφατικά, είτε αποφατικά, βάσει των διαθέσιμων στοιχείων.

12.8 Πριν από τη διατύπωση τελικού συμπεράσματος, οι αρχές ενημερώνουν όλα τα ενδιαφερόμενα μέλη και τους λοιπούς ενδιαφερομένους σχετικά με τα ουσιώδη πραγματικά περιστατικά τα οποία πρόκειται να λάβουν υπόψη τους και στα οποία θα στηρίζεται η απόφαση για την εφαρμογή ή μη οριστικών μέτρων. Η ενημέρωση αυτή πρέπει να πραγματοποιείται αρκετά ενωρίς, ώστε τα μέρη να έχουν το χρόνο για την υπεράσπιση των συμφερόντων τους.

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43 Τα μέλη συμφωνούν ότι οι αιτήσεις για την παροχή εμπιστευτικής μεταχείρισης δεν πρέπει να απορρίπτονται αυθαίρετα. Επιπλέον τα μέλη συμφωνούν ότι η αρχή που διεξάγει την έρευνα δύναται να ζητήσει την άρση της εμπιστευτικής μεταχείρισης μόνο σε σχέση με πληροφορίες που έχουν κάποια χρησιμότητα στο πλαίσιο της διαδικασίας.

12.9 Για τους σκοπούς της παρούσας συμφωνίας, ο όρος "ενδιαφερόμενοι" περιλαμβάνει:

(i) τους εξαγωγείς, τους αλλοδαπούς παραγωγούς και τους εισαγωγείς του προϊόντος που αποτελεί αντικείμενο της έρευνας ή τις εμπορικές και επιχειρηματικές ενώσεις η πλειονότης των μελών των οποίων αποτελείται από παραγωγούς, εξαγωγείς ή εισαγωγείς του συγκεκριμένου προϊόντος· και

(ii) τους παραγωγούς του ομοειδούς προϊόντος στο εισάγον μέλος ή τις εμπορικές και επιχειρηματικές ενώσεις η πλειονότης των μελών των οποίων παράγει το ομοειδές προϊόν στο έδαφος του εισάγοντος μέλους.

Η ανωτέρω απαρίθμηση δεν σημαίνει ότι τα μέλη δεν έχουν το δικαίωμα να συμπεριλάβουν στους ενδιαφερομένους και κάποια άλλα μέρη, είτε ημεδαπά, είτε αλλοδαπά, τα οποία ενδεχομένως δεν καλύπτονται από τον ανωτέρω ορισμό.

12.10 Οι αρχές παρέχουν τη δυνατότητα σε βιομηχανικούς χρήστες του προϊόντος που αποτελεί αντικείμενο της έρευνας και σε αντιπροσωπευτικές οργανώσεις καταναλωτών, σε περιπτώσεις κατά τις οποίες το προϊόν αυτό πωλείται συνήθως στο λιανεμπόριο, να προσκομίσουν τυχόν στοιχεία που θα μπορούσαν να ληφθούν υπόψη κατά τη διερεύνηση των θεμάτων των σχετικών με την παροχή επιδοτήσεων, τη ζημία και την αιτιώδη συνάφεια.

12.11 Οι αρχές λαμβάνουν δεόντως υπόψη τυχόν δυσκολίες που αντιμετωπίζουν οι ενδιαφερόμενοι, ιδιαίτερα οι περιορισμένου μεγέθους εταιρείες, για τη συγκέντρωση των στοιχείων που έχουν ζητηθεί, και παρέχουν κάθε δυνατή βοήθεια σχετικά.

12.12 Οι διαδικασίες που καθορίζονται παραπάνω δεν σημαίνουν ότι οι αρχές ενός μέλους δεν έχουν το δικαίωμα να διενεργούν με ταχύτητα τις διάφορες πράξεις που αναφέρονται στην έναρξη της έρευνας, τη διατύπωση προκαταρκτικών ή τελικών συμπερασμάτων, είτε καταφατικών, είτε αποφατικών, ή να θεσπίζουν προσωρινά ή οριστικά μέτρα κατ' εφαρμογήν των σχετικών διατάξεων της παρούσας συμφωνίας.

Άρθρο 13

Διαβουλεύσεις

13.1 Το συντομότερο δυνατό από την αποδοχή μιας αίτησης που έχει υποβληθεί βάσει του άρθρου 11 και πάντως πριν από την έναρξη οιασδήποτε έρευνας, τα μέλη, τα προϊόντα των οποίων ενδέχεται να αποτελέσουν αντικείμενο της έρευνας, καλούνται να συμμετάσχουν σε διαβουλεύσεις, με σκοπό την αποσαφήνιση της κατάστασης όσον αφορά τα θέματα για τα οποία γίνεται λόγος στο άρθρο 11, παράγραφος 2 και την επίτευξη αμοιβαία αποδεκτής λύσης.

13.2 Επιπλέον, καθ' όλη τη διάρκεια της έρευνας, στα μέλη τα προϊόντα των οποίων αποτελούν αντικείμενο της έρευνας παρέχονται κατάλληλες δυνατότητες για τη συνέχιση των διαβουλεύσεων, με σκοπό την αποσαφήνιση των πραγματικών δεδομένων της υπόθεσης και την επίτευξη αμοιβαία αποδεκτής λύσης[44].

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44 Βάσει των διατάξεων της παρούσας παραγράφου, έχει ιδιαίτερη σημασία ότι η διατύπωση οιουδήποτε καταφατικού συμπεράσματος, είτε προκαταρκτικού, είτε οριστικού, δεν είναι δυνατή, αν προηγουμένως δεν έχουν παρασχεθεί στα μέρη οι κατάλληλες δυνατότητες για τη διενέργεια διαβουλεύσεων. Με τις διαβουλεύσεις αυτές είναι δυνατό να καθοριστεί η βάση της απόφασης να συνεχιστεί η διαδικασία δυνάμει των διατάξεων του μέρους ΙΙ, ΙΙΙ ή Χ.

13.3 Με την επιφύλαξη της υποχρέωσης παραχώρησης των κατάλληλων ευκαιριών για τη διενέργεια διαβουλεύσεων, οι παρούσες διατάξεις, οι οποίες αναφέρονται στο θέμα των διαβουλεύσεων, δεν σημαίνουν ότι οι αρχές ενός μέλους δεν έχουν το δικαίωμα να διενεργούν με ταχύτητα τις διάφορες πράξεις που αναφέρονται στην έναρξη της έρευνας, τη διατύπωση προκαταρκτικών ή τελικών συμπερασμάτων, είτε καταφατικών, είτε αποφατικών, ή να θεσπίζουν προσωρινά ή οριστικά μέτρα σύμφωνα με τις διατάξεις της παρούσας συμφωνίας.

13.4 Το μέλος που σκοπεύει να αρχίσει έρευνα ή το οποίο διεξάγει τέτοια έρευνα επιτρέπει, εφόσον του ζητηθεί, στο μέλος ή τα μέλη, τα προϊόντα των οποίων αποτελούν αντικείμενο της εν λόγω έρευνας, να λάβουν γνώση των μη εμπιστευτικού χαρακτήρα αποδεικτικών στοιχείων, στα οποία συμπεριλαμβάνονται οι μη εμπιστευτικές περιλήψεις πληροφοριών εμπιστευτικού χαρακτήρα και τα οποία χρησιμοποιούνται για την έναρξη ή τη διεξαγωγή της έρευνας.

Άρθρο 14

Υπολογισμός του ύψους της επιδότησης
με βάση το όφελος που προκύπτει για τον αποδέκτη της επιδότησης

Για τους σκοπούς του μέρους V, η μέθοδος την οποία χρησιμοποιεί η αρχή που διεξάγει την έρευνα προκειμένου να υπολογίσει το όφελος που προκύπτει για τον αποδέκτη με βάση το άρθρο 1, παράγραφος 1 πρέπει να προβλέπεται από την εθνική νομοθεσία ή από τους κανονισμούς εφαρμογής του οικείου μέλους, ενώ η εφαρμογή της σε κάθε συγκεκριμένη περίπτωση πρέπει να χαρακτηρίζεται από διαφάνεια και να επεξηγείται επαρκώς. Επιπλέον, η χρησιμοποιούμενη μέθοδος πρέπει να ανταποκρίνεται στις ακόλουθες κατευθυντήριες γραμμές:

(α) γίνεται δεκτό ότι η εισφορά στο μετοχικό κεφάλαιο εταιρειών εκ μέρους του Δημοσίου δεν προσπορίζει όφελος, εκτός αν η επενδυτική απόφαση είναι δυνατό να θεωρηθεί ως μη ανταποκρινόμενη στη συνήθη επενδυτική πρακτική (συμπεριλαμβανομένης της χορήγησης επιχειρηματικών κεφαλαίων), την οποία ακολουθούν οι ιδιώτες επενδυτές στην επικράτεια του οικείου μέλους·

(β) γίνεται δεκτό ότι η χορήγηση δανείου εκ μέρους του Δημοσίου δεν προσπορίζει όφελος, εκτός αν υφίσταται διαφορά μεταξύ του ποσού που καταβάλλει η δανειολήπτρια εταιρεία για το δάνειο που της έχει χορηγήσει το Δημόσιο και του ποσού το οποίο θα ήταν υποχρεωμένη να καταβάλει η εταιρεία για ένα ανάλογο εμπορικό δάνειο, το οποίο η εταιρεία θα ήταν πράγματι σε θέση να εξασφαλίσει στην αγορά. Στην περίπτωση αυτή, το όφελος ισούται με τη διαφορά μεταξύ των δύο αυτών ποσών·

(γ) γίνεται δεκτό ότι η παροχή εγγύησης εκ μέρους του Δημοσίου για κάποιο δάνειο δεν προσπορίζει όφελος, εκτός αν υφίσταται διαφορά μεταξύ του ποσού που καταβάλλει η εταιρεία, υπέρ της οποίας παρεσχέθη η εγγύηση, για το δάνειο που έχει συνομολογήσει με την εγγύηση του Δημοσίου και του ποσού που θα ήταν υποχρεωμένη να καταβάλει η εταιρεία για ένα ανάλογο εμπορικό δάνειο, σε περίπτωση που δεν υπήρχε η εγγύηση του Δημοσίου. Στην περίπτωση αυτή, το όφελος ισούται με τη διαφορά μεταξύ των δύο αυτών ποσών, αφού γίνουν οι αναγκαίες αναπροσαρμογές, για να ληφθούν υπόψη τυχόν διαφορές στις προμήθειες·

(δ) γίνεται δεκτό ότι η διάθεση αγαθών ή υπηρεσιών ή η αγορά αγαθών από το δημόσιο δεν προσπορίζει όφελος, εκτός αν η διάθεση πραγματοποιείται έναντι μικρότερου από το κανονικό τιμήματος ή αν για την αγορά καταβάλλεται τίμημα μεγαλύτερο από το κανονικό. Για να κριθεί κατά πόσον το τίμημα είναι το κανονικό, εξετάζονται οι συνθήκες που επικρατούν στην αγορά της χώρας όπου πραγματοποιείται η διάθεση ή η αγορά, όσον αφορά το συγκεκριμένο αγαθό ή υπηρεσία (στις συνθήκες αυτές συμπεριλαμβάνονται η τιμή, η ποιότητα, η διαθεσιμότητα, η εμπορευσιμότητα, η μεταφορά και οι λοιποί όροι αγοράς ή πώλησης).

Άρθρο 15

Προσδιορισμός της ζημίας[45]

15.1 Ο προσδιορισμός της ζημίας στο πλαίσιο της εφαρμογής του άρθρου VI της GATT του 1994 πρέπει να στηρίζεται σε θετικά αποδεικτικά στοιχεία και προϋποθέτει αντικειμενική εξέταση τόσο (α) του όγκου των επιδοτούμενων εισαγωγών και των συνεπειών των επιδοτούμενων εισαγωγών για τις τιμές των ομοειδών προϊόντων[46] στην εγχώρια αγορά, όσο και (β) των επακόλουθων συνεπειών των εν λόγω εισαγωγών για τους εγχώριους παραγωγούς των αντίστοιχων προϊόντων.

15.2 Προκειμένου περί του όγκου των επιδοτούμενων εισαγωγών, οι αρχές που διεξάγουν τις σχετικές έρευνες εξετάζουν κατά πόσον έχει σημειωθεί σημαντική αύξηση του όγκου των εν λόγω εισαγωγών, είτε σε απόλυτες τιμές, είτε σε συνάρτηση με την παραγωγή ή την κατανάλωση στο εισάγον μέλος. Όσον αφορά την επίδραση των επιδοτούμενων εισαγωγών επί των τιμών, οι αρχές που διεξάγουν τις σχετικές έρευνες εξετάζουν κατά πόσον έχουν πραγματοποιηθεί επιδοτούμενες εισαγωγές σε τιμές αισθητά κατώτερες της τιμής των ομοειδών προϊόντων του εισάγοντος μέλους ή κατά πόσον εισαγωγές αυτού του είδους προκαλούν με οποιονδήποτε τρόπο σημαντική συμπίεση των τιμών ή παρεμποδίζουν σε σημαντικό βαθμό την αύξηση των τιμών που θα είχε σημειωθεί σε αντίθετη περίπτωση. Κανένας από τους ανωτέρω παράγοντες, ούτε περισσότεροι εξ αυτών από κοινού δεν είναι απαραίτητο να θεωρηθούν βαρύνουσας σημασίας για την εξαγωγή συμπερασμάτων.

15.3 Όταν διεξάγονται ταυτοχρόνως έρευνες με αντικείμενο την επιβολή αντισταθμιστικών δασμών σχετικά με τις εισαγωγές συγκεκριμένου προϊόντος από διαφορετικές χώρες, οι αρχές που διεξάγουν τις έρευνες δύνανται να προσμετρούν σωρευτικώς τις συνέπειες των εισαγωγών αυτών μόνο εφόσον βεβαιωθούν ότι: (α) το ύψος της επιδότησης που προκύπτει για τις εισαγωγές από κάθε χώρα είναι αρκετά υψηλό ώστε να μη θεωρείται ασήμαντο από νομική άποψη, σύμφωνα με όσα προβλέπει το άρθρο 11, παράγραφος 9, ενώ ο όγκος των εισαγωγών από κάθε χώρα δεν είναι αμελητέος· και (β) η σωρευτική αξιολόγηση των συνεπειών των εισαγωγών είναι η ενδεδειγμένη λαμβανομένων υπόψη των όρων του ανταγωνισμού

45 Βάσει της παρούσας συμφωνίας, ο όρος "ζημία" σημαίνει, αν δεν ορίζεται κάτι διαφορετικό, τη σοβαρή ζημία η οποία προκαλείται σε εγχώριο κλάδο παραγωγής, τον κίνδυνο πρόκλησης σοβαρής ζημίας σε εγχώριο κλάδο παραγωγής ή τη σημαντική επιβράδυνση της δημιουργίας εγχώριου κλάδου παραγωγής· η ερμηνεία του εν λόγω όρου διέπεται από τις διατάξεις του παρόντος άρθρου.

46 Οπουδήποτε γίνεται χρήση στην παρούσα συμφωνία του όρου "ομοειδές προϊόν" ("like product", "produit similaire"), αυτός νοείται ως αναφερόμενος σε ένα όμοιο προϊόν, δηλαδή προϊόν που μοιάζει από κάθε άποψη με το υπό εξέταση προϊόν ή, αν δεν υπάρχει κάποιο τέτοιο προϊόν, σε ένα άλλο προϊόν, το οποίο, και αν δεν του μοιάζει από κάθε άποψη, ωστόσο έχει χαρακτηριστικά που μοιάζουν σε μεγάλο βαθμό με εκείνα του υπό εξέταση προϊόντος.

μεταξύ των εισαγόμενων προϊόντων, καθώς και των όρων του ανταγωνισμού μεταξύ των εισαγομένων προϊόντων και του ομοειδούς εγχωρίου προϊόντος.

15.4 Η εξέταση των συνεπειών των επιδοτούμενων εισαγωγών επί του εκάστοτε εγχώριου κλάδου παραγωγής περιλαμβάνει αξιολόγηση όλων των συναφών οικονομικών παραγόντων, καθώς και των δεικτών που αντανακλούν την κατάσταση του εν λόγω κλάδου παραγωγής, στους οποίους περιλαμβάνονται: η πραγματική ή ενδεχόμενη μείωση της παραγωγής, των πωλήσεων, του μεριδίου αγοράς, των κερδών, της παραγωγικότητας, της απόδοσης των επενδύσεων ή της χρησιμοποίησης της ικανότητας· ο παράγοντες που επηρεάζουν τις εγχώριες τιμές· οι πραγματικές δυνητικές επιπτώσεις για τις ταμειακές ροές, τα αποθέματα, την απασχόληση, τους μισθούς, την ανάπτυξη, την ικανότητα άντλησης κεφαλαίων ή τις επενδύσεις, καθώς και, όταν πρόκειται για το γεωργικό τομέα, το κατά πόσον έχει προκύψει αύξηση της επιβάρυνσης για τα κρατικά προγράμματα στήριξης. Η ανωτέρω απαρίθμηση έχει ενδεικτικό χαρακτήρα, και κανένας από τους ανωτέρω παράγοντες, ούτε περισσότεροι εξ αυτών από κοινού δεν είναι απαραίτητο να θεωρηθούν βαρύνουσας σημασίας για την εξαγωγή συμπερασμάτων.

15.5 Πρέπει να αποδεικνύεται ότι, εξαιτίας των συνεπειών[47] των επιδοτήσεων, οι επιδοτούμενες εισαγωγές προκαλούν ζημία κατά την έννοια της παρούσας συμφωνίας. Για να διαπιστωθεί κατά πόσον υπάρχει αιτιώδης συνάφεια μεταξύ των επιδοτούμενων εισαγωγών και της ζημίας που υφίσταται ο εγχώριος κλάδος παραγωγής, οι αρχές συνεκτιμούν όλα τα σχετικά αποδεικτικά στοιχεία που έχουν στη διάθεσή τους. Οι αρχές εξετάζουν ακόμη τυχόν άλλους γνωστούς παράγοντες, πέραν των επιδοτούμενων εισαγωγών, οι οποίοι προκαλούν κατά τον ίδιο χρόνο ζημία στον εγχώριο κλάδο παραγωγής, ενώ η ζημία που προξενείται από αυτούς τους άλλους παράγοντες πρέπει να μην είναι δυνατό να αποδοθεί στις επιδοτούμενες εισαγωγές. Στους παράγοντες που ενδέχεται να έχουν σημασία από αυτή την άποψη είναι δυνατό να συμπεριλαμβάνονται, μεταξύ άλλων, ο όγκος και οι τιμές εισαγωγών του συγκεκριμένου προϊόντος για τις οποίες δεν έχει παρασχεθεί επιδότηση, η συρρίκνωση της ζήτησης ή οι μεταβολές των δεδομένων κατανάλωσης, οι περιοριστικές εμπορικές πρακτικές που εφαρμόζουν οι ξένοι και οι εγχώριοι παραγωγοί, καθώς και ο ανταγωνισμός μεταξύ τους, οι τεχνολογικές εξελίξεις και, τέλος, οι εξαγωγικές επιδόσεις και η παραγωγικότητα του εγχώριου κλάδου παραγωγής.

15.6 Οι συνέπειες των επιδοτούμενων εισαγωγών αξιολογούνται σε σχέση με την εγχώρια παραγωγή του ομοειδούς προϊόντος, εφόσον τα διαθέσιμα στοιχεία επιτρέπουν τον χωριστό προσδιορισμό της εν λόγω παραγωγής βάσει ορισμένων κριτηρίων, όπως είναι η μέθοδος παραγωγής, οι πωλήσεις και τα κέρδη των παραγωγών. Αν δεν είναι δυνατός ο χωριστός προσδιορισμός της εν λόγω παραγωγής, οι συνέπειες των επιδοτούμενων εισαγωγών αξιολογούνται μέσω της εξέτασης της παραγωγής της πλέον περιορισμένης ομάδας ή φάσματος προϊόντων, που περιλαμβάνει το ομοειδές προϊόν, για τα οποία είναι δυνατό να συγκεντρωθούν τα απαραίτητα στοιχεία.

15.7 Για να διαπιστωθεί η ύπαρξη κινδύνου πρόκλησης σοβαρής ζημίας λαμβάνονται υπόψη τα πραγματικά περιστατικά, και όχι μόνο τυχόν ισχυρισμοί, εικασίες ή πιθανότητες. Οποιαδήποτε μεταβολή των περιστάσεων, που θα δημιουργούσε κατάσταση υπό την οποία είναι πιθανή η πρόκληση ζημίας από τις παρεχόμενες επιδοτήσεις, πρέπει να έχει προβλεφθεί με βεβαιότητα και να είναι επικείμενη. Προκειμένου να αποφανθούν σχετικά με την ύπαρξη κινδύνου πρόκλησης σοβαρής ζημίας, οι αρχές που διεξάγουν την έρευνα συνεκτιμούν, μεταξύ άλλων, τους ακόλουθους παράγοντες:

47 Κατά τα προβλεπόμενα στις παραγράφους 2 και 4.

(i) το χαρακτήρα της επίμαχης επιδότησης ή των επίμαχων επιδοτήσεων και τις συνέπειες που είναι πιθανό να ανακύψουν από αυτές για το εμπόριο·

(ii) τυχόν αύξηση σε σημαντικό ποσοστό των επιδοτούμενων εισαγωγών στην εγχώρια αγορά, η οποία αποτελεί ένδειξη για την πιθανότητα αξιόλογης αύξησης των εισαγωγών·

(iii) την ύπαρξη επαρκούς και ελεύθερα διαθέσιμης ικανότητας ή την πιθανότητα σημαντικής αύξησης της ικανότητας στο άμεσο μέλλον εκ μέρους του εξαγωγέα, από την οποία προκύπτει ως πιθανή σημαντική αύξηση των επιδοτούμενων εξαγωγών προς την αγορά του εισάγοντος μέλους, λαμβανομένης υπόψη της ύπαρξης άλλων εξαγωγικών αγορών, οι οποίες θα μπορούσαν να απορροφήσουν τυχόν πρόσθετες εξαγωγές·

(iv) το κατά πόσον οι εισαγωγές εισέρχονται στη χώρα σε τιμές που θα έχουν ως αποτέλεσμα είτε τη σημαντική συμπίεση, είτε την παρεμπόδιση της αύξησης των εγχώριων τιμών, και οι οποίες είναι πιθανό να οδηγήσουν σε αύξηση της ζήτησης για επιπλέον εισαγωγές· και

(v) τα αποθέματα του υπό διερεύνηση προϊόντος.

Κανένας από τους ανωτέρω παράγοντες από μόνος του δεν είναι απαραίτητο να θεωρηθεί βαρύνουσας σημασίας για την εξαγωγή συμπερασμάτων, αλλά οι παράγοντες που λαμβάνονται υπόψη στο σύνολό τους πρέπει να οδηγούν στο συμπέρασμα ότι επίκειται η πραγματοποίηση περαιτέρω επιδοτούμενων εξαγωγών και ότι υπάρχει κίνδυνος πρόκλησης σοβαρής ζημίας σε περίπτωση που δεν ληφθούν προστατευτικά μέτρα.

15.8 Σε περιπτώσεις, εξάλλου, κατά τις οποίες επαπειλείται η πρόκληση ζημίας από επιδοτούμενες εισαγωγές, το ενδεχόμενο επιβολής αντισταθμιστικών μέτρων εξετάζεται και η σχετική απόφαση λαμβάνεται με ιδιαίτερη περίσκεψη.

Άρθρο 16

Ορισμός του εγχώριου κλάδου παραγωγής

16.1 Για τους σκοπούς της παρούσας συμφωνίας και με την επιφύλαξη όσων προβλέπονται στην παράγραφο 2, ο όρος "εγχώριος κλάδος παραγωγής" νοείται ως περιλαμβάνων τους εγχώριους παραγωγούς ομοειδών προϊόντων στο σύνολό τους ή εκείνους εξ αυτών των οποίων αθροιστικά η παραγωγή των υπό εξέταση προϊόντων αντιπροσωπεύει το μεγαλύτερο μέρος της συνολικής εγχώριας παραγωγής των εν λόγω προϊόντων, εκτός από την περίπτωση κατά την οποία κάποιοι παραγωγοί συνδέονται[48] με τους εξαγωγείς ή τους εισαγωγείς ή είναι οι ίδιοι εισαγωγείς του προϊόντος που υποτίθεται ότι αποτελεί αντικείμενο επιδότησης ή κάποιου ομοειδούς προϊόντος από άλλες χώρες, οπότε ο όρος "εγχώριος κλάδος παραγωγής" είναι δυνατό να νοείται ως περιλαμβάνων μόνο τους υπόλοιπους παραγωγούς·

48 Για τους σκοπούς της παρούσας παραγράφου, γίνεται δεκτό ότι ένας παραγωγός συνδέεται με κάποιον εξαγωγέα ή εισαγωγέα μόνο εφόσον (α) ο ένας από αυτούς ελέγχει άμεσα ή έμμεσα τον άλλον· ή (β) και οι δύο ελέγχονται άμεσα ή έμμεσα από κάποιον τρίτο· ή (γ) από κοινού ελέγχουν άμεσα ή έμμεσα κάποιον τρίτο, υπό την προϋπόθεση ότι συντρέχουν λόγοι για να πιστεύει ή να υποψιάζεται κανείς ότι η σχέση αυτή έχει ως αποτέλεσμα να συμπεριφέρεται ο εκάστοτε παραγωγός διαφορετικά από ό,τι συμπεριφέρονται οι μη συνδεόμενοι παραγωγοί. Για τους σκοπούς της παρούσας παραγράφου, γίνεται δεκτό ότι μία οντότητα ελέγχει κάποιαν άλλη όταν η πρώτη έχει τη δυνατότητα, είτε νομικώς, είτε λειτουργικώς, να θέτει περιορισμούς στη δεύτερη ή να κατευθύνει τις ενέργειές της.

16.2 Σε εξαιρετικές περιπτώσεις, το έδαφος ενός μέλους είναι δυνατό εις ό,τι αφορά την υπό εξέταση παραγωγή να διαιρεθεί σε δύο ή περισσότερες ανταγωνιστικές αγορές, και οι παραγωγοί κάθε επιμέρους αγοράς είναι δυνατό να θεωρηθούν ως χωριστός κλάδος παραγωγής εφόσον: (α) οι παραγωγοί κάθε επιμέρους αγοράς πωλούν το σύνολο ή σχεδόν το σύνολο των ποσοτήτων του υπό εξέταση προϊόντος που παράγουν στη συγκεκριμένη αγορά, και (β) η ζήτηση στη συγκεκριμένη αγορά δεν καλύπτεται σε αξιόλογο ποσοστό από παραγωγούς του υπό εξέταση προϊόντος οι οποίοι είναι εγκατεστημένοι σε διαφορετικό τμήμα του οικείου εδάφους. Όταν συντρέχουν οι ανωτέρω προϋποθέσεις, είναι δυνατό να γίνει δεκτό ότι προκαλείται ζημία ακόμη και αν μεγάλο μέρος του συνολικού εγχώριου κλάδου παραγωγής δεν υφίσταται ζημία, υπό την προϋπόθεση ότι παρατηρείται συγκέντρωση των επιδοτούμενων εισαγωγών σε μια τέτοια μεμονωμένη αγορά και επιπροσθέτως ότι οι επιδοτούμενες εισαγωγές προξενούν ζημία στους παραγωγούς του συνόλου ή σχεδόν του συνόλου της παραγωγής στη συγκεκριμένη αγορά.

16.3 Όταν ο εγχώριος κλάδος παραγωγής έχει ερμηνευθεί ως οι παραγωγοί συγκεκριμένης περιοχής, δηλαδή ως οι παραγωγοί μιας επιμέρους αγοράς κατά την έννοια της παραγράφου 2, οι επιβαλλόμενοι αντισταθμιστικοί δασμοί αφορούν μόνο τις ποσότητες των υπό εξέταση προϊόντων οι οποίες προορίζονται για τελική κατανάλωση στην εν λόγω περιοχή. Όταν το συνταγματικό δίκαιο του εισάγοντος μέλους δεν επιτρέπει μια τέτοιου είδους επιβολή αντισταθμιστικών δασμών, το εισάγον μέλος δύναται να επιβάλλει αντισταθμιστικούς δασμούς χωρίς περιορισμό μόνο εφόσον: (α) έχει παρασχεθεί η δυνατότητα στους οικείους εξαγωγείς να διακόψουν τις εξαγωγές προς τη συγκεκριμένη περιοχή σε τιμές που απορρέουν από την παροχή επιδοτήσεων ή έστω να παράσχουν σχετικές διαβεβαιώσεις, όπως προβλέπει το άρθρο 18, και δεν παρεσχέθησαν αμελλητί ικανοποιητικές διαβεβαιώσεις σχετικά· και (β) τέτοιου είδους δασμοί δεν επιτρέπεται να επιβάλλονται μόνο στα προϊόντα συγκεκριμένων παραγωγών, οι οποίοι διοχετεύουν την παραγωγή τους στη συγκεκριμένη περιοχή.

16.4 Όταν δύο ή περισσότερες χώρες έχουν, βάσει των διατάξεων του άρθρου XXIV, παράγραφος 8, στοιχείο α) της GATT του 1994, επιτύχει τέτοιο βαθμό οικονομικής ολοκλήρωσης, ώστε να φέρουν τα χαρακτηριστικά μίας, ενοποιημένης, αγοράς, στην περίπτωση αυτή ως εγχώριος κλάδος παραγωγής κατά την έννοια των παραγράφων 1 και 2 νοείται ο κλάδος παραγωγής στο σύνολο της περιοχής την οποία καλύπτει η οικονομική ολοκλήρωση.

16.5 Για την εφαρμογή του παρόντος άρθρου εφαρμόζονται οι διατάξεις του άρθρου 15, παράγραφος 6.

Άρθρο 17

Προσωρινά μέτρα

17.1 Η εφαρμογή προσωρινών μέτρων επιτρέπεται μόνο εφόσον:

(α) έχει αρχίσει έρευνα σύμφωνα με τις διατάξεις του άρθρου 11, έχει εκδοθεί σχετική δημόσια ανακοίνωση και έχουν παρασχεθεί στα ενδιαφερόμενα μέλη και στους λοιπούς ενδιαφερομένους οι κατάλληλες δυνατότητες για να υποβάλουν τυχόν στοιχεία και να διατυπώσουν τις παρατηρήσεις τους·

(β) έχει διατυπωθεί προκαταρκτικό συμπέρασμα το οποίο επιβεβαιώνει την ύπαρξη της επιδότησης και το γεγονός ότι οι επιδοτούμενες εισαγωγές προξενούν ζημία στον εγχώριο κλάδο παραγωγής· και

(γ) οι αρμόδιες αρχές κρίνουν ότι τα εν λόγω μέτρα είναι αναγκαία προκειμένου να αποτραπεί η πρόκληση ζημίας κατά τη διάρκεια της έρευνας.

17.2 Τα προσωρινά μέτρα είναι δυνατό να έχουν τη μορφή προσωρινού αντισταθμιστικού δασμού για τον οποίο παρέχεται εγγύηση υπό μορφή κατάθεσης σε μετρητά ή χορήγησης έγγραφης εγγυητικής δήλωσης· το ύψος της εγγύησης πρέπει να είναι ίσο με το ύψος της επιδότησης, όπως αυτό έχει υπολογισθεί προσωρινά.

17.3 Δεν επιτρέπεται η επιβολή προσωρινών μέτρων πριν από την πάροδο 60 ημερών από την ημερομηνία έναρξης της έρευνας.

17.4 Η ισχύς τυχόν προσωρινών μέτρων πρέπει να έχει τη συντομότερη δυνατή χρονική διάρκεια, η οποία δεν μπορεί να υπερβαίνει τους τέσσερις μήνες.

17.5 Για την εφαρμογή προσωρινών μέτρων τηρούνται οι σχετικές διατάξεις του άρθρου 19.

Άρθρο 18

Αναλήψεις υποχρεώσεων

18.1 Η διαδικασία είναι δυνατό[49] να αναστέλλεται ή να περατούται χωρίς να επιβάλλονται προσωρινά μέτρα ή αντισταθμιστικοί δασμοί, σε περίπτωση που προτείνονται οικειοθελώς ικανοποιητικές αναλήψεις υποχρεώσεων, βάσει των οποίων:

(α) η κυβέρνηση του εξάγοντος μέλους συμφωνεί να καταργήσει ή να μειώσει την επιδότηση ή να λάβει άλλου είδους μέτρα για την αντιμετώπιση των συνεπειών της· ή

(β) ο εξαγωγέας συμφωνεί να αναπροσαρμόσει τις τιμές που εφαρμόζει, και οι αρχές που διεξάγουν την έρευνα πείθονται ότι με τον τρόπο αυτό πρόκειται να εξαλειφθούν οι ζημιογόνες συνέπειες της επιδότησης. Οι αυξήσεις τιμών που προβλέπονται από τέτοιου είδους αναλήψεις υποχρεώσεων δεν επιτρέπεται να είναι μεγαλύτερες από αυτές που χρειάζονται για την αντιστάθμιση του ύψους της επιδότησης. Οι αυξήσεις τιμών είναι προτιμότερο να υπολείπονται του ύψους της επιδότησης, εφόσον αυξήσεις αυτής της κλίμακας θα ήταν αρκετές για την άρση της ζημίας που προξενείται στον εγχώριο κλάδο παραγωγής.

18.2 Δεν επιτρέπεται να ζητηθεί ή να γίνει δεκτή η ανάληψη υποχρεώσεων, παρά μόνο εφόσον οι αρχές του εισάγοντος μέλους έχουν καταλήξει, στο πλαίσιο των προκαταρκτικών συμπερασμάτων τους, στη διαπίστωση ότι όντως παρέχεται επιδότηση και ότι η επιδότηση αυτή έχει ζημιογόνες συνέπειες, και επιπλέον, στην περίπτωση αναλήψεων υποχρεώσεων εκ μέρους εξαγωγέων, εφόσον εξασφαλίζεται η συγκατάθεση του εξάγοντος μέλους.

18.3 Οι προτεινόμενες αναλήψεις υποχρεώσεων είναι δυνατό να μη γίνονται δεκτές, αν οι αρχές του εισάγοντος μέλους εκτιμούν ότι η αποδοχή τους θα δημιουργούσε πρακτικές δυσκολίες, παραδείγματος χάρη αν ο αριθμός των πραγματικών ή δυνητικών εξαγωγέων είναι υπερβολικά μεγάλος ή για άλλους λόγους, συμπεριλαμβανομένων λόγων που ανάγονται στην

49 Ο όρος "είναι δυνατό" δεν σημαίνει ότι επιτρέπεται η ταυτόχρονη συνέχιση της διαδικασίας και η τήρηση αναλήψεων υποχρεώσεων, εκτός από τις περιπτώσεις που ορίζονται στην παράγραφο 4.

ακολουθούμενη συνολική πολιτική. Όταν παρίσταται ανάγκη και εφόσον είναι πρακτικώς δυνατόν, οι αρχές γνωστοποιούν στον εξαγωγέα τους λόγους για τους οποίους έκριναν ως μη ενδεδειγμένη την αποδοχή κάποιας ανάληψης υποχρέωσης και παρέχουν στο μέτρο του δυνατού στον εξαγωγέα τη δυνατότητα να υποβάλει τυχόν παρατηρήσεις του σχετικά.

18.4 Όταν γίνεται δεκτή μία ανάληψη υποχρέωσης, η έρευνα η σχετική με την παροχή της επιδότησης και τη ζημία ολοκληρώνεται παρά την αποδοχή, εφόσον το επιθυμεί το εξάγον μέλος ή εφόσον ληφθεί σχετική απόφαση από το εισάγον μέλος. Στην περίπτωση αυτή, αν διαπιστωθεί ότι δεν υπάρχει επιδότηση ή ζημία, η ανάληψη υποχρέωσης παύει να ισχύει αυτοδικαίως, εκτός από τις περιπτώσεις κατά τις οποίες η διαπίστωση της μη ύπαρξης επιδότησης ή ζημίας είναι σε μεγάλο βαθμό αποτέλεσμα της ύπαρξης της ανάληψης υποχρέωσης. Σε τέτοιες περιπτώσεις, οι αρμόδιες αρχές δύνανται να απαιτούν τη διατήρηση σε ισχύ της ανάληψης υποχρέωσης για εύλογο χρονικό διάστημα, σύμφωνα με τις διατάξεις της παρούσας συμφωνίας. Σε περίπτωση που διαπιστωθεί ότι όντως υπάρχει επιδότηση και ζημία, η αναληφθείσα υποχρέωση παραμένει σε ισχύ με βάση το περιεχόμενό της και σύμφωνα με τις διατάξεις της παρούσας συμφωνίας.

18.5 Οι αρχές του εισάγοντος μέλους δύνανται να εισηγούνται την ανάληψη υποχρεώσεων ως προς τις τιμές, αλλά κανείς εξαγωγέας δεν είναι δυνατό να υποχρεωθεί να αναλάβει μια υποχρέωση αυτής της μορφής. Το γεγονός ότι οι αρχές ενός μέλους ή ένας εξαγωγέας δεν προσφέρονται να αναλάβουν τέτοιου είδους υποχρεώσεις ή δεν ανταποκρίνονται σε σχετική πρόσκληση που τους έχει απευθυνθεί δεν προδικάζει με κανέναν τρόπο την αξιολόγηση των δεδομένων της υπόθεσης. Παρόλα αυτά, οι αρχές έχουν την ευχέρεια να καταλήξουν στο συμπέρασμα ότι η επέλευση του κινδύνου πρόκλησης ζημίας είναι πιθανότερη σε περίπτωση συνέχισης των επιδοτούμενων εισαγωγών.

18.6 Όταν έχει προταθεί και γίνει δεκτή ανάληψη υποχρέωσης εκ μέρους μιας κυβέρνησης ή ενός εξαγωγέα, οι αρχές του εισάγοντος μέλους δύνανται να απαιτούν από την εν λόγω κυβέρνηση ή τον εξαγωγέα να υποβάλλει ανά τακτά χρονικά διαστήματα στοιχεία σχετικά με την εκπλήρωση της αναληφθείσας υποχρέωσης και να επιτρέπει την επαλήθευση των συναφών στοιχείων. Σε περίπτωση παράβασης της αναληφθείσας υποχρέωσης, οι αρχές του εισάγοντος μέλους δύνανται να λαμβάνουν μέτρα με ταχείες διαδικασίες, στο πλαίσιο της παρούσας συμφωνίας και σύμφωνα με τις διατάξεις της· τα μέτρα αυτά είναι δυνατό να συνίστανται στην άμεση εφαρμογή προσωρινών μέτρων, βάσει της καλύτερης διαθέσιμης τεκμηρίωσης. Σε τέτοιες περιπτώσεις, επιτρέπεται η επιβολή συμφώνως προς την παρούσα συμφωνία οριστικών δασμών επί προϊόντων τα οποία έχουν τεθεί σε κατανάλωση όχι περισσότερες από 90 ημέρες πριν από την εφαρμογή των αντίστοιχων προσωρινών μέτρων, με εξαίρεση τα εισαχθέντα προϊόντα που ετέθησαν σε κατανάλωση πριν από την παράβαση της αναληφθείσας υποχρέωσης, ως προς τα οποία δεν ισχύει η αναδρομική αυτή μεταχείριση.

Άρθρο 19

Επιβολή και είσπραξη των αντισταθμιστικών δασμών

19.1 Σε περίπτωση που, μετά την ανάληψη εύλογων προσπαθειών για την ολοκλήρωση των διαβουλεύσεων, ένα μέλος καταλήγει σε οριστικό συμπέρασμα σχετικά με την ύπαρξη της επιδότησης και το ύψος της και διαπιστώνει ότι η παροχή της επιδότησης έχει ως αποτέλεσμα να προξενείται ζημία από τις επιδοτούμενες εισαγωγές, το εν λόγω μέλος δύναται να επιβάλλει αντισταθμιστικό δασμό σύμφωνα με τις διατάξεις του παρόντος άρθρου, εκτός αν υπάρξει κατάργηση της επιδότησης ή των επιδοτήσεων.

19.2 Η απόφαση περί της επιβολής ή μη αντισταθμιστικού δασμού σε περιπτώσεις κατά τις οποίες συντρέχουν όλες οι προϋποθέσεις για την επιβολή, καθώς και η απόφαση περί του κατά πόσον το ύψος του επιβλητέου αντισταθμιστικού δασμού πρέπει να ισούται με ολόκληρο το ύψος της επιδότησης ή με μέρος αυτού είναι αποφάσεις τις οποίες λαμβάνουν οι αρχές του εισάγοντος μέλους. Καλό είναι η επιβολή να έχει προαιρετικό χαρακτήρα στο έδαφος όλων των μελών και ο δασμός να είναι μικρότερος του συνολικού ύψους της επιδότησης, αν ο μικρότερος αυτός δασμός κρίνεται επαρκής για την άρση της ζημίας που προξενείται στον εγχώριο κλάδο παραγωγής. Επίσης είναι σκόπιμο να καθιερωθούν διαδικασίες που να επιτρέπουν στις αρμόδιες αρχές να λαμβάνουν δεόντως υπόψη τις απόψεις που έχουν εκφράσει διάφοροι ημεδαποί ενδιαφερόμενοι[50], των οποίων τα συμφέροντα ενδέχεται να θιγούν σε περίπτωση επιβολής αντισταθμιστικού δασμού.

19.3 Όταν επιβάλλεται αντισταθμιστικός δασμός σε σχέση με δεδομένο προϊόν, ο αντισταθμιστικός αυτός δασμός εισπράττεται κάθε φορά μέχρι του προβλεπόμενου ποσού για όλες χωρίς διάκριση τις εισαγωγές του συγκεκριμένου προϊόντος, όποια και αν είναι η προέλευσή τους, εφόσον διαπιστώνεται ότι οι εισαγωγές αυτές αποτελούν αντικείμενο επιδότησης και προκαλούν ζημία, με εξαίρεση τις εισαγωγές που προέρχονται από πηγές οι οποίες έχουν προβεί στην κατάργηση των επίμαχων επιδοτήσεων ή για τις οποίες έχουν γίνει δεκτές αναλήψεις υποχρεώσεων συμφώνως προς τις διατάξεις της παρούσας συμφωνίας. Κάθε εξαγωγέας, οι εξαγωγές του οποίου υπόκεινται μεν σε οριστικό αντισταθμιστικό δασμό, αλλά δεν συμπεριελήφθησαν στην πραγματικότητα στο αντικείμενο της διεξαχθείσας έρευνας για κάποιον λόγο, πλην της άρνησης συνεργασίας, δικαιούται να ζητήσει να επανεξετασθούν με ταχείες διαδικασίες τα δεδομένα που τον αφορούν, προκειμένου οι αρμόδιες για τη διεξαγωγή της έρευνας αρχές να καθορίσουν το συντομότερο δυνατό αντισταθμιστικό δασμό διαφορετικού ύψους για τον εν λόγω εξαγωγέα.

19.4 Το ύψος του αντισταθμιστικού δασμού που επιβάλλεται[51] για τα εισαγόμενα προϊόντα δεν επιτρέπεται να υπερβαίνει το διαπιστωθέν ύψος της επιδότησης, όπως αυτό έχει υπολογισθεί με βάση το ποσό της επιδότησης ανά μονάδα επιδοτούμενου και εξαγόμενου προϊόντος.

Άρθρο 20

Αναδρομική ισχύς

20.1 Προσωρινά μέτρα και αντισταθμιστικοί δασμοί εφαρμόζονται μόνο ως προς προϊόντα που τίθενται σε κατανάλωση μετά το χρόνο θέσης σε ισχύ της απόφασης που λαμβάνεται βάσει του άρθρου 17, παράγραφος 1 και του άρθρου 19 παράγραφος 1, αντιστοίχως, με την επιφύλαξη των εξαιρέσεων που προβλέπονται στο παρόν άρθρο.

20.2 Όταν διατυπώνεται τελικό συμπέρασμα, το οποίο επιβεβαιώνει την πρόκληση ζημίας (αλλά όχι την ύπαρξη κινδύνου πρόκλησης ζημίας ούτε τη σημαντική επιβράδυνση της δημιουργίας κλάδου παραγωγής) ή, σε περίπτωση που συμπεραίνεται οριστικά ότι υπάρχει κίνδυνος πρόκλησης ζημίας, όταν διαπιστώνεται ότι αν δεν εφαρμόζονταν προσωρινά μέτρα οι συνέπειες των επιδοτούμενων εισαγωγών θα είχαν οδηγήσει στο συμπέρασμα ότι υπάρχει πρόκληση ζημίας, τότε οι αντισταθμιστικοί δασμοί είναι δυνατό να έχουν αναδρομική ισχύ, ώστε να καλύπτεται και η περίοδος εφαρμογής τυχόν προσωρινών μέτρων.

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50 Στο πλαίσιο εφαρμογής της παρούσας παραγράφου, ο όρος "ημεδαποί ενδιαφερόμενοι" συμπεριλαμβάνει τους καταναλωτές και τους βιομηχανικούς χρήστες του εισαγόμενου προϊόντος που αποτελεί αντικείμενο της έρευνας.

51 Στην παρούσα συμφωνία, ο όρος "επιβολή" σημαίνει τη νομική πράξη του οριστικού ή τελικού υπολογισμού του οφειλόμενου δασμού ή φόρου ή της είσπραξής του.

20.3 Αν ο οριστικός αντισταθμιστικός δασμός είναι υψηλότερος από το ποσό για το οποίο έχει παρασχεθεί εγγύηση υπό μορφή κατάθεσης σε μετρητά ή έγγραφης εγγυητικής δήλωσης, δεν επιτρέπεται η είσπραξη της προκύπτουσας διαφοράς. Αν ο οριστικός δασμός είναι μικρότερος από το ποσό για το οποίο έχει παρασχεθεί εγγύηση υπό μορφή κατάθεσης σε μετρητά ή έγγραφης εγγυητικής δήλωσης, το υπερβάλλον ποσό επιστρέφεται ή η έγγραφη εγγυητική δήλωση αποδίδεται το ταχύτερο δυνατό.

20.4 Με την επιφύλαξη όσων προβλέπονται στην παράγραφο 2, όταν διαπιστώνεται η ύπαρξη κινδύνου πρόκλησης ζημίας ή σημαντική επιβράδυνση της δημιουργίας κλάδου παραγωγής (αλλά ακόμη δεν έχει προκληθεί ζημία), η επιβολή οριστικού αντισταθμιστικού δασμού επιτρέπεται μόνο αφού διαπιστωθεί η ύπαρξη κινδύνου πρόκλησης ζημίας ή η σημαντική επιβράδυνση· στην περίπτωση αυτή, τυχόν μετρητά που έχουν κατατεθεί ως εγγύηση κατά τη διάρκεια εφαρμογής των προσωρινών μέτρων είναι επιστρεπτέα, ενώ αν έχει χορηγηθεί έγγραφη εγγυητική δήλωση, αυτή πρέπει να αποδοθεί το ταχύτερο δυνατόν.

20.5 Όταν το τελικό συμπέρασμα είναι αποφατικό, τυχόν μετρητά που έχουν κατατεθεί ως εγγύηση κατά τη διάρκεια εφαρμογής των προσωρινών μέτρων είναι επιστρεπτέα, ενώ αν έχει χορηγηθεί έγγραφη εγγυητική δήλωση, αυτή πρέπει να αποδοθεί το ταχύτερο δυνατόν.

20.6 Σε κρίσιμες περιπτώσεις, όταν προκειμένου περί του οικείου επιδοτούμενου προϊόντος οι αρχές καταλήγουν στο συμπέρασμα ότι έχουν πραγματοποιηθεί σε σχετικά βραχύ χρονικό διάστημα μαζικές εισαγωγές ενός προϊόντος, υπέρ του οποίου καταβάλλονται ή χορηγούνται επιδοτήσεις κατά παράβαση των διατάξεων της GATT του 1994 και της παρούσας συμφωνίας, με αποτέλεσμα να προκαλείται ζημία που θα ήταν δύσκολο να αποκατασταθεί, και παράλληλα κρίνεται σκόπιμη η επιβολή στις εν λόγω εισαγωγές αντισταθμιστικών δασμών με αναδρομική ισχύ, προκειμένου να αποκλειστεί η περίπτωση εκ νέου πρόκλησης της ζημίας, στην περίπτωση αυτή οι επιβαλλόμενοι οριστικοί αντισταθμιστικοί δασμοί είναι δυνατό να αφορούν τις εισαγωγές προϊόντων που ετέθησαν σε κατανάλωση έχ. περισσότερες από 90 ημέρες πριν από την ημερομηνία έναρξης ισχύος των προσωρινών μέτρων.

Άρθρο 21

Διάρκεια ισχύος και επανεξέταση των αντισταθμιστικών δασμών και των αναλήψεων υποχρεώσεων

21.1 Οι αντισταθμιστικοί δασμοί παραμένουν σε ισχύ μόνο για όσο χρόνο και στην έκταση που χρειάζεται για την εξουδετέρωση των ζημιογόνων συνεπειών της παροχής επιδοτήσεων.

21.2 Όποτε το κρίνουν σκόπιμο, οι αρχές επανεξετάζουν κατά πόσον επιβάλλεται η συνέχιση της επιβολής του δασμού, είτε με δική τους πρωτοβουλία, είτε εφόσον υποβληθεί σχετική αίτηση από οποιονδήποτε ενδιαφερόμενο, υπό την προϋπόθεση ότι από την επιβολή του οριστικού αντισταθμιστικού δασμού έχει παρέλθει ικανό χρονικό διάστημα και ότι η αίτηση συνοδεύεται από θετικά αποδεικτικά στοιχεία, από τα οποία προκύπτει ότι είναι απαραίτητη η επανεξέταση. Οι ενδιαφερόμενοι έχουν το δικαίωμα να ζητούν από τις αρχές να εξετάσουν κατά πόσον η συνέχιση της επιβολής του δασμού είναι αναγκαία για την εξουδετέρωση των συνεπειών των επιδοτήσεων και κατά πόσον είναι πιθανή η συνέχιση ή επανάληψη της πρόκλησης ζημίας σε περίπτωση ανάκλησης ή/και διαφοροποίησης του δασμού. Αν, βάσει της επανεξέτασης που έχει πραγματοποιηθεί δυνάμει της παρούσας παραγράφου, οι αρχές καταλήξουν στο συμπέρασμα ότι ο αντισταθμιστικός δασμός δεν είναι πλέον απαραίτητος, ο δασμός καταργείται αμέσως.

21.3 Κατά παρέκκλιση των διατάξεων των παραγράφων 1 και 2, κάθε οριστικός αντισταθμιστικός δασμός καταργείται το αργότερο πέντε έτη από την επιβολή του (ή από την ημερομηνία της πλέον πρόσφατης επανεξέτασης βάσει της παραγράφου 2, εφόσον αντικείμενο της επανεξέτασης ήταν τόσο η παροχή επιδοτήσεων, όσο και η ζημία, ή βάσει της παρούσας παραγράφου), εκτός αν οι αρχές καταλήξουν στο συμπέρασμα, στο πλαίσιο επανεξέτασης που άρχισαν πριν από την ανωτέρω ημερομηνία με δική τους πρωτοβουλία ή μετά τη διατύπωση σχετικού και δεόντως τεκμηριωμένου αιτήματος εκ μέρους ή για λογαριασμό του εγχώριου κλάδου παραγωγής σε προγενέστερο χρόνο που δεν απέχει υπερβολικά από την ανωτέρω ημερομηνία, ότι η λήξη ισχύος του δασμού θα είχε ως πιθανή συνέπεια τη συνέχιση ή την επανάληψη της παροχής επιδοτήσεων και της εξ αυτής προκαλούμενης ζημίας.[52] Ο δασμός είναι δυνατό να διατηρείται σε ισχύ μέχρι την ολοκλήρωση της διαδικασίας επανεξέτασης.

21.4 Οι διατάξεις του άρθρου 12 σχετικά με τα αποδεικτικά στοιχεία και τη διαδικασία εφαρμόζονται για κάθε επανεξέταση η οποία διενεργείται βάσει του παρόντος άρθρου. Κάθε τέτοια επανεξέταση διενεργείται με ταχείες διαδικασίες και πρέπει κανονικά να ολοκληρώνεται εντός 12 μηνών από την ημερομηνία έναρξης της επανεξέτασης.

21.5 Οι διατάξεις του παρόντος άρθρου εφαρμόζονται κατ' αναλογίαν και για τις αναλήψεις υποχρεώσεων που γίνονται δεκτές βάσει του άρθρου 18.

Άρθρο 22

Δημόσια ανακοίνωση και ανάπτυξη του σκεπτικού στο οποίο στηρίζεται

22.1 Όταν οι αρχές έχουν σχηματίσει την πεποίθηση ότι υπάρχουν επαρκή αποδεικτικά στοιχεία τα οποία δικαιολογούν την έναρξη έρευνας βάσει του άρθρου 11, ενημερώνουν σχετικά το μέλος ή τα μέλη στα οποία παράγονται τα προϊόντα που πρόκειται να αποτελέσουν αντικείμενο της έρευνας, καθώς και τους λοιπούς ενδιαφερόμενους, για τους οποίους οι αρμόδιες για τη διεξαγωγή της έρευνας αρχές γνωρίζουν ότι εξαρτούν συμφέροντα από την υπόθεση, και εκδίδουν σχετική δημόσια ανακοίνωση.

22.2 Η δημόσια ανακοίνωση η σχετική με την έναρξη της έρευνας περιλαμβάνει, ή τουλάχιστον παραπέμπει σε ξεχωριστή έκθεση με ανάλογο περιεχόμενο[53], επαρκή στοιχεία σχετικά με τα ακόλουθα θέματα:

(i) το όνομα της χώρας ή των χωρών εξαγωγής και το προϊόν που αποτελεί αντικείμενο της έρευνας·

(ii) την ημερομηνία έναρξης της έρευνας·

(iii) περιγραφή της πρακτικής ή των πρακτικών επιδοτήσεων που αποτελούν αντικείμενο της έρευνας·

(iv) συνοπτική παρουσίαση των δεδομένων επί των οποίων στηρίζεται ο ισχυρισμός ότι προκαλείται ζημία·

(v) τη διεύθυνση στην οποία τα ενδιαφερόμενα μέλη και οι λοιποί ενδιαφερόμενοι πρέπει να αποστέλλουν τυχόν στοιχεία ή παρατηρήσεις τους· και

52 Όταν το ύψος του αντισταθμιστικού δασμού καθορίζεται βάσει παρελθόντων στοιχείων και από την πλέον πρόσφατη διαδικασία αξιολόγησης έχει προκύψει ότι δεν είναι σκόπιμη η επιβολή δασμού, το γεγονός αυτό δεν σημαίνει από μόνο του ότι οι αρχές είναι υποχρεωμένες να καταργήσουν τον οριστικό δασμό.

53 Όταν οι αρχές παρέχουν πληροφορίες και διευκρινίσεις δυνάμει των διατάξεων του παρόντος άρθρου σε ξεχωριστή έκθεση, λαμβάνουν πρόνοια ώστε το κοινό να μπορεί εύκολα να λάβει γνώση του περιεχομένου της έκθεσης.

(vi) τις προθεσμίες που τάσσονται στα ενδιαφερόμενα μέλη και στους λοιπούς ενδιαφερομένους για τη γνωστοποίηση των απόψεών τους.

22.3 Δημόσια ανακοίνωση εκδίδεται για κάθε προκαταρκτικό ή τελικό συμπέρασμα, είτε καταφατικό, είτε αποφατικό, για κάθε απόφαση με την οποία γίνεται δεκτή ανάληψη υποχρέωσης κατ' εφαρμογήν του άρθρου 18, για τη λήξη ισχύος κάποιας ανάληψης υποχρέωσης και για την κατάργηση οποιουδήποτε οριστικού αντισταθμιστικού δασμού. Κάθε ανακοίνωση αυτού του είδους αναφέρει, ή τουλάχιστον παραπέμπει σε ξεχωριστή έκθεση με ανάλογο περιεχόμενο, με τη δέουσα λεπτομέρεια τα πορίσματα και τα συμπεράσματα στα οποία κατέληξαν οι αρχές που διενεργούν την έρευνα σχετικά με όλες τις αποφασιστικής σημασίας πραγματικές ή νομικές παραμέτρους της υπόθεσης. Κάθε τέτοια ανακοίνωση ή έκθεση διαβιβάζεται στο μέλος ή στα μέλη που παράγουν το προϊόν το οποίο αφορά το εκάστοτε συμπέρασμα ή η εκάστοτε ανάληψη υποχρέωσης, καθώς και στους λοιπούς ενδιαφερόμενους για τους οποίους είναι γνωστό ότι εξαρτούν συμφέροντα από την υπόθεση.

22.4 Για την επιβολή προσωρινών μέτρων εκδίδεται δημόσια ανακοίνωση στην οποία εξηγούνται, ή η οποία τουλάχιστον παραπέμπει σε ξεχωριστή έκθεση με ανάλογο περιεχόμενο, με τη δέουσα λεπτομέρεια τα προκαταρκτικά συμπεράσματα τα σχετικά με την ύπαρξη της επιδότησης και τη ζημία, και παρατίθενται τα νομικά και πραγματικά δεδομένα, με βάση τα οποία αποφασίστηκε η αποδοχή ή η απόρριψη των προβαλλόμενων επιχειρημάτων. Κάθε τέτοια ανακοίνωση ή έκθεση περιέχει, χωρίς να παραγνωρίζεται η υποχρέωση προστασίας της εμπιστευτικότητας ορισμένων πληροφοριών, μεταξύ άλλων, τα ακόλουθα:

(i) τα ονόματα των προμηθευτών ή, όταν αυτό είναι πρακτικώς αδύνατο, των εμπλεκόμενων προμηθευτριών χωρών·

(ii) περιγραφή του προϊόντος αρκετά πλήρη, ώστε να επιτρέπει την αξιολόγηση των τελωνειακών παραμέτρων·

(iii) το διαπιστωθέν ύψος της επιδότησης και ανάλυση των δεδομένων που ελήφθησαν υπόψη για τη διαπίστωση της ύπαρξης της επιδότησης·

(iv) το σκεπτικό με βάση το οποίο διαπιστώθηκε η πρόκληση ή μη ζημίας κατά τα προβλεπόμενα στο άρθρο 15·

(v) τους βασικούς λόγους στους οποίους στηρίζεται το συμπέρασμα.

22.5 Η δημόσια ανακοίνωση με την οποία περατούται ή αναστέλλεται η έρευνα σε περίπτωση διατύπωσης καταφατικού συμπεράσματος, με βάση το οποίο επιβάλλεται οριστικός δασμός ή γίνεται δεκτή ανάληψη υποχρέωσης, διαλαμβάνει, ή τουλάχιστον παραπέμπει σε ξεχωριστή έκθεση με ανάλογο περιεχόμενο, όλα τα συναφή στοιχεία τα σχετικά με τα πραγματικά και νομικά δεδομένα της υπόθεσης, καθώς και τους λόγους που οδήγησαν στην επιβολή των οριστικών μέτρων ή στην αποδοχή ανάληψης υποχρέωσης, χωρίς να παραγνωρίζεται η υποχρέωση προστασίας της εμπιστευτικότητας ορισμένων πληροφοριών. Ειδικότερα, η ανακοίνωση ή η έκθεση περιέχει τα στοιχεία που περιγράφονται στην παράγραφο 4, καθώς και τους λόγους για τους οποίους έγιναν δεκτά ή απορρίφθηκαν τα σχετικά επιχειρήματα ή οι ισχυρισμοί των ενδιαφερομένων μελών, των εξαγωγέων και των εισαγωγέων.

22.6 Η δημόσια ανακοίνωση με την οποία περατούται ή αναστέλλεται η έρευνα μετά την αποδοχή ανάληψης υποχρέωσης κατ' εφαρμογήν του άρθρου 18 διαλαμβάνει, ή τουλάχιστον παραπέμπει σε ξεχωριστή έκθεση με ανάλογο περιεχόμενο, το μη εμπιστευτικού χαρακτήρα σκέλος της εν λόγω ανάληψης υποχρέωσης.

22.7 οι διατάξεις του παρόντος άρθρου εφαρμόζονται κατ' αναλογίαν και για την έναρξη και τεράτωση των επανεξετάσεων που διενεργούνται βάσει του άρθρου 21, καθώς και για τις αποφάσεις που λαμβάνονται βάσει του άρθρου 20 και αφορούν την επιβολή δασμών με αναδρομική ισχύ.

Άρθρο 23

Δικαστικός έλεγχος

Κάθε μέλος, η εσωτερική νομοθεσία του οποίου προβλέπει τη δυνατότητα θέσπισης μέτρων υπό μορφή επιβολής αντισταθμιστικών δασμών, φροντίζει για την ύπαρξη και λειτουργία δικαιοδοτικών οργάνων, της τακτικής δικαιοσύνης ή διαιτητικά ή διοικητικά, καθώς και για τη θέσπιση των σχετικών διαδικασιών, ώστε να είναι, μεταξύ άλλων, δυνατός ο άμεσος έλεγχος των πράξεων της Διοίκησης που αναφέρονται στα τελικά συμπεράσματα και τις επανεξετάσεις των συμπερασμάτων κατά την έννοια του άρθρου 21. Τα εν λόγω δικαιοδοτικά όργανα και οι διαδικασίες πρέπει να χαρακτηρίζονται από ανεξαρτησία έναντι των αρχών που φέρουν την ευθύνη για το εκάστοτε συμπέρασμα ή την εκάστοτε επανεξέταση, καθώς επίσης να παρέχουν στο σύνολο των ενδιαφερομένων, οι οποίοι έλαβαν μέρος στη διοικητική διαδικασία και θίγονται άμεσα ή έμμεσα από τις πράξεις της Διοίκησης, το δικαίωμα να κινήσουν τη διαδικασία δικαστικού ελέγχου.

ΜΕΡΟΣ VI: ΟΡΓΑΝΑ

Άρθρο 24

Επιτροπή για τις Επιδοτήσεις και τα Αντισταθμιστικά Μέτρα και επικουρικά όργανα

24.1 Συστήνεται Επιτροπή για τις Επιδοτήσεις και τα Αντισταθμιστικά Μέτρα, η οποία απαρτίζεται από εκπροσώπους όλων των μελών. Η επιτροπή εκλέγει τον πρόεδρό της και συνεδριάζει τουλάχιστον δύο φορές τον χρόνο, καθώς και στις λοιπές περιπτώσεις που προβλέπονται από συναφείς διατάξεις της παρούσας συμφωνίας, μετά από αίτηση οποιουδήποτε μέλους. Η επιτροπή φροντίζει για την εκτέλεση των καθηκόντων που της έχουν ανατεθεί βάσει της παρούσας συμφωνίας ή από τα μέλη και παρέχει στα μέλη τη δυνατότητα να διενεργούν διαβουλεύσεις σχετικά με όλα τα θέματα που άπτονται της λειτουργίας της συμφωνίας και της προαγωγής των στόχων της. Η γραμματεία του ΠΟΕ εκτελεί χρέη γραμματείας της επιτροπής.

24.2 Όταν κρίνεται σκόπιμο, η επιτροπή δύναται να συστήνει όργανα που την επικουρούν στο έργο της.

24.3 Η επιτροπή προβαίνει στη σύσταση Διαρκούς Ομάδας Εμπειρογνωμόνων ("ΔΟΕ"), η οποία απαρτίζεται από πέντε ανεξάρτητα πρόσωπα με υψηλού επιπέδου κατάρτιση στους τομείς των επιδοτήσεων και των εμπορικών σχέσεων. Οι εμπειρογνώμονες εκλέγονται από την επιτροπή, και κάθε χρόνο αντικαθίσταται ένας από αυτούς. Η ΔΟΕ είναι δυνατό να κληθεί να επικουρήσει κάποια ειδική ομάδα (πάνελ), κατά τα προβλεπόμενα στο άρθρο 4, παράγραφος 5. Η επιτροπή δύναται επίσης να συμβουλεύεται τη γνώμη της όσον αφορά την ύπαρξη και τον χαρακτήρα δεδομένης επιδότησης.

24.4 Κάθε μέλος δύναται να θέτει ερωτήματα στη ΔΟΕ και να συμβουλεύεται τη γνώμη της αναφορικά με τον χαρακτήρα δεδομένης επιδότησης, την οποία το εν λόγω μέλος προτίθεται να θεσπίσει ή παρέχει ήδη. Αυτού του είδους οι γνωμοδοτήσεις συμβουλευτικού χαρακτήρα θεωρούνται εμπιστευτικές, και τα μέρη δεν έχουν το δικαίωμα να τις επικαλούνται στο πλαίσιο των διαδικασιών που προβλέπει το άρθρο 7.

24.5 Κατά την εκτέλεση των καθηκόντων τους, η επιτροπή και τα τυχόν όργανα που την επικουρούν δύνανται να έρχονται σε συνεννόηση με οποιονδήποτε κρίνουν σκόπιμο και να ζητούν αντίστοιχα πληροφορίες από οποιανδήποτε πηγή. Παρόλα αυτά, πριν η επιτροπή ή κάποιο από τα όργανα που την επικουρούν διατυπώσει αίτημα για την παροχή πληροφοριών από κάποιον φορέα που υπάγεται στη δικαιοδοσία ενός μέλους, οφείλει να ενημερώνει το σχετικό μέλος.

ΜΕΡΟΣ VII: ΓΝΩΣΤΟΠΟΙΗΣΗ ΚΑΙ ΕΠΙΤΗΡΗΣΗ

Άρθρο 25

Γνωστοποιήσεις

25.1 Τα μέλη συμφωνούν ότι, με την επιφύλαξη των διατάξεων του άρθρου XVI, παράγραφος 1 της GATT του 1994, οι γνωστοποιήσεις επιδοτήσεων πρέπει να υποβάλλονται από αυτά το αργότερο μέχρι τις 30 Ιουνίου κάθε έτους και να είναι σύμφωνες με τις διατάξεις των παραγράφων 2 έως 6.

25.2 Τα μέλη γνωστοποιούν κάθε περίπτωση επιδότησης κατά την έννοια του άρθρου 1, παράγραφος 1, η οποία έχει ατομικό χαρακτήρα κατά την έννοια του άρθρου 2 και η οποία χορηγείται ή διατηρείται στην επικράτειά τους.

25.3 Το περιεχόμενο των γνωστοποιήσεων πρέπει να είναι αρκούντως αναλυτικό, ώστε να επιτρέπει στα υπόλοιπα μέλη να αξιολογούν τις συνέπειες που προκύπτουν για το εμπόριο και να αντιλαμβάνονται τον τρόπο εφαρμογής των γνωστοποιούμενων προγραμμάτων επιδοτήσεων. Για τον σκοπό αυτό και χωρίς να θίγεται το περιεχόμενο και η μορφή του ερωτηματολογίου για τις επιδοτήσεις[54], τα μέλη λαμβάνουν πρόνοια ώστε οι γνωστοποιήσεις που υποβάλλουν να περιλαμβάνουν τα ακόλουθα στοιχεία:

(i) το είδος της επιδότησης (δηλαδή μη επιστρεπτέα ενίσχυση, δάνειο, φορολογική απαλλαγή, κ.τ.λ.)·

(ii) το ύψος της επιδότησης ανά μονάδα ή, όταν αυτό δεν είναι δυνατό, το συνολικό ποσό της επιδότησης ή το ποσό που έχει προϋπολογισθεί για την επιδότηση σε ετήσια βάση (με στοιχεία, εφόσον είναι δυνατό, σχετικά με τη μέση επιδότηση ανά μονάδα κατά το προηγούμενο έτος)·

(iii) το γενικό στόχο που επιδιώκεται με την επιδότηση ή/και τον σκοπό της·

(iv) τη διάρκεια παροχής της επιδότησης ή/και τους λοιπούς χρονικούς περιορισμούς που ενδεχομένως ισχύουν σε σχέση με αυτήν·

(v) στατιστικά δεδομένα τα οποία επιτρέπουν την αξιολόγηση των συνεπειών της επιδότησης για το εμπόριο.

25.4 Σε περίπτωση που μια γνωστοποίηση δεν περιέχει στοιχεία σχετικά με ένα ή περισσότερα από τα επιμέρους θέματα για τα οποία γίνεται λόγος στην παράγραφο 3, σχετικές εξηγήσεις παρέχονται στην ίδια τη γνωστοποίηση.

25.5 Σε περίπτωση παροχής επιδοτήσεων για συγκεκριμένα προϊόντα ή προς συγκεκριμένους κλάδους, τα σχετικά στοιχεία στις γνωστοποιήσεις πρέπει να παρατίθενται ανά προϊόν ή ανά κλάδο.

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54 Η επιτροπή προβαίνει στη σύσταση ομάδας εργασίας, έργο της οποίας είναι η επανεξέταση του περιεχομένου και της μορφής του ερωτηματολογίου, το οποίο περιλαμβάνεται στα BISD 9S/193-194.

25.6 Τα μέλη που θεωρούν ότι στην επικράτειά τους δεν ισχύει κανένα μέτρο, για το οποίο να υφίσταται υποχρέωση γνωστοποίησης βάσει του άρθρου XVI, παράγραφος 1 της GATT του 1994 και της παρούσας συμφωνίας, ενημερώνουν γραπτώς τη γραμματεία σχετικά.

25.7 Τα μέλη αναγνωρίζουν ότι η γνωστοποίηση ενός μέτρου δεν προδικάζει ούτε τη νομική του ισχύ βάσει της GATT του 1994 και της παρούσας συμφωνίας, ούτε τις συνέπειές του βάσει της παρούσας συμφωνίας, ούτε τον χαρακτήρα του μέτρου καθαυτόν.

25.8 Κάθε μέλος δύναται ανά πάσα στιγμή να ζητήσει γραπτώς να του διαβιβασθούν στοιχεία σχετικά με τον χαρακτήρα και την έκταση οιασδήποτε επιδότησης, τη χορήγηση της οποίας αποφασίζει ή συνεχίζει ένα άλλο μέλος (συμπεριλαμβανομένων των επιδοτήσεων για τις οποίες γίνεται λόγος στο μέρος IV) ή να του παρασχεθούν εξηγήσεις σχετικά με τους λόγους για τους οποίους εκρίθη ότι δεδομένο μέτρο δεν καλύπτεται από την υποχρέωση γνωστοποίησης.

25.9 Τα μέλη που λαμβάνουν σχετικό αίτημα παρέχουν τα ζητούμενα στοιχεία το συντομότερο δυνατόν και φροντίζουν αυτά να είναι πλήρη· επίσης, επιδεικνύουν προθυμία, για την παροχή εφόσον τους ζητηθεί, συμπληρωματικών στοιχείων στο μέλος που έχει διατυπώσει σχετικό αίτημα. Ειδικότερα, τα στοιχεία που παρέχουν τα μέλη πρέπει να είναι αρκετά λεπτομερή, ώστε το εκάστοτε άλλο μέλος να είναι σε θέση να εκτιμήσει κατά πόσον αυτά τηρούν τις διατάξεις της παρούσας συμφωνίας. Κάθε μέλος το οποίο πιστεύει ότι δεν έχουν γνωστοποιηθεί τα ανωτέρω στοιχεία δύναται να επισημάνει το θέμα στην επιτροπή.

25.10 Κάθε μέλος, το οποίο θεωρεί ότι ένα άλλο μέλος έχει παραλείψει να γνωστοποιήσει κάποιο μέτρο, το οποίο έχει συνέπειες ανάλογες με εκείνες μιας επιδότησης, κατά παράβαση των διατάξεων του άρθρου XVI παράγραφος 1 της GATT του 1994 και του παρόντος άρθρου, δύναται να επισημάνει το θέμα στο εν λόγω άλλο μέλος. Σε περίπτωση που εν συνεχεία το άλλο μέλος δεν γνωστοποιήσει αμελλητί την επίμαχη περίπτωση επιδότησης, το πρώτο μέλος δύναται να ενημερώσει το ίδιο την επιτροπή σχετικά με την περίπτωση επιδότησης που ισχυρίζεται ότι παρέχεται.

25.11 Τα μέλη γνωστοποιούν αμελλητί στην επιτροπή όλα τα προκαταρκτικά και οριστικά μέτρα τα οποία λαμβάνουν σε σχέση με αντισταθμιστικούς δασμούς. Οι σχετικές εκθέσεις φυλάσσονται στη γραμματεία, όπου και μπορούν να τις εξετάζουν τα υπόλοιπα μέλη. Επίσης τα μέλη υποβάλλουν ανά εξάμηνο εκθέσεις σχετικές με τα μέτρα που έχουν ενδεχομένως λάβει κατά τη διάρκεια του προηγηθέντος εξαμήνου στον τομέα των αντισταθμιστικών δασμών. Για τις εξαμηνιαίες εκθέσεις χρησιμοποιείται συμφωνηθέν τυποποιημένο έντυπο.

25.12 Κάθε μέλος γνωστοποιεί στην επιτροπή: (α) ποια αρχή του εκάστοτε μέλους είναι αρμόδια για την έναρξη και διεξαγωγή των ερευνών που προβλέπονται στο άρθρο 11 και (β) τις εσωτερικές του διαδικασίες οι οποίες διέπουν την έναρξη και διεξαγωγή των εν λόγω ερευνών.

Άρθρο 26

Επιτήρηση

26.1 Η επιτροπή εξετάζει τις νέες και πλήρεις γνωστοποιήσεις που της υποβάλλονται κατ' εφαρμογήν του άρθρου XVI, παράγραφος 1 της GATT του 1994 και του άρθρου 25, παράγραφος 1 της παρούσας συμφωνίας σε ειδικές συνεδριάσεις της, οι οποίες πραγματοποιούνται ανά τριετία. Οι γνωστοποιήσεις οι οποίες υποβάλλονται κατά τα έτη που μεσολαβούν (γνωστοποιήσεις σχετικά με την πορεία προγραμμάτων επιδοτήσεων) εξετάζονται κατά τις τακτικές συνεδριάσεις της επιτροπής.

26.2 Η επιτροπή εξετάζει τις εκθέσεις που της υποβάλλονται βάσει του άρθρου 25, παράγραφος 11 κατά τις τακτικές της συνεδριάσεις.

ΜΕΡΟΣ VIII: ΑΝΑΠΤΥΣΣΟΜΕΝΕΣ ΧΩΡΕΣ ΜΕΛΗ

Άρθρο 27

Ειδική και διακριτική μεταχείριση των αναπτυσσόμενων χωρών μελών

27.1 Τα μέλη αναγνωρίζουν ότι οι επιδοτήσεις είναι δυνατό να επιτελούν σημαντική λειτουργία στο πλαίσιο των προγραμμάτων οικονομικής ανάπτυξης των αναπτυσσόμενων χωρών μελών.

27.2 Η απαγόρευση της παραγράφου 1(α) του άρθρου 3 δεν ισχύει προκειμένου περί:

(α) των αναπτυσσόμενων χωρών μελών που αναφέρονται στο παράρτημα VII·

(β) των υπολοίπων αναπτυσσόμενων χωρών μελών, επί μία οκταετία από την ημερομηνία έναρξης ισχύος της συμφωνίας για τον ΠΟΕ, υπό την προϋπόθεση ότι έχουν τηρηθεί οι διατάξεις της παραγράφου 4.

27.3 Η απαγόρευση του άρθρου 3, παράγραφος 1, στοιχείο β) δεν ισχύει για τις αναπτυσσόμενες χώρες μέλη επί μία πενταετία· επίσης δεν ισχύει για τις λιγότερο ανεπτυγμένες χώρες μέλη επί μια οκταετία από την ημερομηνία έναρξης ισχύος της συμφωνίας για τον ΠΟΕ.

27.4 Οι αναπτυσσόμενες χώρες μέλη που μνημονεύονται στην παράγραφο 2, στοιχείο β) καταργούν τις εξαγωγικές επιδοτήσεις που παρέχουν εντός οκταετούς περιόδου και κατά προτίμηση κατά τρόπο σταδιακό. Εντούτοις, μία αναπτυσσόμενη χώρα μέλος δεν δύναται να αυξήσει το ύψος των εξαγωγικών επιδοτήσεων που παρέχει[55] και οφείλει να τις καταργήσει εντός χρονικής περιόδου βραχύτερης αυτής που προβλέπεται στην παρούσα παράγραφο, όταν η παροχή των εν λόγω εξαγωγικών επιδοτήσεων δεν ανταποκρίνεται στις αναπτυξιακές της ανάγκες. Σε περίπτωση που μία αναπτυσσόμενη χώρα μέλος θεωρεί σκόπιμη την παροχή τέτοιου είδους επιδοτήσεων και πέραν της προβλεπόμενης οκταετούς περιόδου, φροντίζει για την έναρξη διαβουλεύσεων με την επιτροπή το αργότερο ένα έτος πριν από τη λήξη της εν λόγω περιόδου· η επιτροπή αποφασίζει τότε κατά πόσον δικαιολογείται παράταση της προβλεπόμενης περιόδου, αφού εξετάσει το σύνολο των συναφών οικονομικών, χρηματοοικονομικών και αναπτυξιακών αναγκών της συγκεκριμένης αναπτυσσόμενης χώρας μέλους. Σε περίπτωση που η επιτροπή καταλήξει στο συμπέρασμα ότι η παράταση είναι δικαιολογημένη, η οικεία αναπτυσσόμενη χώρα μέλος πραγματοποιεί κάθε χρόνο διαβουλεύσεις με την επιτροπή, προκειμένου να εξετασθεί η αναγκαιότητα διατήρησης των επιδοτήσεων. Σε περίπτωση που η επιτροπή καταλήξει σε διαφορετικό συμπέρασμα, η οικεία αναπτυσσόμενη χώρα μέλος καταργεί σταδιακά τις εναπομένουσες εξαγωγικές επιδοτήσεις εντός διετίας από τη λήξη της τελευταίας περιόδου για την οποία έχει χορηγηθεί σχετική άδεια.

55 Προκειμένου περί αναπτυσσομένων χωρών μελών, οι οποίες δεν χορηγούν εξαγωγικές επιδοτήσεις κατά την ημερομηνία έναρξης ισχύος της συμφωνίας για τον ΠΟΕ, η παρούσα παραγράφος εφαρμόζεται με βάση το ύψος των εξαγωγικών επιδοτήσεων που χορηγήθηκαν κατά το έτος 1986.

27.5 Όταν οι εξαγωγές ορισμένου προϊόντος, τις οποίες πραγματοποιεί μια αναπτυσσόμενη χώρα μέλος, έχουν καταστεί ανταγωνιστικές, η εν λόγω χώρα μέλος οφείλει να καταργήσει σταδιακά τις εξαγωγικές επιδοτήσεις που παρέχει για το συγκεκριμένο προϊόν εντός διετίας. Εντούτοις, όταν πρόκειται για μία από τις αναπτυσσόμενες χώρες μέλη, που μνημονεύονται στο παράρτημα VII, η οποία έχει επιτύχει να καταστήσει ανταγωνιστικές τις εξαγωγές της σε ένα ή περισσότερα προϊόντα, η εν λόγω χώρα οφείλει να καταργήσει σταδιακά εντός οκταετούς περιόδου τις εξαγωγικές επιδοτήσεις που παρέχει για τα συγκεκριμένα προϊόντα.

27.6 Οι εξαγωγές δεδομένου προϊόντος που πραγματοποιεί μία αναπτυσσόμενη χώρα μέλος θεωρούνται ανταγωνιστικές όταν έχουν αυξηθεί μέχρι του σημείου να αντιπροσωπεύουν ποσοστό 3,25% τουλάχιστον του παγκόσμιου εμπορίου για το συγκεκριμένο προϊόν επί δύο συναπτά ημερολογιακά έτη. Η ανταγωνιστικότητα των εξαγωγών κρίνεται είτε (α) μετά από γνωστοποίηση της αναπτυσσόμενης χώρας μέλους, οι εξαγωγές της οποίας έχουν καταστεί ανταγωνιστικές, είτε (β) με βάση σχετικό υπολογισμό τον οποίον διενεργεί η γραμματεία μετά από αίτηση οιουδήποτε μέλους. Για τους σκοπούς της παρούσας παραγράφου, ως προϊόν νοείται μια κλάση της Συνδυασμένης Ονοματολογίας. Η επιτροπή εξετάζει την εφαρμογή της παρούσας διάταξης πέντε έτη από την ημερομηνία έναρξης ισχύος της συμφωνίας για τον ΠΟΕ.

27.7 Οι διατάξεις του άρθρου 4 δεν ισχύουν ως προς τις αναπτυσσόμενες χώρες μέλη όταν πρόκειται για εξαγωγικές επιδοτήσεις οι οποίες συνάδουν με τις διατάξεις των παραγράφων 2 έως 5. Στις περιπτώσεις αυτές είναι εφαρμοστέες οι διατάξεις του άρθρου 7.

27.8 Σε περιπτώσεις επιδοτήσεων που παρέχει μία αναπτυσσόμενη χώρα μέλος δεν ισχύει το τεκμήριο που προβλέπεται στο άρθρο 6 παράγραφος 1, ότι δηλαδή οι επιδοτήσεις προκαλούν σοβαρή ζημία κατά την έννοια της παρούσας συμφωνίας. Η πρόκληση σοβαρής ζημίας, στις περιπτώσεις που προβλέπονται στην παράγραφο 9, αποδεικνύεται επί τη βάσει θετικών αποδεικτικών στοιχείων, σύμφωνα με τις διατάξεις του άρθρου 6, παράγραφοι 3 έως 8.

27.9 Όσον αφορά περιπτώσεις επιδοτήσεων, για τις οποίες είναι δυνατό να ζητηθεί η παροχή έννομης προστασίας και στη χορήγηση των οποίων προβαίνει ή εμμένει μία αναπτυσσόμενη χώρα μέλος, πλην εκείνων που αναφέρονται στο άρθρο 6, παράγραφος 1, δεν επιτρέπεται η χορήγηση άδειας για τη λήψη μέτρων ή η λήψη μέτρων βάσει του άρθρου 7, εκτός αν διαπιστώνεται ότι η επίμαχη επιδότηση έχει ως αποτέλεσμα την ολική ή μερική αποδυνάμωση τελωνειακών παραχωρήσεων ή άλλων υποχρεώσεων που ισχύουν βάσει της GATT του 1994, κατά τέτοιον τρόπο, ώστε να υποκαθίστανται ή να παρεμποδίζονται οι εισαγωγές ομοειδούς προϊόντος από κάποιο άλλο μέλος στην αγορά της αναπτυσσόμενης χώρας μέλους που χορηγεί την επιδότηση ή εκτός αν προξενείται ζημία σε εγχώριο κλάδο παραγωγής στην αγορά εισάγοντος μέλους.

27.10 Κάθε έρευνα η οποία αφορά την επιβολή αντισταθμιστικών δασμών σε σχέση με ένα προϊόν που κατάγεται από αναπτυσσόμενη χώρα μέλος περατούται αφ' ής στιγμής οι αρμόδιες αρχές διαπιστώσουν ότι:

(α) το συνολικό ύψος των επιδοτήσεων που παρέχονται για το συγκεκριμένο προϊόν δεν υπερβαίνει το 2% της αξίας του υπολογιζομένης ανά μονάδα· ή

(β) ο όγκος των επιδοτούμενων εισαγωγών αντιπροσωπεύει ποσοστό κατώτερο του 4% των συνολικών εισαγωγών του ομοειδούς προϊόντος στο εισάγον μέλος, εκτός αν πραγματοποιούνται εισαγωγές από αναπτυσσόμενες χώρες μέλη, καθεμιά από τις

οποίες συμβάλλει στις εισαγωγές κατά ποσοστό κατώτερο του 4% επί του συνόλου, αλλά όλες μαζί αντιπροσωπεύουν ποσοστό ανώτερο του 9% του συνόλου των εισαγωγών του ομοειδούς προϊόντος στο εισάγον μέλος.

27.11 Η τιμή που προβλέπεται στην παράγραφο 10, στοιχείο α) καθορίζεται στο 3% αντί του 2% όσον αφορά τις αναπτυσσόμενες χώρες μέλη που υπάγονται στο πεδίο εφαρμογής της παραγράφου 2, στοιχείο β), οι οποίες έχουν καταργήσει τις εξαγωγικές επιδοτήσεις πριν από την πάροδο της οκταετούς περιόδου από την ημερομηνία έναρξης ισχύος της συμφωνίας για τον ΠΟΕ, καθώς και όσον αφορά τις αναπτυσσόμενες χώρες μέλη στις οποίες αναφέρεται το παράρτημα VII. Η παρούσα διάταξη ισχύει από την ημερομηνία κατά την οποία η κατάργηση των εξαγωγικών επιδοτήσεων γνωστοποιήθηκε στην επιτροπή και για όσον χρόνο η αναπτυσσόμενη χώρα μέλος που πραγματοποίησε τη γνωστοποίηση δεν προβαίνει στη χορήγηση εξαγωγικών επιδοτήσεων. Η παρούσα διάταξη παύει να ισχύει οκτώ έτη μετά την ημερομηνία έναρξης ισχύος της συμφωνίας για τον ΠΟΕ.

27.12 Οι διατάξεις των παραγράφων 10 και 11 είναι εφαρμοστέες όταν εξετάζεται κατά πόσον δεδομένη επιδότηση είναι ασήμαντη από νομική άποψη, κατά τα προβλεπόμενα στο άρθρο 15, παράγραφος 3.

27.13 Οι διατάξεις του μέρους ΙΙΙ δεν ισχύουν προκειμένου περί περιπτώσεων άμεσης άφεσης χρέους, επιδοτήσεων που παρέχονται υπό οιαδήποτε μορφή για την κάλυψη κοινωνικού κόστους, συμπεριλαμβανομένης της παραίτησης του δημοσίου από ποσά που του οφείλονται, καθώς και άλλων περιπτώσεων μεταβίβασης υποχρεώσεων, εφόσον οι εν λόγω επιδοτήσεις χορηγούνται στο πλαίσιο προγράμματος ιδιωτικοποιήσεων που εφαρμόζει αναπτυσσόμενη χώρα μέλος και συνδέονται άμεσα με αυτό, και υπό την προϋπόθεση ότι το εν λόγω πρόγραμμα εφαρμόζεται και οι σχετικές επιδοτήσεις χορηγούνται για περιορισμένο χρονικό διάστημα, ότι έχουν γνωστοποιηθεί στην επιτροπή και επιπλέον ότι απώτερος στόχος του προγράμματος είναι η ιδιωτικοποίηση της οικείας επιχείρησης.

27.14 Μετά από αίτηση ενός ενδιαφερομένου μέλους, η επιτροπή προβαίνει στην εξέταση δεδομένης πρακτικής εξαγωγικών επιδοτήσεων, την οποία εφαρμόζει μια αναπτυσσόμενη χώρα μέλος, προκειμένου να αποφανθεί κατά πόσον η πρακτική αυτή ανταποκρίνεται στις αναπτυξιακές ανάγκες της εν λόγω χώρας.

27.15 Εφόσον το ζητήσει μια ενδιαφερόμενη αναπτυσσόμενη χώρα μέλος, η επιτροπή προβαίνει στην εξέταση δεδομένου αντισταθμιστικού μέτρου, προκειμένου να αποφανθεί κατά πόσον αυτό συμβιβάζεται με τις διατάξεις των παραγράφων 10 και 11, όπως αυτές ισχύουν έναντι της οικείας αναπτυσσόμενης χώρας μέλους.

ΜΕΡΟΣ ΙΧ: ΜΕΤΑΒΑΤΙΚΕΣ ΡΥΘΜΙΣΕΙΣ

Άρθρο 28

Υφιστάμενα προγράμματα

28.1 Τα προγράμματα επιδοτήσεων, τα οποία έχουν τεθεί σε εφαρμογή στην επικράτεια ενός μέλους πριν από την ημερομηνία υπογραφής της συμφωνίας για τον ΠΟΕ από το εν λόγω μέλος και τα οποία έρχονται σε αντίθεση με τις διατάξεις της παρούσας συμφωνίας, επιβάλλεται να:

(α) γνωστοποιούνται στην επιτροπή το αργότερο 90 ημέρες από την ημερομηνία έναρξης ισχύος της συμφωνίας για τον ΠΟΕ ως προς το εν λόγω μέλος· και

(β) να τροποποιούνται ώστε να συμφωνούν με τις διατάξεις της παρούσας συμφωνίας εντός τριετίας από την ημερομηνία έναρξης ισχύος της συμφωνίας για τον ΠΟΕ ως προς το εν λόγω μέλος, ενώ μέχρι τότε δεν ισχύουν ως προς αυτά οι διατάξεις του μέρους ΙΙ.

29.2 Τα μέλη δεν δύνανται να διευρύνουν το πεδίο εφαρμογής των ανωτέρω προγραμμάτων, ούτε να αποφασίζουν την παράτασή τους μετά τη λήξη τους.

Άρθρο 29

Μετασχηματισμός σε οικονομία αγοράς

29.1 Τα μέλη τα οποία διανύουν περίοδο μετασχηματισμού της οικονομίας τους από τον κεντρικό σχεδιασμό σε μια οικονομία της αγοράς, η οποία θα διέπεται από την αρχή της ελεύθερης επιχειρηματικής δραστηριότητας, δύναται να εφαρμόζουν προγράμματα και μέτρα που είναι απαραίτητα για την πραγματοποίηση του μετασχηματισμού.

29.2 Ως προς τα προαναφερθέντα μέλη, τα προγράμματα επιδοτήσεων, τα οποία υπάγονται στο πεδίο εφαρμογής του άρθρου 3 και έχουν γνωστοποιηθεί σύμφωνα με την παράγραφο 3, καταργούνται σταδιακά ή τροποποιούνται, ώστε να συνάδουν με το άρθρο 3 εντός επταετούς περιόδου από την ημερομηνία έναρξης της ισχύος της συμφωνίας για τον ΠΟΕ. Στην περίπτωση αυτή, το άρθρο 4 δεν εφαρμόζεται. Επιπλέον, κατά τη διάρκεια της προαναφερθείσας περιόδου:

(α) δεν επιτρέπεται να ζητηθεί η παροχή έννομης προστασίας βάσει του άρθρου 7 σε σχέση με προγράμματα επιδοτήσεων που υπάγονται στο πεδίο εφαρμογής του άρθρου 6, παράγραφος 1, στοιχείο (δ)·

(β) για τις υπόλοιπες μορφές επιδοτήσεων, ως προς τις οποίες είναι δυνατό να ζητηθεί η παροχή έννομης προστασίας, είναι εφαρμοστέες οι διατάξεις του άρθρου 27, παράγραφος 9.

29.3 Τα προγράμματα επιδοτήσεων τα οποία υπάγονται στο πεδίο εφαρμογής του άρθρου 3 γνωστοποιούνται στην επιτροπή το συντομότερο δυνατόν μετά την ημερομηνία έναρξης ισχύος της συμφωνίας για τον ΠΟΕ. Περαιτέρω γνωστοποιήσεις επιδοτήσεων αυτού του είδους είναι δυνατό να πραγματοποιούνται εντός χρονικού διαστήματος που δεν μπορεί να υπερβαίνει τη διετία από την ημερομηνία έναρξης ισχύος της συμφωνίας για τον ΠΟΕ.

29.4 Σε εξαιρετικές περιπτώσεις, τα μέλη για τα οποία γίνεται λόγος στην παράγραφο 1 δύνανται να λαμβάνουν από την επιτροπή την άδεια να παρεκκλίνουν από τα γνωστοποιηθέντα προγράμματα και μέτρα που εφαρμόζουν, καθώς και από τα σχετικά χρονοδιαγράμματα, εφόσον οι παρεκκλίσεις αυτές κρίνονται απαραίτητες για τη διαδικασία μετασχηματισμού της οικονομίας τους.

ΜΕΡΟΣ Χ: ΕΠΙΛΥΣΗ ΔΙΑΦΟΡΩΝ

Άρθρο 30

Εάν δεν προβλέπεται ρητώς κάτι διαφορετικό στην παρούσα συμφωνία, για τις διαβουλεύσεις και την επίλυση των διαφορών στο πλαίσιο της παρούσας συμφωνίας εφαρμόζονται οι διατάξεις των άρθρων XXII και XXIII της GATT του 1994, όπως έχουν αναπτυχθεί και ισχύουν βάσει του Μνημονίου Συμφωνίας για την Επίλυση των Διαφορών.

ΜΕΡΟΣ XI: ΤΕΛΙΚΕΣ ΔΙΑΤΑΞΕΙΣ

Άρθρο 31

Προσωρινή εφαρμογή

Οι διατάξεις του άρθρου 6, παράγραφος 1 και οι διατάξεις των άρθρων 8 και 9 ισχύουν για περίοδο πέντε ετών, με αφετηρία την ημερομηνία έναρξης ισχύος της συμφωνίας για τον ΠΟΕ. Το αργότερο 180 ημέρες πριν από τη λήξη της προαναφερθείσας περιόδου, η επιτροπή προβαίνει σε εξέταση της εφαρμογής των ανωτέρω διατάξεων, προκειμένου να αποφασίσει κατά πόσον είναι σκόπιμη η παράταση της ισχύος τους για κάποιο επιπλέον χρονικό διάστημα, είτε υπό τη σημερινή τους μορφή, είτε αφού υποστούν ορισμένες τροποποιήσεις.

Άρθρο 32

Λοιπές τελικές διατάξεις

32.1 Δεν επιτρέπεται η λήψη συγκεκριμένων μέτρων έναντι των επιδοτήσεων που παρέχει κάποιο άλλο μέλος παρά μόνο συμφώνως προς τις διατάξεις της GATT του 1994, όπως αυτές ερμηνεύονται από την παρούσα συμφωνία.[56]

32.2 Η διατύπωση επιφυλάξεων σε σχέση με οποιαδήποτε διάταξη της παρούσας συμφωνίας προϋποθέτει τη συγκατάθεση των υπολοίπων μελών.

32.3 Με την επιφύλαξη της παραγράφου 4, οι διατάξεις της παρούσας συμφωνίας εφαρμόζονται για τις έρευνες και τις διαδικασίες εξέτασης μέτρων που βρίσκονται ήδη σε ισχύ, οι οποίες κινούνται μετά από αίτηση που υπεβλήθη κατά την ημερομηνία έναρξης ισχύος της συμφωνίας για τον ΠΟΕ ως προς το οικείο μέλος ή μετά από αυτήν.

32.4 Για την εφαρμογή του άρθρου 21, παράγραφος 3, τεκμαίρεται ότι τα ισχύοντα αντισταθμιστικά μέτρα επεβλήθησαν σε ημερομηνία που δεν είναι μεταγενέστερη της ημερομηνίας έναρξης ισχύος της συμφωνίας για τον ΠΟΕ ως προς το οικείο μέλος, εκτός από τις περιπτώσεις κατά τις οποίες η ισχύουσα κατά την εν λόγω ημερομηνία εσωτερική νομοθεσία ενός μέλους συμπεριελάμβανε ήδη διάταξη με περιεχόμενο ανάλογο της διάταξης της προαναφερθείσας παραγράφου.

32.5 Κάθε μέλος λαμβάνει όλα τα αναγκαία μέτρα γενικού ή ειδικού χαρακτήρα, ώστε να διασφαλίσει ότι, το αργότερο κατά την ημερομηνία έναρξης ισχύος ως προς αυτό της συμφωνίας για τον ΠΟΕ, οι εσωτερικοί του νόμοι, κανονισμοί και διοικητικές διαδικασίες θα συνάδουν με τις διατάξεις της παρούσας συμφωνίας, οι οποίες ενδεχομένως ισχύουν ως προς το οικείο μέλος.

32.6 Κάθε μέλος τηρεί ενήμερη την επιτροπή σχετικά με οποιαδήποτε μεταβολή των εσωτερικών του νόμων και κανονισμών που άπτονται του αντικειμένου της παρούσας συμφωνίας, καθώς και σχετικά με τυχόν μεταβολές όσον αφορά την εφαρμογή των εν λόγω νόμων και κανονισμών.

32.7 Η επιτροπή εξετάζει ανά έτος την εφαρμογή και λειτουργία της παρούσας συμφωνίας, έχοντας ως γνώμονα τους στόχους της. Η επιτροπή ενημερώνει ανά έτος το Συμβούλιο Εμπορευματικών Συναλλαγών σχετικά με τις τυχόν εξελίξεις που σημειώθηκαν κατά το χρονικό διάστημα που κάλυψε η εξέταση.

32.8 Τα παραρτήματα της παρούσας συμφωνίας αποτελούν αναπόσπαστο μέρος αυτής.

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56 Η παρούσα παράγραφος δεν σημαίνει ότι απαγορεύεται η λήψη σε ορισμένες περιπτώσεις μέτρων βάσει άλλων σχετικών διατάξεων της GATT του 1994.

ΠΑΡΑΡΤΗΜΑ Ι

ΕΝΔΕΙΚΤΙΚΟΣ ΚΑΤΑΛΟΓΟΣ ΕΞΑΓΩΓΙΚΩΝ ΕΠΙΔΟΤΗΣΕΩΝ

(α) Η παροχή από το Δημόσιο άμεσων επιδοτήσεων προς μία επιχείρηση ή προς έναν κλάδο παραγωγής ανάλογα με τις εξαγωγικές τους επιδόσεις.

(β) Συστήματα επαναπράτησης συναλλάγματος και κάθε ανάλογη πρακτική που συνίσταται στην προνομοδότηση των εξαγωγών.

(γ) Η κάλυψη εκ μέρους ή με εντολή του Δημοσίου των εξόδων για την εσωτερική μεταφορά και των ναύλων φορτίων που προορίζονται για εξαγωγή υπό όρους ευνοϊκότερους από εκείνους που ισχύουν για τα εμπορεύματα που προορίζονται για εγχώρια κατανάλωση.

(δ) Η παροχή από το Δημόσιο ή από κρατικούς φορείς, είτε αμέσως, είτε εμμέσως στο πλαίσιο προγραμμάτων που εφαρμόζονται με εντολή του Δημοσίου, εισαγόμενων ή εγχώριων προϊόντων ή υπηρεσιών, που χρησιμοποιούνται για την παραγωγή αγαθών προς εξαγωγή, υπό ευνοϊκότερους γενικούς ή ειδικούς όρους εν συγκρίσει με τους γενικούς ή ειδικούς όρους που ισχύουν για την παροχή ομοειδών ή ευθέως ανταγωνιστικών προϊόντων ή υπηρεσιών που χρησιμοποιούνται για την παραγωγή αγαθών τα οποία προορίζονται για εγχώρια κατανάλωση, υπό την προϋπόθεση (όταν πρόκειται για προϊόντα) ότι οι εν λόγω γενικοί ή ειδικοί όροι είναι ευνοϊκότεροι από τους εμπορικούς όρους[57] που είναι σε θέση να εξασφαλίζουν οι εξαγωγείς του οικείου κράτους στις διεθνείς αγορές.

57 Ο όρος "εμπορικοί όροι" σημαίνει ότι η επιλογή μεταξύ εγχωρίων και εισαγόμενων προϊόντων είναι εντελώς ελεύθερη και γίνεται με βάση εμπορικά και μόνο κριτήρια.

(ε) Η ολοσχερής ή μερική απαλλαγή, διαγραφή ή αναστολή πληρωμής, η οποία παραχωρείται ειδικώς για εξαγωγές και αφορά άμεσους φόρους[58] ή εισφορές κοινωνικής ασφάλισης που έχουν καταβληθεί ή οφείλονται από βιομηχανικές ή εμπορικές επιχειρήσεις[59].

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58 Για τους σκοπούς της παρούσας συμφωνίας:

Ο όρος "άμεσοι φόροι" σημαίνει τους φόρους επί των μισθών, των κερδών, των τόκων, των μισθωμάτων, των ποσών που καταβάλλονται για δικαιώματα εκμετάλλευσης και επί όλων των υπολοίπων μορφών εισοδήματος, καθώς και τους φόρους επί της ακινήτου περιουσίας.

Ο όρος "επιβαρύνσεις επί των εισαγωγών" σημαίνει τους πάσης φύσεως και τις λοιπές φορολογικές επιβαρύνσεις επί των εισαγωγών, οι οποίες δεν απαριθμούνται σε κάποιο άλλο σημείο της παρούσας υποσημείωσης.

Ο όρος "έμμεσοι φόροι" σημαίνει τους φόρους επί των πωλήσεων, τους ειδικούς φόρους κατανάλωσης, τους φόρους κύκλου εργασιών, τους φόρους προστιθέμενης αξίας, τους φόρους επί των προνομίων, τα τέλη χαρτοσήμου, τους φόρους μεταβίβασης, τους φόρους επί των αποθεμάτων και του εξοπλισμού, τους φόρους που επιβάλλονται στα σύνορα, καθώς και όλους τους άλλους φόρους πλην των άμεσων φόρων και των επιβαρύνσεων επί των εισαγωγών.

Ο όρος "προανακύψαντες έμμεσοι φόροι" σημαίνει τους έμμεσους φόρους που επιβάλλονται επί των προϊόντων ή των υπηρεσιών που χρησιμοποιούνται αμέσως ή εμμέσως για την παραγωγή δεδομένου προϊόντος.

Ο όρος "σωρευτικοί έμμεσοι φόροι" σημαίνει τους κλιμακούμενους φόρους οι οποίοι επιβάλλονται όταν δεν υπάρχει κάποιος μηχανισμός για τη μεταγενέστερη πίστωση του φόρου σε περίπτωση που τα προϊόντα ή οι υπηρεσίες που υπόκεινται σε φόρο σε ένα στάδιο της παραγωγής χρησιμοποιούνται σε κάποιο μεταγενέστερο στάδιο της παραγωγής.

Ο όρος "διαγραφή" φορολογικών επιβαρύνσεων περιλαμβάνει την επιστροφή ή μείωση φόρων.

Ο όρος "διαγραφή ή επιστροφή" περιλαμβάνει την ολοσχερή ή μερική απαλλαγή ή αναστολή πληρωμής που παραχωρείται σε σχέση με επιβαρύνσεις επί των εισαγωγών.

59 Τα μέλη αναγνωρίζουν ότι η αναστολή πληρωμής δεν ισοδυναμεί κατ' ανάγκην με εξαγωγική επιδότηση σε περίπτωση που, παραδείγματος χάρη, ο οφειλέτης επιβαρύνεται με τον αντίστοιχο τόκο. Τα μέλη επιβεβαιώνουν την αρχή ότι οι τιμές των προϊόντων κατά τις συναλλαγές μεταξύ εξαγωγικών επιχειρήσεων και αλλοδαπών αγοραστών τους οποίους ελέγχουν ή οι οποίοι υπόκεινται στον ίδιο έλεγχο με αυτές πρέπει από την άποψη της φορολογίας να είναι οι ίδιες με τις τιμές που θα εφαρμόζονταν μεταξύ ανεξάρτητων επιχειρήσεων, οι οποίες ενεργούν υπό συνθήκες ελεύθερου ανταγωνισμού. Κάθε μέλος δύναται να επιστήσει την προσοχή ενός άλλου μέλους σε διοικητικές ή άλλες πρακτικές οι οποίες ενδέχεται να έρχονται σε αντίθεση με την ανωτέρω αρχή και οι οποίες συνεπάγονται σημαντικές εξοικονομήσεις σε άμεσους φόρους στο πλαίσιο συναλλαγών με εξαγωγικό αντικείμενο. Στις περιπτώσεις αυτές, τα οικεία μέλη καταβάλλουν κανονικά προσπάθεια για την επίλυση των διαφορών τους, κάνοντας χρήση μηχανισμών που προβλέπονται από ισχύουσες διμερείς συνθήκες για θέματα φορολογίας ή άλλων συναφών διεθνών μηχανισμών, χωρίς να θίγονται τα δικαιώματα και οι υποχρεώσεις των μελών βάσει της GATT του 1994, συμπεριλαμβανομένου του δικαιώματος για διενέργεια διαβουλεύσεων, το οποίο καθιερώνεται με το προηγούμενο εδάφιο.

Η παράγραφος (ε) δεν σημαίνει ότι τα μέλη δεν έχουν την ευχέρεια να λαμβάνουν μέτρα προκειμένου να αποτρέπουν τη διπλή φορολόγηση εισοδήματος που προέρχεται από αλλοδαπές πηγές, το οποίο κερδίζουν οι επιχειρήσεις τους ή οι επιχειρήσεις ενός άλλου μέλους.

(στ) Η πρόβλεψη για ειδικές μειώσεις οι οποίες συναρτώνται άμεσα με τις εξαγωγές ή τις εξαγωγικές επιδόσεις και οι οποίες, κατά τον υπολογισμό της βάσης επί της οποίας επιβάλλονται οι άμεσοι φόροι, υπερβαίνουν τις μειώσεις που προβλέπονται για την παραγωγή προϊόντων, τα οποία προορίζονται για εγχώρια κατανάλωση.

(ζ) Η απαλλαγή ή διαγραφή έμμεσων φόρων[58], οι οποίοι οφείλονται για την παραγωγή και διακίνηση εξαγόμενων προϊόντων, πέραν του ύψους των ίδιων φόρων που επιβάλλονται για την παραγωγή και τη διακίνηση ομοειδών προϊόντων που πωλούνται με προορισμό την εγχώρια κατανάλωση.

(η) Η απαλλαγή, διαγραφή ή αναστολή πληρωμής που παραχωρείται σε σχέση με προανακύψαντες σωρευτικούς έμμεσους φόρους[58] επί προϊόντων ή υπηρεσιών που χρησιμοποιούνται για την παραγωγή εξαγόμενων προϊόντων, σε έκταση μεγαλύτερη της απαλλαγής, διαγραφής ή αναστολής πληρωμής που παραχωρείται σε σχέση με ανάλογους προανακύψαντες σωρευτικούς έμμεσους φόρους επί προϊόντων ή υπηρεσιών που χρησιμοποιούνται για την παραγωγή ομοειδών προϊόντων, τα οποία πωλούνται με προορισμό την εγχώρια κατανάλωση· πάντως, η απαλλαγή από προανακύψαντες σωρευτικούς έμμεσους φόρους, η διαγραφή τους ή η αναστολή της πληρωμής τους επιτρέπεται σε σχέση με εξαγόμενα προϊόντα ακόμη και αν κάτι τέτοιο δεν ισχύει για τα ομοειδή προϊόντα που πωλούνται με προορισμό την εγχώρια κατανάλωση, υπό την προϋπόθεση ότι οι προανακύψαντες σωρευτικοί έμμεσοι φόροι επιβάλλονται στους συντελεστές παραγωγής που καταναλώνονται για την παραγωγή του εξαγόμενου προϊόντος (λαμβανομένων υπόψη των συνήθων απωλειών).[60] Η παρούσα διάταξη ερμηνεύεται με βάση τις κατευθυντήριες γραμμές για την κατανάλωση των συντελεστών παραγωγής στην παραγωγική διαδικασία, οι οποίες περιέχονται στο παράρτημα II.

(θ) Η διαγραφή ή επιστροφή επιβαρύνσεων επί των εισαγωγών[58], καθ'υπέρβαση των επιβαρύνσεων επί των εισαγόμενων συντελεστών παραγωγής που καταναλώνονται για την παραγωγή του εξαγόμενου προϊόντος (λαμβανομένων υπόψη των συνήθων απωλειών)· γίνεται, ωστόσο, δεκτό ότι σε ειδικές περιπτώσεις μία επιχείρηση δύναται να χρησιμοποιεί ορισμένη ποσότητα συντελεστών παραγωγής τους οποίους έχει προμηθευτεί στην εγχώρια αγορά, προκειμένου με αυτούς να υποκαταστήσει ίδια ποσότητα εισαγόμενων συντελεστών παραγωγής, της ίδιας ποιότητας και με τα ίδια χαρακτηριστικά, και με τον τρόπο αυτό να επωφεληθεί της παρούσας διάταξης, υπό την προϋπόθεση ότι τόσο η εισαγωγή όσο και οι αντίστοιχες εξαγωγικές πράξεις πραγματοποιούνται εντός ευλόγου χρονικού διαστήματος, που δεν επιτρέπεται να υπερβαίνει τα δύο έτη. Η παρούσα διάταξη ερμηνεύεται με βάση τις κατευθυντήριες γραμμές για την κατανάλωση των συντελεστών παραγωγής στην παραγωγική διαδικασία, οι οποίες περιέχονται στο παράρτημα II, καθώς και με τις κατευθυντήριες γραμμές που περιέχονται στο παράρτημα III και οι οποίες ακολουθούνται, όταν κρίνεται κατά πόσον ένα σύστημα επιστροφής φόρου σε περιπτώσεις υποκατάστασης ισοδυναμεί με την παροχή εξαγωγικών επιδοτήσεων.

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60 Η παράγραφος (η) δεν ισχύει όταν πρόκειται για συστήματα που στηρίζονται στο φόρο προστιθέμενης αξίας ή που τον υποκαθιστούν με προσαρμογές του φόρου που επιβάλλεται στα σύνορα· το πρόβλημα της υπέρμετρης διαγραφής οφειλών από φόρους προστιθέμενης αξίας ρυθμίζεται αποκλειστικά από την παράγραφο (ζ).

(ι) Η θέση σε εφαρμογή από το Δημόσιο (ή από εξειδικευμένους φορείς που ελέγχονται από το Δημόσιο) προγραμμάτων εγγύησης ή ασφάλισης εξαγωγικών πιστώσεων, προγραμμάτων παροχής εγγύησης ή ασφάλισης έναντι αυξήσεων του κόστους εξαγόμενων προϊόντων ή προγραμμάτων παροχής κάλυψης έναντι συναλλαγματικών κινδύνων, σε ποσοστά που δεν επαρκούν για την κάλυψη των μακροπρόθεσμων εξόδων λειτουργίας και των απωλειών των προγραμμάτων.

(κ) Η χορήγηση από το Δημόσιο (ή από εξειδικευμένους φορείς που ελέγχονται από το Δημόσιο ή/και τελούν υπό την εξουσία του Δημοσίου) εξαγωγικών πιστώσεων, με επιτόκια κατώτερα από αυτά που πρέπει στην πραγματικότητα να καταβάλει για να συγκεντρώσει τα κεφάλαια που παρέχει (ή από αυτά που θα υποχρεούτο να καταβάλει αν για τη συγκέντρωση των κεφαλαίων συνήπτε δάνεια στις διεθνείς κεφαλαιαγορές με την ίδια ημερομηνία λήξης, ίδιους όρους δανεισμού γενικότερα και στο ίδιο νόμισμα στο οποίο παρέχεται η εξαγωγική πίστωση)· επίσης, η καταβολή εκ μέρους τους του συνόλου ή μέρους των εξόδων που επιβαρύνουν τους εξαγωγείς ή τα χρηματοπιστωτικά ιδρύματα για την εξεύρεση των πιστώσεων, στο μέτρο που σκοπός των εν λόγω πράξεων είναι η εξασφάλιση σημαντικού πλεονεκτήματος όσον αφορά τους όρους υπό τους οποίους παρέχεται η εξαγωγική πίστωση.

Γίνεται, ωστόσο, δεκτό ότι αν ένα μέλος έχει αναλάβει από κοινού με άλλες χώρες διεθνή υποχρέωση στον τομέα των επίσημων εξαγωγικών πιστώσεων, την οποία έχουν επίσης αναλάβει δώδεκα τουλάχιστον από τα αρχικά μέλη της παρούσας συμφωνίας την 1η Ιανουαρίου 1979 (ή άλλη, διάδοχο υποχρέωση, την οποία έχουν αποδεχθεί τα εν λόγω αρχικά μέλη), ή σε περίπτωση που ένα μέλος στην πράξη εφαρμόζει τις σχετικές με τα επιτόκια διατάξεις της οικείας υποχρέωσης, τότε δεδομένη πρακτική παροχής εξαγωγικών πιστώσεων, η οποία συνάδει με τις προαναφερθείσες διατάξεις, δεν θεωρείται μορφή εξαγωγικής επιδότησης από αυτές που απαγορεύονται βάσει της παρούσας συμφωνίας.

(λ) Κάθε άλλη επιβάρυνση για τον λογαριασμό του Δημοσίου, η οποία αποτελεί εξαγωγική επιδότηση κατά την έννοια του άρθρου XVI της GATT του 1994.

ΠΑΡΑΡΤΗΜΑ ΙΙ

ΚΑΤΕΥΘΥΝΤΗΡΙΕΣ ΓΡΑΜΜΕΣ ΓΙΑ ΤΗΝ ΚΑΤΑΝΑΛΩΣΗ ΣΥΝΤΕΛΕΣΤΩΝ ΠΑΡΑΓΩΓΗΣ ΣΤΗΝ ΠΑΡΑΓΩΓΙΚΗ ΔΙΑΔΙΚΑΣΙΑ[61]

Ι

1. Τα συστήματα μείωσης έμμεσων φόρων είναι δυνατό να προβλέπουν την παραχώρηση απαλλαγής, διαγραφής ή αναστολής πληρωμής σε σχέση με προανακύψαντες σωρευτικούς έμμεσους φόρους επί συντελεστών παραγωγής που καταναλώνονται για την παραγωγή του εξαγόμενου προϊόντος (λαμβανομένων υπόψη των συνήθων απωλειών). Παρομοίως, τα συστήματα επιστροφής είναι δυνατό να προβλέπουν τη διαγραφή ή την επιστροφή επιβαρύνσεων οι οποίες επιβάλλονται για την εισαγωγή συντελεστών παραγωγής που καταναλώνονται για την παραγωγή του εξαγόμενου προϊόντος (λαμβανομένων υπόψη των συνήθων απωλειών).

2. Στον "Επεξηγηματικό κατάλογο εξαγωγικών επιδοτήσεων" του παραρτήματος Ι της παρούσας συμφωνίας και ειδικότερα στις παραγράφους (η) και (θ) γίνεται χρήση του όρου "συντελεστές παραγωγής που καταναλώνονται για την παραγωγή του εξαγόμενου προϊόντος". Σύμφωνα με την παράγραφο (η), τα συστήματα μείωσης έμμεσων φόρων είναι δυνατό να αποτελούν περιπτώσεις εξαγωγικών επιδοτήσεων στο μέτρο που συνεπάγονται την απαλλαγή, διαγραφή ή αναστολή πληρωμής που παραχωρείται σε σχέση με προανακύψαντες σωρευτικούς έμμεσους φόρους πέραν του ποσού των αντίστοιχων φόρων που όντως επιβάλλονται επί των συντελεστών παραγωγής που καταναλώνονται για την παραγωγή του εξαγόμενου προϊόντος. Σύμφωνα με την παράγραφο (θ), τα συστήματα επιστροφών είναι δυνατό να αποτελούν περιπτώσεις εξαγωγικών επιδοτήσεων στο μέτρο που συνεπάγονται τη διαγραφή ή επιστροφή επιβαρύνσεων επί των εισαγωγών, η οποία αφορά ποσά μεγαλύτερα των επιβαρύνσεων, οι οποίες όντως επιβάλλονται επί των συντελεστών παραγωγής που καταναλώνονται για την παραγωγή του εξαγόμενου προϊόντος. Και οι δύο παράγραφοι ορίζουν ότι κατά την αξιολόγηση της κατανάλωσης συντελεστών παραγωγής για την παραγωγή του εξαγόμενου προϊόντος πρέπει να λαμβάνονται υπόψη οι συνήθεις απώλειες. Η παράγραφος (θ) προβλέπει ακόμη τη δυνατότητα υποκατάστασης στις κατάλληλες περιπτώσεις.

ΙΙ

Όταν οι αρχές που διεξάγουν έρευνα σχετικά με την επιβολή αντισταθμιστικού δασμού δυνάμει της παρούσας συμφωνίας εξετάζουν κατά πόσον συντελεστές παραγωγής καταναλώνονται για την παραγωγή του εξαγόμενου προϊόντος, οφείλουν να ενεργούν με τον ακόλουθο τρόπο:

1. Όταν προβάλλεται ο ισχυρισμός ότι ένα σύστημα μείωσης έμμεσου φόρου ή ένα σύστημα επιστροφής φόρου ισοδυναμεί με την παροχή επιδότησης εξαιτίας της υπέρμετρης μείωσης ή της επιστροφής σε μεγαλύτερη από την κανονική έκταση έμμεσων φόρων ή επιβαρύνσεων επί των εισαγωγών που επιβάλλονται στους συντελεστές παραγωγής οι οποίοι καταναλώνονται για την παραγωγή του εξαγόμενου προϊόντος, οι αρχές που διεξάγουν την έρευνα οφείλουν πρώτα να εξετάσουν κατά πόσον οι αρχές του εξάγοντος μέλους έχουν καθιερώσει και εφαρμόζουν κάποιο σύστημα ή μία διαδικασία, προκειμένου να εξακριβώνουν ποιοι συντελεστές παραγωγής καταναλώνονται για την παραγωγή του εξαγόμενου προϊόντος και σε ποιες ποσότητες. Όταν διαπιστώνεται ότι πράγματι εφαρμόζεται ένα τέτοιο

61 Συντελεστές που καταναλώνονται στην παραγωγική διαδικασία είναι οι συντελεστές που ενσωματώνονται υλικώς στο προϊόν, η ενέργεια, τα καύσιμα και το πετρέλαιο που χρησιμοποιούνται στην παραγωγική διαδικασία, καθώς και οι καταλύτες που καταναλώνονται κατά τη χρήση τους για την παραγωγή του εξαγόμενου προϊόντος.

σύστημα ή διαδικασία, οι αρχές που διεξάγουν την έρευνα πρέπει στη συνέχεια να εξετάζουν το εν λόγω σύστημα ή την εν λόγω διαδικασία, για να κρίνουν αν είναι εύλογα και κατάλληλα για την επίτευξη του επιδιωκόμενου από αυτά στόχου, καθώς και κατά πόσον στηρίζονται στις γενικώς παραδεδεγμένες εμπορικές πρακτικές που ισχύουν στη χώρα εξαγωγής. Οι αρχές που διεξάγουν την έρευνα δύνανται να θεωρήσουν σκόπιμη τη διενέργεια ορισμένων πρακτικών δοκιμών, σύμφωνα με τα προβλεπόμενα στο άρθρο 12, παράγραφος 6, προκειμένου να ελέγξουν την ακρίβεια ορισμένων στοιχείων ή για να βεβαιωθούν ότι το σύστημα ή η διαδικασία εφαρμόζεται κατά τρόπο αποτελεσματικό.

2. Όταν δεν υπάρχει κάποιο τέτοιο σύστημα ή διαδικασία, όταν υπάρχει μεν αλλά δεν κρίνεται εύλογο ή όταν έχει καθιερωθεί και κριθεί εύλογο, αλλά διαπιστώνεται είτε ότι δεν εφαρμόζεται καθόλου, είτε ότι δεν εφαρμόζεται κατά τρόπο αποτελεσματικό, τότε το εξάγον μέλος είναι σκόπιμο να προβαίνει σε συμπληρωματική εξέταση με βάση τους πραγματικούς συντελεστές παραγωγής που έχουν χρησιμοποιηθεί, προκειμένου να διαπιστώνεται κατά πόσον έχει καταβληθεί ποσό μεγαλύτερο του κανονικού. Αν οι αρχές που διεξάγουν την έρευνα το κρίνουν σκόπιμο, είναι δυνατή η διενέργεια συμπληρωματικής εξέτασης βάσει της παραγράφου 1.

3. Οι αρχές που διεξάγουν την έρευνα αντιμετωπίζουν τους συντελεστές παραγωγής ως φυσικώς ενσωματωμένους, εφόσον αυτοί χρησιμοποιούνται κατά την παραγωγική διαδικασία και έχουν ενταχθεί υλικώς στο εξαγόμενο προϊόν. Τα μέλη σημειώνουν ότι είναι δυνατόν ένας συντελεστής παραγωγής να μην απαντά στο τελικό προϊόν με την ίδια μορφή υπό την οποία εισήλθε στην παραγωγική διαδικασία.

4. Για τον προσδιορισμό της ποσότητας δεδομένου συντελεστή παραγωγής, ο οποίος καταναλώνεται για την παραγωγή του εξαγόμενου προϊόντος, πρέπει να συνυπολογίζονται οι "συνήθεις απώλειες", οι οποίες πρέπει να αντιμετωπίζονται ως καταναλωθείσες για την παραγωγή του εξαγόμενου προϊόντος. Ο όρος "απώλειες" αναφέρεται σε εκείνο το μέρος δεδομένου συντελεστή παραγωγής, το οποίο δεν εξυπηρετεί κάποια ανεξάρτητη λειτουργία στο πλαίσιο της παραγωγικής διαδικασίας, δεν καταναλώνεται κατά την παραγωγή του εξαγόμενου προϊόντος (λόγω προβλημάτων αναποτελεσματικότητας ή για άλλους λόγους) και το οποίο δεν ανακτάται, χρησιμοποιείται ή πωλείται από τον ίδιο κατασκευαστή.

5. Όταν η αρχή που διεξάγει την έρευνα εξετάζει κατά πόσον οι απώλειες που προτείνεται να ληφθούν υπόψη είναι "οι συνήθεις", οφείλει να συνεκτιμά τη μέθοδο παραγωγής, τη μέση πείρα του κλάδου παραγωγής στη χώρα εξαγωγής, καθώς και άλλους τεχνικούς παράγοντες, ανάλογα με την περίπτωση. Η αρχή που διεξάγει την έρευνα οφείλει να αποδίδει την πρέπουσα σημασία στο θέμα του κατά πόσον οι αρχές του εξάγοντος μέλους έχουν υπολογίσει με τον ορθό τρόπο το ποσό που αντιπροσωπεύουν οι απώλειες, σε περιπτώσεις κατά τις οποίες το ποσό αυτό πρόκειται να συνυπολογισθεί στο ποσό της μείωσης ή διαγραφής του οφειλόμενου φόρου ή δασμού.

ΠΑΡΑΡΤΗΜΑ ΙΙΙ

ΚΑΤΕΥΘΥΝΤΗΡΙΕΣ ΓΡΑΜΜΕΣ ΟΙ ΟΠΟΙΕΣ ΑΚΟΛΟΥΘΟΥΝΤΑΙ ΟΤΑΝ ΚΡΙΝΕΤΑΙ ΚΑΤΑ ΠΟΣΟΝ ΕΝΑ ΣΥΣΤΗΜΑ ΕΠΙΣΤΡΟΦΗΣ ΦΟΡΟΥ ΣΕ ΠΕΡΙΠΤΩΣΕΙΣ ΥΠΟΚΑΤΑΣΤΑΣΗΣ ΙΣΟΔΥΝΑΜΕΙ ΜΕ ΤΗΝ ΠΑΡΟΧΗ ΕΞΑΓΩΓΙΚΩΝ ΕΠΙΔΟΤΗΣΕΩΝ

I

Ένα σύστημα επιστροφής φόρου είναι δυνατό να προβλέπει την απόδοση ή επιστροφή επιβαρύνσεων οι οποίες έχουν επιβληθεί στις εισαγωγές συντελεστών παραγωγής που καταναλώνονται κατά τη διαδικασία παραγωγής ενός άλλου προϊόντος, εφόσον το εν λόγω άλλο προϊόν κατά την εξαγωγή του περιέχει εγχώριους συντελεστές παραγωγής της ίδιας ποιότητας και με τα ίδια χαρακτηριστικά όπως και εκείνοι που υποκατέστησαν τους εισαγόμενους συντελεστές παραγωγής. Σύμφωνα με την παράγραφο (ê) του "Επεξηγηματικού καταλόγου εξαγωγικών επιδοτήσεων" του παραρτήματος Ι, ένα σύστημα επιστροφής φόρου σε περιπτώσεις υποκατάστασης ενδέχεται να αποτελεί εξαγωγική επιδότηση στο βαθμό που συνεπάγεται την επιστροφή σε έκταση μεγαλύτερη από το κανονικό των επιβαρύνσεων που επεβλήθησαν αρχικά στις εισαγωγές των συντελεστών παραγωγής, σε σχέση με τους οποίους ζητείται η επιστροφή.

II

Όταν οι αρχές, οι οποίες διεξάγουν έρευνα σχετικά με την επιβολή αντισταθμιστικού δασμού δυνάμει της παρούσας συμφωνίας, εξετάζουν δεδομένο σύστημα επιστροφής φόρου σε περιπτώσεις υποκατάστασης, οφείλουν να ενεργούν με τον ακόλουθο τρόπο:

1. Στην παράγραφο (ê) του επεξηγηματικού καταλόγου ορίζεται ότι συντελεστές παραγωγής προερχόμενοι από την εγχώρια αγορά είναι δυνατό να υποκαταστήσουν εισαγόμενους συντελεστές παραγωγής για την παραγωγή ενός προϊόντος που προορίζεται για εξαγωγή, υπό την προϋπόθεση ότι οι εν λόγω συντελεστές παραγωγής είναι της ίδιας ποσότητας και της ίδιας ποιότητας, και έχουν τα ίδια χαρακτηριστικά με τους υποκαθιστάμενους εισαγόμενους συντελεστές παραγωγής. Η ύπαρξη συστήματος ή διαδικασίας επαλήθευσης είναι σημαντική, διότι επιτρέπει στις αρχές του εξάγοντος μέλους να εξασφαλίζει και να είναι σε θέση να αποδείξει ότι η ποσότητα συντελεστών παραγωγής για την οποία ζητείται η επιστροφή δεν υπερβαίνει την ποσότητα ομοειδών προϊόντων που εξάγονται υπό οιαδήποτε μορφή και ότι δεν σημειώνεται επιστροφή επιβαρύνσεων επί των εισαγωγών πέραν εκείνων που επεβλήθησαν αρχικά στους εκάστοτε εισαγόμενους συντελεστές παραγωγής.

2. Όταν προβάλλεται ο ισχυρισμός ότι ένα σύστημα επιστροφής φόρου σε περιπτώσεις υποκατάστασης ισοδυναμεί με την παροχή επιδοτήσεων, οι αρχές που διεξάγουν την έρευνα οφείλουν πρώτα να εξετάσουν κατά πόσον οι αρχές του εξάγοντος μέλους έχουν καθιερώσει και εφαρμόζουν κάποιο σύστημα ή διαδικασία επαλήθευσης. Εφόσον διαπιστώνεται ότι πράγματι εφαρμόζεται ένα τέτοιο σύστημα ή διαδικασία, οι αρχές που διεξάγουν την έρευνα πρέπει στη συνέχεια να εξετάζουν τις σχετικές διαδικασίες επαλήθευσης, για να κρίνουν κατά πόσον αυτές είναι εύλογες και κατάλληλες για την επίτευξη του επιδιωκόμενου από αυτές στόχου, καθώς και αν στηρίζονται στις γενικώς παραδεδεγμένες εμπορικές πρακτικές που ισχύουν στη χώρα εξαγωγής. Αν διαπιστωθεί ότι οι διαδικασίες πληρούν τις ανωτέρω προϋποθέσεις και επιπλέον ότι εφαρμόζονται κατά τρόπο αποτελεσματικό, τότε τεκμαίρεται ότι δεν παρέχεται επιδότηση. Οι αρχές που διεξάγουν την έρευνα δύνανται να θεωρήσουν σκόπιμη τη διενέργεια ορισμένων πρακτικών δοκιμών, σύμφωνα με τα προβλεπόμενα στο άρθρο 12

παράγραφος 6, προκειμένου να ελέγξουν την ακρίβεια ορισμένων στοιχείων ή για να βεβαιωθούν ότι οι εκάστοτε διαδικασίες επαλήθευσης εφαρμόζονται κατά τρόπο αποτελεσματικό.

3. Όταν δεν προβλέπονται διαδικασίες επαλήθευσης, όταν προβλέπονται μεν αλλά δεν κρίνονται εύλογες ή όταν τέτοιου είδους διαδικασίες προβλέπονται και έχουν κριθεί εύλογες, αλλά διαπιστώνεται είτε ότι στην πραγματικότητα δεν εφαρμόζονται, είτε ότι δεν εφαρμόζονται κατά τρόπο αποτελεσματικό, τότε ενδέχεται να συντρέχει περίπτωση επιδότησης. Στις περιπτώσεις αυτές το εξάγον μέλος είναι σκόπιμο να προβεί σε συμπληρωματική εξέταση με βάση τις συναλλαγές που πράγματι πραγματοποιήθηκαν, προκειμένου να διαπιστωθεί κατά πόσον έχει καταβληθεί ποσό μεγαλύτερο του κανονικού. Αν οι αρχές που διεξάγουν την έρευνα το κρίνουν σκόπιμο, είναι δυνατή η διενέργεια συμπληρωματικής εξέτασης κατ' εφαρμογήν της παραγράφου 2.

4. Το γεγονός ότι στο πλαίσιο καθεστώτος επιστροφής φόρου σε περιπτώσεις υποκατάστασης περιλαμβάνεται και η πρόβλεψη ότι οι εξαγωγείς δικαιούνται να επιλέξουν το συγκεκριμένο φορτίο εισαγόμενων προϊόντων για το οποίο θα ζητήσουν την επιστροφή του φόρου δεν ισοδυναμεί από μόνο του με την παροχή επιδότησης.

5. Γίνεται δεκτό ότι έχει σημειωθεί καθ'υπέρβασιν επιστροφή επιβαρύνσεων επί των εισαγωγών, κατά την έννοια της παραγράφου (θ), όταν το Δημόσιο έχει καταβάλει τόκους για τα ποσά που έχει ενδεχομένως επιστρέψει στο πλαίσιο των συστημάτων επιστροφής φόρου που εφαρμόζει· η υπέρβαση ισούται με το ποσό του πράγματι καταβληθέντος ή του οφειλόμενου τόκου.

ΠΑΡΑΡΤΗΜΑ IV

ΥΠΟΛΟΓΙΣΜΟΣ ΤΗΣ ΣΥΝΟΛΙΚΗΣ ΚΑΤ'ΑΞΙΑΝ ΕΠΙΔΟΤΗΣΗΣ
(ΑΡΘΡΟ 6, ΠΑΡΑΓΡΑΦΟΣ 1(Α))[62]

1. Ο υπολογισμός του ύψους μιας επιδότησης στο πλαίσιο εφαρμογής του άρθρου 6 παράγραφος 1(α) γίνεται με βάση το κόστος της για το Δημόσιο.

2. Με την επιφύλαξη όσων προβλέπονται στις παραγράφους 3 έως 5, όταν εξετάζεται κατά πόσον το συνολικό ποσοστό μιας επιδότησης ξεπερνά το 5% της αξίας του προϊόντος, ως αξία του προϊόντος λαμβάνεται η συνολική αξία των πωλήσεων της αποδέκτριας επιχείρησης[63] κατά το πλέον πρόσφατο δωδεκάμηνο πριν από τη χρονική περίοδο παροχής της επιδότησης, για το οποίο είναι διαθέσιμα στοιχεία σχετικά με τις πωλήσεις.[64]

3. Όταν η παροχή μιας επιδότησης συναρτάται με την παραγωγή ή την πώληση συγκεκριμένου προϊόντος, ως αξία του προϊόντος λαμβάνεται η συνολική αξία των πωλήσεων του εν λόγω προϊόντος από την αποδέκτρια επιχείρηση κατά το πλέον πρόσφατο δωδεκάμηνο πριν από τη χρονική περίοδο παροχής της επιδότησης, για το οποίο είναι διαθέσιμα στοιχεία σχετικά με τις πωλήσεις.

4. Όταν η αποδέκτρια επιχείρηση διέρχεται το αρχικό στάδιο λειτουργίας της, γίνεται δεκτό ότι προκαλείται σοβαρή ζημία εφόσον το συνολικό ποσοστό της επιδότησης υπερβαίνει το 15% των συνολικών επενδεδυμένων κεφαλαίων. Για την εφαρμογή της παρούσας παραγράφου γίνεται δεκτό ότι το αρχικό στάδιο λειτουργίας μιας επιχείρησης διαρκεί κατά μέγιστο έναν χρόνο από την έναρξη της παραγωγής.[65]

5. Όταν η αποδέκτρια επιχείρηση είναι εγκατεστημένη σε χώρα η οικονομία της οποίας χαρακτηρίζεται από υψηλό πληθωρισμό, ως αξία του προϊόντος λαμβάνονται οι συνολικές πωλήσεις της αποδέκτριας επιχείρησης (ή οι πωλήσεις ενός προϊόντος, όταν η παροχή της επιδότησης συναρτάται με συγκεκριμένο προϊόν) κατά το προηγηθέν ημερολογιακό έτος, αποπληθωρισμένες κατά το ποσοστό πληθωρισμού που σημειώθηκε το δωδεκάμηνο πριν από το μήνα κατά τον οποίο προβλέπεται να χορηγηθεί η επιδότηση.

6. Για να καθοριστεί το συνολικό ποσοστό που αντιπροσωπεύουν οι επιδοτήσεις που έχουν χορηγηθεί κατά τη διάρκεια συγκεκριμένου έτους, συνυπολογίζονται οι επιδοτήσεις που έχουν χορηγηθεί στο πλαίσιο διαφορετικών προγραμμάτων και από διαφορετικές αρχές στην επικράτεια του οικείου μέλους.

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62 Τα μέλη θα πρέπει, εφόσον παρίσταται ανάγκη, να επιτύχουν μεταξύ τους μια ρύθμιση σχετικά με τα θέματα που δεν έχουν περιληφθεί στο παρόν παράρτημα ή τα οποία χρήζουν περαιτέρω επεξεργασίας για τους σκοπούς του άρθρου 6, παράγραφος 1, στοιχείο α).

63 Ως "αποδέκτρια επιχείρηση" νοείται μία επιχείρηση στην επικράτεια του επιδοτούντος μέλους.

64 Όταν πρόκειται για επιδοτήσεις φορολογικού χαρακτήρα, ως αξία του προϊόντος λαμβάνεται η συνολική αξία των πωλήσεων της αποδέκτριας εταιρείας κατά το φορολογικό έτος κατά τη διάρκεια του οποίου αυτή έλαβε την επιδότηση.

65 Μια επιχείρηση βρίσκεται σε αρχικό στάδιο της λειτουργίας της ακόμη και όταν έχουν αναληφθεί δεσμεύσεις για τη διάθεση κεφαλαίων με σκοπό την ανάπτυξη προϊόντων ή την κατασκευή των εγκαταστάσεων παραγωγής των προϊόντων για τα οποία χορηγείται η επιδότηση, έστω και αν δεν έχει αρχίσει ακόμη η παραγωγή.

7. Στο συνολικό τοσοστό της παρασχεθείσας επιδότησης περιλαμβάνονται επιδοτήσεις που έχουν χορηγηθεί πριν από την ημερομηνία έναρξης ισχύος της συμφωνίας για τον ΠΟΕ, το ύφος από τις οποίες προορίζεται για μελλοντική παραγωγή.

8. Οι επιδοτήσεις, για τις οποίες δεν προβλέπεται η δυνατότητα παροχής έννομης προστασίας βάσει των σχετικών διατάξεων της παρούσας συμφωνίας, δεν λαμβάνονται υπόψη για τον υπολογισμό του ύψους της επιδότησης στο πλαίσιο εφαρμογής του άρθρου 6, παράγραφος 1, στοιχείο α).

ΠΑΡΑΡΤΗΜΑ V

ΔΙΑΔΙΚΑΣΙΕΣ ΠΟΥ ΔΙΕΠΟΥΝ ΤΗ ΣΥΓΚΕΝΤΡΩΣΗ ΣΤΟΙΧΕΙΩΝ ΣΧΕΤΙΚΩΝ ΜΕ ΤΗΝ ΠΡΟΚΛΗΣΗ ΣΟΒΑΡΗΣ ΖΗΜΙΑΣ

1. Κάθε μέλος συνεργάζεται για τη συγκέντρωση των αποδεικτικών στοιχείων που εξετάζονται από την ειδική ομάδα στο πλαίσιο των διαδικασιών του άρθρου 7, παράγραφοι 4 έως 6. Αφ'ης στιγμής γίνει επίκληση των διατάξεων του άρθρου 7, παράγραφος 4, οι διάδικοι, καθώς και κάθε τρίτη ενδιαφερόμενη χώρα μέλος γνωστοποιούν στο ΟΕΔ τον φορέα που είναι υπεύθυνος για την εφαρμογή της παρούσας διάταξης στην επικράτειά τους, καθώς και τις διαδικασίες που πρέπει να ακολουθούνται για την ικανοποίηση αιτημάτων για παροχή πληροφοριών.

2. Σε περιπτώσεις κατά τις οποίες ορισμένα θέματα παραπέμπονται στο ΟΕΔ δυνάμει του άρθρου 7, παράγραφος 4, το ΟΕΔ κινεί, εφόσον του ζητηθεί, την προβλεπόμενη διαδικασία, προκειμένου να λάβει από τις αρχές του επιδοτούντος μέλους τα στοιχεία που είναι απαραίτητα για τη διαπίστωση της ύπαρξης ή μη επιδότησης και για τον καθορισμό του ύψους της επιδότησης και της αξίας των συνολικών πωλήσεων που έχουν πραγματοποιήσει οι επιδοτούμενες επιχειρήσεις· το ίδιο ισχύει για στοιχεία που απαιτούνται για την ανάλυση των αρνητικών συνεπειών που προκαλεί το επιδοτούμενο προϊόν[66]. Η ανωτέρω διαδικασία είναι δυνατό να περιλαμβάνει, ανάλογα με την περίπτωση, την υποβολή ερωτημάτων στις αρχές του επιδοτούντος μέλους και του καταγέλλοντος μέλους, με σκοπό τη συγκέντρωση στοιχείων, όπως επίσης την παροχή επεξηγήσεων και διευκρινίσεων σχετικά με στοιχεία που τίθενται στη διάθεση των διαδίκων στο πλαίσιο των διαδικασιών γνωστοποίησης που προβλέπει το μέρος VII[67].

66 Σε περιπτώσεις κατά τις οποίες είναι απαραίτητο να αποδειχθεί η πρόκληση σοβαρής ζημίας.

67 Κατά τη διαδικασία συγκέντρωσης στοιχείων από το ΟΕΔ, λαμβάνεται υπόψη η ανάγκη της προστασίας στοιχείων που είτε έχουν από τη φύση τους εμπιστευτικό χαρακτήρα, είτε προσκομίζονται από κάποιο μέλος που μετέχει στη διαδικασία με την επεξήγηση ότι πρόκειται για στοιχεία εμπιστευτικού χαρακτήρα.

3. Σε περιπτώσεις που υπάρχουν συνέπειες για τις αγορές τρίτων χωρών, οι διάδικοι δύνανται, καταφεύγοντας εν ανάγκη στην υποβολή ερωτημάτων προς τις αρχές της οικείας τρίτης χώρας μέλους, να συγκεντρώνουν τα στοιχεία που είναι απαραίτητα για την ανάλυση των τυχόν αρνητικών συνεπειών, εφόσον δεν είναι ευλόγως δυνατό να ληφθούν τα εν λόγω στοιχεία από το καταγγέλλον ή από το επιδοτούν μέλος. Η προσφυγή στην ανωτέρω δυνατότητα πρέπει να γίνεται με τέτοιον τρόπο, ώστε να μη συνεπάγεται υπέρμετρη επιβάρυνση για την εκάστοτε τρίτη χώρα μέλος. Ειδικότερα, το εν λόγω μέλος δεν μπορεί να υποχρεωθεί να διενεργήσει ανάλυση της αγοράς ή των τιμών ειδικά για τον σκοπό αυτόν. Η υποχρέωση υποβολής αφορά στοιχεία που είναι ήδη διαθέσιμα ή τα οποία μπορούν ευκόλως να συγκεντρωθούν από το οικείο μέλος (π.χ. τελευταία στατιστικά στοιχεία που έχουν ήδη συλλεγεί από τις αρμόδιες στατιστικές υπηρεσίες, αλλά δεν έχουν δημοσιευθεί ακόμη, στοιχεία που έχουν συγκεντρώσει τα τελωνεία και αναφέρονται στις εισαγωγές και στις δηλωθείσες αξίες των σχετικών προϊόντων, κ.τ.λ.). Εντούτοις, όταν ένα διάδικο μέλος προβαίνει στη διενέργεια λεπτομερούς έρευνας αγοράς με δικά του έξοδα, οι αρχές της οικείας τρίτης χώρας μέλους οφείλουν να διευκολύνουν το έργο του προσώπου ή της εταιρείας που διενεργεί την ανάλυση και να του παρέχουν πρόσβαση στο σύνολο των στοιχείων που δεν θεωρούνται κανονικά εμπιστευτικά από τις εν λόγω αρχές.

4. Το ΟΕΔ ορίζει έναν εκπρόσωπο, έργο του οποίου είναι η διευκόλυνση της διαδικασίας συγκέντρωσης στοιχείων. Μοναδικός στόχος του εκπροσώπου είναι να εξασφαλίζει την έγκαιρη συγκέντρωση των στοιχείων που χρειάζονται προκειμένου να καθίσταται ευχερέστερη η ταχεία ολοκλήρωση της κατοπινής πολυμερούς διαδικασίας εξέτασης της διαφοράς. Ειδικότερα, ο εκπρόσωπος δύναται να προτείνει τρόπους για την πλέον αποτελεσματική αναζήτηση των απαραίτητων στοιχείων, όπως επίσης να ενθαρρύνει τη συνεργασία μεταξύ των μερών.

5. Η διαδικασία συγκέντρωσης στοιχείων, η οποία περιγράφεται στις παραγράφους 2 έως 4, ολοκληρώνεται εντός 60 ημερών από την ημερομηνία παραπομπής του θέματος στο ΟΕΔ βάσει του άρθρου 7, παράγραφος 4. Τα στοιχεία που προκύπτουν από την εν λόγω διαδικασία υποβάλλονται στην ειδική ομάδα την οποία έχει συγκροτήσει το ΟΕΔ κατ'εφαρμογή των διατάξεων του μέρους Χ. Τα στοιχεία αυτά είναι σκόπιμο να περιλαμβάνουν, μεταξύ άλλων, στοιχεία σχετικά με: το ύψος της επίμαχης επιδότησης (και, κατά περίπτωση, την αξία των συνολικών πωλήσεων των επιχειρήσεων που λαμβάνουν την επιδότηση)· τις τιμές του επιδοτούμενου προϊόντος· τις τιμές του μη επιδοτούμενου προϊόντος· τις τιμές που εφαρμόζουν άλλοι προμηθευτές στην αγορά· τυχόν μεταβολές της προσφοράς του επιδοτούμενου προϊόντος στην εκάστοτε αγορά· και μεταβολές των μεριδίων αγοράς. Επίσης πρέπει να περιλαμβάνουν αποδεικτικά στοιχεία που οι διάδικοι προσκομίζουν προς αντίκρουση των ισχυρισμών του αντιδίκου τους, καθώς και τυχόν συμπληρωματικές πληροφορίες τις οποίες η ειδική ομάδα θεωρεί χρήσιμες για την εξαγωγή των συμπερασμάτων της.

6. Σε περίπτωση που το επιδοτούν μέλος ή/και η τρίτη χώρα μέλος αρνείται να συνεργαστεί στο πλαίσιο της διαδικασίας συγκέντρωσης στοιχείων, το καταγέλλον μέλος αναπτύσσει τις απόψεις του αναφορικά με την πρόκληση σοβαρής ζημίας, θεμελιώνοντάς τις στα αποδεικτικά στοιχεία που έχει στη διάθεσή του· επίσης παραθέτει τα πραγματικά περιστατικά και τις περιστάσεις που αναφέρονται στη μη συνεργασία του επιδοτούντος μέλους ή/και της οικείας τρίτης χώρας μέλους. Όταν η απόκτηση ορισμένων στοιχείων είναι αδύνατη εξαιτίας της άρνησης συνεργασίας του επιδοτούντος μέλους ή/και της οικείας τρίτης χώρας μέλους, η ειδική ομάδα δύναται να συμπληρώσει τον σχετικό φάκελλο όπως η ίδια κρίνει σκόπιμο, στηριζόμενη στην καλύτερη δυνατή τεκμηρίωση που έχει προκύψει από άλλες πηγές.

7. Κατά τη διαμόρφωση της απόφασής της, η ειδική ομάδα οφείλει να λαμβάνει υπόψη της το γεγονός της άρνησης συνεργασίας εκ μέρους κάποιας πλευράς που συμμετέχει στη διαδικασία συγκέντρωσης στοιχείων και να

συνάγει από αυτό συμπεράσματα που επιβαρύνουν τη θέση της εν λόγω πλευράς.

8. Όταν αποφασίζει να χρησιμοποιήσει την καλύτερη διαθέσιμη τεκμηρίωση ή να συναγάγει συμπεράσματα που επιβαρύνουν τη θέση μιας πλευράς, η ειδική ομάδα λαμβάνει υπόψη την άποψη του εκπροσώπου του ΟΕΔ, ο οποίος έχει οριστεί βάσει της παραγράφου 4, σχετικά με το κατά πόσον είναι εύλογα τα αιτήματα για την παροχή στοιχείων, καθώς και σχετικά με τις προσπάθειες που τα μέρη έχουν καταβάλει για να ανταποκριθούν στα αιτήματα αυτά εγκαίρως και με πνεύμα συνεργασίας.

9. Η ανωτέρω διαδικασία συγκέντρωσης στοιχείων δεν περιορίζει με κανέναν τρόπο τη δυνατότητα της ειδικής ομάδας να ζητεί συμπληρωματικά στοιχεία τα οποία θεωρεί ουσιώδη για την ορθή επίλυση της διαφοράς και τα οποία δεν ζητήθηκαν ούτε παρασχέθησαν καταλλήλως στο πλαίσιο της εν λόγω διαδικασίας. Εντούτοις, η ειδική ομάδα δεν πρέπει κατ'αρχή να ζητεί πρόσθετα στοιχεία προς συμπλήρωση του φακέλλου, όταν τα στοιχεία αυτά αναμένεται να ενισχύσουν τη θέση συγκεκριμένης πλευράς, και η απουσία των εν λόγω στοιχείων από το φάκελλο οφείλεται στην άνευ λόγου άρνηση της εν λόγω πλευράς να συνεργαστεί στο πλαίσιο της διαδικασίας συγκέντρωσης στοιχείων.

ΠΑΡΑΡΤΗΜΑ VI

ΔΙΑΔΙΚΑΣΙΕΣ ΠΟΥ ΕΦΑΡΜΟΖΟΝΤΑΙ ΓΙΑ ΤΙΣ ΕΠΙΤΟΠΙΕΣ ΕΡΕΥΝΕΣ ΒΑΣΕΙ ΤΟΥ ΑΡΘΡΟΥ 12, ΠΑΡΑΓΡΑΦΟΣ 6

1. Όταν έχει ξεκινήσει έρευνα, οι αρχές του εξάγοντος μέλους και οι επιχειρήσεις που είναι γνωστό ότι εξαρτούν συμφέροντα από την υπόθεση πρέπει να ενημερώνονται σχετικά με την πρόθεση διενέργειας επιτόπιων ερευνών.

2. Αν, σε εξαιρετικές περιπτώσεις, σχεδιάζεται να συμπεριληφθούν στο κλιμάκιο που πρόκειται να διενεργήσει την έρευνα και εμπειρογνώμονες που δεν υπηρετούν στο Δημόσιο, οι επιχειρήσεις και οι αρχές του εξάγοντος μέλους πρέπει να ενημερώνονται σχετικά. Είναι σκόπιμη η θέσπιση αποτελεσματικών κυρώσεων για περιπτώσεις αθέτησης εκ μέρους των εμπειρογνωμόνων που δεν υπηρετούν στο Δημόσιο των υποχρεώσεων που υπέχουν όσον αφορά την εμπιστευτική μεταχείριση ορισμένων στοιχείων.

3. Πρέπει να αποτελεί πάγια πρακτική η εξασφάλιση της ρητής συγκατάθεσης των εμπλεκομένων επιχειρήσεων του εξάγοντος μέλους πριν από τον οριστικό προγραμματισμό της επίσκεψης.

4. Μόλις εξασφαλισθεί η συγκατάθεση των εμπλεκομένων επιχειρήσεων, οι αρχές που διεξάγουν την έρευνα γνωστοποιούν στις αρχές του εξάγοντος μέλους τα ονόματα και τις διευθύνσεις των επιχειρήσεων τις οποίες αφορά η επίσκεψη, καθώς και τις συμφωνηθείσες ημερομηνίες.

5. Οι επιχειρήσεις τις οποίες αφορά η επίσκεψη πρέπει να ειδοποιούνται σχετικά εκανό χρονικό διάστημα πριν από την πραγματοποίησή της.

6. Επισκέψεις με σκοπό την παροχή επεξηγήσεων για το ερωτηματολόγιο πρέπει να πραγματοποιούνται μόνο μετά από αίτηση της εξάγουσας επιχείρησης. Σε περιπτώσεις παρόμοιων αιτήσεων, οι αρχές που διεξάγουν την έρευνα δύνανται να τίθενται στη διάθεση της εκάστοτε επιχείρησης. Η πραγματοποίηση επίσκεψης στις περιπτώσεις αυτές επιτρέπεται τότε μόνο, εφόσον: (α) οι αρχές του εισάγοντος μέλους έχουν ενημερώσει τους εκπροσώπους της κυβέρνησης του οικείου μέλους και (β) οι τελευταίοι δεν έχουν αντίρρηση για την πραγματοποίηση της επίσκεψης.

7. Δεδομένου ότι βασικός σκοπός μιας επιτόπιας έρευνας είναι ο έλεγχος της ακρίβειας στοιχείων που έχουν προσκομιστεί ή η περαιτέρω διευκρίνιση ορισμένων θεμάτων, η επιτόπια έρευνα πρέπει να διενεργείται μετά τη λήψη της απάντησης στο αποσταλέν ερωτηματολόγιο, εκτός αν η οικεία επιχείρηση συμφωνεί να μην ισχύσει κάτι τέτοιο, ενώ η κυβέρνηση του εξάγοντος μέλους ενημερώνεται από τις αρχές που διεξάγουν την έρευνα σχετικά με την προγραμματιζόμενη επίσκεψη και δεν εκφράζει σχετικές αντιρρήσεις· επιπλέον, πρέπει να αποτελεί πάγια πρακτική να ενημερώνονται πριν από την επίσκεψη οι εμπλεκόμενες επιχειρήσεις σχετικά με τον γενικό χαρακτήρα των στοιχείων που πρόκειται να αποτελέσουν αντικείμενο του ελέγχου, όπως επίσης σχετικά με οποιοδήποτε πρόσθετο στοιχείο το οποίο πρέπει να προσκομιστεί, αν και αυτό δεν σημαίνει ότι δεν επιτρέπεται να ζητείται επί τόπου η παροχή και περαιτέρω διευκρινίσεων, υπό το φως στοιχείων που έχουν ήδη συγκεντρωθεί.

8. Τα στοιχεία που ζητούν οι αρχές ή οι επιχειρήσεις των εξαγόντων μελών και οι απαντήσεις σε τυχόν ερωτήματα που διατυπώνουν, τα οποία είναι ουσιώδη για την επιτυχή διεξαγωγή επιτόπιας έρευνας, πρέπει όποτε είναι δυνατό να δίνονται πριν από την πραγματοποίηση της επίσκεψης.

ΠΑΡΑΡΤΗΜΑ VII

ΑΝΑΠΤΥΣΣΟΜΕΝΕΣ ΧΩΡΕΣ ΜΕΛΗ ΣΤΙΣ ΟΠΟΙΕΣ ΑΝΑΦΕΡΕΤΑΙ ΤΟ ΑΡΘΡΟ 27, ΠΑΡΑΓΡΑΦΟΣ 2, ΣΤΟΙΧΕΙΟ Α)

Οι αναπτυσσόμενες χώρες μέλη έναντι των οποίων δεν ισχύουν οι διατάξεις του άρθρου 3, παράγραφος 1, στοιχείο α) κατ' εφαρμογήν του άρθρου 27, παράγραφος 2, στοιχείο α) είναι οι εξής:

(α) Οι λιγότερο αναπτυγμένες χώρες, τις οποίες καθορίζει ο Οργανισμός Ηνωμένων Εθνών και οι οποίες είναι μέλη του ΠΟΕ.

(β) Για καθεμιά από τις ακόλουθες αναπτυσσόμενες χώρες μέλη του ΠΟΕ είναι εφαρμοστέες οι διατάξεις που ισχύουν για τις υπόλοιπες αναπτυσσόμενες χώρες μέλη δυνάμει του άρθρου 27, παράγραφος 2, στοιχείο β) από τη στιγμή που το ετήσιο ΑΕΠ ανά κεφαλή έχει φθάσει τα $ 1.000[68]: Αίγυπτος, Ακτή Ελεφαντοστού, Βολιβία, Γκάνα, Γουατεμάλα, Γουϊάνα, Δομινικανή Δημοκρατία, Ζιμπάμπουε, Ινδία, Ινδονησία, Καμερούν, Κένυα, Κογκό, Μαρόκο, Νιγηρία, Νικαράγουα, Πακιστάν, Σενεγάλη, Σρι Λάνκα και Φιλιππίνες.

68 Η ένταξη ορισμένων αναπτυσσόμενων χωρών μελών στον κατάλογο της παραγράφου (β) βασίζεται στα πλέον πρόσφατα στοιχεία για το κατά κεφαλή ΑΕΠ, τα οποία διέθεσε η Διεθνής Τράπεζα.

ΣΥΜΦΩΝΙΑ ΓΙΑ ΤΑ ΜΕΤΡΑ ΔΙΑΣΦΑΛΙΣΗΣ

Τα μέλη,

Αναλογιζόμενα το συνολικό στόχο των μελών σχετικά με τη βελτίωση και την ενίσχυση του διεθνούς εμπορικού συστήματος, με βάση τη GATT του 1994·

Αναγνωρίζοντας ότι είναι ανάγκη να αποσαφηνισθούν και να ενισχυθούν οι ρυθμίσεις της GATT του 1994, και ειδικότερα εκείνες που περιέχονται στο άρθρο XIX (Έκτακτα μέτρα για τις εισαγωγές συγκεκριμένων προϊόντων), καθώς και να ανασυσταθούν μηχανισμοί για τον πολυμερή έλεγχο των μέτρων διασφάλισης και να εξαλειφθούν τα μέτρα που δεν υπάγονται σε πολυμερή έλεγχο·

Αναγνωρίζοντας τη σπουδαιότητα της διαρθρωτικής προσαρμογής και την ανάγκη που υφίσταται για προώθηση μάλλον παρά για περιορισμό του ανταγωνισμού στις διεθνείς αγορές· και

Αναγνωρίζοντας επίσης ότι, για τους ανωτέρω λόγους, επιβάλλεται η εφαρμογή ολοκληρωμένης συμφωνίας, η οποία θα ισχύει έναντι όλων των μελών και θα στηρίζεται στις θεμελιώδεις αρχές της GATT του 1994·

Συμφωνούν τα ακόλουθα:

Άρθρο 1

Γενική διάταξη

Με την παρούσα συμφωνία θεσπίζονται οι κανόνες που διέπουν την εφαρμογή μέτρων διασφάλισης· ως μέτρα διασφάλισης νοούνται τα μέτρα που ορίζονται στο άρθρο XIX της GATT του 1994.

Άρθρο 2

Προϋποθέσεις

1. Ένα μέλος[1] δύναται να εφαρμόζει μέτρα διασφάλισης έναντι συγκεκριμένου προϊόντος μόνο εφόσον έχει καταλήξει στο συμπέρασμα, κατ' εφαρμογήν των διατάξεων που ακολουθούν, ότι το εν λόγω προϊόν εισάγεται στο έδαφός του σε τόσο μεγάλες ποσότητες, είτε σε απόλυτα μεγέθη, είτε εν συγκρίσει με την εγχώρια παραγωγή, και υπό τέτοιες συνθήκες, ώστε να

1 Οι τελωνειακές ενώσεις δύνανται να εφαρμόζουν μέτρα διασφάλισης είτε ως ενιαίες οντότητες, είτε για λογαριασμό ενός κράτους μέλους τους. Όταν μια τελωνειακή ένωση εφαρμόζει μέτρο διασφάλισης ως ενιαία οντότητα, η συνδρομή του συνόλου των προϋποθέσεων που τάσσονται από την παρούσα συμφωνία αναφορικά με την πρόκληση σοβαρής ζημίας ή την ύπαρξη κινδύνου πρόκλησης σοβαρής ζημίας εξετάζεται με βάση την κατάσταση που παρατηρείται στο σύνολο της τελωνειακής ένωσης. Όταν ένα μέτρο διασφάλισης εφαρμόζεται για λογαριασμό ενός κράτους μέλους, η συνδρομή του συνόλου των προϋποθέσεων που τάσσονται αναφορικά με την πρόκληση σοβαρής ζημίας ή την ύπαρξη κινδύνου πρόκλησης σοβαρής ζημίας εξετάζεται με βάση την κατάσταση που παρατηρείται στο συγκεκριμένο κράτος μέλος, ενώ η ισχύς του μέτρου περιορίζεται υποχρεωτικά στο εν λόγω κράτος μέλος. Καμία διάταξη της παρούσας συμφωνίας δεν προδικάζει την ερμηνεία που ενδέχεται να δοθεί στη σχέση μεταξύ του άρθρου XIX και του άρθρου XXIV, παράγραφος 8 της GATT του 1994.

προκαλείται ή να δημιουργείται ο κίνδυνος να προκληθεί σοβαρή ζημία στον εγχώριο κλάδο παραγωγής ομοειδών ή ευθέως ανταγωνιστικών προϊόντων.

2. Για την εφαρμογή μέτρων διασφάλισης έναντι ενός εισαγόμενου προϊόντος δεν έχει σημασία η προέλευση του προϊόντος.

Άρθρο 3

Έρευνα

1. Η εφαρμογή μέτρου διασφάλισης από ένα μέλος επιτρέπεται μόνο εφόσον έχει διεξαχθεί έρευνα από τις αρμόδιες αρχές του εν λόγω μέλους, σύμφωνα με διαδικασίες που έχουν θεσπισθεί από προηγουμένως και στις οποίες έχει δοθεί η δέουσα δημοσιότητα, όπως προβλέπει το άρθρο Χ της GATT του 1994. Η προαναφερθείσα έρευνα περιλαμβάνει δημόσια ανακοίνωση με την οποία παρέχεται η κατάλληλη πληροφόρηση σε κάθε ενδιαφερόμενο, καθώς και δημόσιες ακροάσεις ή άλλες ενδεδειγμένες διαδικασίες, με τις οποίες να παρέχεται στους εισαγωγείς, τους εξαγωγείς και τους λοιπούς ενδιαφερομένους η δυνατότητα να υποβάλουν αποδεικτικά στοιχεία και να αναπτύξουν τις απόψεις τους. Επίσης πρέπει να τους παρέχεται η δυνατότητα να απαντούν στα επιχειρήματα των άλλων πλευρών κάι να εκθέτουν τις απόψεις τους όσον αφορά, μεταξύ άλλων, το κατά πόσον η εφαρμογή μέτρου διασφάλισης είναι ή όχι σκόπιμη για την προστασία του δημόσιου συμφέροντος. Οι αρμόδιες αρχές δημοσιεύουν έκθεση στην οποία αναπτύσσουν τα πορίσματα της έρευνας που διεξήγαγαν και τα συμπεράσματα στα οποία κατέληξαν αναφορικά με όλες τις πραγματικές και νομικές παραμέτρους της υπόθεσης, παραθέτοντας παράλληλα το σκεπτικό στο οποίο στηρίζονται τα συμπεράσματα αυτά.

2. Οι αρμόδιες αρχές, όταν αποδεικνύεται η ύπαρξη κάποιου λόγου, αντιμετωπίζουν ως εμπιστευτικού χαρακτήρα κάθε στοιχείο το οποίο από τη φύση του έχει τέτοιον χαρακτήρα ή το οποίο έχει υποβληθεί με την επεξήγηση ότι πρόκειται για στοιχείο εμπιστευτικού χαρακτήρα. Απαγορεύεται η αποκάλυψη οποιουδήποτε στοιχείου εμπιστευτικού χαρακτήρα χωρίς σχετική άδεια της πλευράς που το υπέβαλε. Από τα μέρη που έχουν προσκομίσει κάποια εμπιστευτικού χαρακτήρα πληροφορία είναι δυνατό να ζητηθεί να υποβάλουν μη εμπιστευτικού χαρακτήρα περίληψη της ίδιας πληροφορίας, ή, αν τα εν λόγω μέρη υποστηρίζουν ότι η εν λόγω πληροφορία δεν είναι δυνατό να παρουσιασθεί σε περιληπτική μορφή, να αναπτύξουν τους λόγους για τους οποίους είναι αδύνατη η περιληπτική παρουσίαση της πληροφορίας. Ωστόσο, σε περίπτωση που οι αρμόδιες αρχές κρίνουν ότι η αίτηση παροχής εμπιστευτικής μεταχείρισης είναι απορριπτέα, και το μέρος που υπέβαλε την πληροφορία δεν είναι διατεθειμένο ούτε να καταστήσει ευρύτερα γνωστή την πληροφορία, ούτε να επιτρέψει την κοινοποίησή της σε γενικόλογη ή περιληπτική μορφή, οι αρχές δύνανται να μη λαμβάνουν υπόψη τους την πληροφορία αυτή, εκτός αν πείθονται βάσει αξιόπιστων αποδεικτικών ατοιχείων ότι η πληροφορία ανταποκρίνεται στην πραγματικότητα.

Άρθρο 4

Συμπέρασμα σχετικά με την πρόκληση σοβαρής ζημίας ή την ύπαρξη κινδύνου πρόκλησης σοβαρής ζημίας

1. Για τους σκοπούς της παρούσας συμφωνίας:

(α) με τον όρο "σοβαρή ζημία" νοείται κάθε σημαντική συνολική επιβάρυνση της θέσης του οικείου εγχώριου κλάδου παραγωγής·

(β) με τον όρο "κίνδυνος πρόκλησης σοβαρής ζημίας" νοείται κάθε σοβαρή ζημία η οποία είναι επικείμενη πέραν αμφιβολίας, βάσει των διατάξεων της παραγράφου 2. Το συμπέρασμα που αναφέρεται στην ύπαρξη κινδύνου πρόκλησης σοβαρής ζημίας πρέπει να στηρίζεται σε πραγματικά δεδομένα, και όχι απλώς σε ισχυρισμούς, εικασίες ή μεμακρυσμένες πιθανότητες· και

(γ) για να διαπιστωθεί κατά πόσον υπάρχει ζημία ή κίνδυνος πρόκλησης ζημίας, ο όρος "εγχώριος κλάδος παραγωγής" θεωρείται ότι περιλαμβάνει το σύνολο των παραγωγών που παράγουν ομοειδή ή ευθέως ανταγωνιστικά προϊόντα και οι οποίοι δραστηριοποιούνται στο έδαφος ενός μέλους ή εκείνους τους παραγωγούς, των οποίων αθροιζόμενη η παραγωγή ομοειδών ή ευθέως ανταγωνιστικών προϊόντων αντιπροσωπεύει μεγάλο ποσοστό της συνολικής εγχώριας παραγωγής των εν λόγω προϊόντων.

2. (α) Στο πλαίσιο της έρευνας που διεξάγεται προκειμένου να διαπιστωθεί κατά πόσον η αύξηση των εισαγωγών έχει προκαλέσει ή υπάρχει κίνδυνος να προκαλέσει σοβαρή ζημία στον οικείο εγχώριο κλάδο παραγωγής βάσει των διατάξεων της παρούσας συμφωνίας, οι αρμόδιες αρχές συνεκτιμούν όλα τα συναφή στοιχεία, τα οποία είναι αντικειμενικά και δυνάμενα να εκφραστούν με ποσοτικά μεγέθη και τα οποία απεικονίζουν την κατάσταση του εκάστοτε κλάδου παραγωγής· πρόκειται, ιδίως, για τον ρυθμό και το ποσοτικό μέγεθος της αύξησης των εισαγωγών του εκάστοτε προϊόντος, τόσο σε απόλυτα μεγέθη, όσο και συγκριτικά, το μερίδιο της εγχώριας αγοράς που έχει αποσπασθεί συνεπεία της αύξησης των εισαγωγών, τυχόν μεταβολές του ύψους των πωλήσεων, την παραγωγή, την παραγωγικότητα, τη χρησιμοποίηση ικανότητας, τα κέρδη και τις απώλειες και την απασχόληση.

(β) Το συμπέρασμα για το οποίο γίνεται λόγος στο στοιχείο (α) διατυπώνεται τότε μόνο, όταν από την έρευνα έχει προκύψει βάσει αντικειμενικών αποδεικτικών στοιχείων ότι υπάρχει αιτιώδης συνάφεια μεταξύ της αύξησης των εισαγωγών του συγκεκριμένου προϊόντος και της σοβαρής ζημίας ή του κινδύνου πρόκλησης σοβαρής ζημίας. Σε περίπτωση που ζημία στον εγχώριο κλάδο παραγωγής προκαλείται ταυτοχρόνως και από άλλους παράγοντες πλην της αύξησης των εισαγωγών, η εξ αυτών προκαλούμενη ζημία δεν επιτρέπεται να αποδίδεται στην αύξηση των εισαγωγών.

(γ) Οι αρμόδιες αρχές δημοσιεύουν αμελλητί, κατ'εφαρμογήν των διατάξεων του άρθρου 3, εμπεριστατωμένη ανάλυση της υπόθεσης που αποτελεί αντικείμενο της έρευνας, καθώς και τεκμηρίωση της αξιοπιστίας των στοιχείων που έλαβαν υπόψη.

Άρθρο 5

Εφαρμογή μέτρων διασφάλισης

1. Η εφαρμογή μέτρων διασφάλισης από κάποιο μέλος επιτρέπεται μόνο στο βαθμό που κρίνεται αναγκαία για την αποτροπή της πρόκλησης σοβαρής ζημίας ή την άρση των επιπτώσεών της και για τη διευκόλυνση της απαραίτητης προσαρμογής. Όταν το μέτρο έχει τη μορφή ποσοτικού περιορισμού, το ύψος των εισαγωγών δεν είναι δυνατό να περιορίζεται σε επίπεδο κατώτερο αυτού που αντιστοιχεί σε πρόσφατη χρονική περίοδο· το επίπεδο αυτό είναι ο μέσος όρος των εισαγωγών κατά τα τελευταία τρία αντιπροσωπευτικά έτη, ως προς τα οποία είναι διαθέσιμα στατιστικά στοιχεία, εκτός αν παρέχονται σαφή στοιχεία, από τα οποία προκύπτει ότι, για να αποτραπεί η πρόκληση σοβαρής ζημίας ή να αρθούν οι επιπτώσεις της, είναι απαραίτητος ο καθορισμός διαφορετικού επιπέδου. Τα μέλη οφείλουν να επιλέγουν τα μέτρα που προσφέρονται περισσότερο για την επίτευξη των ανωτέρω στόχων.

2. (α) Σε περιπτώσεις κατά τις οποίες καθορίζονται ποσοστώσεις για τις διάφορες προμηθεύτριες χώρες, το μέλος που επιβάλλει τους περιορισμούς δύναται να επιδιώκει την επίτευξη συμφωνίας όσον αφορά τον επιμερισμό της ποσόστωσης με όλα τα υπόλοιπα μέλη που εξαρτούν σημαντικά συμφέροντα από την πώληση του συγκεκριμένου προϊόντος. Όταν υπάρχουν βάσιμοι λόγοι που καθιστούν πρακτικώς ανέφικτη την εφαρμογή της ανωτέρω μεθόδου, το οικείο μέλος ορίζει για κάθε μέλος που εξαρτά σημαντικά συμφέροντα από την πώληση του προϊόντος κάποιο μερίδιο, το οποίο είναι ανάλογο του ποσοστού κατά το οποίο συνέβαλε κάθε τέτοιο μέλος στον συνολικό όγκο ή τη συνολική αξία των εισαγωγών του συγκεκριμένου προϊόντος κατά τη διάρκεια παλαιότερης αντιπροσωπευτικής περιόδου· στο πλαίσιο αυτό, λαμβάνονται δεόντως υπόψη τυχόν ειδικοί παράγοντες οι οποίοι ενδέχεται να έχουν επηρεάσει κατά το παρελθόν ή να εξακολουθούν να επηρεάζουν τις συναλλαγές με αντικείμενο το συγκεκριμένο προϊόν.

(β) Ένα μέλος δύναται να παρεκκλίνει από τις διατάξεις του στοιχείου (α), υπό την προϋπόθεση ότι διεξάγονται διαβουλεύσεις βάσει του άρθρου 12, παράγραφος 3 στο πλαίσιο της επιτροπής μέτρων διασφάλισης, η σύσταση της οποίας προβλέπεται από το άρθρο 13, παράγραφος 1, και ότι η επιτροπή έχει λάβει σαφή αποδεικτικά στοιχεία, από τα οποία προκύπτει ότι: (i) οι εισαγωγές από ορισμένα μέλη έχουν αυξηθεί σε δυσανάλογο ποσοστό εν συγκρίσει με τη συνολική αύξηση των εισαγωγών του συγκεκριμένου προϊόντος κατά την αντιπροσωπευτική περίοδο· (ii) οι λόγοι τους οποίους επικαλείται το μέλος προκειμένου να παρεκκλίνει από τις διατάξεις του στοιχείου (α) κρίνονται βάσιμοι· και (iii) οι προϋποθέσεις της παρέκκλισης αυτής εφαρμόζονται κατά τρόπο ακριβοδίκαιο για όλους τους προμηθευτές του συγκεκριμένου προϊόντος. Η διάρκεια ισχύος οποιουδήποτε μέτρου αυτής της μορφής δεν μπορεί να παρατείνεται πέραν της αρχικής περιόδου ισχύος που προβλέπεται από το άρθρο 7, παράγραφος 1. Η παρέκκλιση που προβλέπεται παραπάνω δεν επιτρέπεται, όταν υπάρχει κίνδυνος πρόκλησης σοβαρής ζημίας.

Άρθρο 6

Προσωρινά μέτρα διασφάλισης

Σε εξαιρετικές περιπτώσεις, κατά τις οποίες τυχόν καθυστέρηση είναι πιθανό να προκαλέσει ζημία που θα ήταν δύσκολο να επανορθωθεί, είναι δυνατή η θέσπιση προσωρινού μέτρου διασφάλισης από ένα μέλος βάσει προκαταρκτικού συμπεράσματος περί της ύπαρξης αναμφισβήτητων στοιχείων με τα οποία αποδεικνύεται ότι η αύξηση των εισαγωγών έχει προκαλέσει ή υπάρχει κίνδυνος να προκαλέσει σοβαρή ζημία. Η διάρκεια ισχύος του προσωρινού μέτρου δεν επιτρέπεται να υπερβαίνει τις 200 ημέρες· κατά τη διάρκεια ισχύος του μέτρου είναι εφαρμοστέες οι σχετικές ρυθμίσεις που προβλέπονται στα άρθρα 2 έως 7 και 12. Τα προσωρινά μέτρα πρέπει να έχουν τη μορφή δασμολογικών αυξήσεων· τα ποσά που προκύπτουν από τις εν λόγω αυξήσεις επιβάλλεται να επιστρέφονται αμελλητί, αν από την έρευνα που διενεργείται σε μεταγενέστερο χρόνο κατ'εφαρμογήν του άρθρου 4, παράγραφος 2 δεν προκύψει το συμπέρασμα ότι η αύξηση των εισαγωγών έχει προκαλέσει ή υπήρχε κίνδυνος να προκαλέσει σοβαρή ζημία στον οικείο εγχώριο κλάδο παραγωγής. Η διάρκεια ισχύος κάθε προσωρινού μέτρου συνυπολογίζεται στην αρχική χρονική περίοδο, καθώς και σε οποιαδήποτε παράταση που αποφασίζεται βάσει του άρθρου 7, παράγραφοι 1, 2 και 3.

'Αρθρο 7

Διάρκεια ισχύος και επανεξέταση των μέτρων διασφάλισης

1. Η εφαρμογή μέτρων διασφάλισης από ένα μέλος επιτρέπεται μόνο για όσο χρονικό διάστημα είναι απαραίτητη προκειμένου να αποτραπεί η πρόκληση σοβαρής ζημίας ή να αρθούν οι αρνητικές της συνέπειες ή να διευκολυνθεί η αναγκαία προσαρμογή. Η διάρκεια ισχύος οποιουδήποτε μέτρου διασφάλισης δεν επιτρέπεται να υπερβαίνει τα τέσσερα έτη, εκτός από τις περιπτώσεις παράτασής της βάσει της παραγράφου 2.

2. Η χρονική περίοδος για την οποία γίνεται λόγος στην παράγραφο 1 είναι δυνατό να παρατείνεται, υπό την προϋπόθεση ότι οι αρμόδιες αρχές του εισάγοντος μέλους έχουν καταλήξει στο συμπέρασμα, με βάση τις διαδικασίες που προβλέπονται στα άρθρα 2, 3, 4 και 5, ότι το συγκεκριμένο μέτρο διασφάλισης εξακολουθεί να είναι αναγκαίο προκειμένου να αποτραπεί η πρόκληση σοβαρής ζημίας ή να αρθούν οι αρνητικές της συνέπειες και ότι αποδεικνύεται βάσει στοιχείων ότι ο οικείος κλάδος παραγωγής διέρχεται φάση προσαρμογής, καθώς και υπό την προϋπόθεση ότι έχουν τηρηθεί οι σχετικές διατάξεις των άρθρων 8 και 12.

3. Η συνολική περίοδος εφαρμογής ενός μέτρου διασφάλισης, συμπεριλαμβανομένης της περιόδου εφαρμογής του προσωρινού μέτρου που έχει ενδεχομένως ληφθεί, της αρχικής περιόδου εφαρμογής και οποιασδήποτε παράτασης της εν λόγω περιόδου, δεν είναι δυνατό να υπερβεί τα οκτώ έτη.

4. Προκειμένου να διευκολυνθεί η προσαρμογή σε περιπτώσεις κατά τις οποίες η προβλεπόμενη διάρκεια ισχύος κάποιου μέτρου διασφάλισης, η οποία γνωστοποιείται βάσει των διατάξεων του άρθρου 12, παράγραφος 1, υπερβαίνει το ένα έτος, το μέλος που εφαρμόζει το εν λόγω μέτρο οφείλει να το άρει σταδιακά ανά τακτά χρονικά διαστήματα μέχρι τη λήξη της ισχύος του. Σε περίπτωση που η διάρκεια ισχύος του μέτρου υπερβαίνει τα τρία έτη, το μέλος που το εφαρμόζει οφείλει να προβεί σε επανεξέταση του μέτρου το αργότερο όταν συμπληρωθεί ο μισός χρόνος ισχύος του μέτρου και, ανάλογα με τις συνθήκες, να το ανακαλέσει ή να επιταχύνει το ρυθμό της σταδιακής του άρσης. Μέτρο, η ισχύς του οποίου παρατείνεται βάσει της παραγράφου 2, δεν επιτρέπεται να συνεπάγεται μεγαλύτερους περιορισμούς εν συγκρίσει με ό,τι ίσχυε κατά τη λήξη της αρχικής περιόδου, ούτε επιτρέπεται η διακοπή της σταδιακής του άρσης.

5. Κανένα μέτρο διασφάλισης δεν είναι δυνατό να εφαρμοσθεί εκ νέου σε σχέση με την εισαγωγή κάποιου προϊόντος για την οποία έχει ήδη εφαρμοσθεί κάποιο μέτρο διασφάλισης που επεβλήθη μετά την ημερομηνία έναρξης της ισχύος της συμφωνίας για τον ΠΟΕ, επί χρονικό διάστημα που ισούται με τη διάρκεια εφαρμογής του αρχικού μέτρου, υπό την προϋπόθεση ότι η μη εφαρμογή αφορά χρονικό διάστημα δύο ετών τουλάχιστον.

6. Κατά παρέκκλιση των διατάξεων της παραγράφου 5, ένα μέτρο διασφάλισης, του οποίου η διάρκεια ισχύος δεν υπερβαίνει τις 180 ημέρες, είναι δυνατόν να εφαρμοσθεί εκ νέου για την εισαγωγή κάποιου προϊόντος, υπό την προϋπόθεση ότι:

(α) έχει παρέλθει ένα έτος τουλάχιστον από την ημερομηνία θέσπισης μέτρου διασφάλισης για την εισαγωγή του συγκεκριμένου προϊόντος· και

(β) το εν λόγω μέτρο διασφάλισης δεν έχει εφαρμοσθεί για το ίδιο προϊόν περισσότερες από δύο φορές κατά τη διάρκεια των πέντε ετών που προηγούνται ακριβώς της ημερομηνίας θέσπισης του μέτρου.

Άρθρο 8

Ύψος των παραχωρήσεων και λοιπές υποχρεώσεις

1. Κάθε μέλος που σκοπεύει να εφαρμόσει ένα μέτρο διασφάλισης ή επιζητεί την παράταση της ισχύος ενός μέτρου διασφάλισης καταβάλλει προσπάθειες για τη διατήρηση σε ισχύ παραχωρήσεων και άλλων υποχρεώσεων, η έκταση των οποίων να συμβαδίζει σε μεγάλο βαθμό με αυτήν που προβλέπεται από την GATT του 1994 και οι οποίες θα ισχύουν μεταξύ του ιδίου και των μελών εξαγωγής που αναμένεται να θιγούν από την εφαρμογή του μέτρου, συμφώνως προς τις διατάξεις του άρθρου 12, παράγραφος 3. Για την επίτευξη του ανωτέρω στόχου, τα ενδιαφερόμενα μέλη δύνανται να έλθουν σε συμφωνία για την παροχή του κατάλληλου εμπορικού ανταλλάγματος, με το οποίο να αντισταθμίζονται οι αρνητικές συνέπειες του μέτρου για την εμπορική τους δραστηριότητα.

2. Σε περίπτωση μη επίτευξης συμφωνίας εντός 30 ημερών κατά τις διαβουλεύσεις που πραγματοποιούνται βάσει του άρθρου 12, παράγραφος 3, τότε τα θιγόμενα εξάγοντα μέλη αποκτούν το δικαίωμα, το αργότερο 90 ημέρες από τη θέση σε ισχύ του μέτρου, να αναστείλουν την εφαρμογή ανάλογης ουσιαστικά έκτασης παραχωρήσεων ή άλλων υποχρεώσεων που ισχύουν βάσει της GATT του 1994 για το εμπόριο που διεξάγουν με το μέλος που προέβη στην εφαρμογή του μέτρου διασφάλισης. Η αναστολή άρχεται αφού παρέλθουν 30 ημέρες από την ημερομηνία κατά την οποία αυτή γνωστοποιείται γραπτώς στο Συμβούλιο Εμπορευματικών Συναλλαγών και εφόσον αυτό το τελευταίο δεν εκφράζει σχετικές αντιρρήσεις.

3. Η άσκηση του δικαιώματος αναστολής που προβλέπεται στην παράγραφο 2 δεν επιτρέπεται κατά τη διάρκεια των τριών πρώτων ετών ισχύος του μέτρου διασφάλισης, υπό την προϋπόθεση ότι το μέτρο διασφάλισης θεσπίστηκε για να αντιμετωπιστεί η αύξηση σε απόλυτα μεγέθη των εισαγωγών και ότι το συγκεκριμένο μέτρο συμβαδίζει με τις διατάξεις της παρούσας συμφωνίας.

Άρθρο 9

Αναπτυσσόμενες χώρες-μέλη

1. Δεν επιτρέπεται η εφαρμογή μέτρων διασφάλισης έναντι προϊόντος που κατάγεται από αναπτυσσόμενη χώρα-μέλος, υπό την προϋπόθεση ότι οι ποσότητες του συγκεκριμένου προϊόντος που εξάγει η εν λόγω αναπτυσσόμενη χώρα στο εισάγον μέλος δεν αντιπροσωπεύουν ποσοστό άνω του 3% των συνολικών εισαγωγών και επιπλέον ότι όλες μαζί οι εισαγωγές των αναπτυσσομένων χωρών-μελών, καθεμιά από τις οποίες συμβάλλει κατά ποσοστό κατώτερο του 3% στις συνολικές εισαγωγές, δεν αντιπροσωπεύουν ποσοστό άνω του 9% των συνολικών εισαγωγών του συγκεκριμένου προϊόντος[2].

2. Μία αναπτυσσόμενη χώρα-μέλος έχει το δικαίωμα να παρατείνει τη διάρκεια εφαρμογής μέτρου διασφάλισης για χρονικό διάστημα που δεν μπορεί να υπερβαίνει τα δύο χρόνια επιπλέον της μέγιστης διάρκειας που επιτρέπεται βάσει του άρθρου 7, παράγραφος 3. Κατά παρέκκλιση των διατάξεων του άρθρου 7, παράγραφος 5, μία αναπτυσσόμενη χώρα-μέλος έχει το δικαίωμα να εφαρμόζει εκ νέου μέτρο διασφάλισης για την εισαγωγή δεδομένου προϊόντος, για την οποία έχει ήδη εφαρμοσθεί κάποιο μέτρο διασφάλισης που θεσπίστηκε μετά την ημερομηνία έναρξης της ισχύος της συμφωνίας για τον ΠΟΕ, μετά την πάροδο χρονικού διαστήματος που ισούται με τη μισή χρονική διάρκεια εφαρμογής του αρχικού μέτρου, υπό την προϋπόθεση ότι η μη εφαρμογή αφορά περίοδο δύο ετών τουλάχιστον.

2 Τα μέλη ενημερώνουν πάραυτα την επιτροπή μέτρων διασφάλισης για τα μέτρα που λαμβάνουν βάσει του άρθρου 9, παράγραφος 1.

Άρθρο 10

Προϊσχύοντα μέτρα βάσει του άρθρου XIX

Τα μέλη προβαίνουν στην κατάργηση όλων των μέτρων διασφάλισης που έχουν θεσπίσει βάσει του άρθρου XIX της GATT του 1947 και τα οποία βρίσκονταν σε ισχύ κατά την ημερομηνία έναρξης ισχύος της συμφωνίας για τον ΠΟΕ, το αργότερο οκτώ έτη από την ημερομηνία έναρξης της εφαρμογής τους ή πέντε έτη από την ημερομηνία έναρξης ισχύος της συμφωνίας για τον ΠΟΕ, ανάλογα με το ποια ημερομηνία είναι μεταγενέστερη.

Άρθρο 11

Απαγόρευση και άρση ορισμένων μέτρων

1. (α) Τα μέλη δεν έχουν το δικαίωμα να λαμβάνουν ή να επιδιώκουν τη λήψη μέτρων έκτακτης ανάγκης έναντι των εισαγωγών συγκεκριμένων προϊόντων, κατά τα προβλεπόμενα στο άρθρο XIX της GATT του 1994, παρά μόνον εφόσον τα εν λόγω μέτρα συμβαδίζουν με τις διατάξεις του προαναφερθέντος άρθρου, όπως αυτό ισχύει βάσει της παρούσας συμφωνίας.

(β) Επιπλέον, τα μέλη δεν έχουν το δικαίωμα να επιδιώκουν, να θεσπίζουν ή να διατηρούν σε ισχύ εθελοντικούς περιορισμούς για τις εξαγωγές, συμφωνίες με τις οποίες τα μέρη αναλαμβάνουν να τηρήσουν συγκεκριμένη συμπεριφορά στην αγορά ή οποιοδήποτε άλλο παρόμοιο μέτρο, είτε όσον αφορά την εξαγωγή, είτε όσον αφορά την εισαγωγή[3],[4]. Στα ανωτέρω μέτρα συγκαταλέγονται μέτρα που θεσπίζει ένα μόνο μέλος, καθώς και μέτρα που απορρέουν από συμφωνίες, διακανονισμούς ή μνημόνια συμφωνίας μεταξύ δύο ή περισσοτέρων μελών. Κάθε μέτρο αυτής της μορφής, το οποίο ισχύει κατά την ημερομηνία έναρξης της ισχύος της συμφωνίας για τον ΠΟΕ, ευθυγραμμίζεται με τις διατάξεις της παρούσας συμφωνίας ή καταργείται σταδιακά, όπως προβλέπει η παράγραφος 2.

(γ) Η παρούσα συμφωνία δεν εφαρμόζεται σε σχέση με τα μέτρα τα οποία επιδιώκει, θεσπίζει ή διατηρεί σε ισχύ ένα μέλος κατ' εφαρμογήν άλλων διατάξεων της GATT του 1994 πλην του άρθρου XIX ή κατ' εφαρμογήν των πολυμερών εμπορικών συμφωνιών που αναφέρονται στο παράρτημα 1Α, πλην της παρούσας συμφωνίας, ή δυνάμει πρωτοκόλλων και συμφωνιών ή ρυθμίσεων που συνάπτονται στο πλαίσιο της GATT του 1994.

2. Η σταδιακή κατάργηση των μέτρων για την οποία γίνεται λόγος στην παράγραφο 1(β) πραγματοποιείται βάσει χρονοδιαγραμμάτων, τα οποία υποβάλλονται από τα ενδιαφερόμενα μέλη στην επιτροπή μέτρων διασφάλισης το αργότερο 180 ημέρες από την ημερομηνία έναρξης ισχύος της συμφωνίας για τον ΠΟΕ. Τα εν λόγω χρονοδιαγράμματα προβλέπουν τη σταδιακή

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3 Η διαχείριση κάποιας εισαγωγικής ποσόστωσης, η οποία επιβάλλεται ως μέτρο διασφάλισης συμφώνως προς τις σχετικές διατάξεις της GATT του 1994 και της παρούσας συμφωνίας, είναι δυνατό να ανατίθεται με κοινή συμφωνία στο εξάγον μέλος.

4 Παραδείγματα παρόμοιων μέτρων είναι ο περιορισμός των εξαγωγών, τα συστήματα παρακολούθησης των τιμών εξαγωγής ή εισαγωγής, η εποπτεία των εξαγωγών ή των εισαγωγών, οι συμφωνίες υποχρεωτικής εισαγωγής και τα συστήματα χορήγησης εξαγωγικών ή εισαγωγικών αδειών στο πλαίσιο διακριτικής ευχέρειας· πρόκειται σε όλες τις περιπτώσεις για μορφές παροχής προστασίας.

κατάργηση όλων των μέτρων για τα οποία γίνεται λόγος στην παράγραφο 1 ή την ευθυγράμμισή τους με τις διατάξεις της παρούσας συμφωνίας εντός περιόδου που δεν επιτρέπεται να υπερβαίνει τα τέσσερα έτη από την ημερομηνία έναρξης ισχύος της συμφωνίας για τον ΠΟΕ, με εξαίρεση μόνο ένα επιμέρους μέτρο ανά εισάγον μέλος[5], η διάρκεια ισχύος του οποίου πρέπει υποχρεωτικά να έχει λήξει μέχρι την 31η Δεκεμβρίου 1999. Οποιαδήποτε εξαίρεση αυτής της μορφής πρέπει να αποτελεί αντικείμενο αμοιβαίας συμφωνίας μεταξύ των άμεσα ενδιαφερομένων μελών και να γνωστοποιείται στην επιτροπή μέτρων διασφάλισης, η οποία πρέπει να το εξετάσει και να το εγκρίνει εντός 90 ημερών από την έναρξη ισχύος της συμφωνίας για τον ΠΟΕ. Στο παράρτημα της παρούσας συμφωνίας αναφέρεται ένα μέτρο για το οποίο συμφωνείται ότι υπάγεται στην προαναφερθείσα εξαίρεση.

3. Τα μέλη δεν ενθαρρύνουν, ούτε υποστηρίζουν τη θέσπιση ή διατήρηση σε ισχύ εκ μέρους δημόσιων ή ιδιωτικών επιχειρήσεων μέτρων που δεν απορρέουν από την άσκηση δημόσιας εξουσίας και τα οποία ισοδυναμούν με κάποιο από τα μέτρα που μνημονεύονται στην παράγραφο 1.

Άρθρο 12

Γνωστοποίηση και διαβουλεύσεις

1. Τα μέλη ενημερώνουν πάραυτα την επιτροπή μέτρων διασφάλισης σχετικά με τα εξής:

(α) την κίνηση διαδικασίας για τη διερεύνηση του κατά πόσον έχει προκληθεί ή υπάρχει κίνδυνος να προκληθεί σοβαρή ζημία, καθώς και τους σχετικούς λόγους·

(β) τη διατύπωση συμπεράσματος με το οποίο επιβεβαιώνεται ότι η αύξηση των εισαγωγών προκαλεί ή υπάρχει κίνδυνος να προκαλέσει σοβαρή ζημία· και

(γ) τη λήψη απόφασης για την εφαρμογή ή την παράταση της ισχύος μέτρου διασφάλισης.

2. Κατά τη γνωστοποίηση των στοιχείων που αναφέρονται στις παραγράφους 1(β) και 1(γ), το μέλος που σκοπεύει να θεσπίσει ένα μέτρο διασφάλισης ή να παρατείνει την ισχύ του παρέχει στην επιτροπή μέτρων διασφάλισης όλα τα σχετικά στοιχεία, στα οποία συμπεριλαμβάνονται μεταξύ άλλων στοιχεία με τα οποία αποδεικνύεται η πρόκληση ή ο κίνδυνος πρόκλησης σοβαρής ζημίας συνεπεία της αύξησης των εισαγωγών, λεπτομερής περιγραφή του προϊόντος το οποίο αφορά το μέτρο και του ίδιου του προτεινόμενου μέτρου, η προτεινόμενη ημερομηνία έναρξης ισχύος του μέτρου, η προβλεπόμενη διάρκεια ισχύος του μέτρου και χρονοδιάγραμμα για τη σταδιακή του άρση. Στην περίπτωση παράτασης της ισχύος μέτρου πρέπει επίσης να προσκομίζονται στοιχεία με τα οποία να αποδεικνύεται ότι ο οικείος κλάδος παραγωγής διέρχεται διαδικασία προσαρμογής. Το Συμβούλιο Εμπορευματικών Συναλλαγών και η επιτροπή μέτρων διασφάλισης δύνανται να ζητούν οποιαδήποτε συμπληρωματικά στοιχεία, τα οποία ενδεχομένως κρίνουν απαραίτητα, από το μέλος που έχει δηλώσει την πρόθεσή του να εφαρμόσει το μέτρο ή να παρατείνει την ισχύ του.

5 Η μοναδική εξαίρεση αυτής της μορφής, η οποία έχει παραχωρηθεί στις Ευρωπαϊκές Κοινότητες αναφέρεται στο παράρτημα της παρούσας συμφωνίας.

3. Κάθε μέλος το οποίο σκοπεύει να θεσπίσει ένα μέτρο διασφάλισης ή να παρατείνει την ισχύ του παρέχει τις κατάλληλες δυνατότητες για την προηγούμενη διεξαγωγή διαβουλεύσεων με εκείνα τα μέλη, τα οποία εξαρτούν σημαντικά συμφέροντα από την εξαγωγή του συγκεκριμένου προϊόντος· αντικείμενο των διαβουλεύσεων αυτών είναι, μεταξύ άλλων, η εξέταση των στοιχείων που έχουν υποβληθεί βάσει της παραγράφου 2, η ανταλλαγή απόψεων σχετικά με το μέτρο και η επίτευξη συμφωνίας για τους τρόπους επίτευξης του στόχου που καθορίζει το άρθρο 8, παράγραφος 1.

4. Τα μέλη ενημερώνουν την επιτροπή μέτρων διασφάλισης πριν από τη θέσπιση οποιουδήποτε προσωρινού μέτρου διασφάλισης, από αυτά που αναφέρονται στο άρθρο 6. Σχετικές διαβουλεύσεις αρχίζουν αμέσως μετά τη θέσπιση του μέτρου.

5. Τα αποτελέσματα των διαβουλεύσεων που προβλέπονται από το παρόν άρθρο, καθώς και των ενδιάμεσων επανεξετάσεων για τις οποίες γίνεται λόγος στο άρθρο 7, παράγραφος 4, οποιοδήποτε αντισταθμιστικό αντάλλαγμα που παρέχεται βάσει του άρθρου 8, παράγραφος 1 και κάθε περίπτωση αναστολής παραχωρήσεων ή άλλων υποχρεώσεων δυνάμει του άρθρου 8, παράγραφος 2 γνωστοποιούνται πάραυτα από το εκάστοτε μέλος στο Συμβούλιο Εμπορευματικών Συναλλαγών.

6. Τα μέλη ενημερώνουν αμελλητί την επιτροπή μέτρων διασφάλισης σχετικά με τους νόμους, τους κανονισμούς και τις διοικητικές διαδικασίες που ισχύουν σε αυτά για την εφαρμογή μέτρων διασφάλισης, καθώς και σχετικά με οποιαδήποτε τροποποίηση αυτών.

7. Κάθε μέλος που διατηρεί σε ισχύ κάποιο από τα μέτρα που ορίζονται στο άρθρο 10 και στο άρθρο 11, παράγραφος 1, το οποίο ισχύει ήδη κατά την ημερομηνία έναρξης ισχύος της συμφωνίας για τον ΠΟΕ, γνωστοποιεί το εν λόγω μέτρο στην επιτροπή μέτρων διασφάλισης, το αργότερο 60 ημέρες από την ημερομηνία έναρξης ισχύος της συμφωνίας για τον ΠΟΕ.

8. Κάθε μέλος δύναται να ενημερώνει την επιτροπή μέτρων διασφάλισης σχετικά με το σύνολο των νόμων, των κανονισμών και των διοικητικών διαδικασιών, καθώς και σχετικά με οποιοδήποτε μέτρο ή ενέργεια που ρυθμίζεται από την παρούσα συμφωνία, τα οποία δεν έχει γνωστοποιήσει κάποιο άλλο μέλος, που υποχρεούται κανονικά σε τέτοια γνωστοποίηση βάσει της παρούσας συμφωνίας.

9. Κάθε μέλος δύναται να ενημερώνει την επιτροπή μέτρων διασφάλισης σχετικά με οποιοδήποτε μέτρο που προβλέπεται στο άρθρο 11, παράγραφος 3, η θέσπιση του οποίου δεν απορρέει από την άσκηση δημόσιας εξουσίας.

10. Κάθε γνωστοποίηση προς το Συμβούλιο Εμπορευματικών Συναλλαγών, η οποία προβλέπεται από την παρούσα συμφωνία, πρέπει κανονικά να πραγματοποιείται μέσω της επιτροπής μέτρων διασφάλισης.

11. Οι σχετικές με την υποχρέωση γνωστοποίησης διατάξεις της παρούσας συμφωνίας δεν συνεπάγονται ότι οποιοδήποτε μέλος είναι υποχρεωμένο να αποκαλύψει κάποια εμπιστευτικού χαρακτήρα πληροφορία, όταν η αποκάλυψη της εν λόγω πληροφορίας θα έθετε εμπόδια στην επιβολή του νόμου ή θα αντέβαινε με οιονδήποτε τρόπο στη δημόσια τάξη ή θα μπορούσε να βλάψει τα νόμιμα εμπορικά συμφέροντα συγκεκριμένων επιχειρήσεων, είτε δημόσιων, είτε ιδιωτικών.

Άρθρο 13

Επιτήρηση

1. Συστήνεται επιτροπή μέτρων διασφάλισης, η οποία τίθεται υπό την ευθύνη του Συμβουλίου Εμπορευματικών Συναλλαγών. Στην επιτροπή δύναται να συμμετάσχει κάθε μέλος που εκφράζει σχετική επιθυμία. Η επιτροπή είναι επιφορτισμένη με τα εξής καθήκοντα:

(α) παρακολουθεί τη συνολική εφαρμογή της παρούσας συμφωνίας, υποβάλλει ανά έτος σχετική έκθεση στο Συμβούλιο Εμπορευματικών Συναλλαγών και διατυπώνει συστάσεις για τη βελτίωσή της·

(β) κρίνει, μετά από αίτηση κάποιου θιγόμενου μέλους, κατά πόσον, στο πλαίσιο εφαρμογής μέτρου διασφάλισης, έχουν τηρηθεί ή όχι οι διαδικαστικές διατάξεις της παρούσας συμφωνίας και αναφέρει τα συμπεράσματά της στο Συμβούλιο Εμπορευματικών Συναλλαγών·

(γ) παρέχει βοήθεια προς τα μέλη, εφόσον της το ζητήσουν, για τους σκοπούς των διαβουλεύσεων που πραγματοποιούνται βάσει των διατάξεων της παρούσας συμφωνίας·

(δ) εξετάζει τα μέτρα που υπάγονται στο άρθρο 10 και στο άρθρο 11, παράγραφος 1, παρακολουθεί τη σταδιακή κατάργηση των εν λόγω μέτρων και αναφέρεται σχετικά στο Συμβούλιο Εμπορευματικών Συναλλαγών·

(ε) εξετάζει, μετά από αίτηση του μέλους που θεσπίζει κάποιο μέτρο διασφάλισης, κατά πόσον οι υποβληθείσες προτάσεις με αντικείμενο την αναστολή παραχωρήσεων ή άλλων υποχρεώσεων είναι "ουσιαστικά ανάλογες" και αναφέρεται σχετικά στο Συμβούλιο Εμπορευματικών Συναλλαγών·

(στ) παραλαμβάνει και εξετάζει όλα τα στοιχεία που γνωστοποιούνται κατ' εφαρμογήν της παρούσας συμφωνίας και αναφέρεται σχετικά στο Συμβούλιο Εμπορευματικών Συναλλαγών· και

(ζ) εκτελεί κάθε άλλο καθήκον σε σχέση με την εφαρμογή της παρούσας συμφωνίας, το οποίο ενδεχομένως της αναθέτει το Συμβούλιο Εμπορευματικών Συναλλαγών.

2. Προκειμένου να βοηθηθεί η επιτροπή για την εκτέλεση των καθηκόντων που της έχουν ανατεθεί σε σχέση με την παρακολούθηση της εφαρμογής της παρούσας συμφωνίας, η γραμματεία καταρτίζει ανά έτος έκθεση, στην οποία παρουσιάζονται τα πραγματικά δεδομένα τα σχετικά με τη λειτουργία της παρούσας συμφωνίας· για την έκθεση λαμβάνονται ως βάση τα στοιχεία που έχουν γνωστοποιηθεί, καθώς και κάθε άλλο αξιόπιστο στοιχείο που έχει περιέλθει στη γνώση της επιτροπής.

Άρθρο 14

Επίλυση διαφορών

Για τη διενέργεια των διαβουλεύσεων και την επίλυση των διαφορών που ανακύπτουν στο πλαίσιο της παρούσας συμφωνίας εφαρμόζονται οι διατάξεις των άρθρων XXII και XXIII της GATT του 1994, όπως επεξηγούνται και τίθενται σε ισχύ με το μνημόνιο συμφωνίας για την επίλυση των διαφορών.

ΠΑΡΑΡΤΗΜΑ

ΕΞΑΙΡΕΣΗ ΠΡΟΒΛΕΠΟΜΕΝΗ ΑΠΟ ΤΟ ΑΡΘΡΟ 11, ΠΑΡΑΓΡΑΦΟΣ 2

Μέλη τα οποία αφορά	Προϊόν	Λήξη ισχύος
ΕΚ/Ιαπωνία	Επιβατηγά αυτοκίνητα, οχήματα παντός εδάφους, ελαφρά οχήματα επαγγελματικής χρήσης, ελαφρά φορτηγά οχήματα (μέχρι 5 τόνους), και οι ίδιοι τύποι οχημάτων σε αμιγώς μη συναρμολογημένη μορφή (σύνολα CKD).	31 Δεκεμβρίου 1999

ΓΕΝΙΚΗ ΣΥΜΦΩΝΙΑ ΓΙΑ ΤΙΣ ΣΥΝΑΛΛΑΓΕΣ ΣΤΟΝ ΤΟΜΕΑ ΤΩΝ ΥΠΗΡΕΣΙΩΝ

Τα μέλη,

Αναγνωρίζοντας την αυξανόμενη σπουδαιότητα των συναλλαγών στον τομέα των υπηρεσιών για την ανάπτυξη της παγκοσμίου οικονομίας·

Επιθυμώντας να θεσπίσουν πολυμερές πλαίσιο αρχών και κανόνων για τις συναλλαγές στον τομέα των υπηρεσιών, ως μέσο προώθησης της οικονομικής ανάπτυξης όλων των εμπορικών εταίρων και της ανάπτυξης των αναπτυσσομένων χωρών με στόχο την επέκταση των εν λόγω συναλλαγών υπό συνθήκες διαφάνειας και προοδευτικής απελευθέρωσης·

Επιθυμώντας την ταχεία επίτευξη, σταδιακά, υψηλότερων επιπέδων απελευθέρωσης των συναλλαγών στον τομέα των υπηρεσιών μέσω διαδοχικών γύρων πολυμερών διαπραγματεύσεων που αποσκοπούν στην προώθηση των συμφερόντων όλων των συμμετεχόντων, υπό αμοιβαία ευνοϊκούς όρους και στην εξασφάλιση γενικότερης ισορροπίας μεταξύ δικαιωμάτων και υποχρεώσεων, λαμβάνοντας, ωστόσο, δεόντως υπόψη τους στόχους εθνικής πολιτικής·

Αναγνωρίζοντας το δικαίωμα των μελών να ρυθμίζουν και να εισάγουν νέες ρυθμίσεις σχετικές με την παροχή υπηρεσιών στην επικράτειά τους και, δεδομένης της ανισότητας που υφίσταται όσον αφορά το βαθμό ανάπτυξης των ρυθμίσεων για την παροχή υπηρεσιών σε διάφορες χώρες, την ιδιαίτερη ανάγκη των αναπτυσσομένων χωρών να ασκούν το εν λόγω δικαίωμα·

Επιθυμώντας να διευκολύνουν την αυξανόμενη συμμετοχή των αναπτυσσομένων χωρών στις συναλλαγές στον τομέα των υπηρεσιών και την αύξηση των εξαγωγών τους όσον αφορά τον εν λόγω τομέα, μέσω, μεταξύ άλλων, της ενίσχυσης των δυνατοτήτων, της αποδοτικότητας και της ανταγωνιστικότητας του εγχωρίου τομέα των υπηρεσιών·

Λαμβάνοντας ιδιαιτέρως υπόψη τις σοβαρές δυσκολίες των λιγότερο ανεπτυγμένων χωρών εξαιτίας των ειδικών οικονομικών συνθηκών που αντιμετωπίζουν καθώς και των αναπτυξιακών, εμπορικών και χρηματοδοτικών τους αναγκών·

Συμφωνούν τα ακόλουθα :

ΜΕΡΟΣ Ι

ΠΕΔΙΟ ΕΦΑΡΜΟΓΗΣ ΚΑΙ ΟΡΙΣΜΟΙ

Άρθρο Ι

Πεδίο εφαρμογής και ορισμοί

1. Η παρούσα συμφωνία εφαρμόζεται σε μέτρα που λαμβάνονται από τα μέλη για τις συναλλαγές στον τομέα των υπηρεσιών.

2. Για τους σκοπούς της παρούσας συμφωνίας, οι συναλλαγές στον τομέα των υπηρεσιών ορίζονται ως η παροχή υπηρεσιών:

   (α) από το έδαφος ενός μέλους στο έδαφος άλλου μέλους·
   (β) εντός του εδάφους ενός μέλους προς χρήστη υπηρεσιών άλλου μέλους·
   (γ) από φορέα παροχής υπηρεσιών ενός μέλους, μέσω εμπορικής παρουσίας στο έδαφος άλλου μέλους·

(δ) από φορέα παροχής υπηρεσιών ενός μέλους, μέσω παρουσίας φυσικών προσώπων ενός μέλους εντός του εδάφους άλλου μέλους.

3. Για τους σκοπούς της παρούσας συμφωνίας :

(α) ως "μέτρα που λαμβάνονται από τα μέλη" νοούνται τα μέτρα που λαμβάνονται από :

(i) κεντρικές, περιφερειακές ή τοπικές διοικήσεις και αρχές· και

(ii) μη κυβερνητικά όργανα κατά την άσκηση των αρμοδιοτήτων που μεταβιβάζονται από κεντρικές, περιφερειακές ή τοπικές διοικήσεις και αρχές.

Κατά την εκπλήρωση των υποχρεώσεων και δεσμεύσεων που απορρέουν από τη συμφωνία, τα μέλη λαμβάνουν τα ενδεδειγμένα μέτρα που έχουν στη διάθεσή τους, προκειμένου να εξασφαλισθεί η τήρηση αυτών από τις περιφερειακές και τοπικές διοικήσεις και αρχές καθώς και από τα μη κυβερνητικά όργανα εντός της επικράτειάς τους·

(β) ο όρος "υπηρεσίες" περιλαμβάνει το σύνολο των υπηρεσιών σε όλους τους τομείς, με εξαίρεση τις υπηρεσίες που παρέχονται κατά την άσκηση κρατικής εξουσίας·

(γ) ως "υπηρεσίες που παρέχονται κατά την άσκηση κρατικής εξουσίας" νοούνται οι υπηρεσίες που δεν παρέχονται ούτε σε εμπορική βάση ούτε ανταγωνιστικά σε σχέση με έναν ή περισσότερους φορείς παροχής υπηρεσιών.

ΜΕΡΟΣ ΙΙ

ΓΕΝΙΚΕΣ ΥΠΟΧΡΕΩΣΕΙΣ ΚΑΙ ΡΥΘΜΙΣΕΙΣ

Άρθρο ΙΙ

Μεταχείριση του μάλλον ευνοουμένου κράτους

1. Όσον αφορά το σύνολο των μέτρων που καλύπτονται από την παρούσα συμφωνία, κάθε κράτος παρέχει αμέσως και άνευ όρων σε υπηρεσίες και φορείς παροχής υπηρεσιών των άλλων μελών όχι λιγότερο ευνοϊκή μεταχείριση από αυτή που παρέχει σε παρεμφερείς υπηρεσίες και φορείς παροχής υπηρεσιών οποιασδήποτε άλλης χώρας.

2. Οποιοδήποτε μέλος έχει το δικαίωμα να εφαρμόζει μέτρα που αντιβαίνουν στην παράγραφο 1 υπό την προϋπόθεση ότι τα εν λόγω μέτρα αναγράφονται στο παράρτημα του άρθρου ΙΙ για τις απαλλαγές και πληρούν τις σχετικές προϋποθέσεις.

3. Οι διατάξεις της παρούσας συμφωνίας δεν σημαίνουν ότι απαγορεύεται σε μέλος να εφαρμόζει ευνοϊκές ρυθμίσεις υπέρ γειτονικών χωρών, με σκοπό τη διευκόλυνση των συναλλαγών που περιορίζονται σε συνεχόμενες παραμεθόριες ζώνες και αφορούν υπηρεσίες, οι οποίες παράγονται και καταναλώνονται επιτόπου.

Άρθρο ΙΙΙ

Διαφάνεια

1. Κάθε μέλος δημοσιεύει, το συντομότερο δυνατό, και, εκτός επειγουσών περιπτώσεων, το αργότερο κατά την έναρξη ισχύος τους, όλα τα

σχετικά μέτρα γενικής εφαρμογής, που αφορούν ή επηρεάζουν τη λειτουργία της παρούσας συμφωνίας. Δημοσιεύονται επίσης, διεθνείς συμφωνίες που αφορούν ή επηρεάζουν τις συναλλαγές στον τομέα των υπηρεσιών, τις οποίες έχει υπογράψει κάποιο μέλος.

2. Στις περιπτώσεις που η δημοσίευση, που αναφέρεται στην παράγραφο 1, είναι πρακτικά αδύνατη, τέτοιου είδους πληροφορίες δημοσιοποιούνται με άλλον τρόπο.

3. Κάθε μέλος ενημερώνει τακτικά και, τουλάχιστον σε ετήσια βάση το Συμβούλιο Συναλλαγών στον τομέα των Υπηρεσιών σχετικά με την εισαγωγή νέων ή την τροποποίηση των υφισταμένων νόμων, ρυθμίσεων ή διοικητικών οδηγιών που επηρεάζουν σημαντικά τις συναλλαγές στον τομέα των υπηρεσιών, οι οποίες καλύπτονται από τις συγκεκριμένες δεσμεύσεις του στο πλαίσιο της παρούσας συμφωνίας.

4. Κάθε μέλος ανταποκρίνεται αμέσως σε αιτήματα που υποβάλλονται από άλλα μέλη για συγκεκριμένες πληροφορίες σχετικά με τα μέτρα γενικής εφαρμογής και τις διεθνείς συμφωνίες, κατά την έννοια της παραγράφου 1. Κάθε μέλος ορίζει, επίσης, ένα ή περισσότερα κέντρα πληροφόρησης για την παροχή στοιχείων σε άλλα μέλη, κατόπιν αιτήσεώς τους, σχετικά με τα εν λόγω θέματα καθώς και με αυτά που υπόκεινται στην υποχρέωση γνωστοποίησης της παραγράφου 3. Τα εν λόγω κέντρα πληροφόρησης ιδρύονται εντός δύο ετών από την έναρξη ισχύος της συμφωνίας για την ίδρυση του ΠΟΕ (που καλείται στην παρούσα συμφωνία "η συμφωνία για τον ΠΟΕ")· για μεμονωμένες αναπτυσσόμενες χώρες μέλη υπάρχει δυνατότητα έγκρισης κάποιου βαθμού ευελιξίας σχετικά με το χρονικό περιθώριο εντός του οποίου πρέπει να δημιουργηθούν τα κέντρα πληροφόρησης. Τα κέντρα πληροφόρησης δεν απαιτείται να αποτελούν θεματοφύλακες νόμων και κανονισμών.

5. Κάθε μέλος δύναται να γνωστοποιεί στο Συμβούλιο Συναλλαγών στον τομέα των Υπηρεσιών τα μέτρα που λαμβάνονται από άλλο μέλος και τα οποία θεωρεί ότι επηρεάζουν τη λειτουργία της παρούσας συμφωνίας.

Άρθρο III α)

Αποκάλυψη εμπιστευτικών πληροφοριών

Καμία διάταξη της παρούσας συμφωνίας δεν υποχρεώνει τα μέλη να παρέχουν εμπιστευτικές πληροφορίες, η αποκάλυψη των οποίων θα εμπόδιζε την επιβολή των νόμων ή θα ήταν αντίθετη προς το δημόσιο συμφέρον ή θα έβλαπτε τα νόμιμα εμπορικά συμφέροντα συγκεκριμένων δημοσίων ή ιδιωτικών επιχειρήσεων.

Άρθρο IV

Αυξανόμενη συμμετοχή των αναπτυσσομένων χωρών

1. Η αυξανόμενη συμμετοχή των αναπτυσσομένων χωρών μελών στις παγκόσμιες συναλλαγές διευκολύνεται μέσω συγκεκριμένων δεσμεύσεων που έχουν διαπραγματευθεί διάφορα μέλη, σύμφωνα με τα μέρη ΙΙΙ και IV της παρούσας συμφωνίας, οι οποίες αφορούν :

(α) την ενίσχυση της ικανότητας, αποδοτικότητας και ανταγωνιστικότητας των εγχώριων υπηρεσιών των εν λόγω χωρών μέσω, μεταξύ άλλων, της δυνατότητας πρόσβασης στην τεχνολογία, σε εμπορική βάση·

(β) τη βελτίωση της πρόσβασης των χωρών αυτών σε δίκτυο διανομής και πληροφοριών· και

(γ) την απελευθέρωση της πρόσβασης στην αγορά όσον αφορά τομείς και τρόπους προμήθειας με εξαγωγικό ενδιαφέρον για τις εν λόγω χώρες.

2. Οι ανεπτυγμένες χώρες μέλη και, στο μέτρο του δυνατού, άλλα μέλη συστήνουν κέντρα επικοινωνίας εντός δύο ετών από την έναρξη ισχύος της συμφωνίας για τον ΠΟΕ, προκειμένου να διευκολυνθεί η πρόσβαση φορέων παροχής υπηρεσιών από αναπτυσσόμενες χώρες μέλη σε πληροφορίες σχετικές με τις αντίστοιχες αγορές τους, όσον αφορά :

(α) τις εμπορικές και τεχνικές πλευρές της παροχής υπηρεσιών,

(β) την καταγραφή, αναγνώριση και απόκτηση επαγγελματικών προσόντων, και

(γ) τη δυνατότητα καθιέρωσης τεχνολογίας υπηρεσιών.

3. Κατά την εφαρμογή των παραγράφων 1 και 2, προτεραιότητα δίνεται στις λιγότερο ανεπτυγμένες χώρες μέλη. Λαμβάνεται ιδιαιτέρως υπόψη η σοβαρή δυσκολία των λιγότερο ανεπτυγμένων χωρών να αποδεχθούν τις ειδικές δεσμεύσεις που αποτέλεσαν αντικείμενο διαπραγματεύσεων λόγω των ιδιαίτερων οικονομικών συνθηκών καθώς και των αναπτυξιακών, εμπορικών και χρηματοδοτικών αναγκών τους.

Άρθρο V

Οικονομική ολοκλήρωση

1. Η παρούσα συμφωνία δεν εμποδίζει τα μέλη της να αποτελούν μέρος ή να συνάπτουν συμφωνία για την απελευθέρωση των συναλλαγών στον τομέα των υπηρεσιών μεταξύ δύο ή περισσοτέρων μερών της εν λόγω συμφωνίας, υπό την προϋπόθεση ότι η συμφωνία αυτή :

(α) καλύπτει σημαντικό αριθμό τομέων[1], και

(β) προβλέπει την απουσία ή κατάργηση ουσιαστικά κάθε μορφής διακριτικής μεταχείρισης, με την έννοια του άρθρου XVII, μεταξύ δύο ή περισσοτέρων μερών, στους τομείς που καλύπτει το στοιχείο α), μέσω :

(i) της κατάργησης υφισταμένων μέτρων που εισάγουν διακριτική μεταχείριση, και/ή

(ii) της απαγόρευσης νέων ή περισσοτέρων μέτρων που εισάγουν διακριτική μεταχείριση,

είτε κατά την έναρξη ισχύος της εν λόγω συμφωνίας ή βάσει λογικού χρονοδιαγράμματος, με εξαίρεση τα μέτρα που επιτρέπονται σύμφωνα με τα άρθρα XI, XII, XIV και XIV α).

2. Προκειμένου να εξεταστεί αν πληρούνται οι όροι της παραγράφου 1, στοιχείο β), είναι δυνατό να ληφθεί υπόψη η σχέση της εν λόγω συμφωνίας με την ευρύτερη διαδικασία οικονομικής ολοκλήρωσης ή απελευθέρωσης των συναλλαγών των υπό εξέταση χωρών.

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1 Η προϋπόθεση αυτή αφορά τον αριθμό των τομέων, το μέγεθος των καλυπτομένων συναλλαγών και τις μορφές παροχών. Για την ικανοποίηση του συγκεκριμένου όρου, οι συμφωνίες δεν επιτρέπεται να αποκλείουν εκ των προτέρων οποιαδήποτε μορφή παροχών.

3. (α) Όταν οι αναπτυσσόμενες χώρες αποτελούν συμβαλλόμενα μέρη συμφωνίας του τύπου που αναφέρεται στην παράγραφο 1, παρέχεται ευελιξία όσον αφορά τις προϋποθέσεις που ορίζονται στην παράγραφο 1 και, ειδικότερα, στο στοιχείο β), ανάλογα με το επίπεδο ανάπτυξης των εν λόγω χωρών, τόσο συνολικά όσο και σε επίπεδο επιμέρους τομέων και υποδιαιρέσεων αυτών.

(β) Κατά παρέκκλιση της παραγράφου 6, στην περίπτωση συμφωνίας του τύπου που αναφέρεται στην παράγραφο 1, η οποία αφορά αποκλειστικά αναπτυσσόμενες χώρες, είναι δυνατόν να παρασχεθεί ευνοϊκότερη μεταχείριση σε νομικά πρόσωπα που ανήκουν ή ελέγχονται από φυσικά πρόσωπα των συμβαλλομένων μερών της εν λόγω συμφωνίας.

4. Οι συμφωνίες που αναφέρονται στην παράγραφο 1 αποσκοπούν στη διευκόλυνση των συναλλαγών μεταξύ των συμβαλλομένων μερών τους και, όσον αφορά τα μέλη που δεν συμμετέχουν σ'αυτές, δεν αυξάνουν τα εμπόδια στις συναλλαγές στον τομέα των υπηρεσιών, εντός των επιμέρους τομέων ή υποδιαιρέσεων αυτών, σε σχέση με το επίπεδο που ίσχυε πριν από τις εν λόγω συμφωνίες.

5. Αν κατά τη σύναψη, διεύρυνση ή σημαντική τροποποίηση των συμφωνιών που αναφέρονται στην παράγραφο 1, ένα μέλος προτίθεται να ανακαλέσει ή να τροποποιήσει συγκεκριμένη δέσμευση κατά παρέκκλιση των ειδικών και γενικών όρων που αναφέρονται στον πίνακα του, υποχρεούται να υποβάλει προειδοποίηση τουλάχιστον 90 ημέρες πριν από την σχετική τροποποίηση ή ανάκληση και εφαρμόζεται η διαδικασία που παρατίθεται στο άρθρο XXI, παράγραφοι 2, 3 και 4.

6. Οι φορείς παροχής υπηρεσιών οποιουδήποτε άλλου μέλους που αποτελούν νομικά πρόσωπα, τα οποία έχουν συσταθεί βάσει της νομοθεσίας συμβαλλόμενου μέρους συμφωνίας που αναφέρεται στην παράγραφο 1, δικαιούνται μεταχείρισης που παρέχεται στο πλαίσιο της εν λόγω συμφωνίας, υπό τον όρο ότι αναλαμβάνουν σημαντικές επιχειρηματικές δραστηριότητες στο έδαφος των μερών της σχετικής συμφωνίας.

7. (α) Τα μέλη που αποτελούν συμβαλλόμενα μέρη συμφωνίας που αναφέρεται στην παράγραφο 1 γνωστοποιούν αμέσως την εν λόγω συμφωνία ή τη πιθανή διεύρυνση ή σημαντική τροποποίηση αυτής στο συμβούλιο Συναλλαγών στον τομέα των Υπηρεσιών. Παρέχουν, επίσης, στο συμβούλιο κάθε σχετική πληροφορία που μπορεί να ζητηθεί. Το συμβούλιο δύναται να προβεί στη σύσταση ομάδας εργασίας για την εξέταση της εν λόγω συμφωνίας ή της πιθανής διεύρυνσης ή σημαντικής τροποποίησης αυτής και την υποβολή αναφοράς σχετικά με τη συμβατότητα της συμφωνίας με το παρόν άρθρο.

(β) Τα μέλη που αποτελούν συμβαλλόμενα μέρη συμφωνίας που αναφέρεται στην παράγραφο 1, η οποία εφαρμόζεται βάσει χρονοδιαγράμματος, υποβάλλουν σε τακτά διαστήματα έκθεση στο Συμβούλιο Συναλλαγών στον τομέα των Υπηρεσιών σχετικά με την εφαρμογή της εν λόγω συμφωνίας. Εφόσον κρίνεται σκόπιμο, το συμβούλιο έχει τη δυνατότητα να συστήσει ομάδα εργασίας για την εξέταση των σχετικών εκθέσεων.

(γ) Με βάση τις εκθέσεις των ομάδων εργασίας που αναφέρονται στα στοιχεία (α) και (β), το συμβούλιο, αν το κρίνει σκόπιμο, έχει τη δυνατότητα να υποβάλει συστάσεις στα μέρη.

8. Ένα μέλος, το οποίο αποτελεί συμβαλλόμενο μέρος συμφωνίας που αναφέρεται στην παράγραφο 1, δεν δύναται να ζητήσει αντισταθμιστικό αντάλλαγμα για εμπορικά οφέλη που ενδέχεται να προκύψουν υπέρ οποιουδήποτε άλλου μέλους από την εν λόγω συμφωνία.

Άρθρο V α)

Συμφωνίες ενοποίησης των αγορών εργασίας

Η παρούσα συμφωνία δεν εμποδίζει τα μέλη της να αποτελούν συμβαλλόμενα μέρη συμφωνίας για την καθιέρωση της πλήρους ενοποίησης[2] των αγορών εργασίας μεταξύ δύο ή περισσοτέρων συμβαλλομένων μερών, υπό την προϋπόθεση ότι η εν λόγω συμφωνία :

(α) απαλλάσσει τους πολίτες των συμβαλλομένων μερών της συμφωνίας από υποχρεώσεις σχετικές με τον τόπο διαμονής και τις άδειες εργασίας·

(β) γνωστοποιείται στο Συμβούλιο Συναλλαγών στον τομέα των Υπηρεσιών.

Άρθρο VI

Εσωτερικές ρυθμίσεις

1. Σε τομείς στους οποίους αναλαμβάνονται συγκεκριμένες υποχρεώσεις, κάθε μέλος εξασφαλίζει ότι, όλα τα μέτρα γενικής εφαρμογής που αφορούν τις συναλλαγές στον τομέα των υπηρεσιών εφαρμόζονται με τρόπο λογικό, αντικειμενικό και αμερόληπτο.

2. (α) Κάθε μέλος διατηρεί ή θεσπίζει το ταχύτερο δυνατό τακτικά, διαιτητικά ή διοικητικά δικαστήρια και διαδικασίες που εξασφαλίζουν, κατόπιν αιτήσεως θιγόμενου πάροχου υπηρεσιών, ταχεία επανεξέταση των διοικητικών αποφάσεων που επηρεάζουν τις συναλλαγές στον τομέα των υπηρεσιών και εφόσον δικαιολογείται, την επιβολή των κατάλληλων λύσεων. Στις περιπτώσεις που οι εν λόγω διαδικασίες δεν είναι ανεξάρτητες από την υπηρεσία στην οποία έχει ανατεθεί η σχετική διοικητική απόφαση, το μέλος εξασφαλίζει ότι οι εν λόγω διαδικασίες όντως παρέχουν δυνατότητα αντικειμενικής και αμερόληπτης επανεξέτασης.

(β) Οι διατάξεις του στοιχείου (α) δεν σημαίνουν ότι απαιτείται από τα μέλη να προβαίνουν στη σύσταση των εν λόγω δικαστηρίων και στη θέσπιση των σχετικών διαδικασιών σε περίπτωση που αυτό έρχεται σε αντίθεση με τη συνταγματική δομή των μελών ή τη φύση του νομικού τους συστήματος.

3. Σε περιπτώσεις που απαιτείται άδεια για την παροχή υπηρεσίας για την οποία έχει αναληφθεί συγκεκριμένη υποχρέωση, οι αρμόδιες αρχές μέλους, μέσα σε εύλογο χρονικό διάστημα μετά την υποβολή αίτησης που θεωρείται πλήρης βάσει της εσωτερικής νομοθεσίας και ρυθμίσεων, γνωρίζουν στον αιτούντα την απόφαση σχετικά με την αίτηση. Όταν ζητηθεί από τον αιτούντα, οι αρμόδιες αρχές του μέλους παρέχουν, χωρίς αδικαιολόγητη καθυστέρηση, πληροφορίες σχετικές με την τύχη της αίτησης.

4. Προκειμένου να εξασφαλισθεί ότι τα μέτρα που αφορούν τις απαιτήσεις σχετικά με τα προσόντα και τις διαδικασίες, τα τεχνικά πρότυπα και τους όρους έκδοσης αδειών δεν αποτελούν περιττά εμπόδια στις συναλλαγές στον τομέα των υπηρεσιών, το Συμβούλιο Συναλλαγών στον τομέα των Υπηρεσιών προβαίνει, μέσω κατάλληλων οργάνων που δύναται να συστήσει, στη θέσπιση των αναγκαίων ρυθμίσεων. Οι ρυθμίσεις αυτές αποσκοπούν στην εξασφάλιση ότι οι σχετικές απαιτήσεις, μεταξύ άλλων :

2 Βασικά, η εν λόγω διαδικασία ένταξης παρέχει στους πολίτες των συμβαλλομένων μερών το δικαίωμα ελεύθερης εισόδου στις αγορές εργασίας αυτών και περιλαμβάνει μέτρα τα οποία αφορούν τους όρους αμοιβής, τις λοιπές συνθήκες απασχόλησης και τις κοινωνικές παροχές.

(α) βασίζονται σε αντικειμενικά και διαφανή κριτήρια, όπως τα προσόντα και η ικανότητα παροχής υπηρεσιών,

(β) δεν είναι πλέον του δέοντος επαχθή για την εξασφάλιση της ποιότητας των υπηρεσιών,

(γ) στην περίπτωση των διαδικασιών έκδοσης αδειών, δεν συνιστούν οι ίδιες περιοριστικούς παράγοντες για την παροχή υπηρεσιών.

5. (α) Σε τομείς στους οποίους ένα μέλος έχει αναλάβει συγκεκριμένες υποχρεώσεις, και μέχρι την έναρξη εφαρμογής των ρυθμίσεων που θεσπίσθηκαν για τους τομείς αυτούς βάσει της παραγράφου 4, το μέλος δεν επιβάλλει όρους σχετικά με την έκδοση αδειών και τα προσόντα καθώς και τεχνικά πρότυπα που αναιρούν εν όλω ή εν μέρει τις εν λόγω συγκεκριμένες υποχρεώσεις κατά τρόπο:

(i) αντίθετο με τα κριτήρια που αναφέρονται στην παράγραφο 4 στοιχεία (α), (β) ή (γ), και

(ii) που δεν αναμένετο λογικά από το εν λόγω μέλος κατά τη στιγμή της ανάληψης των συγκεκριμένων υποχρεώσεων στους σχετικούς τομείς.

(β) Προκειμένου να καθορισθεί κατά πόσον κάποιο μέλος πληροί την υποχρέωση που αναφέρεται στην παράγραφο 5, στοιχείο α), λαμβάνονται υπόψη διεθνή πρότυπα σχετικών διεθνών οργανισμών[3] που εφαρμόζονται από το εν λόγω μέλος.

6. Σε τομείς στους οποίους αναλαμβάνονται συγκεκριμένες υποχρεώσεις όσον αφορά τις υπηρεσίες ελεύθερων επαγγελματιών, κάθε μέλος προβλέπει κατάλληλες διαδικασίες για την επαλήθευση των προσόντων των ελεύθερων επαγγελματιών των άλλων μελών.

Άρθρο VII

Αναγνώριση

1. Για τους σκοπούς της ικανοποίησης, εν όλω ή εν μέρει, των προτύπων ή κριτηρίων εξουσιοδότησης, έκδοσης αδειών ή πιστοποίησης φορέων παροχής υπηρεσιών και λαμβάνοντας υπόψη τις απαιτήσεις της παραγράφου 3, τα μέλη δύνανται να αναγνωρίζουν την αποκτηθείσα παιδεία ή εμπειρία, την εκπλήρωση των υποχρεώσεων ή την έκδοση αδειών και πιστοποιητικών σε συγκεκριμένη χώρα. Η αναγνώριση αυτή που επιτυγχάνεται με εναρμόνιση ή με άλλον τρόπο, είναι δυνατόν να βασίζεται σε συμφωνία ή διακανονισμό με την ενδιαφερόμενη χώρα ή να χορηγείται αυτόνομα.

2. Ένα μέλος που αποτελεί συμβαλλόμενο μέρος συμφωνίας ή διακανονισμού του τύπου που αναφέρεται στην παράγραφο 1, υφιστάμενου ή μελλοντικού, παρέχει κατάλληλες ευκαιρίες σε άλλα ενδιαφερόμενα μέλη να διαπραγματεύονται είτε την προσχώρησή τους στις εν λόγω συμφωνίες ή διακανονισμούς είτε τη σύναψη παρόμοιων συμφωνιών με αυτό. Όταν κάποιο μέλος χορηγεί αναγνώριση αυτόνομα, παρέχει κατάλληλες ευκαιρίες σε άλλα μέλη να αποδείξουν ότι επιβάλλεται να αναγνωρισθεί η παιδεία και η εμπειρία που αποκτήθηκαν, οι άδειες ή τα πιστοποιητικά που εκδόθηκαν καθώς και οι υποχρεώσεις που εκπληρώθηκαν στο έδαφός τους.

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3 Ο όρος "σχετικοί διεθνείς οργανισμοί" αναφέρεται σε διεθνείς οργανισμούς στους οποίους μπορούν να γίνουν μέλη οι σχετικοί φορείς τουλάχιστον όλων των μελών του ΠΟΕ.

3. Ένα μέλος δεν παρέχει αναγνώριση κατά τρόπο που θα εισήγαγε διακριτική μεταχείριση μεταξύ χωρών κατά την εφαρμογή των προτύπων ή κριτηρίων για την έκδοση εγκρίσεων, αδειών ή πιστοποιητικών εκ μέρους των φορέων παροχής υπηρεσιών, ή θα αποτελούσε καλυμμένο περιορισμό στις συναλλαγές στον τομέα των υπηρεσιών.

4. Κάθε μέλος :

(α) Εντός 12 μηνών από την έναρξη ισχύος της συμφωνίας για τον ΠΟΕ, ενημερώνει το Συμβούλιο Συναλλαγών στον τομέα των Υπηρεσιών σχετικά με τα υφιστάμενα μέτρα αναγνώρισης και αναφέρει κατά πόσον τέτοιου είδους μέτρα βασίζονται σε συμφωνίες ή διακανονισμούς του τύπου που αναφέρεται στην παράγραφο 1·

(β) ενημερώνει εμελλητί το Συμβούλιο Συναλλαγών στον τομέα των Υπηρεσιών, σχετικά με την έναρξη διαπραγματεύσεων για συμφωνία ή διακανονισμό του τύπου που αναφέρεται στην παράγραφο 1, προκειμένου να παρασχεθούν κατάλληλες ευκαιρίες σε άλλα μέλη να εκδηλώσουν το ενδιαφέρον τους για συμμετοχή στις διαπραγματεύσεις προτού αυτές εισέλθουν σε ουσιαστική φάση.

(γ) ενημερώνουν εμελλητί το Συμβούλιο Συναλλαγών στον τομέα των Υπηρεσιών, κατά την έγκριση νέων μέτρων αναγνώρισης ή κατά την τροποποίηση σε σημαντικό βαθμό των υφιστάμενων μέτρων και δηλώνουν κατά πόσον τα μέτρα βασίζονται σε συμφωνία ή διακανονισμό του τύπου που αναφέρεται στην παράγραφο 1.

5. Εφόσον κρίνεται σκόπιμο, η αναγνώριση πρέπει να βασίζεται σε κριτήρια που αποφασίζονται πολυμερώς. Σε κατάλληλες περιπτώσεις, τα μέλη συνεργάζονται με τους σχετικούς διακυβερνητικούς και μη κυβερνητικούς οργανισμούς για τον καθορισμό και την υιοθέτηση κοινών διεθνών προτύπων και κριτηρίων αναγνώρισης καθώς και κοινών διεθνών προτύπων για την άσκηση σχετικών εργασιών και επαγγελμάτων στον τομέα των υπηρεσιών.

Άρθρο VIII

Μονοπωλιακή και κατ'αποκλειστικότητα παροχή υπηρεσιών

1. Κάθε μέλος εξασφαλίζει ότι οι φορείς μονοπωλιακής παροχής υπηρεσιών στο έδαφός του, κατά την παροχή των συγκεκριμένων υπηρεσιών στις σχετικές αγορές, δεν ενεργούν κατά τρόπο αντίθετο προς τις υποχρεώσεις βάσει του άρθρου II και τις αναλήψεις υποχρεώσεων του εν λόγω μέλους.

2. Όταν ο φορέας μονοπωλιακής παροχής υπηρεσιών ενός μέλους ασκεί ανταγωνισμό, είτε άμεσα είτε μέσω θυγατρικής εταιρείας, στον τομέα παροχής υπηρεσιών εκτός του πεδίου των μονοπωλιακών δικαιωμάτων του και υπόκειται σε συγκεκριμένες υποχρεώσεις που επιβάλλει το εν λόγω μέλος, το μέλος αυτό εξασφαλίζει ότι ο σχετικός φορέας δεν προβαίνει σε κατάχρηση της μονοπωλιακής του θέσης για να ενεργεί στο έδαφός του κατά τρόπο αντίθετο με τις συγκεκριμένες υποχρεώσεις.

3. Το Συμβούλιο Συναλλαγών στον τομέα των Υπηρεσιών, κατόπιν αιτήσεως μέλους που έχει λόγο να πιστεύει ότι φορέας μονοπωλιακής παροχής υπηρεσίας άλλου μέλους ενεργεί κατά τρόπο αντίθετο με την παράγραφο 1 ή 2, δύναται να ζητήσει από το μέλος που συστήνει, διατηρεί ή εξουσιοδοτεί τον εν λόγω φορέα να του παράσχει συγκεκριμένα στοιχεία όσον αφορά τις σχετικές λειτουργίες.

4. Αν, μετά την έναρξη ισχύος της συμφωνίας για τον ΠΟΕ, κάποιο μέλος χορηγεί μονοπωλιακά δικαιώματα σχετικά με την παροχή υπηρεσίας που καλύπτεται από συγκεκριμένες υποχρεώσεις, το εν λόγω μέλος ενημερώνει το Συμβούλιο Συναλλαγών στον τομέα των Υπηρεσιών το αργότερο τρεις μήνες πριν από την προβλεπόμενη εφαρμογή της χορήγησης μονοπωλιακών δικαιωμάτων και εφαρμόζονται οι διατάξεις των παραγράφων 2, 3 και του άρθρου XXI.

5. Οι διατάξεις του παρόντος άρθρου εφαρμόζονται, επίσης, σε περιπτώσεις κατ'αποκλειστικότητα παροχής υπηρεσιών, όταν ένα μέλος τυπικά ή ουσιαστικά (α) εξουσιοδοτεί ή συστήνει μικρό αριθμό φορέων παροχής υπηρεσιών και (β) εμποδίζει σε σημαντικό βαθμό τον ανταγωνισμό μεταξύ των φορέων παροχής υπηρεσιών στο έδαφός του.

Άρθρο IX

Επιχειρηματικές πρακτικές

1. Τα μέλη αναγνωρίζουν ότι ορισμένες επιχειρηματικές πρακτικές φορέων παροχής υπηρεσιών, εκτός αυτών που εμπίπτουν στο άρθρο VIII, δύνανται να συγκρατήσουν τον ανταγωνισμό και, κατά συνέπεια, να περιορίσουν τις συναλλαγές στον τομέα των υπηρεσιών.

2. Κάθε μέλος, κατόπιν αιτήσεως άλλου μέλους, αρχίζει διαβουλεύσεις με στόχο την άρση των πρακτικών που αναφέρονται στην παράγραφο 1. Το μέλος στο οποίο απευθύνεται η αίτηση εξετάζει με κατανόηση και λαμβάνει πλήρως υπόψη την εν λόγω αίτηση και συνεργάζεται μέσω της παροχής κοινοποιήσιμων μη εμπιστευτικών πληροφοριών, σχετικών με το υπό εξέταση θέμα. Το μέλος στο οποίο απευθύνεται η αίτηση παρέχει τυχόν άλλα στοιχεία που είναι διαθέσιμα στο μέλος που υποβάλλει την αίτηση, με την επιφύλαξη της εσωτερικής του νομοθεσίας και της επίτευξης ικανοποιητικής συμφωνίας όσον αφορά τη διασφάλιση του εμπιστευτικού χαρακτήρα των πληροφοριών από το μέλος που υποβάλλει την αίτηση.

Άρθρο X

Επείγοντα μέτρα διασφάλισης

1. Διεξάγονται πολυμερείς διαπραγματεύσεις σχετικά με το θέμα επειγόντων μέτρων διασφάλισης που βασίζονται στην αρχή της μη εισαγωγής διακρίσεων. Τα αποτελέσματα των εν λόγω διαπραγματεύσεων τίθενται σε εφαρμογή το αργότερο τρία έτη μετά την έναρξη ισχύος της συμφωνίας για τον ΠΟΕ.

2. Κατά το χρονικό διάστημα που προηγείται της θέσης σε εφαρμογή των αποτελεσμάτων των διαπραγματεύσεων που αναφέρονται στην παράγραφο 1, κάθε μέλος δύναται, κατά παρέκκλιση των διατάξεων του άρθρου XXI, παράγραφος 1, να ενημερώνει το Συμβούλιο Συναλλαγών στον τομέα των υπηρεσιών σχετικά με την πρόθεσή του να τροποποιήσει ή να ανακαλέσει συγκεκριμένη δέσμευση σε διάστημα ενός έτους από την θέση σε εφαρμογή της εν λόγω δέσμευσης, υπό την προϋπόθεση ότι το μέλος αυτό δύναται να αποδείξει στο συμβούλιο ότι για την τροποποίηση ή την ανάκληση δεν είναι δυνατόν να αναμένεται η παρέλευση τριών ετών, όπως προβλέπεται στο άρθρο XXI, παράγραφος 1.

3. Οι διατάξεις της παραγράφου 2 παύουν να ισχύουν τρία έτη μετά την έναρξη ισχύος της συμφωνίας για τον ΠΟΕ.

Άρθρο XI

Πληρωμές και Μεταβιβάσεις

1. Εκτός των περιπτώσεων που προβλέπονται στο άρθρο XII, τα μέλη δεν επιβάλλουν περιορισμούς στις διεθνείς μεταβιβάσεις και πληρωμές, όσον αφορά τις τρέχουσες συναλλαγές, τις σχετικές με τις συγκεκριμένες δεσμεύσεις.

2. Καμία διάταξη στην παρούσα συμφωνία δεν θίγει τα δικαιώματα και τις υποχρεώσεις των μελών του Διεθνούς Νομισματικού Ταμείου, που περιέχονται στα άρθρα της συμφωνίας του Ταμείου, συμπεριλαμβανομένης της χρησιμοποίησης πράξεων σε συνάλλαγμα, σύμφωνα με τα άρθρα της συμφωνίας, υπό την προϋπόθεση ότι τα μέλη δεν επιβάλλουν περιορισμούς σε πράξεις κεφαλαίου κατά παρέκκλιση των συγκεκριμένων δεσμεύσεών τους αναφορικά με τις εν λόγω πράξεις, με εξαίρεση τις διατάξεις του άρθρου XII ή αν ζητηθεί από το Ταμείο.

Άρθρο XII

Περιορισμοί για τη διασφάλιση του ισοζυγίου πληρωμών

1. Σε περίπτωση σοβαρών δυσχερειών του ισοζυγίου πληρωμών και εξωτερικών δημοσιονομικών δυσχερειών ή σχετικών κινδύνων, τα μέλη δύνανται να επιβάλλουν ή να διατηρούν περιορισμούς στις συναλλαγές στον τομέα των υπηρεσιών για τους οποίους έχουν αναλάβει συγκεκριμένες υποχρεώσεις, συμπεριλαμβανομένων των σχετικών με τις πληρωμές ή μεταβιβάσεις για συναλλαγές που συνδέονται με τις εν λόγω υποχρεώσεις. Αναγνωρίζεται ότι ιδιαίτερες πιέσεις στο ισοζύγιο πληρωμών μελών κατά τη διαδικασία οικονομικής ανάπτυξης ή οικονομικής μετάβασης είναι δυνατόν να απαιτήσουν την εφαρμογή περιορισμών προκειμένου να εξασφαλισθεί, μεταξύ άλλων, η διατήρηση επαρκούς επιπέδου χρηματοδοτικών αποθεμάτων για την εφαρμογή των προγραμμάτων οικονομικής ανάπτυξης ή οικονομικής μετάβασης των εν λόγω μελών.

2. Όσον αφορά τους περιορισμούς που αναφέρονται στην παράγραφο 1, αυτοί:

(α) δεν εισάγουν διακρίσεις μεταξύ των μελών,

(β) είναι σύμφωνοι με τα άρθρα της συμφωνίας για το Διεθνές Νομισματικό Ταμείο,

(γ) αποφεύγουν να βλάψουν άνευ λόγου τα εμπορικά, οικονομικά και χρηματοδοτικά συμφέροντα των άλλων μελών,

(δ) περιορίζονται στο βαθμό που είναι αναγκαίος για την αντιμετώπιση των περιπτώσεων που περιγράφονται στην παράγραφο 1,

(ε) είναι προσωρινοί και καταργούνται σταδιακά καθόσον βελτιώνονται οι συνθήκες που περιγράφονται στην παράγραφο 1.

3. Κατά τον προσδιορισμό των επιπτώσεων των εν λόγω περιορισμών, τα μέλη δύνανται να δίδουν προτεραιότητα στην παροχή υπηρεσιών που είναι βασικές για τα οικονομικά ή αναπτυξιακά τους προγράμματα. Ωστόσο, οι σχετικοί περιορισμοί δεν επιβάλλονται ούτε διατηρούνται για την προστασία ενός συγκεκριμένου τομέα υπηρεσιών.

4. Οι περιορισμοί που επιβάλλονται ή διατηρούνται βάσει της παραγράφου 1 ή οι σχετικές τροποποιήσεις γνωστοποιούνται άμεσα στο Γενικό Συμβούλιο.

5. (α) Τα μέλη που εφαρμόζουν τις διατάξεις του παρόντος άρθρου διενεργούν το συντομότερο δυνατό, διαβουλεύσεις με την Επιτροπή Περιορισμών του Ισοζυγίου Πληρωμών σχετικά με τους περιορισμούς που επιβάλλονται βάσει του παρόντος άρθρου.

(β) Η υπουργική συνδιάσκεψη καθιερώνει διαδικασίες[4] για τη διεξαγωγή τακτικών διαβουλεύσεων, με στόχο τη διατύπωση συστάσεων στο ενδιαφερόμενο μέλος, όταν κρίνεται σκόπιμο.

(γ) Στο πλαίσιο των εν λόγω διαβουλεύσεων, εκτιμάται η κατάσταση του ισοζυγίου πληρωμών του ενδιαφερόμενου μέλους καθώς και οι περιορισμοί που επιβάλλονται ή διατηρούνται βάσει του παρόντος άρθρου, λαμβανομένων υπόψη, μεταξύ άλλων, παραγόντων όπως :

(i) της φύσης και της έκτασης των δυσχερειών του ισοζυγίου πληρωμών καθώς και των εξωτερικών δημοσιονομικών δυσχερειών,

(ii) των εξωτερικών οικονομικών και εμπορικών συνθηκών του μέλους που ζητεί τη διενέργεια διαβουλεύσεων,

(iii) εναλλακτικών διορθωτικών μέτρων που είναι δυνατόν να ληφθούν,

(δ) Στο πλαίσιο των διαβουλεύσεων, εξετάζεται η συμφωνία των περιορισμών με την παράγραφο 2 και, ειδικότερα, η προοδευτική κατάργηση των περιορισμών, σύμφωνα με την παράγραφο 2, στοιχείο ε).

(ε) Κατά τις εν λόγω διαβουλεύσεις, γίνονται αποδεκτά όλα τα πορίσματα σχετικά με στατιστικά και άλλα στοιχεία που υποβάλλονται από το Διεθνές Νομισματικό Ταμείο για το συνάλλαγμα, τα νομισματικά αποθεματικά και το ισοζύγιο πληρωμών. Τα συμπεράσματα βασίζονται στην εκτίμηση του Ταμείου όσον αφορά το ισοζύγιο πληρωμών και την εξωτερική δημοσιονομική κατάσταση του μέλους που ζητεί τη διενέργεια διαβουλεύσεων.

6. Σε περίπτωση που ένα μέλος, το οποίο δεν αποτελεί μέλος του Διεθνούς Νομισματικού Ταμείου, επιθυμεί να εφαρμόσει τις διατάξεις του παρόντος άρθρου, η υπουργική συνδιάσκεψη θεσπίζει διαδικασία επανεξέτασης καθώς και άλλες αναγκαίες διαδικασίες.

Άρθρο XIII

Δημόσιες συμβάσεις

1. Τα άρθρα II, XVI και XVII δεν εφαρμόζονται σε νόμους, κανονισμούς ή όρους που διέπουν την προμήθεια από δημόσιους φορείς υπηρεσιών που αγοράζονται για να χρησιμοποιηθούν από τις δημόσιες αρχές και όχι για να μεταπωληθούν στο εμπορικό κύκλωμα ή για να χρησιμοποιηθούν στην παροχή υπηρεσιών που προορίζονται για εμπορική πώληση.

2. Στο πλαίσιο της παρούσας συμφωνίας, διεξάγονται πολυμερείς διαπραγματεύσεις σχετικές με τις δημόσιες συμβάσεις στον τομέα των υπηρεσιών, εντός δύο ετών από την έναρξη ισχύος της συμφωνίας για τον ΠΟΕ.

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4 Εννοείται ότι οι διαδικασίες που περιγράφονται στην παράγραφο 5 είναι οι ίδιες με τις διαδικασίες της GATT του 1994.

Άρθρο XIV

Γενικές εξαιρέσεις

Υπό τον όρο ότι τα σχετικά μέτρα δεν εφαρμόζονται κάτα τέτοιο τρόπο, ώστε να συνιστούν μέσο αυθαίρετης ή αδικαιολόγητης διακριτικής μεταχείρισης μεταξύ χωρών, στις οποίες επικρατούν παρεμφερείς συνθήκες ή καλυμμένο περιορισμό των συναλλαγών στον τομέα των υπηρεσιών, καμία διάταξη στην παρούσα συμφωνία δεν σημαίνει ότι απαγορεύεται η λήψη ή επιβολή από οποιοδήποτε μέλος μέτρων:

(α) που είναι αναγκαία για την προστασία της δημόσιας ηθικής ή τη διατήρηση της δημόσιας τάξης·[5]

(β) που είναι αναγκαία για την προστασία της ζωής ή της υγείας των ανθρώπων, των ζώων ή των φυτών·

(γ) που είναι αναγκαία για την εξασφάλιση της συμμόρφωσης προς νόμους και κανονισμούς που δεν αντιβαίνουν στις διατάξεις της παρούσας συμφωνίας, συμπεριλαμβανομένων αυτών που αναφέρονται:

(i) στην πρόληψη δόλιων και απατηλών πρακτικών ή στην αντιμετώπιση των επιπτώσεων της πλημμελούς εκτέλεσης συμβάσεων υπηρεσιών·

(ii) στην προστασία της ιδιωτικής ζωής των ατόμων, όσον αφορά την επεξεργασία και τη διάδοση προσωπικών στοιχείων και στην προστασία του εμπιστευτικού χαρακτήρα ατομικών στοιχείων και λογαριασμών·

(iii) στην ασφάλεια·

δ) αντίθετα με το άρθρο XVII, υπό τον όρο ότι η διαφορά στη μεταχείριση αποσκοπεί στην εξασφάλιση της δίκαιας ή

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5 Η επίκληση της εξαίρεσης για λόγους δημόσιας τάξης είναι δυνατή μόνον όταν υπάρχει πραγματικός και αρκετά σημαντικός κίνδυνος για βασικά συμφέροντα της κοινωνίας.

αποτελεσματικής[6] επιβολής ή συλλογής άμεσων φόρων, όσον αφορά τις υπηρεσίες ή τους φορείς παροχής υπηρεσιών άλλων μελών·

ε) που αντιβαίνουν στο άρθρο ΙΙ, υπό τον όρο ότι η διαφορά στη μεταχείριση είναι αποτέλεσμα συμφωνίας για την αποφυγή διπλής φορολογίας ή διατάξεων για την αποφυγή διπλής φορολογίας που περιλαμβάνονται σε οποιαδήποτε άλλη συμφωνία ή διακανονισμό που έχει δεσμευθεί να τηρήσει το εν λόγω μέλος.

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6 Τα μέτρα που αποσκοπούν στην εξασφάλιση της δίκαιης ή αποτελεσματικής επιβολής ή συγκέντρωσης άμεσων φόρων περιλαμβάνουν μέτρα τα οποία λαμβάνονται από μέλος, στο πλαίσιο του δικού του συστήματος φορολογίας, τα οποία:

(i) εφαρμόζονται σε φορείς παροχής υπηρεσιών, που δεν έχουν μόνιμη κατοικία σ'αυτό αναγνωρίζοντας το γεγονός ότι η φορολογική υποχρέωση των μη μονίμων κατοίκων καθορίζεται βάσει των στοιχείων φορολόγησης που προέρχονται από το έδαφος του εν λόγω μέλους ή βρίσκονται σ'αυτό· ή

(ii) εφαρμόζονται σε μη μόνιμους κατοίκους προκειμένου να εξασφαλισθεί η επιβολή ή συγκέντρωση φόρων στο έδαφος του εν λόγω μέλους· ή

(iii) εφαρμόζονται σε μόνιμους ή μη μόνιμους κατοίκους, προκειμένου να αποφεύγεται η φοροαποφυγή ή η φοροδιαφυγή, συμπεριλαμβανομένων των μέτρων συμμόρφωσης, ή

(iv) εφαρμόζονται σε χρήστες υπηρεσιών που παρέχονται στο ή από το έδαφος άλλου μέλους προκειμένου να εξασφαλισθεί η επιβολή ή συγκέντρωση φόρων στους εν λόγω χρήστες για στοιχεία που προέρχονται από το έδαφος του μέλους· ή

(v) διακρίνουν φορείς παροχής υπηρεσιών που υπόκεινται σε φορολογία για διεθνή στοιχεία φορολόγησης από άλλους φορείς παροχής υπηρεσιών, αναγνωρίζοντας τη διαφορά που υφίσταται μεταξύ τους ως προς τη φύση της φορολογικής βάσης· ή

(vi) καθορίζουν, χορηγούν ή διανέμουν τα εισοδήματα, τα κέρδη, τις ζημίες, τις εκπτώσεις ή πιστώσεις των μονίμων κατοίκων ή κλάδων υποκαταστημάτων ή μεταξύ προσώπων ή υποκαταστημάτων που συνδέονται με το ίδιο νομικό πρόσωπο προκειμένου να διασφαλισθεί η φορολογική βάση του μέλους.

Οι όροι ή οι έννοιες φορολογίας που αναφέρονται στο άρθρο XIV, παράγραφος δ) και στην παρούσα υποσημείωση καθορίζονται ανάλογα με τους ορισμούς και τις έννοιες φορολογίας ή με ισοδύναμους ή παρεμφερείς ορισμούς και έννοιες, βάσει της εσωτερικής νομοθεσίας του μέλους που λαμβάνει το συγκεκριμένο μέτρο.

Άρθρο XIV α)

Εξαιρέσεις για λόγους ασφαλείας

1. Καμία διάταξη στην παρούσα συμφωνία δεν σημαίνει ότι:

(α) απαιτείται από τα μέλη να παρέχουν πληροφορίες των οποίων τη διάδοση θεωρούν αντίθετη στα βασικά τους συμφέροντα για λόγους ασφαλείας· ή

(β) απαγορεύεται στα μέλη να λαμβάνουν μέτρα που θεωρούν αναγκαία για την προστασία των βασικών τους συμφερόντων για λόγους ασφαλείας:

(i) σχετικά με την άμεση ή έμμεση παροχή υπηρεσιών με στόχο τον εφοδιασμό στρατιωτικών εγκαταστάσεων·

(ii) που αφορούν σχάσιμα ή συντήξιμα υλικά ή τα υλικά από τα οποία αυτά παράγονται·

(iii) που λαμβάνονται σε περίοδο πολέμου ή σε περίπτωση έκτακτης ανάγκης σε διεθνές επίπεδο· ή

(γ) απαγορεύεται στα μέλη να λαμβάνουν μέτρα κατ'εφαρμογή των υποχρεώσεών τους βάσει του Χάρτη των Ηνωμένων Εθνών για τη διατήρηση της διεθνούς ειρήνης και ασφάλειας.

2. Το Συμβούλιο Συναλλαγών στον τομέα των Υπηρεσιών ενημερώνεται όσο το δυνατόν πληρέστερα, σχετικά με τα μέτρα που λαμβάνονται βάσει της παραγράφου 1, στοιχεία β) και γ) καθώς και σχετικά με τη λήξη της ισχύος αυτών.

Άρθρο XV

Επιδοτήσεις

1. Τα μέλη αναγνωρίζουν ότι σε ορισμένες περιπτώσεις, οι επιδοτήσεις δύνανται να προκαλέσουν στρέβλωση των συναλλαγών στον τομέα των υπηρεσιών. Τα μέλη αναλαμβάνουν διαπραγματεύσεις με στόχο τη θέσπιση των αναγκαίων πολυμερών ρυθμίσεων για την αποφυγή των σχετικών επιπτώσεων[7]. Στο πλαίσιο των διαπραγματεύσεων εξετάζεται επίσης η σκοπιμότητα των αντισταθμιστικών διαδικασιών. Επίσης, αναγνωρίζεται ο ρόλος των επιδοτήσεων σε σχέση με τα αναπτυξιακά προγράμματα των αναπτυσσομένων χωρών και λαμβάνονται υπόψη οι ανάγκες των μελών, ειδικότερα των αναπτυσσομένων χωρών, για την εξασφάλιση ευελιξίας στο σχετικό τομέα. Για το σκοπό των συγκεκριμένων διαπραγματεύσεων, τα μέλη ανταλλάσσουν πληροφορίες σχετικές με το σύνολο των επιδοτήσεων που αφορούν τις συναλλαγές στον τομέα των υπηρεσιών, οι οποίες παρέχονται στους φορείς παροχής υπηρεσιών σε εθνικό επίπεδο.

2. Κάθε μέλος που θεωρεί ότι θίγεται από επιδοτήσεις άλλου μέλους δύναται να ζητήσει την έναρξη διαβουλεύσεων με το εν λόγω μέλος για το σχετικό θέμα. Τα αιτήματα αυτά εξετάζονται με κατανόηση.

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7 Σε μελλοντικό πρόγραμμα εργασίας θα καθορισθούν ο τρόπος και το χρονοδιάγραμμα διεξαγωγής διαπραγματεύσεων σχετικών με τις εν λόγω πολυμερείς ρυθμίσεις.

ΜΕΡΟΣ ΙΙΙ

ΕΙΔΙΚΕΣ ΑΝΑΛΗΨΕΙΣ ΥΠΟΧΡΕΩΣΕΩΝ

Άρθρο XVI

Πρόσβαση στην αγορά

1. Όσον αφορά την πρόσβαση στην αγορά μέσω των τρόπων παροχής υπηρεσιών που ορίζονται στο άρθρο Ι, κάθε μέλος παρέχει στις υπηρεσίες και φορείς παροχής υπηρεσιών οποιουδήποτε άλλου μέλους μεταχείριση όχι λιγότερο ευνοϊκή από αυτήν που προβλέπεται κατ'εφαρμογή των όρων, περιορισμών και προϋποθέσεων που έχουν συμφωνηθεί και καθορισθεί στον πίνακα υποχρεώσεών του[8].

2. Σε τομείς στους οποίους αναλαμβάνονται υποχρεώσεις πρόσβασης στην αγορά, τα μέτρα τα οποία δεν διατηρούνται ούτε υιοθετούνται από μέλος είτε σε επίπεδο περιφερειακής υποδιαίρεσης είτε στο σύνολο του εδάφους του, εκτός αν ορίζεται διαφορετικά στον πίνακα των υποχρεώσεων του, είναι τα εξής:

(α) περιορισμοί ως προς τον αριθμό των φορέων παροχής υπηρεσιών, υπό μορφή είτε αριθμητικών ποσοστώσεων, μονοπωλίων, αποκλειστικής παροχής υπηρεσιών είτε εξέτασης των οικονομικών αναγκών·

(β) περιορισμοί ως προς τη συνολική αξία πράξεων ή αγαθών στον τομέα των υπηρεσιών, υπό μορφή αριθμητικών ποσοστώσεων ή εξέτασης των οικονομικών αναγκών·

(γ) περιορισμοί ως προς το συνολικό αριθμό πράξεων στον τομέα των υπηρεσιών ή ως προς τη συνολική ποσότητα των παραγομένων υπηρεσιών, οι οποίοι εκφράζονται με καθορισμένες αριθμητικές μονάδες υπό μορφή ποσοστώσεων ή εξέτασης των οικονομικών αναγκών[9].

δ) περιορισμοί ως προς το συνολικό αριθμό φυσικών προσώπων που μπορούν να απασχοληθούν σε συγκεκριμένο τομέα υπηρεσιών ή που είναι δυνατό να απασχολήσει φορέας παροχής υπηρεσιών, οι οποίοι είναι αναγκαίοι για την παροχή συγκεκριμένης υπηρεσίας και συνδέονται άμεσα με αυτή, υπό μορφή αριθμητικών ποσοστώσεων ή εξέτασης των οικονομικών αναγκών·

(ε) μέτρα που επιβάλλουν περιορισμούς ή υποχρεώσεις όσον αφορά την ύπαρξη συγκεκριμένης μορφής νομικών προσώπων ή κοινών επιχειρήσεων, μέσω των οποίων είναι δυνατόν να παρέχεται υπηρεσία από φορέα παροχής υπηρεσιών· και

(στ) περιορισμοί όσον αφορά τη συμμετοχή ξένου κεφαλαίου υπό μορφή ανώτατων ποσοστιαίων περιορισμών στις μετοχές που κατέχουν αλλοδαποί ή τη συνολική αξία μεμονωμένων ή συνολικών ξένων επενδύσεων.

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8 Σε περίπτωση που μέλος αναλαμβάνει υποχρέωση πρόσβασης στην αγορά για την παροχή υπηρεσίας με τον τρόπο που αναφέρεται στο άρθρο Ι, παράγραφος 2, στοιχείο α) και αν η διασυνοριακή κυκλοφορία κεφαλαίου αποτελεί βασικό στοιχείο της ίδιας της υπηρεσίας, το εν λόγω μέλος δεσμεύεται να επιτρέψει την εν λόγω κυκλοφορία κεφαλαίου. Σε περίπτωση που μέλος αναλαμβάνει υποχρέωση πρόσβασης στην αγορά με τον τρόπο που αναφέρεται στο άρθρο Ι, παράγραφος 2, στοιχείο γ), δεσμεύεται να επιτρέψει σχετικές μεταβιβάσεις κεφαλαίων στο έδαφός του.

9 Η παράγραφος 2, στοιχείο γ) δεν καλύπτει μέτρα που λαμβάνονται από μέλος και τα οποία περιορίζουν τις εισροές για την παροχή υπηρεσιών.

Άρθρο XVII

Εθνική μεταχείριση

1. Όσον αφορά το σύνολο των μέτρων των σχετικών με την παροχή υπηρεσιών στους τομείς που περιλαμβάνονται στον πίνακά του και λαμβάνοντας υπόψη τους όρους και περιορισμούς που καθορίζονται σ'αυτόν, κάθε μέλος παρέχει σε υπηρεσίες και φορείς παροχής υπηρεσιών οποιουδήποτε άλλου μέλους, μεταχείριση όχι λιγότερο ευνοϊκή από τη μεταχείριση που παρέχει στις οικείες παρεμφερείς υπηρεσίες και φορείς παροχής υπηρεσιών[10].

2. Κάποιο μέλος είναι δυνατό να πληροί τον όρο της παραγράφου 1 παραχωρώντας σε υπηρεσίες και φορείς παροχής υπηρεσιών οποιουδήποτε άλλου μέλους, είτε τυπικά όμοια μεταχείριση είτε τυπικά διαφορετική μεταχείριση από αυτή που παρέχει στις οικείες παρεμφερείς υπηρεσίες και τους δικούς του φορείς παροχής υπηρεσιών.

3. Η τυπικά όμοια ή τυπικά διαφορετική μεταχείριση θεωρείται ότι είναι λιγότερο ευνοϊκή εάν τροποποιεί τους όρους ανταγωνισμού υπέρ των υπηρεσιών ή φορέων παροχής υπηρεσιών του συγκεκριμένου μέλους, σε σύγκριση με παρεμφερείς υπηρεσίες ή φορείς παροχής υπηρεσιών οποιουδήποτε άλλου μέλους.

Άρθρο XVIII

Πρόσθετες αναλήψεις υποχρεώσεων

Τα μέλη δύνανται να διαπραγματεύονται αναλήψεις υποχρεώσεων σχετικές με μέτρα που αφορούν συναλλαγές στον τομέα των υπηρεσιών, οι οποίες δεν καταχωρούνται σε πίνακες, βάσει των άρθρων XVI ή XVII, συμπεριλαμβανομένων αυτών που αφορούν θέματα σχετικά με τα προσόντα, τα πρότυπα και την έκδοση αδειών. Οι εν λόγω αναλήψεις υποχρεώσεων δεν καταχωρούνται σε πίνακα μέλους.

ΜΕΡΟΣ IV

ΠΡΟΟΔΕΥΤΙΚΗ ΑΠΕΛΕΥΘΕΡΩΣΗ

Άρθρο XIX

Διαπραγμάτευση συγκεκριμένων αναλήψεων υποχρεώσεων

1. Κατά την επιδίωξη των στόχων της παρούσας συμφωνίας, τα μέλη αναλαμβάνουν διαδοχικούς γύρους διαπραγματεύσεων που αρχίζουν το αργότερο πέντε έτη μετά τη θέση σε ισχύ της συμφωνίας για τον ΠΟΕ και διεξάγονται στη συνέχεια σε τακτικά διαστήματα, προκειμένου να επιτευχθεί προοδευτικά υψηλότερο επίπεδο απελευθέρωσης. Οι εν λόγω διαπραγματεύσεις αποσκοπούν στη μείωση ή εξάλειψη των αρνητικών επιπτώσεων μέτρων στις συναλλαγές στον τομέα των υπηρεσιών ως μέσο παροχής αποτελεσματικής πρόσβασης στην αγορά. Η σχετική διαδικασία

10 Οι συγκεκριμένες υποχρεώσεις που αναλαμβάνονται βάσει του παρόντος άρθρου δεν σημαίνουν ότι απαιτείται από τα μέλη να αντισταθμίσουν τα εγγενή ανταγωνιστικά μειονεκτήματα που απορρέουν από τον εξωγενή χαρακτήρα των σχετικών υπηρεσιών ή φορέων παροχής υπηρεσιών.

ακολουθείται με στόχο την προώθηση των συμφερόντων όλων των συμμετεχόντων σε αμοιβαία ευνοϊκή βάση και την εξασφάλιση γενικότερης ισορροπίας δικαιωμάτων και υποχρεώσεων.

2. Η διαδικασία απελευθέρωσης πραγματοποιείται αφού ληφθούν δεόντως υπόψη οι στόχοι της εθνικής πολιτικής και ο βαθμός ανάπτυξης μεμονωμένων μελών, τόσο σε γενικότερο επίπεδο όσο και σε επιμέρους τομείς. Εξασφαλίζεται ο κατάλληλος βαθμός ευελιξίας για μεμονωμένες αναπτυσσόμενες χώρες μέλη όσον αφορά το άνοιγμα μικρότερου αριθμού τομέων, την απελευθέρωση μικρότερου αριθμού κατηγοριών συναλλαγών, την προοδευτική επέκταση της πρόσβασης στην αγορά, ανάλογα με το επίπεδο ανάπτυξής της και, όταν επιτρέπεται η πρόσβαση αλλοδαπών φορέων παροχής υπηρεσιών στις αγορές της, τη θέσπιση ορισμένων όρων που αποσκοπούν στην επίτευξη των στόχων που αναφέρονται στο άρθρο IV.

3. Για κάθε γύρο καθορίζονται οδηγίες και διαδικασίες διαπραγματεύσεων. Για τον καθορισμό των σχετικών οδηγιών, το Συμβούλιο Συναλλαγών στον τομέα των Υπηρεσιών πραγματοποιεί αξιολόγηση των συναλλαγών στον τομέα των Υπηρεσιών σε γενικότερο επίπεδο και σε τομεακή βάση σε σχέση με τους στόχους της παρούσας συμφωνίας, συμπεριλαμβανομένων αυτών που ορίζονται στο άρθρο IV, παράγραφος 1 . Στο πλαίσιο των διαπραγματευτικών οδηγιών, καθορίζονται τρόποι αντιμετώπισης της διαδικασίας απελευθέρωσης που έχουν θέσει σε εφαρμογή αυτόνομα τα μέλη από τις προηγούμενες διαπραγματεύσεις καθώς και της ειδικής μεταχείρισης των λιγότερο ανεπτυγμένων χωρών μελών βάσει των διατάξεων του άρθρου IV παράγραφος 3.

4. Η διαδικασία προοδευτικής απελευθέρωσης προωθείται σε κάθε σχετικό γύρο μέσω διμερών ή πολυμερών διαπραγματεύσεων που αποσκοπούν στην αύξηση του γενικού επιπέδου συγκεκριμένων υποχρεώσεων που αναλαμβάνουν τα μέλη βάσει της παρούσας συμφωνίας.

Άρθρο XX

Πίνακες συγκεκριμένων υποχρεώσεων

1. Κάθε μέλος καθορίζει σε πίνακα τις συγκεκριμένες υποχρεώσεις που αναλαμβάνει στο πλαίσιο του μέρους III της παρούσας συμφωνίας. Όσον αφορά τους τομείς στους οποίους αναλαμβάνονται οι συγκεκριμένες υποχρεώσεις, σε κάθε πίνακα προσδιορίζονται:

(α) οι όροι, οι περιορισμοί και οι προϋποθέσεις πρόσβασης στην αγορά,

(β) οι όροι και οι περιορισμοί, όσον αφορά την εθνική μεταχείριση,

(γ) οι δεσμεύσεις σχετικά με τις πρόσθετες αναλήψεις υποχρεώσεων,

(δ) κατά περίπτωση, το χρονικό πλαίσιο εφαρμογής των εν λόγω υποχρεώσεων,

(ε) η ημερομηνία έναρξης ισχύος των εν λόγω υποχρεώσεων.

2. Τα μέτρα που έρχονται σε αντίθεση με τα άρθρα XVI και XVII εγγράφονται στη στήλη που αναφέρεται στο άρθρο XVI. Στην περίπτωση αυτή, η εγγραφή θεωρείται ότι εισάγει όρο ή περιορισμό όσον αφορά επίσης το άρθρο XVII.

3. Οι πίνακες των συγκεκριμένων υποχρεώσεων επισυνάπτονται στην παρούσα συμφωνία και αποτελούν αναπόσπαστο μέρος αυτής.

Άρθρο XXI

Τροποποίηση των πινάκων

1. (α) Οποιοδήποτε μέλος που αναφέρεται στο παρόν άρθρο ως "το μέλος που προβαίνει σε τροποποιήσεις" δύναται να τροποποιεί ή να ανακαλεί τις αναλήψεις υποχρεώσεων που περιλαμβάνονται στον πίνακά του, οποτεδήποτε, μετά την παρέλευση τριών ετών από την έναρξη ισχύος των σχετικών υποχρεώσεων, σύμφωνα με τις διατάξεις του παρόντος άρθρου.

(β) Το μέλος που προβαίνει σε τροποποιήσεις γνωστοποιεί στο Συμβούλιο Συναλλαγών στον τομέα των Υπηρεσιών την πρόθεσή του να τροποποιήσει ή να ανακαλέσει ανάληψη υποχρέωσης σύμφωνα με το παρόν άρθρο, το αργότερο τρεις μήνες πριν από την προβλεπόμενη ημερομηνία εφαρμογής της τροποποίησης ή της ανάκλησης.

2. (α) Κατόπιν αιτήσεως μέλους, του οποίου τα οφέλη που απορρέουν από την παρούσα συμφωνία είναι δυνατόν να θιγούν από προτεινόμενη τροποποίηση ή ανάκληση που γνωστοποιείται βάσει της παραγράφου 1, στοιχείο β) (το οποίο αναφέρεται στο παρόν άρθρο ως "θιγόμενο μέλος"), το μέλος που προβαίνει σε τροποποιήσεις αρχίζει διαπραγματεύσεις που αποσκοπούν στην επίτευξη συμφωνίας σχετικά με τις αναγκαίες αντισταθμιστικές αναπροσαρμογές. Κατά τις εν λόγω διαπραγματεύσεις και συμφωνίες, τα ενδιαφερόμενα μέλη προσπαθούν να διατηρήσουν ένα γενικό επίπεδο αμοιβαίως επωφελών υποχρεώσεων όχι λιγότερο ευνοϊκών για τις συναλλαγές από αυτές που προβλέπονταν στους πίνακες συγκεκριμένων υποχρεώσεων πριν από τις σχετικές διαπραγματεύσεις.

(β) Οι αντισταθμιστικές προσαρμογές πραγματοποιούνται βάσει της αρχής του μάλλον ευνοουμένου κράτους.

3. (α) Σε περίπτωση που δεν επιτευχθεί συμφωνία μεταξύ του μέλους που προβαίνει σε τροποποιήσεις και των θιγομένων μελών πριν από τη λήξη της περιόδου που προβλέπεται για διαπραγματεύσεις, τα εν λόγω θιγόμενα μέλη δύνανται να παραπέμψουν το θέμα σε διαιτησία. Τα θιγόμενα μέλη που επιθυμούν να επιβάλουν δικαίωμα που ενδεχομένως έχουν για τη χορήγηση αντισταθμιστικού ανταλλάγματος οφείλουν να συμμετέχουν στη διαιτησία.

(β) Αν κανένα από τα θιγόμενα μέλη δεν ζητήσει την προσφυγή σε διαιτησία, το μέλος που προβαίνει σε τροποποιήσεις είναι ελεύθερο να εφαρμόσει την προτεινόμενη τροποποίηση ή ανάκληση.

4. (α) Το μέλος που προβαίνει σε τροποποιήσεις δεν δύναται να τροποποιήσει ή να ανακαλέσει την υποχρέωσή του μέχρις ότου πραγματοποιήσει αντισταθμιστικές αναπροσαρμογές, σύμφωνα με τα πορίσματα της διαιτησίας.

(β) Αν το μέλος που προβαίνει σε τροποποιήσεις θέτει σε εφαρμογή την προτεινόμενη τροποποίηση ή ανάκληση και δεν συμμορφούται με τα πορίσματα της διαιτησίας, τα θιγόμενα μέλη που συμμετείχαν στη διαιτησία δύνανται να τροποποιήσουν ή να ανακαλέσουν κατ' ουσία ισοδύναμα οφέλη, σύμφωνα με τα εν λόγω πορίσματα. Κατά παρέκκλιση του άρθρου II, η σχετική τροποποίηση ή ανάκληση είναι δυνατόν να εφαρμοσθεί αποκλειστικά σε σχέση με το μέλος που προβαίνει σε τροποποιήσεις.

5. Το Συμβούλιο Συναλλαγών στον τομέα των Υπηρεσιών καθορίζει διαδικασίες διόρθωσης ή τροποποίησης των πινάκων υποχρεώσεων. Τα μέλη τα οποία προέβησαν στην τροποποίηση ή ανάκληση βάσει του παρόντος άρθρου, υποχρεώσεων που περιλαμβάνονται στους πίνακες τροποποιούν τους πίνακές τους σύμφωνα με τις σχετικές διαδικασίες.

ΜΕΡΟΣ V

ΘΕΣΜΙΚΕΣ ΔΙΑΤΑΞΕΙΣ

Άρθρο XXII

Διαβουλεύσεις

1. Κάθε μέλος εξετάζει με κατανόηση τις παραστάσεις στις οποίες προβαίνει κάθε άλλο μέλος σχετικά με οποιοδήποτε θέμα που άπτεται της λειτουργίας της παρούσας συμφωνίας και παρέχει τις κατάλληλες ευκαιρίες για τη διεξαγωγή σχετικών διαβουλεύσεων. Στις εν λόγω διαβουλεύσεις εφαρμόζεται το μνημόνιο συμφωνίας για την επίλυση διαφορών (ΜΣΕΔ).

2. Το Συμβούλιο Συναλλαγών στον τομέα των Υπηρεσιών ή το Όργανο Επίλυσης Διαφορών (ΟΕΔ) δύνανται, κατόπιν αιτήσεως μέλους, να προβαίνουν σε συνεννόηση με μέλος ή μέλη σχετικά με θέματα για τα οποία δεν κατέστη δυνατό να βρεθεί ικανοποιητική λύση μέσω της διαδικασίας διαβουλεύσεων που αναφέρεται στην παράγραφο 1.

3. Ένα μέλος δύναται να μην επικαλεσθεί το άρθρο XVII, είτε βάσει του παρόντος άρθρου είτε βάσει του άρθρου XXIII, όσον αφορά μέτρα που λαμβάνονται από άλλο μέλος, τα οποία καλύπτονται από διεθνή συμφωνία που έχει συναφθεί μεταξύ τους, σχετικά με την αποφυγή διπλής φορολογίας. Σε περίπτωση διαφωνίας μεταξύ μελών σχετικά με το κατά πόσον ένα μέτρο εμπίπτει στο πλαίσιο της σχετικής συμφωνίας, τα μέλη έχουν το δικαίωμα να παραπέμψουν το θέμα στο Συμβούλιο Συναλλαγών στον τομέα των Υπηρεσιών[11]. Το Συμβούλιο παραπέμπει το ζήτημα σε διαιτησία. Η απόφαση του διαιτητή είναι τελική και δεσμευτική για τα μέλη.

Άρθρο XXIII

Επίλυση διαφορών και εκτέλεση των υποχρεώσεων

1. Στην περίπτωση που ένα μέλος θεωρεί ότι οποιοδήποτε άλλο μέλος δεν ανταποκρίνεται στις υποχρεώσεις του ή στις συγκεκριμένες δεσμεύσεις βάσει της παρούσας συμφωνίας δύναται, προκειμένου να επιτευχθεί αμοιβαία ικανοποιητική επίλυση του θέματος να προσφύγει στο μνημόνιο συμφωνίας για την επίλυση διαφορών.

2. Αν το ΟΕΔ θεωρεί ότι οι περιστάσεις είναι αρκετά σοβαρές ώστε να δικαιολογούν την εν λόγω ενέργεια, δύναται να επιτρέψει σε μέλος ή μέλη την αναστολή της εφαρμογής υποχρεώσεων και συγκεκριμένων δεσμεύσεων έναντι οποιουδήποτε άλλου μέλους ή μελών, σύμφωνα με το άρθρο 22 του μνημονίου συμφωνίας για την Επίλυση Διαφορών.

3. Αν κάποιο μέλος θεωρεί ότι κάποιο όφελος που ανέμενε λογικά να προκύψει υπέρ αυτού βάσει συγκεκριμένης υποχρέωσης άλλου μέλους, στο πλαίσιο του μέρους III της παρούσας συμφωνίας εξουδετερώνεται ή τίθεται σε κίνδυνο ως αποτέλεσμα της εφαρμογής μέτρων που δεν αντιβαίνουν στις διατάξεις της παρούσας συμφωνίας, δύναται να προσφύγει στο μνημόνιο συμφωνίας για την επίλυση διαφορών. Αν το ΟΕΔ θεωρεί ότι τα συγκεκριμένα μέτρα έχουν αναιρέσει εν όλω ή εν μέρει σχετικά

11 Όσον αφορά τις συμφωνίες για την αποφυγή της διπλής φορολογίας που ισχύουν κατά την έναρξη ισχύος της συμφωνίας για τον ΠΟΕ, σχετικά ζητήματα δύναται να παραπεμφθούν στο Συμβούλιο Συναλλαγών στον τομέα των Υπηρεσιών μόνο με τη σύμφωνη γνώμη και των δύο συμβαλλομένων μερών της εν λόγω συμφωνίας.

οφέλη, το θιγόμενο μέλος έχει το δικαίωμα να προσφύγει σε αμοιβαία ικανοποιητική διευθέτηση, βάσει του άρθρου XXI, παράγραφος 2 η οποία είναι δυνατόν να περιλαμβάνει την τροποποίηση ή ανάκληση του μέτρου. Σε περίπτωση που δεν είναι δυνατή η επίτευξη συμφωνίας μεταξύ των ενδιαφερομένων μελών, εφαρμόζεται το άρθρο 22 του μνημονίου συμφωνίας για την επίλυση διαφορών.

Άρθρο XXIV

Συμβούλιο Συναλλαγών στον τομέα των Υπηρεσιών

1. Το Συμβούλιο Συναλλαγών στον τομέα των Υπηρεσιών εκτελεί τα καθήκοντα που του ανατίθενται για τη διευκόλυνση της λειτουργίας της παρούσας συμφωνίας και την προώθηση των στόχων της. Το συμβούλιο, δύναται αν το κρίνει σκόπιμο να συστήσει επικουρικά όργανα για την αποτελεσματική εκτέλεση των καθηκόντων του.

2. Στο συμβούλιο και, εκτός αν αυτό αποφασίσει διαφορετικά, στα επικουρικά όργανα, δύνανται να συμμετέχουν εκπρόσωποι όλων των μελών.

3. Ο πρόεδρος του συμβουλίου εκλέγεται από τα μέλη.

Άρθρο XXV

Τεχνική Συνεργασία

1. Οι φορείς παροχής υπηρεσιών μελών που χρειάζονται τέτοια βοήθεια έχουν δυνατότητα πρόσβασης στις υπηρεσίες επικοινωνίας που αναφέρονται στο άρθρο IV, παράγραφος 2.

2. Η τεχνική βοήθεια προς τις αναπτυσσόμενες χώρες παρέχεται σε πολυμερές επίπεδο από τη Γραμματεία και αποφασίζεται από το Συμβούλιο Συναλλαγών στον τομέα των Υπηρεσιών.

Άρθρο XXVI

Σχέση με άλλους διεθνείς οργανισμούς

Το Γενικό Συμβούλιο προβαίνει στις κατάλληλες διευθετήσεις για την έναρξη διαβουλεύσεων και συνεργασίας με τον Οργανισμό των Ηνωμένων Εθνών και τις ειδικευμένες υπηρεσίες αυτού, καθώς και με άλλους διακυβερνητικούς οργανισμούς σχετικούς με τον τομέα των υπηρεσιών.

ΜΕΡΟΣ VI

ΤΕΛΙΚΕΣ ΔΙΑΤΑΞΕΙΣ

Άρθρο XXVII

Άρνηση χορήγησης των οφελών

Οποιοδήποτε μέλος δύναται να αρνηθεί τα οφέλη της παρούσας συμφωνίας:

(α) όσον αφορά την παροχή υπηρεσίας, αν αποδείξει ότι η υπηρεσία παρέχεται από ή στο έδαφος μη μέλους ή μέλους έναντι του οποίου το αρνούμενο μέλος δεν εφαρμόζει τη συμφωνία για τον ΠΟΕ·

(β) στην περίπτωση παροχής υπηρεσίας θαλάσσιων μεταφορών, αν αποδείξει ότι η υπηρεσία παρέχεται:

(i) από πλοίο που έχει νηολογηθεί βάσει της νομοθεσίας μη μέλους ή μέλους έναντι του οποίου το αρνούμενο μέλος δεν εφαρμόζει τη συμφωνία για τον ΠΟΕ, και

(ii) από πρόσωπο το οποίο εκμεταλλεύεται ή και χρησιμοποιεί πλοίο, εν όλω ή εν μέρει, αλλά που προέρχεται από μη μέλος ή από μέλος έναντι του οποίου το αρνούμενο μέλος δεν εφαρμόζει τη συμφωνία για τον ΠΟΕ·

(γ) σε φορέα παροχής υπηρεσιών, ο οποίος είναι νομικό πρόσωπο, εάν αποδείξει ότι δεν είναι φορέας παροχής υπηρεσιών άλλου μέλους ή ότι είναι φορέας παροχής υπηρεσιών μέλους, έναντι του οποίου το αρνούμενο μέλος δεν εφαρμόζει τη συμφωνία για τον ΠΟΕ.

Αρθρο XXVIII

Ορισμοί

Για το σκοπό της παρούσας συμφωνίας:

(α) ως "μέτρο" νοείται κάθε μέτρο που λαμβάνεται από μέλος, υπό μορφή νόμου, κανονισμού, κανόνα, διαδικασίας, απόφασης, διοικητικής πράξης ή υπό οποιαδήποτε άλλη μορφή·

(β) ο όρος "παροχή υπηρεσίας" περιλαμβάνει την παραγωγή, διανομή, εμπορία, πώληση και διάθεση υπηρεσίας·

(γ) η έκφραση "μέτρα που λαμβάνονται από μέλη και τα οποία επηρεάζουν τις συναλλαγές στον τομέα των υπηρεσιών" περιλαμβάνει μέτρα σχετικά με:

(i) την αγορά, πληρωμή ή χρήση υπηρεσίας·

(ii) όσον αφορά την παροχή υπηρεσίας, τη δυνατότητα πρόσβασης και χρήσης υπηρεσιών που απαιτούνται από τα εν λόγω μέλη προκειμένου να διατεθούν εν γένει, στο κοινό·

(iii) την παρουσία, συμπεριλαμβανομένης της εμπορικής παρουσίας, προσώπων ενός μέλους για την παροχή υπηρεσίας στο έδαφος άλλου μέλους·

(δ) ως "εμπορική παρουσία" νοείται κάθε τύπος επιχειρηματικής ή επαγγελματικής δραστηριότητας, εκτός των άλλων, μέσω:

(i) της σύστασης, αγοράς ή διατήρησης νομικού προσώπου· ή

(ii) της δημιουργίας ή διατήρησης υποκαταστήματος ή υπηρεσίας εκπροσώπησης,

στο έδαφος μέλους με σκοπό την παροχή υπηρεσίας·

(ε) ως "τομέας" υπηρεσίας νοείται,

(i) όσον αφορά συγκεκριμένη υποχρέωση, ένας ή περισσότεροι ή το σύνολο των επιμέρους τομέων της συγκεκριμένης υπηρεσίας, όπως προσδιορίζονται σε πίνακα ενός μέλους,

(ii) σε αντίθετη περίπτωση, το σύνολο του συγκεκριμένου τομέα υπηρεσιών, συμπεριλαμβανομένων όλων των επιμέρους τομέων ·

(στ) "ο όρος υπηρεσία άλλου μέλους" σημαίνει υπηρεσία που παρέχεται,

(i) από ή στο έδαφος του συγκεκριμένου άλλου μέλους, ή στην περίπτωση θαλάσσιων μεταφορών, από πλοίο που έχει νηολογηθεί βάσει της νομοθεσίας του άλλου μέλους, ή από πρόσωπο που προέρχεται από το άλλο μέλος, το οποίο παρέχει την υπηρεσία μέσω της εκμετάλλευσης πλοίου και/ ή της χρησιμοποίησής του εν όλω ή εν μέρει· ή

(ii) στην περίπτωση παροχής υπηρεσίας μέσω εμπορικής παρουσίας ή μέσω της παρουσίας φυσικών προσώπων, από φορέα παροχής υπηρεσιών του συγκεκριμένου άλλου μέλους·

(ζ) ως "φορέας παροχής υπηρεσιών" νοείται κάθε πρόσωπο που παρέχει υπηρεσία[12].

(η) ως "φορέας μονοπωλιακής παροχής υπηρεσιών" νοείται κάθε πρόσωπο του δημοσίου ή ιδιωτικού τομέα, το οποίο στη σχετική αγορά του εδάφους μέλους, έχει εξουσιοδοτηθεί ή αναγνωρισθεί, επισήμως ή στην πράξη από το εν λόγω μέλος ως αποκλειστικός φορέας παροχής της εν λόγω υπηρεσίας·

(θ) ως "χρήστης υπηρεσίας" νοείται κάθε πρόσωπο που λαμβάνει ή χρησιμοποιεί υπηρεσία·

(ι) ως "πρόσωπο" νοείται είτε φυσικό είτε νομικό πρόσωπο·

(κ) ως "φυσικό πρόσωπο άλλου μέλους" νοείται κάθε φυσικό πρόσωπο που κατοικεί στο έδαφος του συγκεκριμένου άλλου μέλους ή οποιουδήποτε άλλου μέλους και το οποίο, βάσει της νομοθεσίας του συγκεκριμένου άλλου μέλους:

(i) είναι υπήκοος του συγκεκριμένου άλλου μέλους, ή

(ii) έχει δικαίωμα μόνιμης διαμονής στο εν λόγω άλλο μέλος, στην περίπτωση μέλους που

1. δεν έχει υπηκόους· ή

2. παρέχει, κατ' ουσία, την ίδια μεταχείριση στους μόνιμους κατοίκους όπως και στους υπηκόους του, όσον αφορά τα μέτρα που επηρεάζουν τις εμπορικές συναλλαγές στον τομέα των υπηρεσιών, όπως ορίζονται στην αποδοχή ή προσχώρησή του στη συμφωνία για τον ΠΟΕ, υπό την προϋπόθεση ότι κανένα μέλος δεν υποχρεούται να παρέχει σε μόνιμους κατοίκους περισσότερο ευνοϊκή μεταχείριση από αυτή που παρέχει το συγκεκριμένο άλλο μέλος στους μόνιμους κατοίκους. Στη σχετική γνωστοποίηση περιλαμβάνεται η διασφάλιση ότι αναλαμβάνονται, σε σχέση με τους μόνιμους κατοίκους σύμφωνα με τη

12 Σε περίπτωση που η υπηρεσία δεν παρέχεται απευθείας από νομικό πρόσωπο αλλά μέσω άλλων μορφών εμπορικής παρουσίας, όπως μέσω υποκαταστήματος ή υπηρεσίας εκπροσώπησης, ο φορέας παροχής υπηρεσιών (π.χ. το νομικό πρόσωπο) απολαμβάνει, μέσω της σχετικής παρουσίας, μεταχείρισης ίδιας με αυτήν που παρέχεται σε φορείς υπηρεσιών βάσει της συμφωνίας. Η μεταχείριση αυτή επεκτείνεται στην παρουσία μέσω της οποίας παρέχεται η υπηρεσία και δεν επεκτείνεται αναγκαστικά σε άλλα μέρη του φορέα παροχής υπηρεσιών που βρίσκονται εκτός του εδάφους όπου παρέχεται η υπηρεσία.

νομοθεσία και τους κανονισμούς του, οι ίδιες υποχρεώσεις που έχει το εν λόγω άλλο μέλος έναντι των υπηκόων του·

(λ) ως "νομικό πρόσωπο" νοείται κάθε νομική οντότητα που έχει δεόντως συσταθεί ή οργανωθεί, βάσει της ισχύουσας νομοθεσίας, κερδοσκοπικού ή μη χαρακτήρα, η οποία ανήκει στον ιδιωτικό ή δημόσιο τομέα, συμπεριλαμβανομένων των εταιρειών, των οικονομικών συνασπισμών μεγάλων επιχειρήσεων, των προσωπικών εταιρειών, των κοινών επιχειρήσεων, των ατομικών επιχειρήσεων ή των ενώσεων·

(μ) ως "νομικό πρόσωπο άλλου μέλους" νοείται το νομικό πρόσωπο το οποίο είτε:

(i) έχει συσταθεί ή οργανωθεί βάσει της νομοθεσίας του συγκεκριμένου άλλου μέλους και έχει αναλάβει ουσιαστικές επιχειρηματικές δραστηριότητες στο έδαφος αυτού του μέλους ή άλλων μελών, ή

(ii) στην περίπτωση παροχής υπηρεσιών μέσω εμπορικής παρουσίας, που ανήκει σε ή ελέγχεται από:

1. φυσικά πρόσωπα του συγκεκριμένου μέλους, ή

2. νομικά πρόσωπα του συγκεκριμένου άλλου μέλους, όπως προσδιορίζονται στο σημείο (i)

(ν) Ενα νομικό πρόσωπο

(i) "ανήκει" σε πρόσωπα ενός μέλους εάν πάνω από το 50% του μετοχικού κεφαλαίου του ανήκει κατά πλήρη κυριότητα σε πρόσωπα του εν λόγω μέλους·

(ii) "ελέγχεται" από πρόσωπα ενός μέλους εάν αυτά έχουν το δικαίωμα να ορίζουν την πλειοψηφία των διευθυντών του ή να διευθύνουν νομίμως τις δραστηριότητές του·

(iii) "συνδέεται" με άλλο πρόσωπο όταν ελέγχει ή ελέγχεται από το συγκεκριμένο άλλο πρόσωπο ή όταν αυτό και το άλλο πρόσωπο ελέγχονται από το ίδιο πρόσωπο.

(ο) ο όρος "άμεσοι φόροι" περιλαμβάνει το σύνολο των φόρων επί του συνολικού εισοδήματος, ή των συνολικών στοιχείων εισοδήματος ή κεφαλαίου, συμπεριλαμβανομένων των φόρων επί των κερδών από τις μεταβιβάσεις κυριότητας, των φόρων περιουσίας, κληρονομιών και δωρεών και των φόρων επί των συνολικών ποσών μισθών ή αμοιβών που καταβάλλουν οι επιχειρήσεις καθώς και των φόρων ανατίμησης κεφαλαίου.

Αρθρο XXIX

Παραρτήματα

Τα παραρτήματα της παρούσας συμφωνίας αποτελούν αναπόσπαστο μέρος αυτής.

ΠΑΡΑΡΤΗΜΑ ΓΙΑ ΤΙΣ ΑΠΑΛΛΑΓΕΣ ΑΠΟ ΤΙΣ ΥΠΟΧΡΕΩΣΕΙΣ ΠΟΥ ΕΠΙΒΑΛΛΕΙ ΤΟ ΑΡΘΡΟ II.

Πεδίο εφαρμογής

1. Στο παρόν παράρτημα καθορίζονται οι προϋποθέσεις υπό τις οποίες ένα μέλος, κατά την έναρξη ισχύος της παρούσας συμφωνίας, απαλλάσσεται από τις υποχρεώσεις του βάσει του άρθρου II, παράγραφος 1.

2. Τυχόν νέες απαλλαγές που εφαρμόζονται μετά την έναρξη ισχύος της συμφωνίας για τον ΠΟΕ περιλαμβάνονται στο άρθρο IX, παράγραφος 3 της εν λόγω συμφωνίας.

Επανεξέταση

3. Το Συμβούλιο Συναλλαγών στον τομέα των Υπηρεσιών επανεξετάζει το σύνολο των απαλλαγών που χορηγούνται για χρονικό διάστημα ανώτερο των πέντε ετών. Η πρώτη σχετική αναθεώρηση πραγματοποιείται το αργότερο πέντε έτη μετά την έναρξη ισχύος της συμφωνίας για τον ΠΟΕ.

4. Κατά την αναθεώρηση, το Συμβούλιο Συναλλαγών στον τομέα των Υπηρεσιών:

(α) εξετάζει κατά πόσον ισχύουν ακόμη οι συνθήκες που κατέστησαν αναγκαίες τις απαλλαγές· και

(β) καθορίζει την ημερομηνία ενδεχόμενης μελλοντικής επανεξέτασης.

Λήξη

5. Η απαλλαγή ενός μέλους από τις υποχρεώσεις του βάσει του άρθρου II, παράγραφος 1 της συμφωνίας, όσον αφορά ένα συγκεκριμένο μέτρο, λήγει κατά την ημερομηνία που προβλέπεται στην απαλλαγή.

6. Κατ' αρχήν, οι εν λόγω απαλλαγές δεν θα πρέπει να ισχύουν για χρονικό διάστημα μεγαλύτερο των δέκα ετών. Εν πάση περιπτώσει, αποτελούν αντικείμενο διαπραγμάτευσης στο πλαίσιο μεταγενέστερων γύρων για την απελευθέρωση των εμπορικών συναλλαγών.

7. Κατά τη λήξη του χρονικού διαστήματος ισχύος των απαλλαγών, το ενδιαφερόμενο μέλος πληροφορεί το Συμβούλιο Συναλλαγών στον τομέα των Υπηρεσιών ότι το ασυμβίβαστο μέτρο αναπροσαρμόστηκε ώστε να συμφωνεί με το άρθρο II, παράγραφος 1 της συμφωνίας.

Κατάλογοι των απαλλαγών από τις υποχρεώσεις του άρθρου II

[Οι εγκεκριμένοι κατάλογοι των απαλλαγών βάσει του άρθρου II βάσει του άρθρου II παράγραφος 2 επισυνάπτονται στο παρόν αντίγραφο της συμφωνίας για τον ΠΟΕ.]

ΠΑΡΑΡΤΗΜΑ ΓΙΑ ΤΗΝ ΚΥΚΛΟΦΟΡΙΑ ΦΥΣΙΚΩΝ ΠΡΟΣΩΠΩΝ ΠΟΥ ΠΑΡΕΧΟΥΝ ΥΠΗΡΕΣΙΕΣ ΒΑΣΕΙ ΤΗΣ ΣΥΜΦΩΝΙΑΣ

1. Το παρόν παράρτημα εφαρμόζεται σε μέτρα που έχουν σχέση με την παροχή υπηρεσίας και αφορούν φυσικά πρόσωπα τα οποία αποτελούν φορείς παροχής υπηρεσιών ενός μέλους και φυσικά πρόσωπα ενός μέλους τα οποία απασχολούνται από φορέα παροχής υπηρεσιών ενός μέλους.

2. Η συμφωνία δεν εφαρμόζεται σε μέτρα που αφορούν φυσικά πρόσωπα, τα οποία επιζητούν πρόσβαση στην αγορά εργασίας ενός μέλους, ούτε σε μέτρα που αφορούν θέματα σχετικά με την υπηκοότητα, διαμονή ή απασχόληση σε μόνιμη βάση.

3. Σύμφωνα με τα μέρη ΙΙΙ και ΙV της συμφωνίας, τα μέλη δύνανται να διαπραγματεύονται συγκεκριμένες υποχρεώσεις που εφαρμόζονται στην κυκλοφορία όλων των κατηγοριών φυσικών προσώπων που παρέχουν υπηρεσίες βάσει της συμφωνίας. Σε φυσικά πρόσωπα που καλύπτονται από συγκεκριμένη υποχρέωση δίνεται το δικαίωμα να παρέχουν τις σχετικές υπηρεσίες σύμφωνα με τους όρους της υποχρέωσης.

4. Η συμφωνία δεν απαγορεύει σε μέλος να εφαρμόζει μέτρα για τη ρύθμιση της εισόδου ή της προσωρινής διαμονής φυσικών προσώπων στο έδαφός του, συμπεριλαμβανομένων των μέτρων που είναι αναγκαία για την προστασία της ακεραιότητας φυσικών προσώπων και την εξασφάλιση της ομαλής κυκλοφορίας αυτών δια μέσου των συνόρων υπό την προϋπόθεση ότι τα εν λόγω μέτρα δεν εφαρμόζονται κατά τρόπον ώστε να αναιρούν εν όλω ή εν μέρει τα οφέλη που απορρέουν για οποιοδήποτε μέλος από τους όρους της συγκεκριμένης υποχρέωσης[1].

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1 Το μοναδικό γεγονός ότι απαιτείται θεώρηση για φυσικά πρόσωπα ορισμένων μελών και όχι για φυσικά πρόσωπα άλλων μελών δεν θεωρείται ότι καθιστά άκυρα ή θέτει σε κίνδυνο τα οφέλη που απορρέουν από συγκεκριμένες υποχρεώσεις.

ΠΑΡΑΡΤΗΜΑ ΓΙΑ ΤΙΣ ΥΠΗΡΕΣΙΕΣ ΑΕΡΟΠΟΡΙΚΩΝ ΜΕΤΑΦΟΡΩΝ

1. Το παρόν παράρτημα εφαρμόζεται σε μέτρα που αφορούν τις συναλλαγές στον τομέα των υπηρεσιών αεροπορικών μεταφορών, τακτικών ή μη τακτικών καθώς και των συναφών υπηρεσιών. Επιβεβαιώνεται ότι οι συγκεκριμένες δεσμεύσεις ή υποχρεώσεις που αναλαμβάνονται βάσει της παρούσας συμφωνίας δεν μειώνουν ούτε επηρεάζουν τυχόν υποχρεώσεις που έχουν αναλάβει τα μέλη στο πλαίσιο διμερών ή πολυμερών συμφωνιών οι οποίες ισχύουν κατά την ημερομηνία έναρξης ισχύος της συμφωνίας για τον ΠΟΕ.

2. Η συμφωνία, συμπεριλαμβανομένων των διαδικασιών επίλυσης διαφορών, δεν εφαρμόζεται σε μέτρα που αφορούν :

(α) μεταφορικά δικαιώματα, τα οποία έχουν παραχωρηθεί καθ'οιονδήποτε τρόπο· ή

(β) υπηρεσίες που συνδέονται άμεσα με την άσκηση των μεταφορικών δικαιωμάτων·

με εξαίρεση τις διατάξεις της παραγράφου 3 του παρόντος παραρτήματος.

3. Η συμφωνία εφαρμόζεται σε μέτρα που αφορούν :

(α) υπηρεσίες επισκευής και συντήρησης αεροσκαφών·

(β) την πώληση και την προώθηση στην αγορά των υπηρεσιών αερομεταφορών·

(γ) υπηρεσίες σχετικές με το ηλεκτρονικό σύστημα κρατήσεων (ΗΣΚ).

4. Η προσφυγή στις διαδικασίες επίλυσης διαφορών που προβλέπονται στη συμφωνία επιτρέπεται μόνο σε περίπτωση που έχουν αναληφθεί υποχρεώσεις ή συγκεκριμένες δεσμεύσεις από τα ενδιαφερόμενα μέλη ή έχουν εξαντληθεί οι διαδικασίες επίλυσης διαφορών στο πλαίσιο διμερών και άλλων πολυμερών συμφωνιών ή διακανονισμών.

5. Το Συμβούλιο Συναλλαγών στον τομέα των Υπηρεσιών εξετάζει κατά τακτά διαστήματα και το λιγότερο κάθε πέντε χρόνια, τις εξελίξεις στον τομέα των αερομεταφορών καθώς και την εφαρμογή του παρόντος παραρτήματος, με στόχο την εκτίμηση της δυνατότητας περαιτέρω εφαρμογής της συμφωνίας στον εν λόγω τομέα.

6. Ορισμοί :

(α) Ως "υπηρεσίες επισκευής και συντήρησης αεροσκαφών" νοούνται οι σχετικές εργασίες που εκτελούνται σε αεροσκάφος ή τμήμα αυτού το οποίο έχει αποσυρθεί από τη γραμμή και δεν περιλαμβάνουν τις λεγόμενες εργασίες συντήρησης γραμμής πτήσεων.

(β) Ως "πώληση και μάρκετινγκ υπηρεσιών αερομεταφορών" νοούνται οι δυνατότητες του ενδιαφερόμενου αερομεταφορέα να πωλεί και να διαθέτει ελεύθερα στην αγορά υπηρεσίες αερομεταφορών, συμπεριλαμβανομένων όλων των θεμάτων που άπτονται του μάρκετινγκ όπως : έρευνα αγοράς, διαφήμιση και διανομή. Οι εν λόγω δραστηριότητες δεν περιλαμβάνουν τον καθορισμό τιμών των υπηρεσιών αερομεταφορών ούτε τους ισχύοντες όρους.

(γ) Ως "υπηρεσίες ηλεκτρονικού συστήματος κρατήσεων" (ΗΣΚ) νοούνται οι υπηρεσίες που παρέχονται μέσω μηχανογραφικών συστημάτων τα οποία περιέχουν πληροφορίες σχετικές με τα προγραμματισμένα δρομολόγια των αερομεταφορέων, τη διαθεσιμότητα αυτών, τους ναύλους και τους κανόνες που ισχύουν για τους ναύλους και βάσει των οποίων είναι δυνατόν να γίνονται κρατήσεις και να εκδίδονται εισιτήρια.

(δ) Ως "μεταφορικά δικαιώματα" νοούνται τα δικαιώματα για την εκμετάλλευση τακτικών και μη τακτικών αεροπορικών γραμμών και/ή τη μεταφορά, έναντι αμοιβής ή/και μίσθωσης, επιβατών, φορτίου και ταχυδρομείου από, προς, εντός ή πάνω από το έδαφος μέλους, συμπεριλαμβανομένων των σημείων που εξυπηρετούνται, των δρομολογίων που εκτελούνται, των κατηγοριών μεταφερόμενου φορτίου, της μεταφορικής ικανότητας που παρέχεται, των ναύλων που επιβάλλονται και των σχετικών όρων, καθώς και των κριτηρίων ανάθεσης της εκμετάλλευσης σε αερομεταφορείς, όπως ο αριθμός, η κυριότητα και η μορφή ελέγχου.

ΠΑΡΑΡΤΗΜΑ ΓΙΑ ΤΙΣ ΧΡΗΜΑΤΟΠΙΣΤΩΤΙΚΕΣ ΥΠΗΡΕΣΙΕΣ

1. Πεδίο εφαρμογής και ορισμοί

(α) Το παρόν παράρτημα εφαρμόζεται σε μέτρα που αφορούν την παροχή χρηματοπιστωτικών υπηρεσιών. Στο παρόν παράρτημα, ως παροχή χρηματοπιστωτικών υπηρεσιών νοείται η παροχή υπηρεσιών όπως ορίζεται στο άρθρο Ι, παράγραφος 2 της συμφωνίας.

(β) Για τους σκοπούς του άρθρου Ι, παράγραφος 3, στοιχείο β) της συμφωνίας, ως "υπηρεσίες που παρέχονται κατά την εκτέλεση κρατικής εξουσίας" νοούνται :

(i) δραστηριότητες που εκτελούνται από κεντρική τράπεζα ή νομισματική αρχή ή οποιοδήποτε οργανισμό του δημοσίου τομέα κατά την εφαρμογή νομισματικών ή συναλλαγματικών πολιτικών·

(ii) δραστηριότητες που αποτελούν τμήμα θεσπισμένου συστήματος κοινωνικής ασφάλισης ή κρατικών συνταξιοδοτικών καθεστώτων·

(iii) άλλες δραστηριότητες που εκτελούνται από δημόσιο φορέα για λογαριασμό ή με την εγγύηση ή τη χρήση κρατικών χρηματοδοτικών πόρων.

(γ) Για τους σκοπούς του άρθρου Ι, παράγραφος 3, στοιχείο β) της συμφωνίας, σε περίπτωση που ένα μέλος επιτρέπει την ανάληψη οποιασδήποτε από τις δραστηριότητες που αναφέρονται στα σημεία (ii) και (iii) της ανωτέρω παραγράφου από τους δικούς του φορείς παροχής χρηματοπιστωτικών υπηρεσιών, υπό συνθήκες ανταγωνισμού με δημόσιο φορέα ή φορέα παροχής χρηματοπιστωτικών υπηρεσιών, ο όρος "υπηρεσίες" περιλαμβάνει τις εν λόγω δραστηριότητες.

(δ) Το άρθρο Ι, παράγραφος 3, στοιχείο γ) της συμφωνίας δεν εφαρμόζεται σε υπηρεσίες που καλύπτονται από το παρόν παράρτημα.

2. Εσωτερικές ρυθμίσεις

(α) Κατά παρέκκλιση των λοιπών διατάξεων της συμφωνίας, δεν απαγορεύεται στα μέλη να λαμβάνουν μέτρα για λόγους προληπτικής εποπτείας, συμπεριλαμβανομένης της προστασίας επενδυτών, καταθετών, ασφαλιζομένων ή προσώπων, στα οποία οι παρέχοντες χρηματοπιστωτικές υπηρεσίες καταβάλλουν αμοιβή για υπηρεσίες θεματοφύλακα, ή για τη διασφάλιση της ακεραιότητας και σταθερότητας του χρηματοπιστωτικού συστήματος. Όταν τα εν λόγω μέτρα βρίσκονται σε αντίθεση με τις διατάξεις της συμφωνίας, δεν χρησιμοποιούνται ως μέσο αποφυγής των δεσμεύσεων και υποχρεώσεων που έχουν αναλάβει τα μέλη βάσει της συμφωνίας.

(β) Ουδεμία διάταξη της συμφωνίας δεν σημαίνει ότι υποχρεούται μέλος να αποκαλύψει πληροφορίες σχετικές με τις υποθέσεις και τους λογαριασμούς μεμονωμένων πελατών ή πληροφορίες εμπιστευτικού χαρακτήρα ή σχετικές με την ιδιοκτησία που βρίσκονται στην κατοχή δημοσίων φορέων.

3. Αναγνώριση

(α) Κατά τον καθορισμό των μέσων εφαρμογής των μέτρων που αφορούν τις χρηματοπιστωτικές υπηρεσίες ένα μέλος δύναται να αναγνωρίζει, για λόγους προληπτικής εποπτείας, μέτρα άλλων χωρών. Η

αναγνώριση αυτή, η οποία δύναται να επιτυγχάνεται μέσω εναρμόνισης ή με άλλον τρόπο, είναι δυνατόν να βασίζεται σε συμφωνία ή διακανονισμό με την ενδιαφερόμενη χώρα ή να χορηγείται αυτόνομα.

(β) Ένα μέλος που αποτελεί μέρος σε συμφωνίες ή διακανονισμούς που αναφέρονται στο στοιχείο (α) και υφίστανται ή προβλέπονται για το μέλλον, παρέχει κατάλληλες ευκαιρίες σε άλλα ενδιαφερόμενα μέλη να διαπραγματεύονται την προσχώρησή τους στις σχετικές συμφωνίες ή διακανονισμούς ή τη σύναψη παρεμφερών συνθηκών και διακανονισμών με αυτό, που θα εξασφάλιζαν ισοδύναμες ρυθμίσεις, μηχανισμούς εποπτείας, διαδικασίες εφαρμογής και ενδεχομένως, διαδικασίες σχετικές με την ανταλλαγή πληροφοριών μεταξύ των συμβαλλομένων μερών της συμφωνίας ή του διακανονισμού. Σε περίπτωση, που ένα μέλος πραγματοποιεί την αναγνώριση αυτόνομα, παρέχει κατάλληλες ευκαιρίες στα υπόλοιπα μέλη να αποδείξουν ότι ισχύουν οι σχετικές προϋποθέσεις.

(γ) Σε περίπτωση που ένα μέλος σχεδιάζει την αναγνώριση μέτρων προληπτικής εποπτείας άλλων χωρών δεν εφαρμόζεται το άρθρο VII, παράγραφος 4, στοιχείο β).

4. Επίλυση διαφορών

Οι ειδικές ομάδες (πάνελ) για τις διαφορές σε θέματα προληπτικής εποπτείας και άλλα χρηματοπιστωτικά ζητήματα διαθέτουν τις αναγκαίες γνώσεις σχετικά με τη συγκεκριμένη χρηματοπιστωτική υπηρεσία που αποτελεί αντικείμενο διαφοράς.

5. Ορισμοί

Για τους σκοπούς του παρόντος παραρτήματος :

(α) Ως χρηματοπιστωτική υπηρεσία νοείται οποιαδήποτε υπηρεσία χρηματοπιστωτικής φύσεως που προσφέρεται από φορέα παροχής χρηματοπιστωτικών υπηρεσιών ενός μέλους. Στις χρηματοπιστωτικές υπηρεσίες περιλαμβάνονται όλες οι ασφαλιστικές και οι σχετικές με ασφάλειες υπηρεσίες καθώς και οι τραπεζικές και λοιπές χρηματοπιστωτικές υπηρεσίες (εκτός των ασφαλιστικών). Στις χρηματοπιστωτικές υπηρεσίες περιλαμβάνονται οι εξής δραστηριότητες :

Ασφαλιστικές υπηρεσίες και υπηρεσίες σχετικές με ασφάλειες

(i) πρωτασφάλιση (συμπεριλαμβανομένης της συνασφάλισης):

(A) ζωής
(B) ζημιών

(ii) Αντασφάλιση και επανεκχώρηση·

(iii) Διαμεσολάβηση στον ασφαλιστικό τομέα, όπως μεσιτεία και πρακτορεία·

(iv) Επικουρικές ασφαλιστικές υπηρεσίες, όπως παροχή συμβουλευτικών υπηρεσιών, αναλογιστικές μελέτες, εκτίμηση του κινδύνου και υπηρεσίες διακανονισμού αποζημιώσεων.

Τραπεζικές και λοιπές χρηματοπιστωτικές υπηρεσίες (εκτός των ασφαλιστικών)

(v) Αποδοχή καταθέσεων και άλλων επιστρεπτέων κεφαλαίων από το κοινό·

(vi) Κάθε μορφής δανειοδότηση, συμπεριλαμβανομένης της καταναλωτικής πίστης, των ενυπόθηκων πιστώσεων, της διαχείρισης επιχειρηματικών απαιτήσεων και της χρηματοδότησης εμπορικών συναλλαγών.

(vii) Χρηματοδοτική μίσθωση·

(viii) Όλες οι υπηρεσίες πληρωμής και μεταφοράς χρηματικών ποσών, συμπεριλαμβανομένων των πιστωτικών και χρεωστικών καρτών, των ταξιδιωτικών επιταγών και των τραπεζικών επιταγών·

(ix) Εγγυήσεις και αναλήψεις υποχρεώσεων·

(x) Συναλλαγές για ίδιο λογαριασμό ή για λογαριασμό πελατών, είτε στο χρηματιστήριο ή σε εξωχρηματιστηριακές αγορές ή με άλλο τρόπο επί :

(Α) μέσων χρηματαγοράς (συμπεριλαμβανομένων επιταγών, συναλλαγματικών, πιστοποιητικών καταθέσεων)·

(Β) συναλλάγματος·

(Γ) παράγωγων προϊόντων συμπεριλαμβανομένων, αλλά όχι αποκλειστικά, προθεσμιακών συμβολαίων και συμβολαίων με δικαίωμα προαίρεσης·

(Δ) μέσων συναλλαγματικών ισοτιμιών και επιτοκίου, συμπεριλαμβανομένων προϊόντων όπως οι συμφωνίες ανταλλαγής και οι προθεσμιακές συμφωνίες επιτοκίου·

(Ε) μεταβιβάσιμων κινητών αξιών·

(ΣΤ) άλλων διαπραγματεύσιμων μέσων και χρηματοπιστωτικών περιουσιακών στοιχείων συμπεριλαμβανομένων των ράβδων χρυσού ή αργύρου·

(xi) Συμμετοχή σε εκδόσεις κάθε μορφής χρεογράφων, συμπεριλαμβανομένης της αναδοχής και της διάθεσης (στο κοινό ή σε ιδιώτες) και παροχή υπηρεσιών που συνδέονται με τις σχετικές εκδόσεις·

(xii) Υπηρεσίες χρηματιστού·

(xiii) Διαχείριση περιουσιακών στοιχείων, όπως διαχείριση ρευστών διαθεσίμων ή χαρτοφυλακίου, κάθε μορφή διαχείρισης συλλογικών επενδύσεων, διαχείριση κεφαλαίων συνταξιοδοτικών ταμείων, υπηρεσίες φύλαξης, θεματοφύλακα και καταπιστευματοδόχου·

(xiv) Υπηρεσίες εκκαθάρισης και συμψηφισμού για χρηματοπιστωτικά περιουσιακά στοιχεία, συμπεριλαμβανομένων των κινητών αξιών, των παράγωγων προϊόντων και άλλων διαπραγματεύσιμων μέσων·

(xv) Παροχή και μεταβίβαση πληροφοριών χρηματοπιστωτικού χαρακτήρα και επεξεργασία χρηματοπιστωτικών δεδομένων και σχετικού λογισμικού από φορείς παροχής άλλων χρηματοπιστωτικών υπηρεσιών·

(xvi) Υπηρεσίες παροχής συμβουλών, διαμεσολάβησης και άλλες συμπληρωματικές χρηματοπιστωτικές υπηρεσίες, σχετικές με το σύνολο των δραστηριοτήτων που αναφέρονται στα σημεία (v) έως (xv), συμπεριλαμβανομένης της αξιολόγησης και της ανάλυσης πιστοληπτικής ικανότητας, της έρευνας και των συμβουλών για επενδύσεις και συγκρότηση χαρτοφυλακίων, της παροχής συμβουλών για εξαγορές καθώς και για αναδιάρθρωση και στρατηγική επιχειρήσεων·

(β) Ως φορέας παροχής χρηματοπιστωτικών υπηρεσιών νοείται κάθε φυσικό ή νομικό πρόσωπο ενός μέλους που επιθυμεί να παράσχει ή που παρέχει χρηματοπιστωτικές υπηρεσίες. Ωστόσο, ο όρος "φορέας παροχής χρηματοπιστωτικών υπηρεσιών" δεν συμπεριλαμβάνει δημόσιους φορείς.

(γ) Ως "δημόσιος φορέας" νοείται :

(i) διοικητική αρχή, κεντρική τράπεζα ή νομισματική αρχή ενός μέλους, ή οντότητα που ανήκει ή ελέγχεται από μέλος, η οποία έχει επιφορτισθεί κυρίως με την εκτέλεση διοικητικών λειτουργιών ή δραστηριοτήτων για χρήση των δημοσίων υπηρεσιών, μη συμπεριλαμβανομένης αυτής που ασχολείται, βασικά, με την παροχή χρηματοπιστωτικών υπηρεσιών με εμπορικούς όρους ή

(ii) ιδιωτικός φορέας επιφορτισμένος με λειτουργίες, οι οποίες εκτελούνται κανονικά από κεντρική τράπεζα ή νομισματική αρχή, όταν ασκεί αυτές τις λειτουργίες.

ΔΕΥΤΕΡΟ ΠΑΡΑΡΤΗΜΑ ΓΙΑ ΤΙΣ ΧΡΗΜΑΤΟΠΙΣΤΩΤΙΚΕΣ ΥΠΗΡΕΣΙΕΣ

1. Κατά παρέκκλιση του άρθρου ΙΙ της συμφωνίας και των παραγράφων 1 και 2 του παραρτήματος για τις απαλλαγές από τις υποχρεώσεις του άρθρου ΙΙ, οποιοδήποτε μέλος δύναται κατά τη διάρκεια περιόδου 60 ημερών, που αρχίζει τέσσερις μήνες μετά την έναρξη ισχύος της συμφωνίας για τον ΠΟΕ, να συμπεριλάβει στο προαναφερόμενο παράρτημα μέτρα σχετικά με τις χρηματοπιστωτικές υπηρεσίες που είναι ασυμβίβαστα με το άρθρο ΙΙ, παράγραφος 1 της συμφωνίας.

2. Κατά παρέκκλιση του άρθρου ΧΧΙ της συμφωνίας, οποιοδήποτε μέλος δύναται, κατά τη διάρκεια περιόδου 60 ημερών που αρχίζει τέσσερις μήνες μετά την έναρξη ισχύος της συμφωνίας για τον ΠΟΕ, να βελτιώσει, να τροποποιήσει ή να ανακαλέσει το σύνολο ή μέρος των συγκεκριμένων υποχρεώσεων επί των χρηματοπιστωτικών υπηρεσιών που περιλαμβάνονται στον πίνακά του.

3. Το Συμβούλιο Συναλλαγών στον τομέα των Υπηρεσιών καθορίζει τις διαδικασίες που είναι αναγκαίες για την εφαρμογή των παραγράφων 1 και 2.

ΠΑΡΑΡΤΗΜΑ ΓΙΑ ΤΙΣ ΔΙΑΠΡΑΓΜΑΤΕΥΣΕΙΣ ΣΤΟΝ ΤΟΜΕΑ ΤΩΝ ΥΠΗΡΕΣΙΩΝ ΘΑΛΑΣΣΙΩΝ ΜΕΤΑΦΟΡΩΝ

1. Το άρθρο ΙΙ και το παράρτημα σχετικά με τις απαλλαγές από τις υποχρεώσεις του άρθρου ΙΙ, συμπεριλαμβανομένης της απαίτησης καταγραφής στο παράρτημα των μέτρων που βρίσκονται σε αντίθεση με την αρχή της μεταχείρισης του μάλλον ευνοούμενου κράτους που θα εξακολουθήσει να εφαρμόζει ένα μέλος, τίθενται σε ισχύ, όσον αφορά τις διεθνείς θαλάσσιες μεταφορές, τις βοηθητικές υπηρεσίες και τη δυνατότητα πρόσβασης και χρησιμοποίησης των λιμενικών εγκαταστάσεων, όχι πριν από:

(α) την ημερομηνία υλοποίησης που καθορίζεται στην παράγραφο 4 της υπουργικής απόφασης για τις διαπραγματεύσεις στον τομέα των υπηρεσιών θαλάσσιων μεταφορών· ή,

(β) σε περίπτωση αποτυχίας των διαπραγματεύσεων, την ημερομηνία της οριστικής έκθεσης της ομάδας διαπραγματεύσεων για τις υπηρεσίες θαλάσσιων μεταφορών που προβλέπεται στην εν λόγω απόφαση.

2. Η παράγραφος 1 δεν εφαρμόζεται σε συγκεκριμένες αναλήψεις υποχρεώσεων όσον αφορά υπηρεσίες θαλασσίων μεταφορών που περιλαμβάνονται σε πίνακα κάποιου μέλους.

3. Μετά την ολοκλήρωση των διαπραγματεύσεων που αναφέρονται στην

παράγραφο 1 και πριν από την ημερομηνία υλοποίησης, οποιοδήποτε μέλος δύναται να βελτιώσει, να τροποποιήσει ή να ανακαλέσει το σύνολο ή μέρος των συγκεκριμένων αναλήψεων υποχρεώσεών του στο σχετικό τομέα χωρίς να χορηγήσει αντισταθμιστικά ανταλλάγματα, κατά παρέκκλιση των διατάξεων του άρθρου XXI.

ΠΑΡΑΡΤΗΜΑ ΓΙΑ ΤΙΣ ΤΗΛΕΠΙΚΟΙΝΩΝΙΕΣ

1. Στόχοι

Αναγνωρίζοντας τα ιδιαίτερα χαρακτηριστικά του τομέα των τηλεπικοινωνιακών υπηρεσιών και, ειδικότερα, το διττό του ρόλο ως ξεχωριστού τομέα οικονομικής δραστηριότητας και ως σημαντικού μέσου για τη μεταφορά άλλων οικονομικών δραστηριοτήτων, τα μέλη συνεφώνησαν στο ακόλουθο παράρτημα με στόχο την περαιτέρω επεξεργασία των διατάξεων της συμφωνίας, όσον αφορά τα μέτρα για την πρόσβαση και χρήση δημοσίων δικτύων μεταφοράς και παροχής τηλεπικοινωνιακών υπηρεσιών. Συνεπώς, το παρόν παράρτημα περιλαμβάνει σημειώσεις και συμπληρωματικές διατάξεις σχετικές με τη συμφωνία.

2. Πεδίο εφαρμογής

(α) Το παρόν παράρτημα εφαρμόζεται στο σύνολο των μέτρων ενός μέλους, τα οποία επηρεάζουν την πρόσβαση και χρήση δημοσίων δικτύων μεταφοράς και παροχής τηλεπικοινωνιακών υπηρεσιών[1].

(β) Το παρόν παράρτημα δεν εφαρμόζεται σε μέτρα που αφορούν την καλωδιακή ή ραδιοκυματική διανομή ραδιοφωνικών ή τηλεοπτικών προγραμμάτων.

(γ) ουδεμία διάταξη στο παρόν παράρτημα δεν σημαίνει:

(i) ότι ζητείται από μέλη να εξουσιοδοτήσουν φορείς παροχής υπηρεσιών άλλων μελών να εγκαταστήσουν, να κατασκευάσουν, να αποκτήσουν, να μισθώσουν, να θέσουν σε λειτουργία ή να διαθέσουν δίκτυα μεταφοράς και παροχής τηλεπικοινωνιακών υπηρεσιών εκτός αυτών που προβλέπονται στον πίνακα υποχρεώσεών τους, ή

(ii) ότι ζητείται από μέλη (ή ότι ζητείται από μέλη να υποχρεώσουν φορείς παροχής υπηρεσιών που υπάγονται στη δικαιοδοσία τους), να εγκαταστήσουν, να κατασκευάσουν, να αποκτήσουν, να μισθώσουν, να θέσουν σε λειτουργία ή να διαθέσουν δίκτυα μεταφοράς και παροχής τηλεπικοινωνιακών υπηρεσιών που δεν παρέχονται εν γένει στο κοινό.

3. Ορισμοί

Για τους σκοπούς του παρόντος παραρτήματος:

(α) Ως "τηλεπικοινωνίες" νοούνται η εκπομπή και λήψη σημάτων μέσω ηλεκτρομαγνητικών μέσων.

(β) Ως "δημόσια μεταφορά τηλεπικοινωνιακής υπηρεσίας" νοείται κάθε μεταφορά τηλεπικοινωνιακής υπηρεσίας που απαιτείται, ρητώς ή στην πράξη, να διατεθεί από μέλος στο κοινό. Οι υπηρεσίες αυτές είναι δυνατόν να περιλαμβάνουν, μεταξύ άλλων, την τηλεγραφική, τηλεφωνική και τηλετυπική μετάδοση καθώς και τη μετάδοση δεδομένων που περιλαμβάνει, βασικά, τη μετάδοση σε πραγματικό χρόνο πληροφοριών που παρέχονται από πελάτες μεταξύ δύο ή περισσοτέρων σημείων χωρίς καμία διατερματική μεταβολή στη μορφή ή το περιεχόμενο των σχετικών πληροφοριών.

1 Η παράγραφος αυτή σημαίνει ότι κάθε μέλος εξασφαλίζει την εφαρμογή των υποχρεώσεων του παρόντος παραρτήματος σε σχέση με τους φορείς εξασφάλισης δημοσίων δικτύων μεταφοράς και παροχής τηλεπικοινωνιακών υπηρεσιών με οποιοδήποτε μέσο κρίνεται αναγκαίο.

(γ) Ως "δημόσιο δίκτυο μεταφοράς και παροχής τηλεπικοινωνιακής υπηρεσίας" νοείται η δημόσια υποδομή τηλεπικοινωνιακής μεταφοράς που καθιστά δυνατές τις τηλεπικοινωνίες μεταξύ δύο ή περισσοτέρων καθορισμένων σημείων απόληξης δικτύου.

(δ) Ως "ενδοεπιχειρησιακές επικοινωνίες" νοούνται οι τηλεπικοινωνίες μέσω των οποίων μια επιχείρηση επικοινωνεί στο εσωτερικό της ή με τις θυγατρικές της εταιρείες, τα υποκαταστήματα και, με την επιφύλαξη των εσωτερικών νόμων και κανονισμών, με τις συνδεδεμένες επιχειρήσεις. Για τους λόγους αυτούς, οι "θυγατρικές" εταιρείες, τα "υποκαταστήματα" και, όταν είναι σκόπιμο, οι "συνδεδεμένες επιχειρήσεις" ορίζονται από κάθε μέλος. Ο όρος "ενδοεπιχειρησιακές επικοινωνίες", όπως χρησιμοποιείται στο παρόν παράρτημα, δεν περιλαμβάνει τις εμπορικές ή μη εμπορικές υπηρεσίες που παρέχονται σε επιχειρήσεις οι οποίες δεν αποτελούν θυγατρικές εταιρείες, υποκαταστήματα ή συνδεδεμένες επιχειρήσεις, ή που παρέχονται σε υφιστάμενους ή μελλοντικούς πελάτες.

(ε) Τυχόν αναφορές σε παράγραφο ή εδάφιο του παρόντος παραρτήματος συμπεριλαμβάνουν όλες τις σχετικές υποδιαιρέσεις.

4. Διαφάνεια

Κατά την εφαρμογή του άρθρου III της συμφωνίας, κάθε μέλος εξασφαλίζει ότι παρέχονται στο κοινό οι σχετικές πληροφορίες όσον αφορά τους όρους πρόσβασης και χρησιμοποίησης των δημόσιων δικτύων μεταφοράς και παροχής τηλεπικοινωνιακών υπηρεσιών συμπεριλαμβανομένων: του καθορισμού τιμών και άλλων ειδικών και γενικών όρων παροχής υπηρεσιών· των προδιαγραφών των τεχνικών διεπαφών με τα εν λόγω δίκτυα και υπηρεσίες· πληροφοριών σχετικών με φορείς που είναι υπεύθυνοι για την προετοιμασία και υιοθέτηση προτύπων που εφαρμόζονται στην εν λόγω πρόσβαση και χρησιμοποίηση· των όρων που εφαρμόζονται στην προσάρτηση τερματικού και λοιπού εξοπλισμού και τυχόν απαιτήσεων σχετικών με κοινοποιήσεις, καταχώρηση και έκδοση αδειών.

5. Πρόσβαση σε δημόσια δίκτυα και υπηρεσίες τηλεπικοινωνιακής υποδομής και χρησιμοποίηση αυτών

(α) Κάθε μέλος εξασφαλίζει σε φορείς παροχής υπηρεσιών των άλλων μελών τη δυνατότητα πρόσβασης και χρησιμοποίησης των δημοσίων δικτύων μεταφοράς ή παροχής τηλεπικοινωνιακών υπηρεσιών βάσει ευλόγων και αμερόληπτων ειδικών και γενικών όρων για την παροχή υπηρεσίας που περιλαμβάνεται στον πίνακά του. Η υποχρέωση αυτή εφαρμόζεται, μεταξύ άλλων, μέσω των παραγράφων β) έως στ)[2].

(β) Κάθε μέλος εξασφαλίζει σε φορείς παροχής υπηρεσιών άλλων μελών τη δυνατότητα πρόσβασης και χρησιμοποίησης των δημοσίων δικτύων ή υπηρεσιών τηλεπικοινωνιακής μεταφοράς που παρέχονται εντός ή διαμέσου των συνόρων του συγκεκριμένου μέλους, συμπεριλαμβανομένων των ιδιωτικών μισθωμένων κυκλωμάτων, και για το σκοπό αυτό εξασφαλίζει, με την επιφύλαξη των παραγράφων ε) και στ), ότι επιτρέπεται στους εν λόγω φορείς παροχής υπηρεσιών:

2 Ο όρος "αμερόληπτος" νοείται ότι αναφέρεται στην αρχή του μάλλον ευνοούμενου κράτους και στην έννοια της εθνικής μεταχείρισης όπως ορίζεται στη συμφωνία, και ότι αντικατοπτρίζει τη χρησιμοποίηση του όρου κατά τομέα ως εξής: "ειδικοί και γενικοί όροι όχι λιγότερο ευνοϊκοί από αυτούς που ισχύουν για άλλους χρήστες παρεμφερών δημοσίων δικτύων ή υπηρεσιών τηλεπικοινωνιακής μεταφοράς υπό παρόμοιες συνθήκες".

(i) να αγοράζουν ή να μισθώνουν και να προσαρτούν τερματικό ή άλλο εξοπλισμό που έρχεται σε διεπαφή με το δίκτυο και που είναι αναγκαίος για τους φορείς παροχής υπηρεσιών·

(ii) να διασυνδέουν ιδιωτικά μισθωμένα ή ιδιόκτητα κυκλώματα με δημόσια δίκτυα και υπηρεσίες τηλεπικοινωνιακής υποδομής ή με κυκλώματα που μισθώνονται ή ανήκουν σε άλλους φορείς παροχής υπηρεσιών, και

(iii) να κάνουν χρήση, κατά την παροχή υπηρεσίας, πρωτοκόλλων λειτουργίας που επιλέγονται από το φορέα παροχής υπηρεσιών, εκτός αυτών που είναι αναγκαία για την εξασφάλιση της προσφοράς δημοσίων δικτύων μεταφοράς και παροχής τηλεπικοινωνιακών υπηρεσιών στο κοινό γενικότερα.

(γ) Κάθε μέλος εξασφαλίζει στους φορείς παροχής υπηρεσιών των άλλων μελών τη δυνατότητα χρησιμοποίησης δημοσίων δικτύων μεταφοράς και παροχής τηλεπικοινωνιακών υπηρεσιών για τη διάδοση πληροφοριών εντός και διαμέσου των συνόρων, συμπεριλαμβανομένων των ενδοεπιχειρησιακών επικοινωνιών των συγκεκριμένων φορέων παροχής υπηρεσιών και της πρόσβασης σε πληροφορίες που περιέχονται σε βάσεις δεδομένων ή που είναι κατ' άλλον τρόπο αποθηκευμένες σε αναγνώσιμη από μηχανή μορφή στην επικράτεια οποιουδήποτε μέλος. Τα νέα ή τροποποιημένα μέτρα ενός μέλους τα οποία επηρεάζουν σε σημαντικό βαθμό τη σχετική χρήση γνωστοποιούνται και αποτελούν αντικείμενο διαβουλεύσεων, σύμφωνα με τις σχετικές διατάξεις της συμφωνίας.

(δ) Κατά παρέκκλιση της προηγούμενης παραγράφου, οποιοδήποτε μέλος δύναται να λάβει μέτρα που είναι αναγκαία για τη διασφάλιση της ασφάλειας και του εμπιστευτικού χαρακτήρα των μηνυμάτων, υπό την προϋπόθεση ότι τα σχετικά μέτρα δεν εφαρμόζονται κατά τρόπο που να αποτελεί μέσο αυθαίρετης και αδικαιολόγητης διάκρισης ή καλυμμένο περιορισμό των συναλλαγών στον τομέα των υπηρεσιών.

(ε) Κάθε μέλος εξασφαλίζει ότι δεν επιβάλλεται κανένας όρος όσον αφορά τη δυνατότητα πρόσβασης και χρησιμοποίησης δημοσίων δικτύων μεταφοράς και παροχής τηλεπικοινωνιακών υπηρεσιών εκτός αυτών που είναι αναγκαίοι για:

(i) την προστασία των καθηκόντων, των σχετικών με δημόσιες υπηρεσίες, των φορέων εξασφάλισης δημοσίων δικτύων μεταφοράς και παροχής τηλεπικοινωνιακών υπηρεσιών και ειδικότερα της δυνατότητας προσφοράς εν γένει στο κοινό των δικτύων και των υπηρεσιών τους.

(ii) την προστασία της τεχνικής ακεραιότητας των δημοσίων δικτύων μεταφοράς ή παροχής τηλεπικοινωνιακών υπηρεσιών· ή

(iii) την εξασφάλιση ότι οι φορείς παροχής υπηρεσιών άλλων μελών παρέχουν υπηρεσίες μόνον εφόσον επιτρέπεται, σύμφωνα με τις αναλήψεις υποχρεώσεων που περιέχονται σε πίνακα μέλους.

(στ) Υπό την προϋπόθεση ότι πληρούν τα κριτήρια που αναφέρονται στην παράγραφο (ε), οι όροι πρόσβασης και χρησιμοποίησης των δημοσίων δικτύων μεταφοράς και παροχής τηλεπικοινωνιακών υπηρεσιών είναι δυνατόν να περιλαμβάνουν:

(i) περιορισμούς ως προς τη μεταπώληση και την από κοινού χρησιμοποίηση των εν λόγω υπηρεσιών·

(ii) υποχρέωση χρησιμοποίησης συγκεκριμένων τεχνικών διεπαφών, συμπεριλαμβανομένων πρωτοκόλλων διεπαφής για διασύνδεση με τα σχετικά δίκτυα και υπηρεσίες·

(iii) απαιτήσεις, όπου κρίνεται αναγκαίο, για τη διαλειτουργικότητα των σχετικών υπηρεσιών και την προώθηση των στόχων που αναφέρονται στην παράγραφο 7, στοιχείο α)·

(iv) έγκριση τύπου τερματικού ή άλλου εξοπλισμού που έρχεται σε διεπαφή με το δίκτυο και τεχνικές υποχρεώσεις σχετικές με την προσάρτηση αυτού του εξοπλισμού στα εν λόγω δίκτυα·

(v) περιορισμοί ως προς τη διασύνδεση των ιδιωτικών μισθωμένων ή ιδιόκτητων κυκλωμάτων με τα εν λόγω δίκτυα ή υπηρεσίες ή με κυκλώματα που μισθώνονται από ή ανήκουν σε άλλο φορέα παροχής υπηρεσιών· ή

(vi) διαδικασίες γνωστοποίησης, καταχώρησης και έκδοσης αδειών.

(ζ) Κατά παρέκκλιση των προηγουμένων παραγράφων αυτού του κεφαλαίου, μια αναπτυσσόμενη χώρα μέλος δύναται, ανάλογα με το επίπεδο ανάπτυξής της, να θέτει εύλογους όρους πρόσβασης και χρησιμοποίησης δημοσίων δικτύων μεταφοράς και παροχής τηλεπικοινωνιακών υπηρεσιών που απαιτούνται, για την ενίσχυση της εσωτερικής τηλεπικοινωνιακής υποδομής και των σχετικών δυνατοτήτων παροχής υπηρεσιών καθώς και για την αύξηση της συμμετοχής της χώρας αυτής σε διεθνείς συναλλαγές στον τομέα των τηλεπικοινωνιακών υπηρεσιών. Οι όροι αυτοί καθορίζονται στον πίνακα του συγκεκριμένου μέλους.

7. Τεχνική Συνεργασία

(α) Τα μέλη αναγνωρίζουν ότι η ύπαρξη αποτελεσματικής και προηγμένης τηλεπικοινωνιακής υποδομής σε χώρες, ειδικότερα σε αναπτυσσόμενες χώρες, είναι καθοριστικής σημασίας για την επέκταση των συναλλαγών τους στον τομέα των υπηρεσιών. Προς τούτο, τα μέλη εγκρίνουν και προωθούν τη συμμετοχή, στο μεγαλύτερο δυνατό βαθμό, ανεπτυγμένων και αναπτυσσομένων χωρών και των φορέων εξασφάλισης δημοσίων δικτύων μεταφοράς και παροχής τηλεπικοινωνιακών υπηρεσιών καθώς και άλλων οντοτήτων των χωρών αυτών στα αναπτυξιακά προγράμματα διεθνών και περιφερειακών οργανισμών, συμπεριλαμβανομένης της Διεθνούς Ενώσεως Τηλεπικοινωνιών, του Αναπτυξιακού Προγράμματος των Ηνωμένων Εθνών και της Διεθνούς Τράπεζας για την Ανασυγκρότηση και Ανάπτυξη.

(β) Τα μέλη ενθαρρύνουν και υποστηρίζουν τη συνεργασία στον τομέα των τηλεπικοινωνιών μεταξύ αναπτυσσομένων χωρών σε διεθνές, περιφερειακό και κατώτερο του περιφερειακού επίπεδο.

(γ) Σε συνεργασία με τους αρμόδιους διεθνείς οργανισμούς, τα μέλη παρέχουν, όταν είναι εφικτό, σε αναπτυσσόμενες χώρες στοιχεία σχετικά με τις τηλεπικοινωνιακές υπηρεσίες και τις εξελίξεις στον τομέα των τηλεπικοινωνιών και της τεχνολογίας πληροφοριών, για να συμβάλουν στην ενίσχυση του τομέα των τηλεπικοινωνιακών υπηρεσιών των εν λόγω χωρών.

(δ) Τα μέλη δίνουν ιδιαίτερη σημασία στη δημιουργία δυνατοτήτων για τις λιγότερο ανεπτυγμένες χώρες προκειμένου να παροτρύνουν αλλοδαπούς φορείς παροχής τηλεπικοινωνιακών υπηρεσιών να συμβάλουν στη μεταφορά τεχνολογίας, στην επιμόρφωση και σε άλλες δραστηριότητες που στηρίζουν την ανάπτυξη της τηλεπικοινωνιακής τους υποδομής και την επέκταση των συναλλαγών τους στον τομέα των τηλεπικοινωνιακών υπηρεσιών.

7. Σχέσεις με Διεθνείς Οργανισμούς και Συμφωνίες

(α) Τα μέλη αναγνωρίζουν τη σημασία των διεθνών προτύπων για τη συνολική εναρμόνιση και διαλειτουργικότητα των τηλεπικοινωνιακών δικτύων και υπηρεσιών και αναλαμβάνουν την προώθηση αυτών των προτύπων μέσω των εργασιών των σχετικών διεθνών φορέων, συμπεριλαμβανομένης της Διεθνούς Ενωσης Τηλεπικοινωνιών και του Διεθνούς Οργανισμού Τυποποίησης.

(β) Τα μέλη αναγνωρίζουν το ρόλο των διακυβερνητικών και μη κυβερνητικών οργανισμών και συμφωνιών όσον αφορά την εξασφάλιση της αποτελεσματικής λειτουργίας των τηλεπικοινωνιακών υπηρεσιών, σε εθνικό και διεθνές επίπεδο και, ειδικότερα της Διεθνούς Ενωσης Τηλεπικοινωνιών. όταν κρίνεται σκόπιμο, τα μέλη μεριμνούν για την έναρξη διαβουλεύσεων με τους εν λόγω οργανισμούς επί θεμάτων που ανακύπτουν από την εφαρμογή του παρόντος παραρτήματος.

ΠΑΡΑΡΤΗΜΑ ΓΙΑ ΤΙΣ ΔΙΑΠΡΑΓΜΑΤΕΥΣΕΙΣ ΣΤΟΝ ΤΟΜΕΑ ΤΩΝ ΒΑΣΙΚΩΝ ΤΗΛΕΠΙΚΟΙΝΩΝΙΩΝ

1. Το άρθρο ΙΙ και το παράρτημα για τις απαλλαγές από τις υποχρεώσεις του άρθρου ΙΙ, συμπεριλαμβανομένης της υποχρέωσης για καταγραφή στο παράρτημα τυχόν μέτρων που έρχονται σε αντίθεση με τη μεταχείριση του μάλλον ευνοουμένου κράτους και διατηρούνται σε ισχύ από κάποιο μέλος, τίθενται σε εφαρμογή, όσον αφορά τις βασικές τηλεπικοινωνίες μόνον :

(α) κατά την ημερομηνία υλοποίησης που καθορίζεται στην παράγραφο 5 της υπουργικής απόφασης για τις διαπραγματεύσεις στον τομέα των βασικών τηλεπικοινωνιών· ή

(β) σε περίπτωση αποτυχίας των διαπραγματεύσεων κατά την ημερομηνία της τελικής έκθεσης της ομάδας διαπραγμάτευσεων στον τομέα των βασικών τηλεπικοινωνιών, που προβλέπεται στην προαναφερθείσα απόφαση.

2. Η παράγραφος 1 δεν ισχύει για συγκεκριμένες υποχρεώσεις, σχετικές με τις βασικές τηλεπικοινωνίες που έχουν καταγραφεί στον πίνακα ενός μέλους.

ΣΥΜΦΩΝΙΑ ΓΙΑ ΤΑ ΔΙΚΑΙΩΜΑΤΑ ΠΝΕΥΜΑΤΙΚΗΣ ΙΔΙΟΚΤΗΣΙΑΣ ΣΤΟΝ ΤΟΜΕΑ ΤΟΥ ΕΜΠΟΡΙΟΥ

Τα μέλη,

ΕΠΙΘΥΜΩΝΤΑΣ να περιορίσουν τα φαινόμενα που συνεπάγονται στρεβλώσεις και εμπόδια για το διεθνές εμπόριο και λαμβάνοντας υπόψη την ανάγκη να προωθηθεί η αποτελεσματική και επαρκής προστασία των δικαιωμάτων πνευματικής ιδιοκτησίας, καθώς επίσης να διασφαλισθεί ότι τα μέτρα και οι διαδικασίες για την επιβολή των δικαιωμάτων πνευματικής ιδιοκτησίας δεν καταλήγουν να αποτελούν από μόνα τους φραγμούς για το νόμιμο εμπόριο·

ΑΝΑΓΝΩΡΙΖΟΝΤΑΣ, στο πλαίσιο αυτό, την αναγκαιότητα να καθιερωθούν νέοι κανόνες και ρυθμίσεις σχετικά με τα ακόλουθα θέματα:

(α) το πεδίο εφαρμογής εν προκειμένω των θεμελιωδών αρχών της GATT του 1994 και των σχετικών διεθνών συμφωνιών και συμβάσεων που ρυθμίζουν θέματα πνευματικής ιδιοκτησίας·

(β) την καθιέρωση επαρκών προτύπων και αρχών όσον αφορά τη θεσμοθέτηση, την έκταση και τη χρήση δικαιωμάτων πνευματικής ιδιοκτησίας στο τομέα του εμπορίου·

(γ) την καθιέρωση αποτελεσματικών και πρόσφορων μέσων για την επιβολή των δικαιωμάτων πνευματικής ιδιοκτησίας στον τομέα του εμπορίου, λαμβανομένων υπόψη των διαφορών που υφίστανται σχετικά στις έννομες τάξεις των διαφόρων χωρών·

(δ) την καθιέρωση αποτελεσματικών και μη χρονοβόρων διαδικασιών για την πολυμερή πρόληψη και επίλυση των διαφορών που ανακύπτουν μεταξύ κυβερνήσεων· και

(ε) τη θέσπιση μεταβατικών ρυθμίσεων, ώστε να επιτευχθεί η μεγαλύτερη δυνατή συμμετοχή στα αποτελέσματα των διαπραγματεύσεων·

ΑΝΑΓΝΩΡΙΖΟΝΤΑΣ την ανάγκη θεσμοθέτησης ενός πολυμερούς συστήματος αρχών, κανόνων και ρυθμίσεων για την αντιμετώπιση του διεθνούς εμπορίου προϊόντων που αποτελούν αντικείμενο απομίμησης ή παραποίησης·

ΑΝΑΓΝΩΡΙΖΟΝΤΑΣ ότι τα δικαιώματα πνευματικής ιδιοκτησίας είναι δικαιώματα του ιδιωτικού δικαίου·

ΑΝΑΓΝΩΡΙΖΟΝΤΑΣ τους επιδιωκόμενους από τις εθνικές έννομες τάξεις στόχους για την προστασία της πνευματικής ιδιοκτησίας, οι οποίοι εντάσσονται στην ανάγκη προστασίας του δημόσιου συμφέροντος και στους οποίους περιλαμβάνονται οι στόχοι στον τομέα της ανάπτυξης και της τεχνολογίας·

ΑΝΑΓΝΩΡΙΖΟΝΤΑΣ επίσης τις ιδιαίτερες ανάγκες των λιγότερο ανεπτυγμένων χωρών μελών, οι οποίες χρειάζονται τη μέγιστη δυνατή ευελιξία κατά την εφαρμογή στην εσωτερική τους έννομη τάξη των σχετικών νόμων και κανονισμών, προκειμένου να οικοδομήσουν μια υγιή και βιώσιμη τεχνολογική βάση·

ΤΟΝΙΖΟΝΤΑΣ τη σπουδαιότητα της άμβλυνσης των εντάσεων μέσω της ανάληψης αυστηρότερων δεσμεύσεων όσον αφορά την επίλυση με πολυμερείς διαδικασίες των διαφορών που άπτονται δικαιωμάτων πνευματικής ιδιοκτησίας στον τομέα του εμπορίου·

ΕΠΙΘΥΜΩΝΤΑΣ την καθιέρωση σχέσης αμοιβαίας υποστήριξης μεταξύ του ΠΟΕ και του Παγκόσμιου Οργανισμού Πνευματικής Ιδιοκτησίας (που καλείται στην παρούσα συμφωνία: "ΠΟΠΙ"), καθώς και άλλων συναφών διεθνών οργανισμών·

ΣΥΜΦΩΝΟΥΝ τα ακόλουθα:

ΜΕΡΟΣ Ι

ΓΕΝΙΚΕΣ ΔΙΑΤΑΞΕΙΣ ΚΑΙ ΘΕΜΕΛΙΩΔΕΙΣ ΑΡΧΕΣ

Άρθρο 1

Φύση και έκταση των υποχρεώσεων

1. Τα μέλη θέτουν σε ισχύ τις διατάξεις της παρούσας συμφωνίας. Τα μέλη δικαιούνται, χωρίς να είναι υποχρεωμένα, να παρέχουν στην εσωτερική τους έννομη τάξη μεγαλύτερο βαθμό προστασίας από αυτήν που επιβάλλεται βάσει της παρούσας συμφωνίας, υπό την προϋπόθεση ότι η μεγαλύτερη αυτή προστασία δεν αντιβαίνει στις διατάξεις της παρούσας συμφωνίας. Τα μέλη είναι ελεύθερα να επιλέγουν τη μέθοδο που κρίνουν κατάλληλη για την εφαρμογή των διατάξεων της παρούσας συμφωνίας στο πλαίσιο της εσωτερικής τους έννομης τάξης και πρακτικής.

2. Για τους σκοπούς της παρούσας συμφωνίας, ο όρος "πνευματική ιδιοκτησία" καλύπτει όλα τα είδη πνευματικής ιδιοκτησίας στα οποία αναφέρονται τα τμήματα 1 έως 7 του μέρους ΙΙ.

3. Τα μέλη επιφυλάσσουν τη μεταχείριση που προβλέπεται στην παρούσα συμφωνία στους υπηκόους των υπολοίπων μελών.[1] Όταν πρόκειται για την άσκηση κάποιου δικαιώματος πνευματικής ιδιοκτησίας, με τον όρο "υπήκοοι των υπολοίπων μελών" νοούνται, τα φυσικά ή νομικά πρόσωπα τα οποία πληρούν τις προϋποθέσεις αναγνώρισης της προστασίας, οι οποίες καθορίζονται από τη Σύμβαση των Παρισίων (1967), τη Σύμβαση της Βέρνης (1971), τη Σύμβαση της Ρώμης και τη Συνθήκη για την Πνευματική Ιδιοκτησία στον Τομέα των ολοκληρωμένων Κυκλωμάτων, εφόσον όλα τα μέλη του ΠΟΕ είναι συγχρόνως συμβαλλόμενα μέρη των εν λόγω συμβάσεων.[2] Κάθε μέλος, το οποίο κάνει χρήση κάποιας από τις δυνατότητες που παρέχει το άρθρο 5, παράγραφος 3 ή το άρθρο 6, παράγραφος 2 της Σύμβασης της Ρώμης,

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1 Με τον όρο "υπήκοοι" στην παρούσα συμφωνία και πρόκειται για ξεχωριστό τελωνειακό έδαφος που είναι μέλος του ΠΟΕ, νοούνται τα πρόσωπα, είτε φυσικά, είτε νομικά, που έχουν τη νόμιμη κατοικία τους ή τη γνήσια πραγματική και ισχύουσα βιομηχανική ή εμπορική τους έδρα στο συγκεκριμένο τελωνειακό έδαφος.

2 Στην παρούσα συμφωνία, ο όρος "Σύμβαση των Παρισίων" σημαίνει τη Σύμβαση των Παρισίων για την Προστασία της Βιομηχανικής Ιδιοκτησίας· ο όρος "Σύμβαση των Παρισίων (1967)" σημαίνει την Πράξη της προαναφερθείσας συμβάσεως, η οποία συνήφθη στη Στοκχόλμη στις 14 Ιουλίου 1967. Ο όρος "Σύμβαση της Βέρνης" σημαίνει τη Σύμβαση της Βέρνης περί Προστασίας των Λογοτεχνικών και Καλλιτεχνικών Έργων· ο όρος "Σύμβαση της Βέρνης (1971)" σημαίνει την Πράξη της προαναφερθείσας συμβάσεως, η οποία συνήφθη στο Παρίσι στις 24 Ιουλίου 1971. Ο όρος "Σύμβαση της Ρώμης" σημαίνει τη Διεθνή Σύμβαση για την Προστασία των Ερμηνευτών ή Εκτελεστών Καλλιτεχνών, των Παραγωγών Φωνογραφημάτων και των Οργανισμών Ραδιοφωνίας και Τηλεόρασης, η οποία συνήφθη στη Ρώμη στις 26 Οκτωβρίου 1961. Ο όρος "Συνθήκη για την Πνευματική Ιδιοκτησία στον τομέα των ολοκληρωμένων Κυκλωμάτων (Συνθήκη IPIC) σημαίνει τη Συνθήκη για την Πνευματική Ιδιοκτησία στον τομέα των ολοκληρωμένων Κυκλωμάτων, η οποία συνήφθη στη Ουάσινγκτον στις 26 Μαΐου 1989. Με τον όρο "Συμφωνία για τον ΠΟΕ" νοείται η συμφωνία για την ίδρυση του ΠΟΕ.

προβαίνει στην προβλεπόμενη από τις εν λόγω διατάξεις γνωστοποίηση προς το Συμβούλιο για τα Δικαιώματα Πνευματικής Ιδιοκτησίας στον Τομέα του Εμπορίου ("συμβούλιο για τα TRIP").

Άρθρο 2

Συμβάσεις σχετικές με την πνευματική ιδιοκτησία

1. Για τους σκοπούς των μερών II, III και IV της παρούσας συμφωνίας, τα μέλη εφαρμόζουν τα άρθρα 1 έως 12 και το άρθρο 19 της Σύμβασης των Παρισίων (1967).

2. Καμία διάταξη των μερών I έως IV της παρούσας συμφωνίας δεν επιτρέπεται να έρχεται σε αντίθεση με τις υφιστάμενες υποχρεώσεις που τα μέλη ενδέχεται να έχουν αναλάβει έναντι αλλήλων βάσει της Σύμβασης των Παρισίων, της Σύμβασης της Βέρνης, της Σύμβασης της Ρώμης και της Συνθήκης για την Πνευματική Ιδιοκτησία στον Τομέα των ολοκληρωμένων Κυκλωμάτων.

Άρθρο 3

Εθνική Μεταχείριση

1. Κάθε μέλος παρέχει στους υπηκόους των υπολοίπων μελών μεταχείριση όχι λιγότερο ευνοϊκή από αυτήν που παρέχει στους δικούς του υπηκόους όσον αφορά την προστασία[3] της πνευματικής ιδιοκτησίας, με την επιφύλαξη των εξαιρέσεων που ισχύουν ήδη δυνάμει, αντιστοίχως, της Σύμβασης των Παρισίων (1967), της Σύμβασης της Βέρνης (1971), της Σύμβασης της Ρώμης ή της Συνθήκης για την Πνευματική Ιδιοκτησία στον Τομέα των ολοκληρωμένων Κυκλωμάτων. Προκειμένου περί των καλλιτεχνών ερμηνευτών, των παραγωγών φωνογραφημάτων και των οργανισμών ραδιοφωνίας και τηλεόρασης, η προαναφερθείσα υποχρέωση υφίσταται μόνο ως προς τα δικαιώματα που προβλέπει η παρούσα συμφωνία. Κάθε μέλος, το οποίο κανει χρήση κάποιας από τις δυνατότητες που παρέχει το άρθρο 6 της Σύμβασης της Βέρνης (1971) ή το άρθρο 16,παράγραφος 1, στοιχείο (β) της Σύμβασης της Ρώμης προβαίνει στην προβλεπόμενη από τις εν λόγω διατάξεις γνωστοποίηση προς το συμβούλιο για τα TRIP.

2. Τα μέλη δύνανται να προσφεύγουν στις εξαιρέσεις που επιτρέπονται βάσει της παραγράφου 1 προκειμένου περί διαδικασιών παροχής δικαστικής προστασίας ή διοικητικών διαδικασιών, συμπεριλαμβανομένης της επιλογής νόμιμης διεύθυνσης ή του διορισμού εντολοδόχου στην έννομη τάξη ενός μέλους, μόνο όταν η προσφυγή στην εκάστοτε εξαίρεση είναι αναγκαία για την εξασφάλιση της συμμόρφωσης προς νόμους και κανονισμούς που δεν έρχονται σε αντίθεση με τις διατάξεις της παρούσας συμφωνίας και υπό την προϋπόθεση ότι οι πρακτικές αυτού του είδους δεν ασκούνται κατά τρόπο που να συνεπάγεται συγκεκαλυμμένους περιορισμούς για το εμπόριο.

Άρθρο 4

Μεταχείριση του μάλλον ευνοουμένου κράτους

Προκειμένου περί της προστασίας της πνευματικής ιδιοκτησίας, κάθε πλεονέκτημα, ευεργέτημα, προνόμιο ή ασυλία που αναγνωρίζεται από ένα μέλος στους υπηκόους οποιασδήποτε άλλης χώρας παραχωρείται αυτομάτως

3 Για τους σκοπούς των άρθρων 3 και 4, ο όρος "προστασία" καλύπτει θέματα που άπτονται της θεσμοθέτησης, απόκτησης, έκτασης, διατήρησης και επιβολής των δικαιωμάτων πνευματικής ιδιοκτησίας, καθώς και θέματα που έχουν σχέση με τη χρήση των δικαιωμάτων πνευματικής ιδιοκτησίας, τα οποία ρυθμίζονται ρητώς από την παρούσα συμφωνία.

και άνευ όρων στους υπηκόους όλων των υπολοίπων μελών. Η ανωτέρω υποχρέωση δεν καλύπτει κατ' εξαίρεση κάθε πλεονέκτημα, ευεργέτημα, προνόμιο ή ασυλία που παραχωρείται από κάποιο μέλος και που:

(α) απορρέει από διεθνείς συμφωνίες για την παροχή δικαστικής συνδρομής ή την επιβολή του νόμου, εφόσον έχει γενικό χαρακτήρα και δεν περιορίζεται ειδικά σε θέματα προστασίας της πνευματικής ιδιοκτησίας·

(β) παραχωρείται δυνάμει των διατάξεων της Σύμβασης της Βέρνης (1971) ή της Σύμβασης της Ρώμης, οι οποίες προβλέπουν ότι η παρεχόμενη μεταχείριση δεν είναι υποχρεωτικό να ανταποκρίνεται στην εθνική μεταχείριση, αλλά στη μεταχείριση που παρέχεται σε κάποια άλλη χώρα·

(γ) αφορά τα δικαιώματα των καλλιτεχνών ερμηνευτών, των παραγωγών φωνογραφημάτων και των οργανισμών ραδιοφωνίας και τηλεόρασης που δεν προβλέπονται από την παρούσα συμφωνία·

(δ) απορρέει από διεθνείς συμφωνίες σχετικές με την προστασία της πνευματικής ιδιοκτησίας, οι οποίες ετέθησαν σε ισχύ πριν από την έναρξη ισχύος της συμφωνίας για τον ΠΟΕ, υπό την προϋπόθεση ότι οι εν λόγω συμφωνίες έχουν γνωστοποιηθεί στο συμβούλιο για τα TRIP και ότι δεν εισάγουν αυθαίρετες ή αδικαιολόγητες διακρίσεις σε βάρος των υπηκόων των υπολοίπων μελών.

Άρθρο 5

Πολυμερείς συμφωνίες για την απόκτηση ή τη διατήρηση της προστασίας

Οι υποχρεώσεις που προβλέπονται από τα άρθρα 3 και 4 δεν ισχύουν ως προς διαδικασίες οι οποίες προβλέπονται από πολυμερείς συμφωνίες που έχουν συναφθεί στο πλαίσιο λειτουργίας του ΠΟΠΙ και ρυθμίζουν θέματα απόκτησης και διατήρησης δικαιωμάτων πνευματικής ιδιοκτησίας.

Άρθρο 6

Εξάντληση

Στο πλαίσιο των διαδικασιών επίλυσης των διαφορών βάσει της παρούσας συμφωνίας και με την επιφύλαξη των διατάξεων των άρθρων 3 και 4, καμία διάταξη της παρούσας συμφωνίας δεν επιτρέπεται να χρησιμοποιηθεί για ρύθμιση του θέματος της εξάντλησης των δικαιωμάτων πνευματικής ιδιοκτησίας.

Άρθρο 7

Στόχοι

Η προστασία και η επιβολή των δικαιωμάτων πνευματικής ιδιοκτησίας πρέπει να συμβάλλουν στην προώθηση των τεχνολογικών καινοτομιών, καθώς και στη μεταφορά και διάδοση των τεχνολογικών γνώσεων, κατά τρόπον ώστε να ωφελούνται αμοιβαία αυτοί που παράγουν και αυτοί που χρησιμοποιούν τις τεχνολογικές γνώσεις, να προάγεται η κοινωνική και οικονομική ευημερία και να επιτυγχάνεται ισορροπία μεταξύ δικαιωμάτων και υποχρεώσεων.

Άρθρο 8

Αρχές

1. Κατά την κατάρτιση ή τροποποίηση των νόμων και των κανονισμών τους, τα μέλη δύνανται να θεσπίζουν μέτρα τα οποία κρίνονται αναγκαία για την προστασία της δημόσιας υγείας και της ποιότητας των τροφίμων, καθώς επίσης για την προαγωγή του δημόσιου συμφέροντος σε τομείς ζωτικής σημασίας για την κοινωνικοοικονομική και τεχνολογική τους ανάπτυξη, υπό την προϋπόθεση ότι τα εν λόγω μέτρα δεν έρχονται σε αντίθεση με τις διατάξεις της παρούσας συμφωνίας.

2. Σε ορισμένες περιπτώσεις και υπό την προϋπόθεση ότι δεν παραβιάζονται οι διατάξεις της παρούσας συμφωνίας, είναι δυνατό να απαιτείται η λήψη πρόσφορων μέτρων για την αποτροπή της καταχρηστικής άσκησης δικαιωμάτων πνευματικής ιδιοκτησίας από τους δικαιούχους ή της προσφυγής σε πρακτικές που συνεπάγονται υπέρμετρους περιορισμούς για το εμπόριο ή έχουν αρνητική επίδραση στη διεθνή μεταφορά τεχνολογίας.

ΜΕΡΟΣ ΙΙ

ΠΡΟΤΥΠΑ ΣΧΕΤΙΚΑ ΜΕ ΤΗ ΘΕΣΠΟΘΕΤΗΣΗ, ΤΗΝ ΕΚΤΑΣΗ ΚΑΙ ΤΗ ΧΡΗΣΗ ΤΩΝ ΔΙΚΑΙΩΜΑΤΩΝ ΠΝΕΥΜΑΤΙΚΗΣ ΙΔΙΟΚΤΗΣΙΑΣ

ΤΜΗΜΑ 1: ΔΙΚΑΙΩΜΑΤΑ ΔΗΜΙΟΥΡΓΟΥ ΚΑΙ ΣΥΓΓΕΝΙΚΑ ΔΙΚΑΙΩΜΑΤΑ

Άρθρο 9

Σχέση με τη Σύμβαση της Βέρνης

1. Τα μέλη οφείλουν να εφαρμόζουν τα άρθρα 1 έως 21 της Σύμβασης της Βέρνης (1971), καθώς και το προσάρτημα της ίδιας σύμβασης. Παρόλα αυτά, τα μέλη δεν αποκτούν δικαιώματα, ούτε υποχρεώσεις βάσει της παρούσας συμφωνίας αναφορικά με τα δικαιώματα που παραχωρούνται βάσει του άρθρου 6α της προαναφερθείσας σύμβασης και με τα δικαιώματα που απορρέουν από την εν λόγω διάταξη.

2. Η προστασία των δικαιωμάτων δημιουργού καλύπτει τις δημιουργίες, αλλά όχι τις ιδέες, τις διαδικασίες, τις μεθόδους λειτουργίας ή τις μαθηματικές έννοιες καθαυτές.

Άρθρο 10

Προγράμματα ηλεκτρονικού υπολογιστή και μεταγλωττίσεις δεδομένων

1. Τα προγράμματα ηλεκτρονικού υπολογιστή, είτε σε πρωτογενή κώδικα, είτε σε καταληκτικό κώδικα, χαίρουν της ίδιας προστασίας όπως και τα λογοτεχνικά έργα βάσει της Σύμβασης της Βέρνης (1971).

2. Οι μεταγλωττίσεις δεδομένων και κάθε άλλο υλικό, είτε είναι σε μορφή αναγνώσιμη από μηχανή, είτε όχι, που εξαιτίας της επιλογής ή της διάταξης των περιεχομένων τους αποτελούν πνευματικές δημιουργίες χαίρουν προστασίας ως τέτοιες. Η εν λόγω προστασία, η οποία δεν εκτείνεται και στα ίδια τα δεδομένα ή στο ίδιο το υλικό, δεν θίγει τυχόν δικαιώματα δημιουργού που υφίστανται ως προς τα δεδομένα ή το υλικό.

Άρθρο 11

Μισθωτικά δικαιώματα

Σε σχέση, τουλάχιστον, με τα προγράμματα ηλεκτρονικού υπολογιστή και τα κινηματογραφικά έργα, τα μέλη παρέχουν το δικαίωμα στους δημιουργούς και στα πρόσωπα που τους έχουν διαδεχθεί στο εκάστοτε δικαίωμα να επιτρέπουν ή να απαγορεύουν την εμπορική μίσθωση στο κοινό των πρωτότυπων έργων που καλύπτονται από δικαίωμα δημιουργού ή αντιγράφου τους. Από την ανωτέρω υποχρέωση είναι δυνατό να απαλλαγεί ένα μέλος ως προς τα κινηματογραφικά έργα, εκτός αν η μίσθωση του

εκάστοτε έργου έχει οδηγήσει σε εκτεταμένες πρακτικές αντιγραφής του, οι οποίες συνεπάγονται σοβαρή ζημία για το αποκλειστικό δικαίωμα αναπαραγωγής που η έννομη τάξη του συγκεκριμένου μέλους απονέμει στους δημιουργούς και στα πρόσωπα που τους έχουν διαδεχθεί στο δικαίωμα. Όσον αφορά τα προγράμματα ηλεκτρονικού υπολογιστή, η προαναφερθείσα υποχρέωση δεν υφίσταται σε περιπτώσεις μίσθωσης κατά τις οποίες η μίσθωση δεν έχει ως κύριο αντικείμενο το ίδιο το πρόγραμμα.

Άρθρο 12

Χρόνος προστασίας

Όταν ο χρόνος προστασίας ενός έργου, εξαιρουμένων των φωτογραφικών έργων και των έργων των εφαρμοσμένων τεχνών, δεν καθορίζεται με βάση τη ζωή κάποιου φυσικού προσώπου, τότε ο χρόνος προστασίας είναι τουλάχιστον 50 έτη από τη λήξη του ημερολογιακού έτους κατά το οποίο σημειώθηκε η δημοσίευση του έργου κατόπιν αδείας ή, σε περίπτωση που δεν υπήρξε τέτοια δημοσίευση του έργου κατόπιν αδείας εντός 50 ετών από τη δημιουργία του, 50 έτη από τη λήξη του ημερολογιακού έτους κατά το οποίο δημιουργήθηκε το έργο.

Άρθρο 13

Περιορισμοί και εξαιρέσεις

Τα μέλη δύνανται να θεσπίζουν περιορισμούς και εξαιρέσεις στα αποκλειστικά δικαιώματα, αλλά μόνο για ορισμένες ειδικές περιπτώσεις, υπό την προϋπόθεση ότι δεν παρακωλύεται η κανονική εκμετάλλευση του έργου και δεν βλάπτονται σε υπερβολικό βαθμό τα νόμιμα συμφέροντα του δικαιούχου.

Άρθρο 14

Προστασία των καλλιτεχνών ερμηνευτών, των παραγωγών φωνογραφημάτων (ηχογραφήσεων) και των οργανισμών ραδιοφωνίας και τηλεόρασης

1. Προκειμένου περί της εγγραφής της ερμηνείας τους σε κάποιο μέσο ηχογράφησης, οι καλλιτέχνες ερμηνευτές έχουν τη δυνατότητα να εμποδίζουν τις ακόλουθες πράξεις, όταν αυτές επιχειρούνται χωρίς την άδειά τους: την εγγραφή κάποιας ερμηνείας που δεν έχει αποτελέσει αντικείμενο εγγραφής, καθώς και την αναπαραγωγή της εγγραφής αυτής. Οι καλλιτέχνες ερμηνευτές έχουν επίσης τη δυνατότητα να εμποδίζουν τις ακόλουθες πράξεις, όταν αυτές επιχειρούνται χωρίς την άδειά τους: την αναμετάδοση διά ασυρμάτων μέσων και τη διάθεση στο κοινό κάποιας ζωντανής ερμηνείας τους.

2. Οι παραγωγοί φωνογραφημάτων έχουν το δικαίωμα να επιτρέπουν ή να απαγορεύουν την άμεση ή έμμεση αναπαραγωγή των φωνογραφημάτων τους.

3. Οι οργανισμοί ραδιοφωνίας και τηλεόρασης έχουν το δικαίωμα να απαγορεύουν τις ακόλουθες πράξεις, όταν αυτές επιχειρούνται χωρίς την άδειά τους: την εγγραφή, την αναπαραγωγή των εγγραφών και την επαναμετάδοση διά ασυρμάτων μέσων των εκπομπών τους, καθώς και τη διάθεση στο κοινό τηλεοπτικών εκπομπών με αντικείμενο τα ανωτέρω. Σε περίπτωση που ένα μέλος δεν αναγνωρίζει τα προαναφερθέντα δικαιώματα στους οργανισμούς ραδιοφωνίας και τηλεόρασης, οφείλει να παρέχει τη δυνατότητα στα πρόσωπα στα οποία ανήκουν τα δικαιώματα δημιουργού, που αφορούν έργα δυνάμενα να αποτελέσουν αντικείμενο εκπομπής, να εμποδίζουν τις προαναφερθείσες πράξεις, με την επιφύλαξη των διατάξεων της Σύμβασης της Βέρνης (1971).

4. Οι διατάξεις του άρθρου 11 οι σχετικές με τα προγράμματα ηλεκτρονικών υπολογιστών εφαρμόζονται κατ' αναλογίαν και ως προς τους παραγωγούς φωνογραφημάτων, καθώς και γενικότερα ως προς τα πρόσωπα που έχουν δικαίωμα σε κάποιο φωνογράφημα, όπως αυτά ορίζονται από τη νομοθεσία κάθε μέλους. Εάν σε ένα μέλος στις 15 Απριλίου 1994 υπάρχει

σε ισχύ σύστημα καταβολής εύλογης αμοιβής στους δικαιούχους για τη μίσθωση φωνογραφημάτων, το εν λόγω μέλος δύναται να διατηρήσει σε ισχύ το σύστημα αυτό, υπό την προϋπόθεση ότι η εμπορική μίσθωση των φωνογραφημάτων δεν συνεπάγεται την πρόκληση σοβαρής ζημίας στα αποκλειστικά δικαιώματα αναπαραγωγής των δικαιούχων.

5. Η διάρκεια της προστασίας που παρέχεται βάσει της παρούσας συμφωνίας στους καλλιτέχνες ερμηνευτές και στους παραγωγούς φωνογραφημάτων φθάνει τουλάχιστον μέχρι τη λήξη πεντηκονταετίας, με χρονικό σημείο εκκίνησης τη λήξη του ημερολογιακού έτους κατά το οποίο πραγματοποιήθηκε η εγγραφή ή η ερμηνεία. Η διάρκεια της προστασίας που παρέχεται βάσει της παραγράφου 3 ορίζεται σε μία εικοσαετία τουλάχιστον από τη λήξη του ημερολογιακού έτους κατά το οποίο πραγματοποιήθηκε η εκπομπή.

6. Κάθε μέλος δύναται να θεσπίζει σε σχέση με τα δικαιώματα που αναγνωρίζονται βάσει των παραγράφων 1, 2 και 3 προϋποθέσεις, περιορισμούς, εξαιρέσεις και επιφυλάξεις, στο μέτρο που κάτι τέτοιο επιτρέπεται βάσει της Σύμβασης της Ρώμης. Εντούτοις, οι διατάξεις του άρθρου 18 της Σύμβασης της Βέρνης (1971) εφαρμόζονται επίσης κατ' αναλογίαν για τα δικαιώματα επί των φωνογραφημάτων που αναγνωρίζονται στους καλλιτέχνες ερμηνευτές και στους παραγωγούς φωνογραφημάτων..

ΤΜΗΜΑ 2: ΕΜΠΟΡΙΚΑ ΣΗΜΑΤΑ

Άρθρο 15

Αντικείμενο της προστασίας

1. Κάθε σήμα και κάθε συνδυασμός σημάτων, που παρέχει τη δυνατότητα να διακρίνονται τα αγαθά ή οι υπηρεσίες μιας επιχείρησης από τα αγαθά ή τις υπηρεσίες των άλλων επιχειρήσεων, είναι δυνατό να αποτελέσει εμπορικό σήμα. Τα σήματα αυτού του είδους, και ειδικότερα οι λέξεις που αποδίδουν ονόματα προσώπων, τα γράμματα, οι αριθμητικές παραστάσεις, οι παραστάσεις γενικώς και οι συνδυασμοί χρωμάτων, καθώς και οποιοσδήποτε συνδυασμός των ανωτέρω σημάτων είναι δυνατό να καταχωρηθούν ως εμπορικά σήματα. Σε περίπτωση κατά την οποία ένα σήμα δεν παρέχει από τη φύση του τη δυνατότητα να διακριθεί συγκεκριμένο αγαθό ή υπηρεσία, τα μέλη δύνανται να εξαρτήσουν τη δυνατότητα καταχώρησής του από την απόκτηση της δυνατότητας διαφοροποίησης του αγαθού ή της υπηρεσίας μέσω της χρήσης. Τα μέλη δύνανται να θέτουν ως προϋπόθεση για την καταχώρηση ότι το σήμα πρέπει να μπορεί να γίνει αντιληπτό δια της όρασης.

2. Η παράγραφος 1 δεν σημαίνει ότι τα μέλη δεν έχουν το δικαίωμα να αρνούνται την καταχώρηση κάποιου εμπορικού σήματος επικαλούμενα άλλους λόγους, υπό τον όρο να μην παρεκκλίνουν από τις διατάξεις της Σύμβασης των Παρισίων (1967).

3. Τα μέλη δύνανται να εξαρτούν τη δυνατότητα καταχώρησης από τη χρήση. Εντούτοις, το γεγονός ότι ένα εμπορικό σήμα έχει όντως χρησιμοποιηθεί δεν επιτρέπεται να τίθεται ως προϋπόθεση για την υποβολή αίτησης προς καταχώρηση του εν λόγω σήματος. Δεν επιτρέπεται η απόρριψη μιας αίτησης με μόνη τη δικαιολογία ότι η σκοπούμενη χρήση του σήματος δεν έχει πραγματοποιηθεί πριν από την πάροδο τριετούς περιόδου από την ημερομηνία υποβολής της αίτησης.

4. Ο χαρακτήρας των αγαθών ή των υπηρεσιών για τα οποία προορίζεται να χρησιμοποιηθεί ένα εμπορικό σήμα δεν μπορεί σε καμία περίπτωση να θεωρείται ως εμπόδιο για την καταχώρηση του εκάστοτε εμπορικού σήματος.

5. Τα μέλη καθιστούν γνωστό στο κοινό κάθε εμπορικό σήμα, είτε πριν από την καταχώρησή του, είτε αμέσως μετά από αυτήν, και παρέχουν στους ενδιαφερόμενους τις κατάλληλες δυνατότητες να ζητήσουν ενδεχομένως την ακύρωση της καταχώρησης. Επιπλέον, τα μέλη δύνανται να παρέχουν στους ενδιαφερόμενους τη δυνατότητα να εκφράζουν αντιρρήσεις για την καταχώρηση συγκεκριμένου εμπορικού σήματος.

Άρθρο 16

Απονεμόμενα δικαιώματα

1. Ο κύριος ενός καταχωρημένου εμπορικού σήματος έχει το αποκλειστικό δικαίωμα να απαγορεύει σε πάντα τρίτο να χρησιμοποιεί χωρίς τη συγκατάθεσή του στο πλαίσιο της εμπορικής του δραστηριότητας όμοια ή παρεμφερή σήματα για υπηρεσίες ή αγαθά όμοια ή παρεμφερή με εκείνα τα οποία αφορά το καταχωρηθέν εμπορικό σήμα, εφόσον η χρήση των εν λόγω σημάτων είναι πιθανό να οδηγήσει σε σύγχυση. Όταν χρησιμοποιείται το ίδιο σήμα για κάποιο όμοιο αγαθό ή υπηρεσία, τεκμαίρεται ότι είναι πιθανή η πρόκληση σύγχυσης. Τα δικαιώματα που καθορίζονται παραπάνω δεν θίγουν τυχόν άλλα προϋφιστάμενα δικαιώματα, ούτε τη δυνατότητα που έχουν τα μέλη να απονέμουν δικαιώματα με προϋπόθεση τη χρήση.

2. Το άρθρο 6α της Σύμβασης των Παρισίων (1967) εφαρμόζεται κατ' αναλογίαν και ως προς τις υπηρεσίες. Για να αποφανθούν κατά πόσον ένα εμπορικό σήμα είναι ευρέως γνωστό, τα μέλη εξετάζουν πόσο γνωστό είναι το εν λόγω εμπορικό σήμα στο τμήμα του κοινού που κρίνεται κατάλληλο για την περίπτωση, καθώς και τον βαθμό γνώσης του εμπορικού σήματος στο συγκεκριμένο μέλος, ο οποίος είναι απόρροια των προσπαθειών προώθησης του σήματος.

3. Το άρθρο 6α της Σύμβασης των Παρισίων (1967) εφαρμόζεται κατ' αναλογίαν και για τα αγαθά ή τις υπηρεσίες που δεν μοιάζουν με αγαθά ή υπηρεσίες σε σχέση με τα οποία έχει καταχωρηθεί ένα εμπορικό σήμα, υπό τον όρο ότι η χρήση του συγκεκριμένου εμπορικού σήματος σε σχέση με το συγκεκριμένο αγαθό ή την συγκεκριμένη υπηρεσία ενδέχεται να ερμηνευθεί ως δηλούσα κάποια σχέση μεταξύ του εν λόγω αγαθού ή της εν λόγω υπηρεσίας και του προσώπου στο οποίο ανήκει το καταχωρηθέν εμπορικό σήμα και εφόσον η χρήση αυτή ενέχει τον κίνδυνο να θιγούν τα συμφέροντα του προσώπου στο οποίο ανήκει το καταχωρηθέν εμπορικό σήμα.

Άρθρο 17

Εξαιρέσεις

Τα μέλη δύνανται να θεσπίζουν περιορισμένης έκτασης εξαιρέσεις στα δικαιώματα που απορρέουν από ένα εμπορικό σήμα, όπως είναι λόγου χάρη η θεμιτή χρήση περιγραφικών όρων, υπό την προϋπόθεση ότι οι θεσπιζόμενες εξαιρέσεις δεν αντιβαίνουν στα νόμιμα συμφέροντα του προσώπου στο οποίο ανήκει το εμπορικό σήμα και των τρίτων ενδιαφερομένων.

Άρθρο 18

Διάρκεια της προστασίας

Η αρχική καταχώρηση ενός εμπορικού σήματος, καθώς και κάθε ανανέωση αυτής ισχύει για επτά έτη τουλάχιστον. Η καταχώρηση κάποιου εμπορικού σήματος είναι ανανεώσιμη εις το διηνεκές.

Άρθρο 19

Η χρήση ως προϋπόθεση

1. Αν για τη διατήρηση της καταχώρησης απαιτείται η χρήση του εμπορικού σήματος, η ανάκληση της καταχώρησης επιτρέπεται μόνο αν έχουν μεσολαβήσει τουλάχιστον τρία έτη αδιάλειπτης αχρησίας, εκτός αν το πρόσωπο στο οποίο ανήκει το εμπορικό σήμα επικαλείται και αποδεικνύει την ύπαρξη κάποιου σοβαρού λόγου, που συνιστά εμπόδιο για τη χρήση του σήματος. Γίνεται δεκτό ότι στους σοβαρούς λόγους της αδυναμίας χρήσης συγκαταλέγονται ορισμένες περιστάσεις που δεν εξαρτώνται από τη θέληση του προσώπου στο οποίο ανήκει το εμπορικό σήμα και οι οποίες θέτουν εμπόδια στη χρήση του, όπως είναι οι περιορισμοί που επιβάλλονται στις εισαγωγές αγαθών ή υπηρεσιών που προστατεύονται από το εμπορικό σήμα ή ορισμένες άλλες υποχρεωτικές ρυθμίσεις που θεσπίζονται από το κράτος σε σχέση με αυτά.

2. Προκειμένου να αποφασισθεί η διατήρηση ή μη σε ισχύ της καταχώρησης ενός εμπορικού σήματος, η χρήση του από κάποιον τρίτο αναγνωρίζεται ως χρήση του εμπορικού σήματος, υπό τον όρο ότι η χρήση αυτή παραμένει υπό τον έλεγχο του προσώπου στο οποίο ανήκει το εμπορικό σήμα.

Άρθρο 20

Λοιπές προϋποθέσεις

Η χρήση ενός εμπορικού σήματος στο πλαίσιο εμπορικής δραστηριότητας δεν επιτρέπεται να παρακωλύεται σε αδικαιολόγητο βαθμό με την επιβολή ειδικών προϋποθέσεων, όπως είναι η χρήση εκ παραλλήλου με κάποιο άλλο εμπορικό σήμα, η χρήση του υπό συγκεκριμένη μορφή ή η χρήση του κατά τρόπον ο οποίος αναιρεί την ικανότητα του σήματος να διαφοροποιεί τα αγαθά ή τις υπηρεσίες μίας επιχείρησης από τα αγαθά ή τις υπηρεσίες των υπολοίπων επιχειρήσεων. Η ανωτέρω διάταξη δεν σημαίνει ότι δεν επιτρέπεται να απαιτείται η χρήση του εμπορικού σήματος που εξατομικεύει την επιχείρηση που παράγει τα εκάστοτε αγαθά ή υπηρεσίες εκ παραλλήλου, αλλά όχι σε συνάρτηση με το εμπορικό σήμα που διαφοροποιεί τα συγκεκριμένα αγαθά ή τις συγκεκριμένες υπηρεσίες της εν λόγω επιχείρησης.

Άρθρο 21

Άδειες εκμετάλλευσης και εκχώρηση εμπορικών σημάτων

Τα μέλη δύνανται να θεσπίζουν προϋποθέσεις για τη χορήγηση αδειών εκμετάλλευσης και την εκχώρηση εμπορικών σημάτων, ενώ γίνεται δεκτό ότι δεν επιτρέπεται η χορήγηση υποχρεωτικών αδειών για τα εμπορικά σήματα και ότι το πρόσωπο στο οποίο ανήκει ένα καταχωρημένο εμπορικό σήμα έχει το δικαίωμα εκχώρησης του εμπορικού σήματος χωρίς αναγκαστικά να απαιτείται εκ παραλλήλου η μεταβίβαση της επιχείρησης στην οποία ανήκει το εμπορικό σήμα.

ΤΜΗΜΑ 3: ΓΕΩΓΡΑΦΙΚΕΣ ΕΝΔΕΙΞΕΙΣ

Άρθρο 22

Προστασία των γεωγραφικών ενδείξεων

1. Για τους σκοπούς της παρούσας συμφωνίας, ως γεωγραφικές ενδείξεις νοούνται οι ενδείξεις με τις οποίες επισημαίνεται ότι ένα αγαθό

κατάγεται από το έδαφος κάποιου μέλους ή από συγκεκριμένη περιοχή της επικράτειας ενός μέλους ή ακόμη από συγκεκριμένο τόπο σε κάποιο μέλος, εφόσον από τη γεωγραφική καταγωγή του προϊόντος συναρτώνται σε μεγάλο βαθμό η ποιότητα, η φήμη και τα λοιπά χαρακτηριστικά του εν λόγω αγαθού.

2. Προκειμένου περί των γεωγραφικών ενδείξεων, τα μέλη θέτουν στη διάθεση των ενδιαφερομένων τα έννομα μέσα, με τα οποία να αποτρέπεται:

(α) η χρήση οποιουδήποτε μέσου για την περιγραφή ή την παρουσίαση ενός αγαθού, με το οποίο δηλώνεται ή υπονοείται ότι το εν λόγω αγαθό κατάγεται από γεωγραφική περιοχή που δεν συμπίπτει με τον πραγματικό τόπο καταγωγής του, εφόσον με τον τρόπο αυτό το κοινό σχηματίζει εσφαλμένη αντίληψη όσον αφορά τη γεωγραφική καταγωγή του αγαθού·

(β) κάθε χρήση η οποία συνιστά πράξη αθέμιτου ανταγωνισμού κατά την έννοια του άρθρου 10α της Σύμβασης των Παρισίων (1967).

3. Τα μέλη, είτε αυτεπαγγέλτως εφόσον υπάρχει σχετική πρόβλεψη στη νομοθεσία τους ή κατόπιν αιτήσεως κάποιου ενδιαφερομένου, αρνούνται ή ακυρώνουν την καταχώρηση ενός εμπορικού σήματος, το οποίο είτε περιλαμβάνει, είτε συνίσταται σε μία γεωγραφική ένδειξη αναφορικά με αγαθά που δεν κατάγονται από το έδαφος που δηλώνεται με την ένδειξη, εάν η χρήση της συγκεκριμένης ένδειξης στο εμπορικό σήμα που χρησιμοποιείται για τα εν λόγω αγαθά στο συγκεκριμένο μέλος εμπεριέχει τον κίνδυνο να δοθεί εσφαλμένη εντύπωση στο κοινό ως προς τον πραγματικό τόπο καταγωγής.

4. Η προστασία που παρέχεται βάσει των παραγράφων 1, 2 και 3 αναγνωρίζεται επίσης έναντι γεωγραφικών ενδείξεων οι οποίες, ακόμη και αν ακριβολογούν όσον αφορά το έδαφος, την περιοχή ή τον τόπο καταγωγής των αγαθών, δίδουν στο κοινό την εσφαλμένη εντύπωση ότι τα εν λόγω αγαθά κατάγονται από κάποιο άλλο έδαφος.

Άρθρο 23

Επιπρόσθετη προστασία για τις γεωγραφικές ενδείξεις που χρησιμοποιούνται για τα κρασιά και τα οινοπνευματώδη ποτά

1. Κάθε μέλος παρέχει στους ενδιαφερόμενους τα έννομα μέσα για την αποτροπή της χρήσης γεωγραφικών ενδείξεων προκειμένου περί κρασιών που δεν κατάγονται από τον τόπο που δηλώνεται με τη χρησιμοποιούμενη γεωγραφική ένδειξη ή προκειμένου περί οινοπνευματωδών ποτών που δεν κατάγονται από τον τόπο που δηλώνεται με τη χρησιμοποιούμενη γεωγραφική ένδειξη, ακόμη και σε περιπτώσεις κατά τις οποίες η πραγματική καταγωγή των αγαθών ή η γεωγραφική ένδειξη αναγράφεται σε μετάφραση ή συνοδεύεται από εκφράσεις όπως "είδος", "τύπου", "με χαρακτηριστικά", "απομίμηση" ή ανάλογες εκφράσεις.[4]

2. Η καταχώρηση εμπορικού σήματος αναφερόμενου σε κάποιο κρασί, το οποίο περιλαμβάνει ή συνίσταται σε γεωγραφική ένδειξη με την οποία εξατομικεύονται κρασιά, ή εμπορικού σήματος αναφερόμενου σε κάποιο οινοπνευματώδες ποτό, το οποίο περιλαμβάνει ή συνίσταται σε γεωγραφική ένδειξη με την οποία εξατομικεύονται οινοπνευματώδη

4 Κατά παρέκκλιση του άρθρου 42, πρώτο εδάφιο, τα μέλη δύνανται, εναλλακτικά, να θεσπίζουν τη δυνατότητα επιβολής των προαναφερθεισών υποχρεώσεων με πράξεις της Διοίκησης.

ποτά, δεν γίνεται δεκτή ή ακυρώνεται, είτε αυτεπαγγέλτως από τις αρχές του εκάστοτε μέλους, εφόσον υπάρχει σχετική πρόβλεψη στη νομοθεσία του, είτε εφόσον το ζητήσει κάποιος ενδιαφερόμενος, όταν το συγκεκριμένο κρασί ή οινοπνευματώδες ποτό είναι διαφορετικής καταγωγής.

3. Σε περίπτωση που συμπίπτουν οι γεωγραφικές ενδείξεις που χρησιμοποιούνται για συγκεκριμένα κρασιά, η παρεχόμενη προστασία καλύπτει όλες τις ενδείξεις, με την επιφύλαξη των διατάξεων του άρθρου 22 παράγραφος 4. Κάθε μέλος καθορίζει τις πρακτικές λεπτομέρειες που διέπουν τη διαφοροποίηση των κατά περίπτωση πανομοιότυπων ενδείξεων μεταξύ τους, λαμβάνοντας υπόψη την ανάγκη να διασφαλίζεται η δίκαιη αντιμετώπιση των οικείων παραγωγών και να αποτρέπονται οι παρανοήσεις εκ μέρους των καταναλωτών.

4. Προκειμένου να διευκολυνθεί η προστασία των γεωγραφικών ενδείξεων που χρησιμοποιούνται για τα κρασιά, πρόκειται να διεξαχθούν διαπραγματεύσεις στο πλαίσιο του συμβουλίου για τα TRIP, με αντικείμενο την καθιέρωση πολυμερούς συστήματος γνωστοποίησης και καταχώρησης των γεωγραφικών ενδείξεων, οι οποίες χρησιμοποιούνται για τα κρασιά που πληρούν τις προϋποθέσεις παροχής προστασίας στα μέλη που μετέχουν στο εν λόγω σύστημα.

Άρθρο 24

Διεθνείς διαπραγματεύσεις και εξαιρέσεις

1. Τα μέλη συμφωνούν να διεξαγάγουν διαπραγματεύσεις με σκοπό την αύξηση της προστασίας που παρέχεται στις επιμέρους γεωγραφικές ενδείξεις βάσει του άρθρου 23. Ένα μέλος δεν δύναται να επικαλεστεί τις διατάξεις των παραγράφων 4 έως 8 κατωτέρω για να αρνηθεί τη διεξαγωγή διαπραγματεύσεων ή τη σύναψη διμερών ή πολυμερών συμφωνιών. Στο πλαίσιο των ανωτέρω διαπραγματεύσεων, τα μέλη δέχονται να εξετάσουν τη δυνατότητα συνέχισης της εφαρμογής των προαναφερθεισών διατάξεων ως προς επιμέρους γεωγραφικές ενδείξεις, των οποίων η χρήση έχει αποτελέσει αντικείμενο παρόμοιων διαπραγματεύσεων.

2. Το συμβούλιο για τα TRIP εξετάζει περιοδικά την εφαρμογή των διατάξεων του παρόντος τμήματος· η πρώτη εξέταση αυτής της μορφής διενεργείται εντός δύο ετών από την έναρξη ισχύος της συμφωνίας για τον ΠΟΕ. Το συμβούλιο ενημερώνεται σχετικά με οποιοδήποτε ζήτημα που άπτεται της τήρησης των υποχρεώσεων που απορρέουν από τις εν λόγω διατάξεις· το συμβούλιο για τα TRIP, κατόπιν αιτήσεως κάποιου μέλους, έρχεται σε συνεννοήσεις με οποιοδήποτε μέλος ή μέλη σχετικά με οποιοδήποτε ζήτημα για το οποίο δεν έχει καταστεί δυνατό να εξευρεθεί ικανοποιητική λύση μέσω διμερών ή πλειομερών διαβουλεύσεων μεταξύ των ενδιαφερομένων μελών. Το συμβούλιο προβαίνει στις ενέργειες οι οποίες αποφασίζονται από κοινού, με σκοπό τη διευκόλυνση της εφαρμογής του παρόντος τμήματος και την προώθηση των στόχων που αυτό θέτει.

3. Κατά την εφαρμογή του παρόντος τμήματος, ένα μέλος δεν επιτρέπεται να παρέχει στις γεωγραφικές ενδείξεις μικρότερη προστασία από αυτήν που προβλεπόταν στο εν λόγω μέλος αμέσως πριν από την ημερομηνία έναρξης ισχύος της συμφωνίας για τον ΠΟΕ.

4. Καμία διάταξη του παρόντος τμήματος δεν συνεπάγεται ότι τα μέλη οφείλουν να εμποδίζουν τη συνέχιση της χρήσης κατά τρόπο ομοιόμορφο μίας συγκεκριμένης γεωγραφικής ένδειξεως κάποιου άλλου μέλους, η οποία χρησιμοποιείται για την εξατομίκευση κρασιών ή οινοπνευματωδών ποτών, προκειμένου περί αγαθών ή υπηρεσιών, εκ μέρους ενός υπηκόου τους ή

κάποιου προσώπου που έχει τη νόμιμη κατοικία του στην επικράτειά τους, εφόσον το πρόσωπο αυτό έχει κάνει συστηματική χρήση της εν λόγω γεωγραφικής ενδείξεως σε σχέση με όμοια ή παρεμφερή αγαθά ή υπηρεσίες στην επικράτεια του εν λόγω μέλους, είτε (α) επί δεκαετία τουλάχιστον πριν από τις 15 Απριλίου 1994, είτε (β) καλοπίστως, πριν από την προαναφερθείσα ημερομηνία.

5. Όταν ένα εμπορικό σήμα έχει υποβληθεί προς καταχώρηση ή έχει καταχωρηθεί καλοπίστως ή όταν έχουν αποκτηθεί δικαιώματα σε ένα εμπορικό σήμα μέσω της χρήσης του καλοπίστως, είτε:

(α) πριν από την ημερομηνία θέσης σε εφαρμογή των παρουσών διατάξεων στο οικείο μέλος, όπως αυτή καθορίζεται στο μέρος VI, είτε

(β) πριν θεσπιστεί η προστασία της γεωγραφικής ενδείξεως στη χώρα από την οποία προέρχεται,

τότε τα μέτρα που λαμβάνονται στο πλαίσιο εφαρμογής του παρόντος τμήματος δεν θίγουν τη δυνατότητα καταχώρησης ή την ισχύ της καταχώρησης κάποιου εμπορικού σήματος ή το δικαίωμα χρήσης κάποιου εμπορικού σήματος, με βάση το σκεπτικό ότι το εν λόγω εμπορικό σήμα είναι πανομοιότυπο ή παρεμφερές με συγκεκριμένη γεωγραφική ένδειξη.

6. Καμία διάταξη του παρόντος τμήματος δεν συνεπάγεται ότι τα μέλη οφείλουν να εφαρμόζουν τις διατάξεις του σε σχέση με μία γεωγραφική ένδειξη η οποία χρησιμοποιείται σε οποιοδήποτε άλλο μέλος για αγαθά ή υπηρεσίες, όταν η αρμόζουσα ένδειξη για τα εν λόγω αγαθά ή υπηρεσίες ταυτίζεται με τον όρο που χρησιμοποιείται συνήθως στην καθομιλουμένη και αποτελεί την κοινή ονομασία των εν λόγω αγαθών ή υπηρεσιών στο έδαφος του μέλους αυτού. Καμία διάταξη του παρόντος τμήματος δεν συνεπάγεται ότι τα μέλη οφείλουν να εφαρμόζουν τις διατάξεις του σε σχέση με κάποια γεωγραφική ένδειξη η οποία χρησιμοποιείται σε οποιοδήποτε άλλο μέλος για προϊόντα που προέρχονται από είδος αμπέλου, για την οποία η αρμόζουσα ένδειξη ταυτίζεται με την κοινή ονομασία ποικιλίας σταφυλιών που απαντά στο έδαφος του εν λόγω μέλους κατά την ημερομηνία έναρξης ισχύος της συμφωνίας για τον ΠΟΕ.

7. Ένα μέλος δύναται να θεσπίζει ρύθμιση σύμφωνα με την οποία οι αιτήσεις που υποβάλλονται δυνάμει του παρόντος τμήματος σε σχέση με τη χρήση ή την καταχώρηση ενός εμπορικού σήματος πρέπει να έχουν παραληφθεί εντός πενταετίας είτε από τη στιγμή που η αντικανονική χρήση της προστατευόμενης ενδείξεως έχει γίνει ευρέως γνωστή στο εν λόγω μέλος, είτε από την ημερομηνία καταχώρησης του εμπορικού σήματος στο εν λόγω μέλος, υπό τον όρο ότι το εμπορικό σήμα έχει δημοσιευθεί μέχρι την ανωτέρω ημερομηνία, σε περίπτωση που η ημερομηνία αυτή είναι προγενέστερη της ημερομηνίας κατά την οποία η αντικανονική χρήση του σήματος έγινε ευρέως γνωστή στο συγκεκριμένο μέλος, υπό την προϋπόθεση ότι η γεωγραφική ένδειξη δεν χρησιμοποιείται ή δεν έχει καταχωρηθεί κακή τη πίστει.

8. Οι διατάξεις του παρόντος τμήματος δεν θίγουν με κανέναν τρόπο το δικαίωμα οποιουδήποτε προσώπου να χρησιμοποιεί στο πλαίσιο της εμπορικής του δραστηριότητας το όνομά του ή το όνομα του προκατόχου του στην επιχείρηση, εκτός αν το όνομα αυτό χρησιμοποιείται με τέτοιον τρόπο, ώστε να δημιουργούνται εσφαλμένες εντυπώσεις στο κοινό.

9. Βάσει της παρούσας συμφωνίας δεν υφίσταται υποχρέωση παροχής προστασίας σε γεωγραφικές ενδείξεις οι οποίες είτε δεν χαίρουν προστασίας, είτε έχουν παύσει να χαίρουν προστασίας στη χώρα από την οποία προέρχονται ή οι οποίες έχουν περιέλθει σε αχρησία στην εν λόγω χώρα.

ΤΜΗΜΑ 4: ΒΙΟΜΗΧΑΝΙΚΑ ΣΧΕΔΙΑ

Άρθρο 25

Προϋποθέσεις προστασίας

1. Τα μέλη θεσπίζουν ρυθμίσεις για την προστασία νέων ή πρωτότυπων βιομηχανικών σχεδίων που έχουν δημιουργηθεί κατά τρόπο ανεξάρτητο. Τα μέλη δύνανται να προβλέπουν ότι ένα σχέδιο δεν θεωρείται νέο ή πρωτότυπο, αν δεν διαφέρει ουσιωδώς από άλλα γνωστά σχέδια ή από συνδυασμούς επιμέρους στοιχείων άλλων γνωστών σχεδίων. Τα μέλη δύνανται να καθιερώνουν την πρόβλεψη ότι η προστασία αυτή δεν εκτείνεται σε σχέδια που στην ουσία αποτελούν απόρροια τεχνικών ή λειτουργικών παραμέτρων.

2. Κάθε μέλος λαμβάνει μέτρα, ώστε να διασφαλίζεται ότι οι προϋποθέσεις που τάσσονται για την εξασφάλιση της προστασίας των σχεδίων της κλωστοϋφαντουργίας, και ειδικότερα εκείνες που αναφέρονται στις σχετικές δαπάνες, την εξέταση και τη δημοσίευσή τους, δεν αίρουν σε υπερβολικό βαθμό τη δυνατότητα των ενδιαφερομένων να ζητήσουν και να λάβουν τη σχετική προστασία. Τα μέλη έχουν την ευχέρεια να συμμορφώνονται προς την ανωτέρω υποχρέωση είτε με τη θέσπιση νομοθεσίας στον τομέα των βιομηχανικών σχεδίων, είτε με τη θέσπιση νομοθεσίας στον τομέα των δικαιωμάτων δημιουργού.

Άρθρο 26

Προστασία

1. Ο κύριος ενός προστατευόμενου βιομηχανικού σχεδίου έχει το δικαίωμα να εμποδίζει τρίτους να προβαίνουν χωρίς τη συγκατάθεσή του στην παραγωγή, την πώληση ή την εισαγωγή ειδών που φέρουν ή ενσωματώνουν ένα σχέδιο το οποίο είναι είτε εξ ολοκλήρου, είτε σε μεγάλο βαθμό αντίγραφο του προστατευόμενου σχεδίου, υπό την προϋπόθεση ότι οι ανωτέρω πράξεις επιχειρούνται για εμπορικούς λόγους.

2. Τα μέλη δύνανται να καθιερώνουν περιορισμένης έκτασης εξαιρέσεις στην προστασία των βιομηχανικών σχεδίων, υπό τον όρο ότι οι εξαιρέσεις αυτές δεν συνεπάγονται υπέρμετρους περιορισμούς για την κανονική εκμετάλλευση των προστατευομένων βιομηχανικών σχεδίων και δεν θίγουν σε υπερβολικό βαθμό τα νόμιμα συμφέροντα του κυρίου του προστατευόμενου σχεδίου, λαμβανομένων υπόψη των νόμιμων συμφερόντων τυχόν τρίτων.

3. Η διάρκεια της παρεχόμενης προστασίας δεν είναι δυνατό να είναι συντομότερη από 10 έτη.

ΤΜΗΜΑ 5: ΔΙΠΛΩΜΑΤΑ ΕΥΡΕΣΙΤΕΧΝΙΑΣ

Άρθρο 27

Αντικείμενο των διπλωμάτων ευρεσιτεχνίας

1. Με την επιφύλαξη των διατάξεων των παραγράφων 2 και 3, διπλώματα ευρεσιτεχνίας είναι δυνατό να απονέμονται για οποιαδήποτε εφεύρεση, είτε αυτή αφορά κάποιο προϊόν, είτε αφορά κάποια μέθοδο, σε όλους τους τομείς της τεχνολογίας, υπό την προϋπόθεση ότι η εφεύρεση είναι νέα, ότι στηρίζεται σε κάποια επινόηση και ότι είναι ικανή να αποτελέσει αντικείμενο βιομηχανικής εφαρμογής.[5] Με την επιφύλαξη του άρθρου 65, παράγραφος 4, του άρθρου 70, παράγραφος 8 και της παραγράφου 3 του παρόντος άρθρου, η απονομή διπλωμάτων ευρεσιτεχνίας και η αναγνώριση των δικαιωμάτων που απορρέουν από διπλώματα ευρεσιτεχνίας πραγματοποιούνται χωρίς διακρίσεις όσον αφορά τον τόπο εφεύρεσης, τον τεχνολογικό τομέα ή το κατά πόσον τα οικεία προϊόντα είναι εισαγόμενα ή εγχωρίως παραγόμενα.

2. Τα μέλη δύνανται να αρνούνται την απονομή διπλώματος ευρεσιτεχνίας αναφορικά με μία εφεύρεση, όταν η παρεμπόδιση της εμπορικής εκμετάλλευσης της εφεύρεσης αυτής στο έδαφός τους επιβάλλεται για λόγους προστασίας της δημόσιας τάξης ή ηθικής, συμπεριλαμβανομένης της ανάγκης προστασίας της ζωής ή της υγείας των ανθρώπων, των ζώων και των φυτών ή της αποτροπής πρόκλησης σοβαρής ζημίας στο περιβάλλον, υπό την προϋπόθεση ότι η άρνηση αυτή δεν στηρίζεται αποκλειστικά και μόνο στο γεγονός ότι η εκμετάλλευση της εφεύρεσης απαγορεύεται βάσει της νομοθεσίας του οικείου μέλους.

3. Τα μέλη δύνανται επίσης να αρνούνται την απονομή διπλώματος ευρεσιτεχνίας αναφορικά με:

(α) διαγνωστικές, θεραπευτικές και χειρουργικές μεθόδους, οι οποίες προορίζονται για ανθρώπους ή ζώα·

(β) φυτά και ζώα, πλην των μικροοργανισμών, καθώς και βιολογικών κατά βάση μεθόδων για την παραγωγή φυτών ή ζώων, με εξαίρεση τις μη βιολογικές και τις μικροβιολογικές μεθόδους. Εντούτοις, τα μέλη παρέχουν προστασία σε φυτικές ποικιλίες, είτε με την απονομή διπλωμάτων ευρεσιτεχνίας, είτε με την εφαρμογή κάποιου αποτελεσματικού συστήματος που καθιερώνουν ειδικά για τον σκοπό αυτό, ή ακόμη με συνδυασμό των ανωτέρω. Οι διατάξεις της παρούσας παραγράφου επανεξετάζονται τέσσερα έτη μετά την ημερομηνία έναρξης ισχύος της συμφωνίας για τον ΠΟΕ.

Άρθρο 28

Απονεμόμενα δικαιώματα

1. Κάθε δίπλωμα ευρεσιτεχνίας παρέχει στον κύριό του τα ακόλουθα αποκλειστικά δικαιώματα:

(α) όταν το δίπλωμα ευρεσιτεχνίας αφορά κάποιο προϊόν, ο κύριος του διπλώματος δικαιούται να εμποδίζει τρίτους να προβαίνουν χωρίς τη συγκατάθεσή του στην παραγωγή, τη χρησιμοποίηση, την

5 Για τους σκοπούς του παρόντος άρθρου, οι όροι "επινόηση" και "ικανή να αποτελέσει αντικείμενο βιομηχανικής εφαρμογής" είναι δυνατό να θεωρούνται από ένα μέλος ως συνώνυμοι με τους όρους "μη προφανής" και "χρήσιμη" αντιστοίχως.

προσφορά προς πώληση, την πώληση ή την εισαγωγή[6] για τους προαναφερθέντες σκοπούς του συγκεκριμένου προϊόντος·

(β) όταν το δίπλωμα ευρεσιτεχνίας αφορά κάποια μέθοδο, ο κύριος του διπλώματος δικαιούται να εμποδίζει τρίτους να προβαίνουν χωρίς τη συγκατάθεσή του στη χρησιμοποίηση της μεθόδου, καθώς και στη χρησιμοποίηση, προσφορά προς πώληση, πώληση ή εισαγωγή για τους προαναφερθέντες σκοπούς τουλάχιστον των προϊόντων που παράγονται απευθείας με τη συγκεκριμένη μέθοδο.

2. Οι κύριοι των διπλωμάτων ευρεσιτεχνίας έχουν επίσης το δικαίωμα να εκχωρούν ή να μεταβιβάζουν δια διαδοχής το δίπλωμα ευρεσιτεχνίας, καθώς επίσης να συνομολογούν συμβάσεις εκμετάλλευσης.

Άρθρο 29

Προϋποθέσεις απονομής διπλώματος ευρεσιτεχνίας

1. Τα μέλη απαιτούν από τα πρόσωπα που υποβάλλουν κάποια εφεύρεση με αίτημα την απονομή διπλώματος ευρεσιτεχνίας να περιγράφουν την εφεύρεση κατά τρόπο αρκετά σαφή και ολοκληρωμένο, ώστε να είναι δυνατή η θέση σε εφαρμογή της εφεύρεσης από πρόσωπο που διαθέτει την αναγκαία ειδική κατάρτιση· επίσης δύνανται να απαιτούν από τους ενδιαφερομένους να επισημαίνουν τον καλύτερο τρόπο θέσης σε εφαρμογή της εφεύρεσης, τον οποίον γνωρίζει ο εφευρέτης κατά την ημερομηνία κατάθεσης της αίτησης ή, αν διεκδικείται προτεραιότητα, κατά την ημερομηνία προτεραιότητας που αναφέρεται στην αίτηση.

2. Τα μέλη δύνανται να ζητούν από τα πρόσωπα που υποβάλλουν αίτηση για την απονομή διπλώματος ευρεσιτεχνίας να προσκομίζουν στοιχεία σχετικά με ανάλογες αιτήσεις που έχουν ενδεχομένως κατατεθεί στο εξωτερικό και με τυχόν διπλώματα ευρεσιτεχνίας που τους έχουν χορηγηθεί εκεί.

Άρθρο 30

Εξαιρέσεις στα απονεμόμενα δικαιώματα

Τα μέλη δύνανται να θεσπίζουν περιορισμένης έκτασης εξαιρέσεις στα αποκλειστικά δικαιώματα που απορρέουν από τα διπλώματα ευρεσιτεχνίας, υπό τον όρο ότι οι εξαιρέσεις αυτές δεν συνεπάγονται υπέρμετρους περιορισμούς για την κανονική εκμετάλλευση της ευρεσιτεχνίας και δεν θίγουν σε υπερβολικό βαθμό τα νόμιμα συμφέροντα του κυρίου του διπλώματος ευρεσιτεχνίας, λαμβανομένων υπόψη των νόμιμων συμφερόντων τυχόν τρίτων.

Άρθρο 31

Λοιπές χρήσεις χωρίς την άδεια του δικαιούχου

Όταν η νομοθεσία ενός μέλους επιτρέπει ορισμένες άλλες χρήσεις[7] του προϊόντος ή της μεθόδου που αποτελεί αντικείμενο του διπλώματος ευρεσιτεχνίας χωρίς την άδεια του δικαιούχου, συμπεριλαμβανομένης της χρήσης από τις κρατικές αρχές ή της χρήσης από τρίτους με την έγκριση των κρατικών αρχών, είναι εφαρμοστέες οι ακόλουθες διατάξεις:

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6 Το εν λόγω δικαίωμα, όπως και όλα τα άλλα δικαιώματα που αναγνωρίζονται βάσει της παρούσας συμφωνίας σε σχέση με τη χρησιμοποίηση, την πώληση, την εισαγωγή ή τη με οιονδήποτε τρόπο διακίνηση αγαθών, υφίσταται με την επιφύλαξη των διατάξεων του άρθρου 6.

7 Με τον όρο "άλλες χρήσεις" νοούνται οι λοιπές χρήσεις πέραν αυτών που επιτρέπονται βάσει του άρθρου 30.

(α) η δυνατότητα χορήγησης έγκρισης για την εκάστοτε χρήση εξετάζεται με βάση τα ατομικά στοιχεία της συγκεκριμένης περίπτωσης·

(β) η χρήση αυτή επιτρέπεται μόνο εφόσον, πριν προβεί σε αυτήν, ο ενδιαφερόμενος έχει καταβάλει προσπάθειες να εξασφαλίσει την άδεια του δικαιούχου υπό εύλογους οικονομικούς όρους και προϋποθέσεις, και οι προσπάθειες αυτές δεν έχουν ευοδωθεί μέσα σε εύλογο χρονικό διάστημα. Ένα μέλος δύναται να μην απαιτεί τη συνδρομή της ανωτέρω προϋπόθεσης σε περιπτώσεις εθνικής έκτακτης ανάγκης ή αν συντρέχει κάποια άλλη περίσταση εξαιρετικά επείγοντος χαρακτήρα ή σε περιπτώσεις που γίνεται χρήση εκ μέρους των κρατικών αρχών για σκοπούς μη εμπορικούς. Ακόμη, όμως, και σε περιπτώσεις εθνικής έκτακτης ανάγκης ή όταν συντρέχει κάποια άλλη περίσταση εξαιρετικά επείγοντος χαρακτήρα, ο δικαιούχος πρέπει να ενημερώνεται σχετικά το συντομότερο δυνατό. Σε περιπτώσεις που γίνεται χρήση εκ μέρους των κρατικών αρχών για σκοπούς μη εμπορικούς και όταν οι κρατικές αρχές ή η επιχείρηση, χωρίς να έχουν διενεργήσει έρευνα σχετικά με τα δικαιώματα ευρεσιτεχνίας, γνωρίζουν ή έχουν υπόψη τους αποδεδειγμένα στοιχεία από τα οποία προκύπτει ότι ένα έγκυρο δίπλωμα ευρεσιτεχνίας χρησιμοποιείται ή πρόκειται να χρησιμοποιηθεί από τις κρατικές αρχές, ο δικαιούχος ενημερώνεται σχετικά αμελλητί·

(γ) η έκταση και η διάρκεια της χρήσης περιορίζεται στο μέτρο που είναι αναγκαίο για την επίτευξη του σκοπού για τον οποίο παρεσχέθη η σχετική έγκριση, ενώ όταν πρόκειται για τεχνολογία στον τομέα των ημιαγωγών, επιτρέπεται μόνο η χρήση από κρατικές αρχές για σκοπούς μη εμπορικούς ή για την άρση των συνεπειών μίας πρακτικής που έχει κριθεί ως αντιβαίνουσα στον ανταγωνισμό μετά από σχετική δικαστική ή διοικητική διαδικασία·

(δ) η χρήση δεν έχει αποκλειστικό χαρακτήρα·

(ε) δεν επιτρέπεται η εκχώρηση του δικαιώματος χρήσης σε τρίτο, παρά μόνον από κοινού με το τμήμα της επιχείρησης ή της πελατείας στο οποίο επιτρέπεται η χρήση·

(στ) σε κάθε περίπτωση η χρήση επιτρέπεται κατά κύριο λόγο για την κάλυψη της ζήτησης στην εγχώρια αγορά του μέλους που παρέχει την έγκριση γι' αυτήν·

(ζ) με την επιφύλαξη της επαρκούς προστασίας των νόμιμων συμφερόντων των προσώπων που λαμβάνουν τη σχετική έγκριση, η έγκριση είναι δυνατό να ανακαλείται αν και όποτε εκλείψουν οι λόγοι για τους οποίους παρεσχέθη και υπό την προϋπόθεση ότι δεν είναι πιθανό να ανακύψουν εκ νέου οι λόγοι αυτοί. Η αρμόδια αρχή, εάν της υποβληθεί σχετική αιτιολογημένη αίτηση, έχει την εξουσία να εξετάζει κατά πόσον εξακολουθούν να υφίστανται οι λόγοι για τους οποίους παρεσχέθη η έγκριση·

(η) στον δικαιούχο καταβάλλεται οικονομικό αντάλλαγμα το οποίο κρίνεται εύλογο με βάση τα δεδομένα κάθε περίπτωσης και αφού ληφθεί υπόψη η οικονομική αξία της έγκρισης·

(θ) η νομιμότητα οποιασδήποτε απόφασης που αφορά την παροχή έγκρισης για τέτοιου είδους χρήσεις υπόκειται στον έλεγχο των δικαστηρίων ή κάποιου άλλου λειτουργικά ανεξάρτητου ανώτερου οργάνου στο οικείο μέλος·

(ι) κάθε απόφαση η οποία αφορά το οικονομικό αντάλλαγμα που παρέχεται για τη χρήση υπόκειται στον έλεγχο των δικαστηρίων ή κάποιου άλλου λειτουργικά ανεξάρτητου ανώτερου οργάνου στο οικείο μέλος·

(κ) τα μέλη δεν είναι υποχρεωμένα να εφαρμόζουν τις προϋποθέσεις που ορίζονται στα στοιχεία (β) και (στ), όταν η έγκριση της χρήσης παρέχεται για την άρση των συνεπειών μίας πρακτικής που έχει κριθεί ως αντιβαίνουσα στον ανταγωνισμό μετά από σχετική δικαστική ή διοικητική διαδικασία. Για τον καθορισμό του ύψους του οικονομικού ανταλλάγματος σε τέτοιες περιπτώσεις είναι δυνατό να λαμβάνεται υπόψη η ανάγκη καταστολής πρακτικών που νοθεύουν τον ανταγωνισμό. Οι αρμόδιες αρχές δύνανται να αρνούνται την ανάκληση της έγκρισης αν και όποτε κρίνουν ότι είναι πιθανό να ανακύψουν εκ νέου οι λόγοι για τους οποίους παρεσχέθη η έγκριση·

(λ) όταν παρέχεται έγκριση για κάποια χρήση με σκοπό να καταστεί δυνατή η εκμετάλλευση ενός διπλώματος ευρεσιτεχνίας ("δεύτερο δίπλωμα ευρεσιτεχνίας"), η εκμετάλλευση του οποίου είναι αδύνατη χωρίς την παραβίαση κάποιου άλλου διπλώματος ευρεσιτεχνίας ("πρώτο δίπλωμα ευρεσιτεχνίας"), είναι επιπλέον εφαρμοστέες οι ακόλουθες προϋποθέσεις:

(i) η εφεύρεση που κατοχυρώνεται με το δεύτερο δίπλωμα ευρεσιτεχνίας πρέπει να στηρίζεται σε σημαντική τεχνική πρόοδο μεγάλης οικονομικής σπουδαιότητας σε σχέση με την εφεύρεση που κατοχυρώνεται με το πρώτο δίπλωμα ευρεσιτεχνίας·

(ii) ο κύριος του πρώτου διπλώματος ευρεσιτεχνίας δικαιούται να λάβει παράλληλη άδεια υπό εύλογους όρους για τη χρήση της εφεύρεσης που κατοχυρώνεται με το δεύτερο δίπλωμα ευρεσιτεχνίας· και

(iii) η χρήση που επιτρέπεται σε σχέση με το πρώτο δίπλωμα ευρεσιτεχνίας δεν επιτρέπεται να παραχωρηθεί σε τρίτο, παρά μόνο εφόσον παράλληλα εκχωρείται και το δεύτερο δίπλωμα ευρεσιτεχνίας.

Άρθρο 32

Ανάκληση/Αφαίρεση

Παρέχεται η δυνατότητα δικαστικού ελέγχου οποιασδήποτε απόφασης η οποία αφορά την ανάκληση ή την αφαίρεση ενός διπλώματος ευρεσιτεχνίας.

Άρθρο 33

Διάρκεια της προστασίας

Η παρεχόμενη προστασία διαρκεί τουλάχιστον μέχρι την πάροδο εικοσαετίας από την ημερομηνία κατάθεσης της σχετικής αίτησης.[8]

Άρθρο 34

Διπλώματα ευρεσιτεχνίας με αντικείμενο μεθόδους: βάρος της απόδειξης

1. Για τους σκοπούς τυχόν διαδικασιών ενώπιον των πολιτικών δικαστηρίων με αντικείμενο την παραβίαση των δικαιωμάτων του κυρίου, για τα οποία γίνεται λόγος στο άρθρο 28, παράγραφος 1, στοιχείο (β), όταν μεν το δίπλωμα ευρεσιτεχνίας αφορά κάποια μέθοδο παραγωγής συγκεκριμένου προϊόντος, οι δικαστικές αρχές έχουν την εξουσία να απαιτήσουν από τον εναγόμενο να αποδείξει ότι η μέθοδος παραγωγής κάποιου πανομοιότυπου προϊόντος διαφέρει από τη μέθοδο η οποία κατοχυρώνεται με το δίπλωμα ευρεσιτεχνίας. Συνεπώς, τα μέλη καθιερώνουν πρόβλεψη σύμφωνα με την οποία, σε μία τουλάχιστον από τις κατωτέρω περιπτώσεις, όταν κάποιο πανομοιότυπο προϊόν παράγεται χωρίς τη συγκατάθεση του προσώπου στο οποίο ανήκει η αντίστοιχη ευρεσιτεχνία, τεκμαίρεται, εκτός αν αποδεικνύεται το αντίθετο, ότι το προϊόν έχει παραχθεί με τη μέθοδο που κατοχυρώνεται με το δίπλωμα ευρεσιτεχνίας:

(α) σε περίπτωση που το προϊόν που παράγεται με τη μέθοδο, η οποία κατοχυρώνεται με το δίπλωμα ευρεσιτεχνίας, είναι καινούργιο·

(β) εφόσον υπάρχει μεγάλη πιθανότητα το πανομοιότυπο προϊόν να έχει παραχθεί με τη συγκεκριμένη μέθοδο, ενώ το πρόσωπο στο οποίο ανήκει η ευρεσιτεχνία έχει καταβάλει εύλογη προσπάθεια χωρίς να μπορέσει να προσδιορίσει τη μέθοδο παραγωγής που όντως χρησιμοποιήθηκε.

2. Τα μέλη είναι ελεύθερα να προβλέπουν ότι το βάρος της απόδειξης που ορίζεται στην παράγραφο 1 ανήκει στην πλευρά που κατηγορείται για παραβίαση του δικαιώματος μόνο εφόσον συντρέχει η προϋπόθεση που ορίζεται στο στοιχείο (α) ή μόνο εφόσον συντρέχει η προϋπόθεση που ορίζεται στο στοιχείο (β).

3. Κατά την προσαγωγή αποδεικτικών στοιχείων περί του αντιθέτου, λαμβάνονται υπόψη τα νόμιμα συμφέροντα των εναγομένων σχετικά με την προστασία του επιχειρηματικού απορρήτου και των μυστικών περί τις μεθόδους παραγωγής.

ΤΜΗΜΑ 6: ΔΙΑΤΑΞΕΙΣ (ΤΟΠΟΓΡΑΦΙΕΣ) ΟΛΟΚΛΗΡΩΜΕΝΩΝ ΚΥΚΛΩΜΑΤΩΝ

Άρθρο 35

Σχέση με τη συνθήκη IPIC

Τα μέλη συμφωνούν να παρέχουν προστασία στις διατάξεις (τοπογραφίες) ολοκληρωμένων κυκλωμάτων (οι οποίες στην παρούσα συμφωνία καλούνται "διατάξεις") βάσει των άρθρων 2 έως 7

8 Γίνεται δεκτό ότι στα μέλη τα οποία δεν εφαρμόζουν σύστημα αρχικής χορήγησης είναι δυνατό να προβλέπεται ότι η περίοδος προστασίας άρχεται από την ημερομηνία κατάθεσης που ισχύει στο πλαίσιο του συστήματος αρχικής χορήγησης.

(πλην του άρθρου 6, παράγραφος 3), του άρθρου 12 και του άρθρου 16, παράγραφος 3 της Συνθήκης για την Πνευματική Ιδιοκτησία στον τομέα των ολοκληρωμένων Κυκλωμάτων ("συνθήκη IPIC") και, επιπλέον, να εφαρμόζουν τις διατάξεις που ακολουθούν.

Άρθρο 36

Έκταση της προστασίας

Με την επιφύλαξη των διατάξεων του άρθρου 37, παράγραφος 1, τα μέλη θεωρούν παράνομες τις ακόλουθες ενέργειες, εφόσον επιχειρούνται χωρίς την άδεια του δικαιούχου[9]: την εισαγωγή, πώληση ή διακίνηση με οιονδήποτε τρόπο και για εμπορικούς σκοπούς μιας προστατευόμενης διάταξης, ενός ολοκληρωμένου κυκλώματος στο οποίο είναι ενσωματωμένη μια προστατευόμενη διάταξη ή οποιουδήποτε προϊόντος στο οποίο είναι ενσωματωμένο ένα τέτοιο ολοκληρωμένο κύκλωμα, μόνο στο βαθμό που η διάταξη, το ολοκληρωμένο κύκλωμα ή το προϊόν για το οποίο πρόκειται σε κάθε περίπτωση εξακολουθεί να περιλαμβάνει μια παρανόμως αναπαραχθείσα διάταξη.

Άρθρο 37

Πράξεις για τις οποίες δεν είναι απαραίτητη η άδεια του δικαιούχου

1. Κατά παρέκκλιση του άρθρου 36, τα μέλη δεν δύνανται να θεωρούν παράνομη τη διενέργεια καμίας από τις πράξεις που μνημονεύονται στο προαναφερθέν άρθρο προκειμένου περί ενός ολοκληρωμένου κυκλώματος, στο οποίο είναι ενσωματωμένη μία παρανόμως αναπαραχθείσα διάταξη, ή οποιουδήποτε προϊόντος, στο οποίο είναι ενσωματωμένο ένα τέτοιο ολοκληρωμένο κύκλωμα, όταν το πρόσωπο που την επιχειρεί ή που ζητεί την εκτέλεσή της δεν γνώριζε και δεν μπορούσε λογικά να γνωρίζει κατά την απόκτηση του ολοκληρωμένου κυκλώματος ή του προϊόντος στο οποίο είναι ενσωματωμένο ένα τέτοιο ολοκληρωμένο κύκλωμα ότι αυτό περιλάμβανε μία παρανόμως αναπαραχθείσα διάταξη. Τα μέλη προβλέπουν ότι από τη στιγμή που το εν λόγω πρόσωπο έχει ενημερωθεί καταλλήλως σχετικά με την παράνομη αναπαραγωγή της διάταξης, δύναται να επιχειρεί οποιαδήποτε από τις προαναφερθείσες πράξεις σε σχέση με τα προϊόντα που έχει ήδη παραλάβει ή έχει παραγγείλει από προηγουμένως, αλλά παράλληλα υποχρεούται να καταβάλει στον δικαιούχο κάποιο ποσό, που να αντιστοιχεί σε εύλογου ύψους δικαίωμα εκμετάλλευσης, το οποίο θα ήταν κανονικά καταβλητέο, αν οι δύο πλευρές είχαν συνάψει κατόπιν ελεύθερων διαπραγματεύσεων συμφωνία εκμετάλλευσης της εν λόγω διάταξης.

2. Οι προϋποθέσεις που ορίζονται στο άρθρο 31, στοιχεία (α) έως (κ), εφαρμόζονται κατ' αναλογίαν και σε περιπτώσεις εκούσιας παραχώρησης αδείας σε σχέση με κάποια διάταξη ή με τη χρήση της εκ μέρους ή για λογαριασμό των κρατικών αρχών χωρίς την άδεια του δικαιούχου.

Άρθρο 38

Διάρκεια της προστασίας

1. Στα μέλη στα οποία η καταχώρηση αποτελεί απαραίτητη προϋπόθεση για την παροχή προστασίας, η προστασία που παρέχεται στις διατάξεις

9 Στο παρόν κεφάλαιο, ο όρος "δικαιούχος" έχει την ίδια σημασία με τον όρο "κάτοχος του δικαιώματος" που χρησιμοποιείται στη συνθήκη IPIC.

ολοκληρωμένων κυκλωμάτων διαρκεί τουλάχιστον μέχρι την παρέλευση 10 ετών από την ημερομηνία κατάθεσης της αίτησης καταχώρησης ή από την πρώτη εμπορική εκμετάλλευση της διάταξης, σε οποιοδήποτε σημείο του κόσμου και αν έχει πραγματοποιηθεί αυτή.

2. Στα μέλη στα οποία η καταχώρηση δεν αποτελεί απαραίτητη προϋπόθεση για την παροχή προστασίας, η προστασία που παρέχεται στις διατάξεις ολοκληρωμένων κυκλωμάτων διαρκεί τουλάχιστον 10 έτη από την ημερομηνία της πρώτης εμπορικής εκμετάλλευσης της διάταξης, σε οποιοδήποτε σημείο του κόσμου και αν έχει πραγματοποιηθεί αυτή.

3. Κατά παρέκκλιση των παραγράφων 1 και 2, τα μέλη δύνανται να προβλέπουν ότι η προστασία παύει 15 έτη μετά τη δημιουργία της προστατευομένης διάταξης.

ΤΜΗΜΑ 7: ΠΡΟΣΤΑΣΙΑ ΜΗ ΑΠΟΚΑΛΥΦΘΕΙΣΩΝ ΠΛΗΡΟΦΟΡΙΩΝ

Άρθρο 39

1. Στο πλαίσιο της διασφάλισης της αποτελεσματικής προστασίας έναντι πρακτικών που συνεπάγονται αθέμιτο ανταγωνισμό, κατ' εφαρμογήν του άρθρου 10α της Σύμβασης των Παρισίων (1967), τα μέλη παρέχουν προστασία, αφενός, στις μη αποκαλυφθείσες πληροφορίες, όπως προβλέπει η παράγραφος 2, και, αφετέρου, στα στοιχεία που έχουν τεθεί στη διάθεση των κρατικών αρχών ή κρατικών φορέων, όπως προβλέπει η παράγραφος 3.

2. Κάθε φυσικό ή νομικό πρόσωπο έχει τη δυνατότητα να εμποδίσει την αποκάλυψη σε τρίτους πληροφοριών οι οποίες έχουν περιέλθει στην κατοχή του με νόμιμο τρόπο, καθώς και την απόκτηση ή τη χρήση τέτοιων πληροφοριών εκ μέρους τρίτων χωρίς τη συγκατάθεσή του και κατά τρόπο που να αντιβαίνει σε θεμιτές επιχειρηματικές πρακτικές[10], υπό την προϋπόθεση ότι οι εκάστοτε πληροφορίες:

(α) είναι απόρρητες, υπό την έννοια ότι, είτε ως σύνολο, είτε από την άποψη του ακριβούς περιεχομένου και της διάταξης των επιμέρους στοιχείων που τις αποτελούν, δεν είναι ευρέως γνωστές, ούτε μπορούν να γίνουν ευκόλως γνωστές σε πρόσωπα ανήκοντα σε κύκλους που ασχολούνται συνήθως με το οικείο είδος πληροφοριών·

(β) έχουν εμπορική αξία, η οποία απορρέει από τον απόρρητο χαρακτήρα τους· και

(γ) το πρόσωπο που έχει αποκτήσει με νόμιμο τρόπο τον έλεγχο επί των εν λόγω πληροφοριών έχει καταβάλει εύλογες προσπάθειες, λαμβανομένων υπόψη των όλων συνθηκών, για τη διαφύλαξη του απόρρητου χαρακτήρα τους.

10 Για τους σκοπούς της παρούσας διάταξης, η φράση "τρόπος που αντιβαίνει σε θεμιτές επιχειρηματικές πρακτικές" σημαίνει τουλάχιστον ορισμένες πρακτικές, όπως είναι η αθέτηση μιας σύμβασης, η παραβίαση του καθήκοντος εχεμύθειας ή η εξώθηση σε αθέτηση· επίσης περιλαμβάνει την απόκτηση μη αποκαλυφθεισών πληροφοριών εκ μέρους τρίτων, οι οποίοι γνώριζαν ή αγνοούσαν από βαριά αμέλεια ότι για την απόκτηση έγινε χρήση τέτοιων πρακτικών.

3. Τα μέλη, στις περιπτώσεις κατά τις οποίες εξαρτούν την παροχή έγκρισης για τη διάθεση στην αγορά φαρμακευτικών προϊόντων ή χημικών προϊόντων που χρησιμοποιούνται στη γεωργία και για τα οποία έχουν χρησιμοποιηθεί νέες χημικές ενώσεις, από την υποβολή των αποτελεσμάτων δοκιμών, τα οποία δεν έχουν προηγουμένως δοθεί στη δημοσιότητα, ή άλλου είδους στοιχείων, η συγκέντρωση των οποίων απαιτεί μεγάλη προσπάθεια, οφείλουν να προστατεύουν τα εν λόγω στοιχεία έναντι αθέμιτων επιχειρηματικών πρακτικών. Επιπλέον, τα μέλη διαφυλάσσουν τον απόρρητο χαρακτήρα των εν λόγω στοιχείων, εκτός αν η αποκάλυψή τους είναι αναγκαία για την προστασία του κοινού ή εκτός αν λαμβάνονται μέτρα για την προστασία των στοιχείων έναντι αθέμιτων επιχειρηματικών πρακτικών.

ΤΜΗΜΑ 8: ΕΛΕΓΧΟΣ ΠΡΑΚΤΙΚΩΝ ΠΟΥ ΣΥΝΕΠΑΓΟΝΤΑΙ ΣΤΡΕΒΛΩΣΕΙΣ ΤΟΥ ΑΝΤΑΓΩΝΙΣΜΟΥ ΣΤΟ ΠΛΑΙΣΙΟ ΑΔΕΙΩΝ ΕΚΜΕΤΑΛΛΕΥΣΗΣ

Άρθρο 40

1. Τα μέλη συμφωνούν ότι ορισμένες πρακτικές που εφαρμόζονται ή όροι που επιβάλλονται στο πλαίσιο παραχώρησης αδειών εκμετάλλευσης δικαιωμάτων πνευματικής ιδιοκτησίας ενδέχεται να έχουν αρνητικές επιπτώσεις στις συναλλαγές και να παρεμποδίζουν τη μεταφορά και διάδοση τεχνολογικών γνώσεων.

2. Καμία διάταξη της παρούσας συμφωνίας δεν εμποδίζει τα μέλη να προσδιορίζουν στο πλαίσιο της νομοθεσίας τους τις πρακτικές παραχώρησης αδειών εκμετάλλευσης ή τις συναφείς προϋποθέσεις οι οποίες είναι πιθανό σε ορισμένες περιπτώσεις να αποτελούν κατάχρηση δικαιωμάτων πνευματικής ιδιοκτησίας, με αρνητικές συνέπειες για τον ανταγωνισμό στις εκάστοτε αγορές. Όπως ορίζεται και παραπάνω, τα μέλη δύνανται, σεβόμενα τις υπόλοιπες διατάξεις της παρούσας συμφωνίας, να θεσπίζουν τα κατάλληλα μέτρα για την αποτροπή ή τον έλεγχο τέτοιου είδους πρακτικών, οι οποίες είναι δυνατόν, επί παραδείγματι, να έχουν τη μορφή αποκλειστικών ρητρών αντιπαραχώρησης, όρων με τους οποίους απαγορεύεται η προσβολή της ισχύος μίας πράξης ή της αναγκαστικής εκμετάλλευσης περισσοτέρων προϊόντων, με βάση τους σχετικούς νόμους και κανονισμούς του οικείου μέλους.

3. Κάθε μέλος, εφόσον του υποβληθεί σχετικό αίτημα, αρχίζει διαβουλεύσεις με κάποιο άλλο μέλος, που έχει λόγους να πιστεύει ότι ένα πρόσωπο, στο οποίο ανήκει κάποιο δικαίωμα πνευματικής ιδιοκτησίας και το οποίο έχει την υπηκοότητα του μέλους προς το οποίο απευθύνεται η αίτηση διεξαγωγής διαβουλεύσεων ή έχει τη νόμιμη κατοικία του σε αυτό, επιχειρεί να εφαρμόσει πρακτικές οι οποίες έρχονται σε σύγκρουση με τους νόμους και τους κανονισμούς του αιτούντος μέλους, τους σχετικούς με τα θέματα που ρυθμίζονται από το παρόν τμήμα· στην περίπτωση αυτή το αιτούν μέλος επιθυμεί να εξασφαλίσει την τήρηση της νομοθεσίας του, χωρίς να θίγεται η δυνατότητα λήψης μέτρων από εκάτερα τα μέρη βάσει της νομοθεσίας τους και χωρίς να περιστέλλεται καθόλου η ελευθερία τους να λάβουν κάποια οριστική απόφαση. Το μέλος προς το οποίο απευθύνεται η αίτηση εξετάζει με πνεύμα πλήρους κατανόησης τη δυνατότητα διεξαγωγής διαβουλεύσεων με το αιτούν μέλος και παρέχει τις κατάλληλες ευκαιρίες γι' αυτό τον σκοπό. Επίσης επιδεικνύει διάθεση συνεργασίας, παρέχοντας μη εμπιστευτικού χαρακτήρα πληροφορίες, οι οποίες είναι προσιτές στο ευρύ κοινό και έχουν σχέση με την υπόθεση, καθώς και τυχόν άλλα στοιχεία που έχει στη διάθεσή του, με την επιφύλαξη της εσωτερικής του νομοθεσίας και της σύναψης αμοιβαία αποδεκτών συμφωνιών με αντικείμενο τη διαφύλαξη της εμπιστευτικότητας των εν λόγω στοιχείων εκ μέρους του αιτούντος μέλους.

4. Όταν σε ένα μέλος εκκρεμούν διαδικασίες σε βάρος προσώπων που έχουν την υπηκοότητα κάποιου άλλου μέλους ή έχουν τη νόμιμη κατοικία τους σε αυτό το τελευταίο, με την κατηγορία ότι έχουν παραβιάσει τους νόμους και τους κανονισμούς του πρώτου μέλους που άπτονται των θεμάτων που ρυθμίζονται από το παρόν τμήμα, το μέλος αυτό παρέχει, εφόσον του ζητηθεί, στο άλλο μέλος τη δυνατότητα διεξαγωγής διαβουλεύσεων υπό τις ίδιες προϋποθέσεις που προβλέπονται στην παράγραφο 3.

ΜΕΡΟΣ ΙΙΙ

ΕΠΙΒΟΛΗ ΤΩΝ ΔΙΚΑΙΩΜΑΤΩΝ ΠΝΕΥΜΑΤΙΚΗΣ ΙΔΙΟΚΤΗΣΙΑΣ

ΤΜΗΜΑ 1: ΓΕΝΙΚΕΣ ΥΠΟΧΡΕΩΣΕΙΣ

Άρθρο 41

1. Τα μέλη μεριμνούν ώστε η νομοθεσία τους να προβλέπει τις διαδικασίες επιβολής που ορίζονται στο παρόν μέρος, προκειμένου να είναι δυνατή η αποτελεσματική λήψη μέτρων για την αντιμετώπιση κάθε πράξης παραβίασης των δικαιωμάτων πνευματικής ιδιοκτησίας που κατοχυρώνονται από την παρούσα συμφωνία· στα μέτρα αυτά συμπεριλαμβάνονται κατασταλτικά μέτρα τα οποία είναι δυνατό να εφαρμόζονται γρήγορα για να αποτραπούν τυχόν παραβιάσεις, καθώς και κατασταλτικά μέτρα, με τα οποία αποθαρρύνεται η διάπραξη περαιτέρω παραβιάσεων. Οι εν λόγω διαδικασίες εφαρμόζονται με τέτοιον τρόπο, ώστε να αποφεύγεται η ανόρθωση εμποδίων για το νόμιμο εμπόριο και να καθιερώνονται μηχανισμοί για την εξασφάλιση της μη καταχρηστικής προσφυγής σε αυτές.

2. Οι διαδικασίες για την επιβολή των δικαιωμάτων πνευματικής ιδιοκτησίας πρέπει να είναι εύλογες και δίκαιες. Επίσης δεν πρέπει να είναι υπερβολικά περίπλοκες, ούτε υπερβολικά δαπανηρές και να μη συνεπάγονται αδικαιολόγητες καθυστερήσεις. Ακόμη, οι προθεσμίες που τάσσονται για την εφαρμογή τους πρέπει να είναι εύλογες.

3. Οι αποφάσεις που εκδίδονται επί της ουσίας κάθε υπόθεσης πρέπει, εφόσον είναι δυνατό, να είναι γραπτές και αιτιολογημένες και να κοινοποιούνται τουλάχιστον στους διαδίκους χωρίς αδικαιολόγητες καθυστερήσεις. Οι αποφάσεις που εκδίδονται επί της ουσίας κάθε υπόθεσης πρέπει να είναι θεμελιωμένες σε εκείνα τα αποδεικτικά στοιχεία και μόνο, επί των οποίων είχαν τη δυνατότητα να εκφρασθούν οι διάδικοι.

4. Στα μέρη που μετέχουν σε μια διαδικασία παραχωρείται η δυνατότητα να ζητήσουν την εξέταση της ορθότητας των οριστικών αποφάσεων της Διοίκησης από δικαστικό όργανο, καθώς και των νομικών, τουλάχιστον, πτυχών των αρχικών δικαστικών αποφάσεων επί της ουσίας της υπόθεσης, με την επιφύλαξη τυχόν δικονομικών διατάξεων της νομοθεσίας του οικείου μέλους σχετικά με τη σπουδαιότητα των υποθέσεων. Εντούτοις, δεν υφίσταται υποχρέωση παροχής της δυνατότητας να ζητείται η εξέταση της ορθότητας των αθωωτικών αποφάσεων που εκδίδονται στο πλαίσιο ποινικών δικών.

5. Γίνεται δεκτό ότι το παρόν μέρος δεν δημιουργεί καμία υποχρέωση για την καθιέρωση στο πλαίσιο του δικαιοδοτικού συστήματος των μελών ειδικού μηχανισμού για την επιβολή των δικαιωμάτων πνευματικής ιδιοκτησίας, πέραν αυτού που υφίσταται για την επιβολή του νόμου εν γένει και ότι δεν θίγει τη δυνατότητα των μελών να επιβάλλουν την τήρηση του νόμου γενικώς. Καμία διάταξη του παρόντος μέρους δεν

δημιουργεί οποιαδήποτε υποχρέωση για τα μέλη να κατανείμουν με συγκεκριμένο τρόπο τα μέσα που διαθέτουν για την επιβολή των δικαιωμάτων πνευματικής ιδιοκτησίας, αφενός, και την επιβολή του νόμου εν γένει, αφετέρου.

ΤΜΗΜΑ 2: ΑΙΑΔΙΚΑΣΙΕΣ ΚΑΙ ΜΕΤΡΑ ΑΠΟΚΑΤΑΣΤΑΣΗΣ ΤΟΥ ΑΣΤΙΚΟΥ ΚΑΙ ΤΟΥ ΔΙΟΙΚΗΤΙΚΟΥ ΔΙΚΑΙΟΥ

Άρθρο 42

Εύλογες και δίκαιες διαδικασίες

Τα μέλη καθιερώνουν και θέτουν στη διάθεση των προσώπων στα οποία ανήκουν τα διάφορα δικαιώματα[11] δικαιοδοτικές διαδικασίες του αστικού δικαίου για την επιβολή των δικαιωμάτων πνευματικής ιδιοκτησίας που κατοχυρώνονται από την παρούσα συμφωνία. Οι εναγόμενοι έχουν το δικαίωμα να ενημερώνονται γραπτώς, εγκαίρως και με τη δέουσα διεξοδικότητα σχετικά με την υπόθεση, συμπεριλαμβανομένων των στοιχείων επί των οποίων ερείδονται οι ισχυρισμοί του αντιδίκου. Οι διάδικοι έχουν το δικαίωμα να παρίστανται δια ανεξάρτητου συνηγόρου, ενώ οι διαδικασίες δεν επιτρέπεται να επιβάλλουν υπερβολικά επαχθείς υποχρεώσεις όσον αφορά την αυτοπρόσωπη παρουσία των διαδίκων. Όλα τα μέρη που μετέχουν στις σχετικές διαδικασίες έχουν το δικαίωμα να επικαλεστούν στοιχεία προς επίρρωση των ισχυρισμών τους και να προσκομίσουν όλες τις σχετικές αποδείξεις. Στο πλαίσιο της διαδικασίας λαμβάνεται μέριμνα για την επισήμανση των στοιχείων εμπιστευτικού χαρακτήρα και την προστασία της εμπιστευτικότητάς τους, εκτός αν κάτι τέτοιο προσκρούει σε υφιστάμενες συνταγματικές επιταγές.

Άρθρο 43

Απόδειξη

1. Όταν ένας διάδικος έχει προσκομίσει αποδεικτικά στοιχεία, τα οποία κατέστη δυνατό να συγκεντρώσει και τα οποία αρκούν για τη θεμελίωση των ισχυρισμών του, ενώ παράλληλα επισημαίνει κάποια άλλα στοιχεία, τα οποία επίσης θα ήταν χρήσιμα για τη θεμελίωση των ισχυρισμών του, αλλά τα οποία βρίσκονται υπό τον έλεγχο του αντιδίκου του, οι δικαστικές αρχές έχουν την εξουσία να απαιτήσουν από τον αντίδικο να προσκομίσει αυτά τα δεύτερα αποδεικτικά στοιχεία, υπό την επιφύλαξη στις κατάλληλες περιπτώσεις των προϋποθέσεων που τάσσονται για την προστασία της εμπιστευτικότητας ορισμένων στοιχείων.

2. Σε περιπτώσεις κατά τις οποίες ένας διάδικος αρνείται εσκεμμένα και χωρίς να επικαλείται κάποιο βάσιμο λόγο να επιτρέψει την πρόσβαση ή γενικώς δεν παρέχει τα απαραίτητα στοιχεία εντός ευλόγου χρονικού διαστήματος ή θέτει σημαντικά εμπόδια σε διαδικασία που εκκρεμεί μετά από την κατάθεση αγωγής για την επιβολή κάποιου δικαιώματος, το οικείο μέλος δύναται να παραχωρεί στις δικαστικές αρχές την εξουσία να διατυπώνουν προκαταρκτικά ή οριστικά συμπεράσματα, καταφατικά ή αποφατικά, βάσει των στοιχείων που τους έχουν υποβληθεί, στα οποία είναι δυνατό να συμπεριλαμβάνονται η καταγγελία και οι ισχυρισμοί του διαδίκου κατά του οποίου στρέφονται οι συνέπειες της άρνησης παραχώρησης πρόσβασης στα στοιχεία, χωρίς να θίγεται η δυνατότητα που ενδεχομένως παρέχεται στα μέρη να εκφράζονται επί των προβαλλόμενων ισχυρισμών ή των προσκομισθέντων αποδεικτικών στοιχείων.

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11 Για τους σκοπούς του παρόντος μέρους, ο όρος "δικαιούχος" καλύπτει επίσης τους συλλόγους και τις ενώσεις που νομιμοποιούνται να διεκδικούν τα δικαιώματά τους.

Άρθρο 44

προσωρινά μέτρα

1. Οι δικαστικές αρχές έχουν την εξουσία να διατάξουν έναν διάδικο να παύσει να παραβιάζει κάποιο δικαίωμα· η διαταγή είναι δυνατό να αποσκοπεί, μεταξύ άλλων, στην αποτροπή της εισόδου στα υπαγόμενα στη δικαιοδοσία τους δίκτυα εμπορίας εισαγόμενων προϊόντων, τα οποία συνδέονται με κάποια παραβίαση δικαιώματος πνευματικής ιδιοκτησίας, αμέσως μετά τον εκτελωνισμό των εν λόγω προϊόντων. Τα μέλη δεν είναι υποχρεωμένα να παρέχουν την ανωτέρω εξουσία όταν το αντικείμενο της προστασίας έχει αποκτηθεί ή παραγγελθεί από κάποιο πρόσωπο, το οποίο είτε δεν γνώριζε ακόμη, είτε αγνοούσε δικαιολογημένα ότι οι επίμαχες συναλλαγές συνεπάγονταν ενδεχομένως την παραβίαση δικαιώματος πνευματικής ιδιοκτησίας.

2. Κατά παρέκκλιση των υπολοίπων διατάξεων του παρόντος μέρους και υπό την προϋπόθεση ότι τηρούνται οι διατάξεις του μέρους ΙΙ, οι οποίες ρυθμίζουν ρητώς το θέμα της χρήσης εκ μέρους των κρατικών αρχών ή εκ μέρους τρίτων με την έγκριση των κρατικών αρχών, όταν δεν υπάρχει σχετική έγκριση του δικαιούχου, τα μέλη δύνανται να μη θεσπίζουν άλλα μέτρα αποκατάστασης για την άρση των συνεπειών παρόμοιων μορφών χρήσης, πέραν της καταβολής χρηματικής αποζημίωσης κατ' εφαρμογήν του άρθρου 31, στοιχείο (η). Στις λοιπές περιπτώσεις, είναι δυνατή η προσφυγή στα μέτρα αποκατάστασης που προβλέπονται από το παρόν μέρος, εκτός αν τα μέτρα αυτά προσκρούουν στη νομοθεσία του οικείου μέλους, οπότε επιτρέπεται η έκδοση αναγνωριστικής αποφάσεως και η απαίτηση καταβολής επαρκούς αποζημίωσης.

Άρθρο 45

Αποζημίωση

1. Οι δικαστικές αρχές έχουν την εξουσία να διατάσσουν το πρόσωπο που έχει παραβιάσει ένα δικαίωμα πνευματικής ιδιοκτησίας να καταβάλει στο πρόσωπο στο οποίο ανήκει το εν λόγω δικαίωμα εύλογη αποζημίωση προς αποκατάσταση της ζημίας που το πρόσωπο αυτό έχει υποστεί λόγω της παραβίασης του δικαιώματος πνευματικής ιδιοκτησίας που του ανήκει εκ μέρους κάποιου προσώπου, το οποίο είτε γνώριζε, είτε όφειλε κανονικά να γνωρίζει ότι η επιχειρούμενη από αυτό πράξη ήταν παράνομη.

2. Οι δικαστικές αρχές έχουν επίσης την εξουσία να διατάσσουν το πρόσωπο που έχει παραβιάσει ένα δικαίωμα να αποζημιώσει τον δικαιούχο για τυχόν έξοδα που κατέβαλε για την υπόθεση, συμπεριλαμβανομένης ενδεχομένως εύλογης αμοιβής δικηγόρου. Στις κατάλληλες περιπτώσεις, τα μέλη δύνανται να παρέχουν στις δικαστικές αρχές την εξουσία να διατάσσουν την απόδοση των κερδών ή/και την καταβολή προκαθορισθείσας αποζημίωσης, ακόμη και αν ο διαπράξας την παραβίαση δεν εγνώριζε ή αγνοούσε δικαιολογημένα ότι η επιχειρούμενη από αυτόν πράξη συνεπάγετο παραβίαση δικαιώματος πνευματικής ιδιοκτησίας.

Άρθρο 46

Λοιπά μέτρα αποκατάστασης

Προκειμένου να υφίστανται αποτελεσματικά μέσα αποτροπής των παραβιάσεων, οι δικαστικές αρχές έχουν την εξουσία να διατάσσουν την απόσυρση από τα δίκτυα εμπορίας των αγαθών που έχει διαπιστωθεί ότι

συνδέονται με την παραβίαση κάποιου δικαιώματος, χωρίς να είναι αναγκαία η καταβολή οιασδήποτε αποζημιώσεως, κατά τρόπον ώστε να αποτρέπεται η πρόκληση βλάβης στον δικαιούχο· ακόμη είναι δυνατό, εναλλακτικά, να διατάσσεται η καταστροφή των επίμαχων αγαθών, εκτός αν κάτι τέτοιο έρχεται σε αντίθεση με υφιστάμενες συνταγματικές επιταγές. οι δικαστικές αρχές έχουν επίσης την εξουσία να διατάσσουν την απόσυρση από τα δίκτυα εμπορίας των υλικών και των εργαλείων που χρησιμοποιούνται κατά κύριο λόγο για την παραγωγή των αγαθών που έχει διαπιστωθεί ότι συνδέονται με την παραβίαση κάποιου δικαιώματος, χωρίς να είναι αναγκαία η καταβολή οιασδήποτε αποζημιώσεως, κατά τρόπον ώστε να ελαχιστοποιείται ο κίνδυνος επανάληψης των παραβιάσεων. Όταν οι αρχές εξετάζουν αιτήσεις με τις οποίες τους ζητείται να διατάξουν κάτι από τα προαναφερθέντα, συνεκτιμούν την ανάγκη να υπάρχει σχέση αναλογικότητας μεταξύ της σοβαρότητας της παραβίασης και των διατασσομένων μέτρων αποκατάστασης, καθώς επίσης τα τυχόν συμφέροντα τρίτων. Όταν πρόκειται για προϊόντα που παρανόμως φέρουν ένα εμπορικό σήμα, η απλή αφαίρεση του εμπορικού σήματος που έχει παρανόμως τεθεί στα προϊόντα δεν αρκεί, εκτός από εξαιρετικές περιπτώσεις, προκειμένου να θεωρηθούν τα προϊόντα κατάλληλα προς διάθεση στα δίκτυα εμπορίας.

Άρθρο 47

Δικαίωμα ενημέρωσης

Τα μέλη δύνανται να προβλέπουν ότι οι δικαστικές αρχές έχουν την εξουσία να διατάσσουν αυτόν που έχει διαπράξει μια παραβίαση να γνωστοποιήσει στον δικαιούχο την ταυτότητα τυχόν τρίτων, οι οποίοι ενέχονται στην παραγωγή και διακίνηση των παράνομων αγαθών ή υπηρεσιών, καθώς και τα δίκτυα διανομής που χρησιμοποιούν, εκτός αν κάτι τέτοιο δεν κρίνεται δικαιολογημένο με βάση τη σοβαρότητα της παραβίασης.

Άρθρο 48

Αποζημίωση του εναγομένου

1. Οι δικαστικές αρχές έχουν την εξουσία να διατάσσουν την πλευρά με αίτηση της οποίας ελήφθησαν μέτρα και η οποία έχει προσφύγει κατά τρόπο καταχρηστικό στις διαδικασίες επιβολής των δικαιωμάτων να καταβάλει στην πλευρά που έχει παρανόμως υποχρεωθεί σε πράξη ή παράλειψη εύλογη αποζημίωση για την αποκατάσταση της ζημίας που υπέστη συνεπεία της εν λόγω καταχρηστικής προσφυγής. Οι δικαστικές αρχές έχουν ακόμη την εξουσία να διατάσσουν τον ενάγοντα να καταβάλει στον εναγόμενο τις σχετικές δαπάνες, συμπεριλαμβανομένης ενδεχομένως εύλογης αμοιβής δικηγόρου.

2. Σε σχέση με την εφαρμογή του συνόλου της νομοθεσίας που άπτεται της προστασίας ή της επιβολής των δικαιωμάτων πνευματικής ιδιοκτησίας, τα μέλη δύνανται να απαλλάσσουν τόσο τις κρατικές αρχές, όσο και τους κρατικούς λειτουργούς από την ευθύνη που υπέχουν για τη λήψη των κατάλληλων μέτρων αποκατάστασης μόνο σε περιπτώσεις κατά τις οποίες οι κρατικές αρχές ή οι κρατικοί λειτουργοί ενήργησαν ή σκόπευαν να ενεργήσουν καλοπίστως στο πλαίσιο της εφαρμογής του εκάστοτε νόμου.

Άρθρο 49

Διοικητικές διαδικασίες

Στο μέτρο που είναι δυνατό να διαταχθεί οποιοδήποτε μέτρο

αποκατάστασης του αστικού δικαίου στο πλαίσιο της εφαρμογής διοικητικών διαδικασιών και μετά την εξέταση της ουσίας της υπόθεσης, οι εν λόγω διαδικασίες πρέπει να διέπονται από αρχές ανάλογες κατ' ουσίαν προς αυτές που ορίζονται στο παρόν τμήμα.

ΤΜΗΜΑ 3: ΠΡΟΣΩΡΙΝΑ ΜΕΤΡΑ

Άρθρο 50

1. Οι δικαστικές αρχές έχουν την εξουσία να διατάσσουν την άμεση και αποτελεσματική εφαρμογή προσωρινών μέτρων:

(α) προκειμένου να αποτραπεί η παραβίαση κάποιου δικαιώματος πνευματικής ιδιοκτησίας και ειδικότερα για να αποτραπεί η είσοδος στα υπαγόμενα στη δικαιοδοσία τους δίκτυα εμπορίας αγαθών, συμπεριλαμβανομένων εισαγόμενων αγαθών αμέσως μετά τον εκτελωνισμό τους·

(β) προκειμένου να διαφυλαχθούν αποδεικτικά στοιχεία που αναφέρονται στην υποτιθέμενη παραβίαση,

2. Όταν κρίνεται αναγκαίο, οι δικαστικές αρχές έχουν την εξουσία να θεσπίζουν προσωρινά μέτρα χωρίς πρώτα να ακούσουν τις απόψεις της άλλης πλευράς, ιδίως όταν πιθανολογείται ότι τυχόν καθυστέρηση ενδέχεται να προκαλέσει ανεπανόρθωτη βλάβη στο πρόσωπο στο οποίο ανήκει το σχετικό δικαίωμα, ή όταν αποδεικνύεται ότι υπάρχει κίνδυνος καταστροφής συναφών αποδεικτικών στοιχείων.

3. Οι δικαστικές αρχές έχουν την εξουσία να ζητούν από τον ενάγοντα να προσκομίσει τυχόν αποδεικτικά στοιχεία τα οποία είναι ευλόγως δυνατό να συγκεντρώσει, προκειμένου να βεβαιωθούν σε ικανοποιητικό βαθμό ότι ο ενάγων είναι το πρόσωπο στο οποίο ανήκει το εκάστοτε δικαίωμα και ότι η υποτιθέμενη παραβίαση αφορά το δικαίωμα του ενάγοντα ή ότι επίκειται παραβίαση ενός τέτοιου δικαιώματος· επίσης έχουν την εξουσία να ζητούν από τον ενάγοντα να καταβάλει εύλογη εγγύηση ή κάποια ισοδύναμη ασφάλεια, με σκοπό την προστασία του εναγομένου και την αποτροπή καταχρήσεων.

4. Όταν έχουν αποφασισθεί προσωρινά μέτρα χωρίς πρώτα να ακουστούν οι απόψεις της άλλης πλευράς, τα θιγόμενα μέρη πρέπει να ενημερώνονται σχετικά αμελλητί και πάντως το αργότερο μετά την εκτέλεση των μέτρων. Με αίτηση του εναγομένου διενεργείται επανεξέταση των μέτρων, οπότε ο εναγόμενος έχει το δικαίωμα να εκθέσει τις απόψεις του· σκοπός της επανεξέτασης είναι να αποφασισθεί, εντός εύλογου χρονικού διαστήματος από τη γνωστοποίηση των μέτρων, κατά πόσον είναι σκόπιμη η τροποποίηση, ανάκληση ή διατήρηση σε ισχύ των εκάστοτε μέτρων.

5. Είναι δυνατό να ζητείται από τον ενάγοντα να προσκομίσει τυχόν άλλα στοιχεία, τα οποία είναι απαραίτητα, προκειμένου η αρμόδια για την εκτέλεση των προσωρινών μέτρων αρχή να μπορέσει να εντοπίσει τα προϊόντα στα οποία αυτά αναφέρονται.

6. Με την επιφύλαξη της παραγράφου 4, τα προσωρινά μέτρα τα οποία λαμβάνονται δυνάμει των παραγράφων 1 και 2 ανακαλούνται ή έστω παύουν να ισχύουν μετά από αίτηση του εναγομένου, αν δεν κινηθούν μέσα σε εύλογο χρονικό διάστημα οι προβλεπόμενες διαδικασίες για την έκδοση απόφασης επί της ουσίας της υπόθεσης· το κρίσιμο χρονικό διάστημα καθορίζεται από τη δικαστική αρχή που έχει διατάξει την εκτέλεση των μέτρων, σε περίπτωση που κάτι τέτοιο επιτρέπεται από τη νομοθεσία του

οικείου μέλους. Αν δεν υπάρχει ρητός καθορισμός του κρίσιμου χρονικού διαστήματος, αυτό δεν μπορεί να είναι μεγαλύτερο των 20 εργασίμων ημερών ή των 31 ημερολογιακών ημερών, ανάλογα με το ποιο χρονικό διάστημα είναι το μεγαλύτερο.

7. Όταν τα προσωρινά μέτρα ανακαλούνται ή όταν η ισχύς τους παύει εξαιτίας κάποιας πράξης ή παράλειψης του ενάγοντος ή όταν διαπιστώνεται εκ των υστέρων ότι δεν έχει υπάρξει παραβίαση ή κίνδυνος παραβίασης ενός δικαιώματος πνευματικής ιδιοκτησίας, οι δικαστικές αρχές έχουν την εξουσία να διατάξουν τον ενάγοντα, μετά από αίτηση του εναγομένου, να καταβάλει στον εναγόμενο εύλογη αποζημίωση για τη ζημία που έχει ενδεχομένως υποστεί εξαιτίας των εν λόγω μέτρων.

8. Στο μέτρο που είναι δυνατό να διαταχθεί οποιοδήποτε προσωρινό μέτρο στο πλαίσιο της εφαρμογής διοικητικών διαδικασιών, οι εν λόγω διαδικασίες πρέπει να διέπονται από αρχές ανάλογες κατ' ουσίαν προς αυτές που ορίζονται στο παρόν τμήμα.

ΤΜΗΜΑ 4: ΕΙΔΙΚΕΣ ΠΡΟΫΠΟΘΕΣΕΙΣ ΓΙΑ ΤΑ ΔΙΑΣΥΝΟΡΙΑΚΑ ΜΕΤΡΑ[12]

Άρθρο 51

Αναστολή της θέσης σε ελεύθερη κυκλοφορία με απόφαση των τελωνειακών αρχών

Τα μέλη, τηρώντας τις διατάξεις που ακολουθούν, θεσπίζουν τις κατάλληλες διαδικασίες[13], ώστε το πρόσωπο στο οποίο ανήκει ένα

12 Όταν ένα μέλος έχει άρει σε μεγάλο βαθμό το σύνολο των ελέγχων επί των εμπορευμάτων που διακινούνται μεταξύ του εδάφους του και του εδάφους κάποιου άλλου μέλους, με το οποίο αποτελεί τελωνειακή ένωση, το μέλος αυτό δεν υποχρεούται να εφαρμόζει τις διατάξεις του παρόντος τμήματος για τα εμπορεύματα που διακινούνται μεταξύ του εδάφους του και του εδάφους του άλλου μέλους.

13 Γίνεται δεκτό ότι δεν υφίσταται υποχρέωση εφαρμογής τέτοιου είδους διαδικασιών προκειμένου περί εισαγωγών προϊόντων, τα οποία έχουν διατεθεί στην αγορά μιας άλλης χώρας εκ μέρους ή με τη συγκατάθεση του δικαιούχου, ή προκειμένου περί εμπορευμάτων που βρίσκονται υπό διαμετακόμιση.

δικαίωμα πνευματικής ιδιοκτησίας, το οποίο έχει βάσιμους λόγους να υποψιάζεται ότι είναι πιθανή η εισαγωγή προϊόντων που φέρουν εμπορικά σήματα τα οποία αποτελούν αντικείμενο παραποίησης ή απομίμησης ή συνδέονται με την παράνομη εκμετάλλευση κάποιου δικαιώματος δημιουργού[14], να έχει τη δυνατότητα να υποβάλει σχετική γραπτή αίτηση προς τις αρμόδιες αρχές, διοικητικές ή δικαστικές, με αντικείμενο την αναστολή εκ μέρους των τελωνειακών αρχών της θέσης σε ελεύθερη κυκλοφορία των επίμαχων προϊόντων. Τα μέλη δύνανται να επιτρέπουν την υποβολή παρόμοιων αιτήσεων όταν πρόκειται για εμπορεύματα που συνδέονται με άλλου είδους παραβιάσεις δικαιωμάτων πνευματικής ιδιοκτησίας, υπό την προϋπόθεση ότι πληρούνται οι προϋποθέσεις που ορίζονται στο παρόν τμήμα. Τα μέλη δύνανται επίσης να καθιερώνουν αντίστοιχες διαδικασίες για την αναστολή με απόφαση των τελωνειακών αρχών της παράδοσης παράνομων εμπορευμάτων, τα οποία προορίζονται για εξαγωγή από το έδαφός τους.

Άρθρο 52

Αίτηση

Κάθε πρόσωπο στο οποίο ανήκει ένα δικαίωμα πνευματικής ιδιοκτησίας και το οποίο κινεί τις διαδικασίες που προβλέπονται στο άρθρο 51 οφείλει να προσκομίσει επαρκή αποδεικτικά στοιχεία, με βάση τα οποία οι αρμόδιες αρχές να πείθονται ότι, βάσει της νομοθεσίας της χώρας εισαγωγής, υπάρχει εκ πρώτης όψεως παραβίαση του δικαιώματος πνευματικής ιδιοκτησίας του αιτούντος· επίσης ο αιτών οφείλει να θέσει στη διάθεση των αρχών αρκούντως λεπτομερή περιγραφή των σχετικών προϊόντων, ώστε αυτά να είναι εύκολα αναγνωρίσιμα από τις τελωνειακές αρχές. Οι αρμόδιες αρχές γνωστοποιούν στον αιτούντα εντός ευλόγου χρονικού διαστήματος κατά πόσον κάνουν δεκτή την αίτηση, καθώς και το χρονικό διάστημα κατά το οποίο πρόκειται να εφαρμόσουν μέτρα οι τελωνειακές αρχές, εφόσον η διάρκεια εφαρμογής των μέτρων καθορίζεται από τις ίδιες τις αρμόδιες αρχές.

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14 Για τους σκοπούς της παρούσας συμφωνίας:

(α) ο όρος "προϊόν που φέρει εμπορικό σήμα" που αποτελεί αντικείμενο παραποίησης ή απομίμησης σημαίνει οποιοδήποτε προϊόν, συμπεριλαμβανομένων των συσκευασιών, το οποίο φέρει χωρίς να υπάρχει σχετική άδεια ένα εμπορικό σήμα πανομοιότυπο με κάποιο άλλο εμπορικό σήμα, που έχει καταχωρηθεί εγκύρως σε σχέση με το εν λόγω προϊόν, ή το οποίο έχει βασικά χαρακτηριστικά που δεν επιτρέπουν τη διαφοροποίησή του από ένα άλλο, εγκύρως καταχωρηθέν, σήμα, και το οποίο με τον τρόπο αυτό συνεπάγεται παραβίαση των δικαιωμάτων του προσώπου στο οποίο ανήκει το εν λόγω άλλο εμπορικό σήμα βάσει της νομοθεσίας της χώρας εισαγωγής·

(β) ο όρος "προϊόν που συνδέεται με την παράνομη εκμετάλλευση δικαιώματος δημιουργού" σημαίνει κάθε προϊόν το οποίο αποτελεί αντίγραφο άλλου προϊόντος, χωρίς τη συγκατάθεση του προσώπου στο οποίο ανήκει το σχετικό δικαίωμα ή του προσώπου που έχει νομιμοποιηθεί δεόντως από το πρόσωπο στο οποίο ανήκει το δικαίωμα στη χώρα παραγωγής, και το οποίο παράγεται με την αντιγραφή, άμεση ή έμμεση, κάποιου άλλου αντικειμένου, εφόσον η παραγωγή του αντιγράφου θα μπορούσε να θεωρηθεί παραβίαση ενός δικαιώματος δημιουργού ή άλλου συγγενικού δικαιώματος βάσει της νομοθεσίας της χώρας εισαγωγής.

Άρθρο 53

Παροχή εγγύησης ή ισοδύναμης ασφάλειας

1. Οι αρμόδιες αρχές έχουν την εξουσία να ζητούν από τον ενάγοντα να παράσχει εγγύηση ή άλλη ισοδύναμη ασφάλεια, η οποία να αρκεί για την κατοχύρωση του εναγομένου και των αρμόδιων αρχών και για την αποτροπή καταχρήσεων. Η εν λόγω εγγύηση ή η ισοδύναμη ασφάλεια απαιτείται να μην αποθαρρύνει αδικαιολόγητα την προσφυγή στις προβλεπόμενες διαδικασίες.

2. Όταν οι τελωνειακές αρχές αναστέλλουν τη θέση σε ελεύθερη κυκλοφορία εμπορευμάτων, τα οποία έχουν σχέση με βιομηχανικά σχέδια, δικαιώματα ευρεσιτεχνίας, διατάξεις (ολοκληρωμένων κυκλωμάτων) ή μη γνωστοποιηθέντα στοιχεία, μετά την υποβολή σχετικής αίτησης βάσει του παρόντος τμήματος και ενεργώντας βάσει αποφάσεως την οποία δεν έχει λάβει κάποια δικαστική ή άλλη ανεξάρτητη αρχή, ενώ παράλληλα έχει παρέλθει η προθεσμία που τάσσεται στο άρθρο 55, χωρίς να εγκριθεί η εφαρμογή προσωρινών μέτρων αποκατάστασης εκ μέρους της προς τούτο αρμόδιας αρχής, και έχουν τηρηθεί όλες οι λοιπές προϋποθέσεις που ισχύουν για την εισαγωγή, ο κύριος, ο εισαγωγέας ή ο παραλήπτης των εν λόγω εμπορευμάτων δικαιούται να ζητήσει τη θέση τους σε ελεύθερη κυκλοφορία, αφού καταβάλει εγγύηση αρκετά μεγάλη, ώστε να εξασφαλίζεται το πρόσωπο στο οποίο ανήκει το σχετικό δικαίωμα έναντι οιασδήποτε παραβίασης. Η καταβολή μιας τέτοιας εγγύησης δεν θίγει τη δυνατότητα του δικαιούχου να ζητήσει τη λήψη οιουδήποτε άλλου προβλεπόμενου μέτρου αποκατάστασης, ενώ εξυπακούεται ότι η παρασχεθείσα εγγύηση αποδεσμεύεται αν ο δικαιούχος δεν φροντίσει να προσφύγει στη δικαιοσύνη εντός ευλόγου χρονικού διαστήματος.

Άρθρο 54

Πληροφόρηση περί της αναστολής

Ο εισαγωγέας και ο ενάγων ενημερώνονται πάραυτα σχετικά με την αναστολή της θέσης σε ελεύθερη κυκλοφορία των εμπορευμάτων κατ' εφαρμογήν του άρθρου 51.

Άρθρο 55

Διάρκεια της αναστολής

Εάν, εντός χρονικού διαστήματος που δεν είναι δυνατό να υπερβαίνει τις 10 εργάσιμες ημέρες από τη γνωστοποίηση της αναστολής στον ενάγοντα, οι τελωνειακές αρχές δεν έχουν ειδοποιηθεί ότι έχουν κινηθεί εκ μέρους κάποιου άλλου μέρους πλην του εναγομένου οι διαδικασίες που απαιτούνται για την έκδοση απόφασης επί της ουσίας της υπόθεσης ή ότι η προς τούτο αρμόδια αρχή έχει λάβει προσωρινά μέτρα για την παράταση της αναστολής της θέσης των οικείων εμπορευμάτων σε ελεύθερη κυκλοφορία, τότε τα εν λόγω εμπορεύματα τίθενται σε ελεύθερη κυκλοφορία, υπό την προϋπόθεση ότι έχουν τηρηθεί όλες οι λοιπές προϋποθέσεις που τάσσονται για την εισαγωγή ή την εξαγωγή· όταν κρίνεται αναγκαίο, η ανωτέρω προθεσμία είναι δυνατό να παρατείνεται κατά 10 εργάσιμες ημέρες επιπλέον. Σε περίπτωση που έχουν κινηθεί οι διαδικασίες που απαιτούνται για την έκδοση απόφασης επί της ουσίας της απόφασης, διενεργείται με αίτηση του εναγομένου επανεξέταση των μέτρων, οπότε ο εναγόμενος έχει το δικαίωμα να εκθέσει τις απόψεις του· σκοπός της επανεξέτασης είναι να αποφασισθεί, εντός εύλογου χρονικού διαστήματος, κατά πόσον είναι σκόπιμη η τροποποίηση, ανάκληση ή διατήρηση σε ισχύ των εκάστοτε μέτρων. Κατά παρέκκλιση των ανωτέρω, όταν η αναστολή της θέσης των εμπορευμάτων σε ελεύθερη κυκλοφορία εφαρμόζεται ή παρατείνεται κατ' εφαρμογήν προσωρινού δικαστικού μέτρου, εφαρμόζονται οι διατάξεις του άρθρου 50 παράγραφος 6.

Άρθρο 56

Αποζημίωση του εισαγωγέα και του κυρίου των εμπορευμάτων

Οι αρμόδιες αρχές έχουν την εξουσία να διατάσσουν τον ενάγοντα να καταβάλει στον εισαγωγέα, στον παραλήπτη και στον κύριο των εμπορευμάτων εύλογη αποζημίωση για τυχόν ζημία που υπέστησαν εξαιτίας της παράνομης δέσμευσης των εμπορευμάτων ή εξαιτίας της δέσμευσης εμπορευμάτων που εν συνεχεία ετέθησαν σε ελεύθερη κυκλοφορία βάσει του άρθρου 55.

Άρθρο 57

Δικαίωμα ελέγχου και ενημέρωσης

Με την επιφύλαξη της ανάγκης προστασίας πληροφοριών εμπιστευτικού χαρακτήρα, τα μέλη παραχωρούν στις αρμόδιες αρχές την εξουσία να παρέχουν τις κατάλληλες δυνατότητες στον δικαιούχο, ώστε αυτός να μπορεί να ζητήσει να διενεργηθεί έλεγχος των εμπορευμάτων που έχουν δεσμεύσει οι τελωνειακές αρχές, προκειμένου να συγκεντρωθούν στοιχεία προς επίρρωση των ισχυρισμών του δικαιούχου. Οι αρμόδιες αρχές έχουν ακόμη την εξουσία να παραχωρούν ανάλογη δυνατότητα στον εισαγωγέα να ζητήσει τη διενέργεια ελέγχου επί των εμπορευμάτων που έχουν ενδεχομένως δεσμευθεί. Όταν επί της ουσίας της υπόθεσης έχει εκδοθεί καταφατική απόφαση, τα μέλη δύνανται να παραχωρούν στις αρμόδιες αρχές την εξουσία να γνωστοποιούν στον δικαιούχο τα ονόματα και τις διευθύνσεις του αποστολέα, του εισαγωγέα και του παραλήπτη, καθώς και τις ποσότητες των επίμαχων προϊόντων.

Άρθρο 58

Αυτεπάγγελτη ενέργεια

Όταν τα μέλη απαιτούν από τις αρμόδιες αρχές να ενεργούν με ιδία πρωτοβουλία και να αναστέλλουν τη θέση των εμπορευμάτων σε ελεύθερη κυκλοφορία όταν έχουν συγκεντρώσει αποδεικτικά στοιχεία, από τα οποία εκ πρώτης όψεως προκύπτει ότι τα εν λόγω εμπορεύματα συνδέονται με την παραβίαση κάποιου δικαιώματος πνευματικής ιδιοκτησίας, στην περίπτωση αυτή:

(α) οι αρμόδιες αρχές δύνανται ανά πάσα στιγμή να ζητούν από τον δικαιούχο οποιαδήποτε πληροφορία η οποία ενδέχεται να φανεί χρήσιμη για την εκτέλεση των καθηκόντων που τους έχουν ανατεθεί·

(β) ο εισαγωγέας και ο δικαιούχος ενημερώνονται αμελλητί σχετικά με την αναστολή. Σε περίπτωση που ο εισαγωγέας έχει ασκήσει έφεση ενώπιον των αρμόδιων αρχών κατά της απόφασης περί αναστολής, η αναστολή υπόκειται στις προϋποθέσεις που ορίζονται στο άρθρο 55, οι οποίες εφαρμόζονται κατ' αναλογίαν·

(γ) τα μέλη δύνανται να απαλλάσσουν τόσο τις κρατικές αρχές, όσο και τους κρατικούς λειτουργούς από την ευθύνη που υπέχουν για τη λήψη των κατάλληλων μέτρων αποκατάστασης μόνο σε περιπτώσεις κατά τις οποίες οι κρατικές αρχές ή οι κρατικοί λειτουργοί ενήργησαν ή σκόπευαν να ενεργήσουν καλοπίστως.

Άρθρο 59

Μέτρα αποκατάστασης

Με την επιφύλαξη τυχόν άλλων δικαιωμάτων άμυνας που αναγνωρίζονται στο πρόσωπο στο οποίο ανήκει το εκάστοτε δικαίωμα και χωρίς να θίγεται το δικαίωμα του εναγομένου να ζητήσει την επανεξέταση από δικαστική αρχή των μέτρων που έχουν ληφθεί, οι αρμόδιες αρχές έχουν την εξουσία να διατάσσουν την καταστροφή ή την απόσυρση των παράνομων εμπορευμάτων σύμφωνα με τις αρχές που καθορίζονται στο άρθρο 46. Προκειμένου περί προϊόντων που φέρουν εμπορικό σήμα το οποίο αποτελεί αντικείμενο παραποίησης ή απομίμησης, οι αρχές δεν επιτρέπουν την επανεξαγωγή των παράνομων προϊόντων ως έχουν, ούτε τα υποβάλλουν σε ξεχωριστή τελωνειακή διαδικασία, εκτός αν συντρέχουν εξαιρετικές περιστάσεις.

Άρθρο 60

Εισαγωγές αμελητέων ποσοτήτων

Τα μέλη δύνανται να εξαιρούν από την εφαρμογή των ανωτέρω διατάξεων μικρές ποσότητες προϊόντων που δεν προορίζονται για εμπορικό σκοπό και περιέχονται στις προσωπικές αποσκευές των ταξιδιωτών ή αποστέλλονται ως μικροδέματα.

ΤΜΗΜΑ 5: ΠΟΙΝΙΚΕΣ ΔΙΑΔΙΚΑΣΙΕΣ

Άρθρο 61

Τα μέλη καθιερώνουν ποινικές διαδικασίες και ποινές, οι οποίες είναι δυνατό να εφαρμοσθούν τουλάχιστον σε περιπτώσεις εκ προθέσεως

απομίμησης/παραποίησης εμπορικών σημάτων ή παράνομης εκμετάλλευσης δικαιώματος δημιουργού σε εμπορική κλίμακα. Οι επαπειλούμενες ποινές περιλαμβάνουν τη φυλάκιση ή/και χρηματικά πρόστιμα, τα οποία πρέπει να είναι αρκετά υψηλά, ώστε να αποθαρρύνονται οι παραβιάσεις· γενικά οι επαπειλούμενες ποινές πρέπει να αντιστοιχούν ως προς την αυστηρότητά τους στις ποινές που επισύρονται για ποινικά αδικήματα ανάλογης σοβαρότητας. Στις κατάλληλες περιπτώσεις, οι προβλεπόμενες ποινές είναι δυνατό να περιλαμβάνουν την κατάσχεση, τη δήμευση ή την καταστροφή των παράνομων εμπορευμάτων, καθώς και οποιωνδήποτε υλικών ή εργαλείων που έχουν χρησιμοποιηθεί κατά κύριο λόγο για τη διάπραξη του αδικήματος. Τα μέλη δύνανται να καθιερώνουν ποινικές διαδικασίες και ποινές οι οποίες είναι δυνατό να εφαρμόζονται και σε άλλες περιπτώσεις παραβιάσεων δικαιωμάτων πνευματικής ιδιοκτησίας, ιδίως σε περιπτώσεις κατά τις οποίες οι παραβιάσεις διαπράττονται εκ προθέσεως και σε εμπορική κλίμακα.

ΜΕΡΟΣ IV

ΑΠΟΚΤΗΣΗ ΚΑΙ ΔΙΑΤΗΡΗΣΗ ΤΩΝ ΔΙΚΑΙΩΜΑΤΩΝ ΠΝΕΥΜΑΤΙΚΗΣ ΙΔΙΟΚΤΗΣΙΑΣ ΚΑΙ ΣΥΝΑΦΕΙΣ ΔΙΑΔΙΚΑΣΙΕΣ ΜΕΤΑΞΥ ΤΩΝ ΜΕΡΩΝ

Άρθρο 62

1. Τα μέλη δύνανται να θέτουν ως προϋπόθεση για την απόκτηση ή τη διατήρηση των δικαιωμάτων πνευματικής ιδιοκτησίας που προβλέπονται στα τμήματα 2 έως 6 του μέρους II την τήρηση εύλογων διαδικασιών και διατυπώσεων. Οι εν λόγω διαδικασίες και διατυπώσεις πρέπει να συνάδουν με τις διατάξεις της παρούσας συμφωνίας.

2. Όταν η απόκτηση ενός δικαιώματος πνευματικής ιδιοκτησίας εξαρτάται από την αναγνώριση ή την καταχώρηση του δικαιώματος, τα μέλη λαμβάνουν πρόνοια, ώστε οι διαδικασίες που διέπουν την αναγνώριση ή την καταχώρηση αυτή να επιτρέπουν την αναγνώριση ή την καταχώρηση του δικαιώματος εντός ευλόγου χρονικού διαστήματος και να αποτρέπεται η αδικαιολόγητη συρρίκνωση της περιόδου προστασίας, υπό την προϋπόθεση ότι έχουν τηρηθεί οι ουσιαστικές προϋποθέσεις που ισχύουν για την απόκτηση του δικαιώματος.

3. Το άρθρο 4 της σύμβασης των Παρισίων (1967) εφαρμόζεται κατ' αναλογίαν για τα σήματα που αναφέρονται σε υπηρεσίες.

4. Οι διαδικασίες που εφαρμόζονται για την απόκτηση ή τη διατήρηση των δικαιωμάτων πνευματικής ιδιοκτησίας, καθώς επίσης, στις περιπτώσεις που η νομοθεσία του οικείου μέλους προβλέπει τέτοιου είδους διαδικασίες, η διαδικασία ανάκλησης με διοικητική απόφαση και οι διαδικασίες που ισχύουν μεταξύ των μερών, όπως είναι η προβολή ένστασης, η ανάκληση και η ακύρωση, διέπονται από τις γενικές αρχές που ορίζονται στο άρθρο 41, παράγραφοι 2 και 3.

5. Οι οριστικές διοικητικές αποφάσεις που λαμβάνονται στο πλαίσιο οποιασδήποτε από τις διαδικασίες που προβλέπονται στην παράγραφο 4 υπόκεινται σε επανεξέταση από δικαστική ή οιωνεί δικαστική αρχή. Εντούτοις, η υποχρέωση να παρέχονται τα μέσα ώστε να είναι δυνατή η επανεξέταση των εν λόγω αποφάσεων δεν ισχύει σε περιπτώσεις ανεπιτυχούς προβολής ένστασης ή ανάκλησης με διοικητική απόφαση, υπό τον όρο ότι οι λόγοι επί των οποίων στηρίζονται οι εν λόγω διαδικασίες είναι δυνατό να αποτελέσουν αντικείμενο ακυρωτικών διαδικασιών.

ΜΕΡΟΣ V

ΠΡΟΛΗΨΗ ΚΑΙ ΕΠΙΛΥΣΗ ΔΙΑΦΟΡΩΝ

Άρθρο 63
Διαφάνεια

1. Οι νόμοι, οι κανονισμοί, καθώς επίσης οι οριστικές δικαστικές αποφάσεις και οι διοικητικές αποφάσεις γενικής εφαρμογής που κηρύσσονται εκτελεστές από ένα μέλος και άπτονται του αντικειμένου της παρούσας συμφωνίας (δηλαδή της θεσμοθέτησης, έκτασης, απόκτησης, επιβολής και αποτροπής της καταχρηστικής χρησιμοποίησης δικαιωμάτων πνευματικής ιδιοκτησίας) πρέπει υποχρεωτικά να δημοσιεύονται ή, αν η δημοσίευσή τους δεν είναι πρακτικώς δυνατή, να γίνονται γνωστά στο κοινό, σε επίσημη γλώσσα του εκάστοτε μέλους και κατά τέτοιον τρόπο, ώστε οι κυβερνήσεις και τα πρόσωπα στα οποία ανήκουν τα διάφορα δικαιώματα να έχουν την ευχέρεια να λαμβάνουν γνώση αυτών. Τυχόν συμφωνίες σχετικές με τα θέματα που ρυθμίζονται από την παρούσα συμφωνία, οι οποίες ισχύουν μεταξύ της κυβέρνησης ή κάποιου κρατικού φορέα ενός μέλους και της κυβέρνησης ή κάποιου κρατικού φορέα ενός άλλου μέλους πρέπει επίσης να δημοσιεύονται.

2. Τα μέλη γνωστοποιούν τους νόμους και τους κανονισμούς για τους οποίους γίνεται λόγος στην παράγραφο 1 στο συμβούλιο για τα TRIP, ούτως ώστε να διευκολύνεται το έργο της παρακολούθησης της εφαρμογής της παρούσας συμφωνίας, το οποίο έχει ανατεθεί στο συμβούλιο. Το συμβούλιο καταβάλλει προσπάθειες για την ελαχιστοποίηση της επιβάρυνσης που συνεπάγεται για τα μέλη η εκπλήρωση της προαναφερθείσας υποχρεώσεως και δύναται να αποφασίζει την απαλλαγή από την υποχρέωση γνωστοποίησης των νόμων και των κανονισμών απευθείας στο συμβούλιο, εφόσον ευοδωθούν οι διαβουλεύσεις με τον ΠΟΠΙ για τη δημιουργία κοινού μητρώου, το οποίο θα περιέχει τους εν λόγω νόμους και κανονισμούς. Το συμβούλιο εξετάζει επίσης προς την ίδια κατεύθυνση τη σκοπιμότητα λήψης μέτρων όσον αφορά τα στοιχεία που γνωστοποιούνται στο πλαίσιο των σχετικών υποχρεώσεων που θεσπίζονται στην παρούσα συμφωνία και απορρέουν από τις διατάξεις του άρθρου 6β της σύμβασης των Παρισίων (1967).

3. Κάθε μέλος είναι διατεθειμένο να παράσχει, μετά από σχετική γραπτή αίτηση κάποιου άλλου μέλους, στοιχεία ανάλογα εκείνων για τα οποία γίνεται λόγος στην παράγραφο 1. Όταν ένα μέλος έχει λόγους να πιστεύει ότι συγκεκριμένη δικαστική ή διοικητική απόφαση ή μια διμερής συμφωνία σχετική με δικαιώματα πνευματικής ιδιοκτησίας έχει συνέπειες για τα δικαιώματά του βάσει της παρούσας συμφωνίας, το εν λόγω μέλος δύναται ακόμη να ζητήσει γραπτώς να λάβει γνώση της εκάστοτε δικαστικής ή διοικητικής απόφασης ή της συγκεκριμένης διμερούς συμφωνίας ή, τουλάχιστον, να πληροφορηθεί το περιεχόμενό τους με τη δέουσα λεπτομέρεια.

4. Καμία διάταξη των παραγράφων 1, 2 και 3 δεν συνεπάγεται για τα μέλη την υποχρέωση να αποκαλύψουν πληροφορίες εμπιστευτικού χαρακτήρα, όταν κάτι τέτοιο θα έθετε εμπόδια στην επιβολή του νόμου ή θα ερχόταν με οποιονδήποτε τρόπο σε αντίθεση με το δημόσιο συμφέρον ή θα έβλαπτε τα νόμιμα εμπορικά συμφέροντα συγκεκριμένων επιχειρήσεων, είτε δημόσιων, είτε ιδιωτικών.

Άρθρο 64

Επίλυση διαφορών

1. Οι διατάξεις των άρθρων XXII και XXIII της GATT του 1994, όπως επεξηγούνται και ισχύουν βάσει του Μνημονίου Συμφωνίας για την Επίλυση Διαφορών, είναι εφαρμοστέες για τις διαβουλεύσεις και την επίλυση των διαφορών στο πλαίσιο της παρούσας συμφωνίας, εκτός αν η ίδια η συμφωνία περιέχει αντίθετη ρητή πρόβλεψη.

2. Η παράγραφος 1, στοιχεία (β) και (γ) του άρθρου XXIII της GATT του 1994 δεν είναι εφαρμοστέα για την επίλυση των διαφορών στο πλαίσιο της παρούσας συμφωνίας επί μία πενταετία από την ημερομηνία έναρξης ισχύος της συμφωνίας για τον ΠΟΕ.

3. Κατά το χρονικό διάστημα που μνημονεύεται στην παράγραφο 2, το συμβούλιο για τα TRIP ασχολείται με τα θέματα τα οποία είναι δυνατό να αφορούν οι καταγγελίες του τύπου που προβλέπεται από την παράγραφο 1, στοιχεία (β) και (γ) του άρθρου XXIII της GATT του 1994 και οι οποίες υποβάλλονται δυνάμει της παρούσας συμφωνίας, καθώς και με τις λεπτομέρειες υποβολής των καταγγελιών αυτών· το συμβούλιο υποβάλει τις συστάσεις του σχετικά στην υπουργική συνδιάσκεψη προς έγκριση. Για οποιαδήποτε απόφαση της υπουργικής συνδιάσκεψης με αντικείμενο την έγκριση των συστάσεων του συμβουλίου ή την παράταση της χρονικής περιόδου που προβλέπεται στην παράγραφο 2 απαιτείται οπωσδήποτε ομοφωνία, ενώ οι εγκεκριμένες συστάσεις ισχύουν για το σύνολο των μελών, χωρίς να είναι απαραίτητη κάποια περαιτέρω τυπική διαδικασία αποδοχής.

ΜΕΡΟΣ VI

ΜΕΤΑΒΑΤΙΚΕΣ ΡΥΘΜΙΣΕΙΣ

Άρθρο 65

Μεταβατικές ρυθμίσεις

1. Με την επιφύλαξη των διατάξεων των παραγράφων 2, 3 και 4, κανένα μέλος δεν υποχρεούται να εφαρμόσει τις διατάξεις της παρούσας συμφωνίας πριν από τη λήξη καθολικής περιόδου ενός έτους από την ημερομηνία έναρξης ισχύος της συμφωνίας για τον ΠΟΕ.

2. Οι αναπτυσσόμενες χώρες μέλη έχουν το δικαίωμα να μεταθέτουν κατά τέσσερα επιπλέον έτη την ημερομηνία έναρξης της εφαρμογής των διατάξεων της παρούσας συμφωνίας, η οποία καθορίζεται στην παράγραφο 1, με εξαίρεση τα άρθρα 3, 4 και 5.

3. Κάθε άλλο μέλος, το οποίο διανύει περίοδο μεταρρυθμίσεων με σκοπό τη μετάβαση από μία κεντρικά σχεδιαζόμενη οικονομία σε μια οικονομία της αγοράς, η οποία θα διέπεται από την αρχή της ελεύθερης επιχειρηματικής δραστηριότητας, και το οποίο καταβάλλει προσπάθειες για την αναμόρφωση των δομών του συστήματος προστασίας της πνευματικής ιδιοκτησίας που εφαρμόζει και αντιμετωπίζει ειδικά προβλήματα για την κατάρτιση και εφαρμογή νόμων και κανονισμών στον τομέα της πνευματικής ιδιοκτησίας, δύναται ομοίως να μεταθέσει την έναρξη εφαρμογής της παρούσας συμφωνίας για ορισμένο χρονικό διάστημα, κατά τα προβλεπόμενα στην παράγραφο 2.

4. Στο βαθμό που μία αναπτυσσόμενη χώρα μέλος είναι υποχρεωμένη βάσει της πάρούσας συμφωνίας να επεκτείνει την προστασία των ευρεσιτεχνιών

που παρέχει σε σχέση με διάφορα προϊόντα και σε τεχνολογικούς τομείς για τους οποίους κανονικά δεν προβλέπεται τέτοια προστασία στο έδαφος της εν λόγω χώρας κατά την ημερομηνία που έχει οριστεί γενικά για την έναρξη εφαρμογής της παρούσας συμφωνίας ως προς τη συγκεκριμένη χώρα, κατά τα προβλεπόμενα στην παράγραφο 2, η εν λόγω χώρα μέλος δύναται να αναβάλει ως προς τους συγκεκριμένους τεχνολογικούς τομείς για επιπλέον περίοδο 5 ετών την εφαρμογή των διατάξεων του τμήματος 5 του μέρους ΙΙ, οι οποίες αναφέρονται στα διπλώματα ευρεσιτεχνίας που απονέμονται για προϊόντα.

5. Όταν ένα μέλος κάνει χρήση μεταβατικής περιόδου βάσει των παραγράφων 1, 2, 3 ή 4, μεριμνά ώστε οι τυχόν μεταβολές που υφίστανται οι νόμοι, οι κανονισμοί και οι πρακτικές του κατά τη διάρκεια της μεταβατικής περιόδου να μην αποδυναμώνουν τη συμφωνία τους με τις διατάξεις της παρούσας συμφωνίας.

Άρθρο 66

Λιγότερο ανεπτυγμένες χώρες μέλη

1. Λόγω των ειδικών αναγκών και απαιτήσεων των λιγότερο ανεπτυγμένων χωρών μελών, των οικονομικών, χρηματοοικονομικών και διοικητικών περιορισμών που αντιμετωπίζουν, καθώς και λόγω της ανάγκης ευελιξίας που υφίσταται σε σχέση με την ανάπτυξη από αυτές μιας βιώσιμης τεχνολογικής βάσης, οι εν λόγω χώρες μέλη δεν υποχρεούνται να εφαρμόζουν τις διατάξεις της παρούσας συμφωνίας, πλην των άρθρων 3, 4 και 5, για δεκαετή περίοδο από την ημερομηνία έναρξης της εφαρμογής, η οποία προβλέπεται από το άρθρο 65, παράγραφος 1. Μετά από δεόντως αιτιολογημένη αίτηση εκ μέρους μιας λιγότερο ανεπτυγμένης χώρας μέλους, το συμβούλιο για τα TRIP παρέχει έγκριση για την παράταση της εν λόγω περιόδου.

2. Οι ανεπτυγμένες χώρες μέλη θεσμοθετούν κίνητρα για επιχειρήσεις και φορείς που δραστηριοποιούνται στην επικράτειά τους, με σκοπό την προώθηση και την ενθάρρυνση της μεταφοράς τεχνολογίας προς τις λιγότερο ανεπτυγμένες χώρες μέλη, ούτως ώστε αυτές να μπορέσουν να συγκροτήσουν μια υγιή και βιώσιμη τεχνολογική βάση.

Άρθρο 67

Τεχνική συνεργασία

Προκειμένου να διευκολυνθεί η εφαρμογή της παρούσας συμφωνίας, οι ανεπτυγμένες χώρες μέλη παρέχουν, εφόσον τους ζητηθεί και βάσει κοινά αποδεκτών όρων και προϋποθέσεων, τεχνική και χρηματοδοτική συνεργασία προς τις αναπτυσσόμενες και τις λιγότερο ανεπτυγμένες χώρες μέλη. Η συνεργασία αυτή είναι δυνατό να περιλαμβάνει βοήθεια για την κατάρτιση νόμων και κανονισμών με αντικείμενο την προστασία και επιβολή των δικαιωμάτων πνευματικής ιδιοκτησίας, καθώς και την αποτροπή της καταχρηστικής τους άσκησης· επίσης είναι δυνατό να έχει τη μορφή της παροχής βοήθειας για τη δημιουργία ή την ενίσχυση υπηρεσιών και οργάνων στις οικείες χώρες με συναφείς αρμοδιότητες, συμπεριλαμβανομένης της κατάρτισης προσωπικού.

ΜΕΡΟΣ VII

ΘΕΣΜΙΚΕΣ ΡΥΘΜΙΣΕΙΣ ΚΑΙ ΤΕΛΙΚΕΣ ΔΙΑΤΑΞΕΙΣ

Άρθρο 68

Το Συμβούλιο για τα Δικαιώματα Πνευματικής Ιδιοκτησίας στον Τομέα του Εμπορίου

Το Συμβούλιο για τα Δικαιώματα Πνευματικής Ιδιοκτησίας στον Τομέα του Εμπορίου ("συμβούλιο για τα TRIP") παρακολουθεί την εφαρμογή της παρούσας συμφωνίας και, ειδικότερα, την τήρηση από τα μέλη των υποχρεώσεων που υπέχουν βάσει της συμφωνίας· επίσης παρέχει στα μέλη τη δυνατότητα να διεξάγουν διαβουλεύσεις επί θεμάτων που άπτονται των δικαιωμάτων πνευματικής ιδιοκτησίας στον τομέα του εμπορίου. Το συμβούλιο εκτελεί και οποιαδήποτε άλλα καθήκοντα του αναθέτουν ενδεχομένως τα μέλη και, ειδικότερα, παρέχει τη συνδρομή που τα μέλη ενδεχομένως ζητούν από αυτό σε σχέση με διαδικασίες επίλυσης διαφορών. Κατά την εκτέλεση των καθηκόντων του, το συμβούλιο για τα TRIP δύναται να έρχεται σε συνεννόηση ή να ζητά πληροφορίες από οιανδήποτε πηγή κρίνει σκόπιμο. Σε συνεννόηση με τον ΠΟΠΙ, το συμβούλιο καταβάλλει προσπάθειες για την καθιέρωση εντός ενός έτους από την έναρξη ισχύος της συνεδρίασή του των κατάλληλων ρυθμίσεων για την υλοποίηση συνεργασίας με τα όργανα του εν λόγω οργανισμού.

Άρθρο 69

Διεθνής συνεργασία

Τα μέλη συμφωνούν να συνεργάζονται μεταξύ τους με σκοπό την εξάλειψη των διεθνών εμπορευματικών συναλλαγών που πραγματοποιούνται κατά παράβαση δικαιωμάτων πνευματικής ιδιοκτησίας. Προς την κατεύθυνση αυτή, τα μέλη ορίζουν κάποια αρμόδια αρχή στο πλαίσιο του διοικητικού τους μηχανισμού, με την οποία είναι δυνατό να έρχονται σε επαφή τα υπόλοιπα μέλη, και ενημερώνουν τα υπόλοιπα μέλη σχετικά. Επίσης, είναι πρόθυμα προς ανταλλαγή πληροφοριών σχετικά με το εμπόριο παράνομων αγαθών. Ειδικότερα, τα μέλη προωθούν την ανταλλαγή πληροφοριών και τη συνεργασία μεταξύ των τελωνειακών υπηρεσιών όσον αφορά τις συναλλαγές με αντικείμενο προϊόντα που φέρουν κάποιο εμπορικό σήμα το οποίο αποτελεί αντικείμενο παραποίησης ή απομίμησης και προϊόντα που συνδέονται με την παράνομη εκμετάλλευση κάποιου δικαιώματος δημιουργού.

Άρθρο 70

Προστασία υφιστάμενων αγαθών

1. Η παρούσα συμφωνία δεν δημιουργεί υποχρεώσεις σε σχέση με πράξεις που επιχειρήθηκαν πριν από την ημερομηνία έναρξης της εφαρμογής της συμφωνίας ως προς το οικείο μέλος.

2. Με την επιφύλαξη τυχόν αντίθετων διατάξεων της παρούσας συμφωνίας, η παρούσα συμφωνία δημιουργεί υποχρεώσεις σε σχέση με το σύνολο των αγαθών που υφίστανται κατά την ημερομηνία έναρξης της εφαρμογής της παρούσας συμφωνίας ως προς το εκάστοτε μέλος και καλύπτονται από την παρεχόμενη προστασία στο οικείο μέλος κατά την ίδια ημερομηνία ή τα οποία πληρούν, είτε εξαρχής, είτε σε μεταγενέστερο στάδιο, τις προϋποθέσεις παροχής προστασίας που ορίζονται από την παρούσα συμφωνία. Στο πλαίσιο εφαρμογής της παρούσας παραγράφου, καθώς

και των παραγράφων 3 και 4, οι υποχρεώσεις στον τομέα των δικαιωμάτων δημιουργού, οι οποίες υφίστανται σε σχέση με έργα που έχουν ήδη δημιουργηθεί, καθορίζονται με αποκλειστική βάση το άρθρο 18 της Σύμβασης της Βέρνης (1971), ενώ οι υποχρεώσεις οι οποίες αφορούν τα δικαιώματα των παραγωγών φωνογραφημάτων και των καλλιτεχνών ερμηνευτών σε υφιστάμενα φωνογραφήματα καθορίζονται με αποκλειστική βάση το άρθρο 18 της Σύμβασης της Βέρνης (1971), όπως είναι εφαρμοστέο βάσει του άρθρου 14, παράγραφος 6 της παρούσας συμφωνίας.

3. Τα μέλη δεν είναι υποχρεωμένα να επεκτείνουν εκ νέου την παρεχόμενη προστασία σε ύλη η οποία κατά την ημερομηνία έναρξης της εφαρμογής της παρούσας συμφωνίας ως προς το εκάστοτε μέλος έχει περιέλθει στην αρμοδιότητα του κράτους.

4. Προκειμένου περί πράξεων που αφορούν συγκεκριμένα αντικείμενα, σε σχέση με τα οποία υφίστανται προστατευόμενα δικαιώματα, οι οποίες καθίστανται παράνομες βάσει νομοθεσίας συνάδουσας με τις διατάξεις της παρούσας συμφωνίας και επιχειρήθηκαν το πρώτον πριν από την ημερομηνία αποδοχής της συμφωνίας για τον ΠΟΣ από το οικείο μέλος ή σε σχέση με τις οποίες πραγματοποιήθηκε κάποια σημαντική επένδυση πριν από την προαναφερθείσα ημερομηνία, τα μέλη δύνανται να περιορίζουν τα μέτρα αποκατάστασης που τίθενται στη διάθεση του δικαιούχου όσον αφορά τη συνέχιση της διενέργειας τέτοιου είδους πράξεων μετά την ημερομηνία θέσης σε ισχύ της παρούσας συμφωνίας ως προς το εκάστοτε μέλος. Στις περιπτώσεις αυτές, πάντως, το οικείο μέλος καθιερώνει τουλάχιστον πρόβλεψη για την καταβολή δίκαιου οικονομικού ανταλλάγματος.

5. Τα μέλη δεν είναι υποχρεωμένα να εφαρμόζουν τις διατάξεις του άρθρου 11 και του άρθρου 14, παράγραφος 4 σε σχέση με πρωτότυπα έργα ή αντίγραφα τα οποία έχουν αγορασθεί πριν από την ημερομηνία θέσης σε ισχύ της παρούσας συμφωνίας ως προς το εκάστοτε μέλος.

6. Τα μέλη δεν οφείλουν να εφαρμόζουν το άρθρο 31, ούτε να συμμορφώνονται στην υποχρέωση που καθιερώνεται με το άρθρο 27 παράγραφος 1 (όπου ορίζεται ότι τα δικαιώματα δημιουργού χαίρουν προστασίας χωρίς διακρίσεις ανάλογα με τον τομέα της τεχνολογίας) αναφορικά με περιπτώσεις χρήσης χωρίς την άδεια του δικαιούχου, εφόσον για τη συγκεκριμένη χρήση έχει χορηγηθεί έγκριση από κρατική αρχή πριν από την ημερομηνία κατά την οποία έγινε γνωστή η παρούσα συμφωνία.

7. Στις περιπτώσεις κατά τις οποίες η προστασία των δικαιωμάτων πνευματικής ιδιοκτησίας εξαρτάται από προηγούμενη πράξη καταχώρησης, οι αιτήσεις για την παροχή προστασίας οι οποίες ενδεχομένως εκκρεμούν κατά την ημερομηνία θέσης σε ισχύ της παρούσας συμφωνίας ως προς το εκάστοτε μέλος είναι δυνατό να τροποποιούνται, ούτως ώστε με αυτές να ζητείται πλέον η αυξημένη προστασία που προβλέπεται βάσει των διατάξεων της παρούσας συμφωνίας. Οι τροποποιήσεις αυτές δεν επιτρέπεται να διευρύνουν το αντικείμενο της προστασίας.

8. Αν κατά την ημερομηνία έναρξης ισχύος της συμφωνίας για τον ΠΟΣ ένα μέλος δεν παρέχει στις ευρεσιτεχνίες που αφορούν χημικά προϊόντα του φαρμακευτικού ή του γεωργικού τομέα ανάλογο βαθμό προστασίας με αυτόν που απορρέει από τις υποχρεώσεις που ισχύουν γι' αυτό βάσει του άρθρου 27, τότε το εν λόγω μέλος:

(α) καθιερώνει, από την ημερομηνία έναρξης ισχύος της συμφωνίας για τον ΠΟΣ και κατά παρέκκλιση των διατάξεων του μέρους VI κάποιον μηχανισμό, ώστε να είναι δυνατή η υποβολή αιτήσεων με αντικείμενο ευρεσιτεχνίες που αφορούν τέτοιου είδους εφευρέσεις·

(β) εφαρμόζει για τις εν λόγω αιτήσεις, από την ημερομηνία θέσης σε ισχύ της παρούσας συμφωνίας, τις προϋποθέσεις απονομής διπλωμάτων ευρεσιτεχνίας που προβλέπονται από την παρούσα συμφωνία, ενεργώντας όπως θα ενεργούσε αν οι εν λόγω προϋποθέσεις εφαρμόζονταν κατά την ημερομηνία υποβολής της αίτησης στο συγκεκριμένο μέλος ή, αν προβλέπεται και διεκδικείται προτεραιότητα, κατά την ημερομηνία προτεραιότητας που αναφέρεται στην αίτηση· και

(γ) παρέχει προστασία στις ευρεσιτεχνίες, κατά τα προβλεπόμενα από την παρούσα συμφωνία, από την απονομή του διπλώματος ευρεσιτεχνίας και για το υπόλοιπο χρονικό διάστημα κατά το οποίο εκτείνεται η κατοχύρωση της ευρεσιτεχνίας, με χρονικό σημείο εκκίνησης την ημερομηνία υποβολής της αίτησης βάσει του άρθρου 33 της παρούσας συμφωνίας, προκειμένου περί εκείνων από τις εν λόγω αιτήσεις οι οποίες πληρούν τις προϋποθέσεις παροχής προστασίας που προβλέπει το στοιχείο (β).

9. Όταν σε ένα μέλος έχει υποβληθεί αίτηση για την κατοχύρωση ευρεσιτεχνίας σε σχέση με συγκεκριμένο προϊόν κατ' εφαρμογήν της παραγράφου 8, στοιχείο(α), παρέχονται δικαιώματα αποκλειστικής εμπορίας του εν λόγω προϊόντος, κατά παρέκκλιση των διατάξεων του μέρους VI, για μία πενταετία από τη λήψη της έγκρισης για την εμπορία στο συγκεκριμένο μέλος ή για το χρονικό διάστημα μέχρι την απονομή ή την άρνηση απονομής διπλώματος ευρεσιτεχνίας για το εν λόγω προϊόν στο ίδιο μέλος, ανάλογα με το ποια από τις δύο χρονικές περιόδους είναι βραχύτερη, υπό την προϋπόθεση ότι μετά την έναρξη ισχύος της συμφωνίας για τον ΠΟΕ έχει υποβληθεί και γίνει δεκτή αίτηση για την απονομή διπλώματος ευρεσιτεχνίας για το συγκεκριμένο προϊόν σε κάποιο άλλο μέλος και έχει χορηγηθεί στο εν λόγω άλλο μέλος έγκριση σχετικά με την εμπορία του προϊόντος.

Άρθρο 71

Επανεξέταση και τροποποίηση

1. Το συμβούλιο για τα TRIP προβαίνει στην επανεξέταση της εφαρμογής της παρούσας συμφωνίας μετά τη λήξη της μεταβατικής περιόδου που προβλέπεται στο άρθρο 65, παράγραφος 2. Με γνώμονα την πείρα που αποκτάται στο πλαίσιο εφαρμογής της παρούσας συμφωνίας, το συμβούλιο για τα TRIP προβαίνει στην επανεξέτασή της δύο έτη μετά την ανωτέρω ημερομηνία, καθώς και στη συνέχεια, ανά χρονικά διαστήματα της ίδιας διάρκειας. Το συμβούλιο δύναται επίσης να πραγματοποιεί επανεξετάσεις υπό το φως νέων εξελίξεων που έχουν ενδεχομένως σημειωθεί στον συγκεκριμένο τομέα και οι οποίες είναι πιθανό να δικαιολογούν την τροποποίηση της παρούσας συμφωνίας.

2. Τυχόν τροποποιήσεις, οι οποίες αποσκοπούν απλώς και μόνο στην ευθυγράμμιση με καθεστώτα αναγνώρισης μεγαλύτερου βαθμού προστασίας για τα δικαιώματα πνευματικής ιδιοκτησίας, που έχουν επιτευχθεί και ισχύουν βάσει άλλων πολυμερών συμφωνιών και έχουν γίνει δεκτά στο πλαίσιο των εν λόγω συμφωνιών από όλα τα μέλη του ΠΟΕ, είναι δυνατό να παραπέμπονται στην υπουργική συνδιάσκεψη με ομόφωνη πρόταση του συμβουλίου για τα TRIP· στην περίπτωση αυτή η υπουργική συνδιάσκεψη λαμβάνει ενδεχομένως μέτρα δυνάμει του άρθρου X, παράγραφος 6 της συμφωνίας για τον ΠΟΕ.

Άρθρο 72

Επιφυλάξεις

Για τη διατύπωση επιφυλάξεων σχετικά με οποιαδήποτε διάταξη της παρούσας συμφωνίας απαιτείται η συγκατάθεση των υπολοίπων μερών.

Άρθρο 73

Εξαιρέσεις για λόγους ασφαλείας

Καμία διάταξη της παρούσας συμφωνίας δεν έχει την έννοια ότι:

(α) ένα μέλος είναι υποχρεωμένο να καταστήσει γνωστή οποιαδήποτε πληροφορία, όταν κατά την άποψή του η αποκάλυψη της πληροφορίας αυτής θα αντέβαινε σε θεμελιώδη συμφέροντα ασφαλείας του εν λόγω μέλους· ή

(β) ένα μέλος δεν δύναται να λαμβάνει μέτρα τα οποία κρίνει απαραίτητα για την προάσπιση των θεμελιωδών συμφερόντων ασφαλείας του, και συγκεκριμένα:

(i) όσον αφορά τα σχάσιμα υλικά ή τα υλικά που χρησιμοποιούνται για την παραγωγή σχάσιμων υλικών·

(ii) όσον αφορά το εμπόριο όπλων, πυρομαχικών και λοιπού πολεμικού υλικού, καθώς και τις συναλλαγές με αντικείμενο άλλα προϊόντα και υλικά, οι οποίες αποσκοπούν αμέσως ή εμμέσως στον εφοδιασμό ενόπλων δυνάμεων·

(iii) όταν τα μέτρα λαμβάνονται σε καιρό πολέμου ή άλλης έκτακτης κατάστασης στις διεθνείς σχέσεις· ή

(γ) ένα μέλος δεν δύναται να λαμβάνει μέτρα στο πλαίσιο των υποχρεώσεων που του αναλογούν για τη διαφύλαξη της διεθνούς ειρήνης και ασφάλειας βάσει του Καταστατικού Χάρτη των Ηνωμένων Εθνών.

ΠΑΡΑΡΤΗΜΑ 2

ΜΝΗΜΟΝΙΟ ΣΥΜΦΩΝΙΑΣ ΣΧΕΤΙΚΑ ΜΕ ΤΟΥΣ ΚΑΝΟΝΕΣ ΚΑΙ ΤΙΣ ΔΙΑΔΙΚΑΣΙΕΣ ΠΟΥ ΔΙΕΠΟΥΝ ΤΗΝ ΕΠΙΛΥΣΗ ΤΩΝ ΔΙΑΦΟΡΩΝ

Τα μέλη συμφωνούν τα ακόλουθα:

Άρθρο 1

Πεδίο εφαρμογής

1. Οι κανόνες και οι διαδικασίες του παρόντος μνημονίου συμφωνίας εφαρμόζονται σε διαφορές που ανακύπτουν στο πλαίσιο της εφαρμογής των διατάξεων για τη διενέργεια διαβουλεύσεων και την επίλυση των διαφορών που περιέχονται στις συμφωνίες που παρατίθενται στο προσάρτημα 1 του παρόντος μνημονίου συμφωνίας (εφεξής καλούμενες "καλυπτόμενες συμφωνίες"). Οι κανόνες και οι διαδικασίες του παρόντος μνημονίου συμφωνίας εφαρμόζονται, επίσης, για τη διενέργεια διαβουλεύσεων και την επίλυση διαφορών μεταξύ μελών, όσον αφορά τα δικαιώματα και τις υποχρεώσεις τους στο πλαίσιο των διατάξεων της συμφωνίας για τον Παγκόσμιο Οργανισμό Εμπορίου (που εφεξής καλείται "συμφωνία για τον ΠΟΕ) καθώς και του παρόντος μνημονίου συμφωνίας, λαμβανομένων υπόψη ξεχωριστά ή σε συνδυασμό με οποιαδήποτε από τις λοιπές καλυπτόμενες συμφωνίες.

2. Οι κανόνες και οι διαδικασίες του παρόντος μνημονίου συμφωνίας εφαρμόζονται με την επιφύλαξη των ειδικών ή πρόσθετων κανόνων και διαδικασιών επίλυσης διαφορών, που περιλαμβάνονται στις καλυπτόμενες συμφωνίες, όπως ορίζονται στο προσάρτημα 2 του παρόντος μνημονίου συμφωνίας. Σε περίπτωση που υφίσταται διαφορά μεταξύ των κανόνων και των διαδικασιών του παρόντος μνημονίου συμφωνίας και των ειδικών ή πρόσθετων κανόνων και διαδικασιών που παρατίθενται στο προσάρτημα 2, υπερέχουν οι ειδικοί ή πρόσθετοι κανόνες και διαδικασίες του προσαρτήματος 2. Σε περιπτώσεις διαφορών, όσον αφορά κανόνες και διαδικασίες βάσει περισσοτέρων της μιας καλυπτομένων συμφωνιών, εάν υπάρχει αντίθεση μεταξύ των ειδικών ή πρόσθετων κανόνων και διαδικασιών των εν λόγω υπό εξέταση συμφωνιών και εάν οι διάδικοι δεν δύνανται να αποφασίσουν σχετικά με τους κανόνες και τις διαδικασίες εντός είκοσι ημερών από τη σύσταση της ειδικής ομάδας (πάνελ), ο πρόεδρος του οργάνου Επίλυσης Διαφορών που προβλέπεται στο άρθρο 2, παράγραφος 1 (που καλείται εφεξής "ΟΕΔ") σε συνεννόηση με τους διαδίκους, καθορίζει τους κανόνες και τις διαδικασίες που απαιτείται να τεθούν σε εφαρμογή εντός δέκα ημερών από την υποβολή αίτησης από οποιοδήποτε μέλος. Ο πρόεδρος βασίζεται στην αρχή ότι οι ειδικοί ή πρόσθετοι κανόνες και διαδικασίες πρέπει να χρησιμοποιούνται στο μεγαλύτερο δυνατό βαθμό και ότι οι κανόνες και οι διαδικασίες που καθορίζονται στο παρόν μνημόνιο συμφωνίας είναι σκόπιμο να χρησιμοποιούνται στο βαθμό που απαιτείται για την αποφυγή των συγκρούσεων.

Άρθρο 2

Διαχείριση

1. Συστήνεται το Όργανο Επίλυσης Διαφορών με αρμοδιότητα τη διαχείριση των σχετικών κανόνων και διαδικασιών και, εκτός εάν προβλέπεται διαφορετικά σε καλυπτόμενη συμφωνία, των διατάξεων των καλυπτόμενων συμφωνιών που αφορούν τις διαβουλεύσεις και την επίλυση των διαφορών. Συνεπώς, το ΟΕΔ έχει το δικαίωμα να συγκροτεί ειδικές ομάδες, να εγκρίνει εκθέσεις της ειδικής ομάδας και του δευτεροβάθμιου δικαιοδοτικού οργάνου, να εξασφαλίζει την παρακολούθηση της εφαρμογής

των συστάσεων και των αποφάσεων και να επιτρέπει την αναστολή των παραχωρήσεων και άλλων υποχρεώσεων, στο πλαίσιο των καλυπτόμενων συμφωνιών. Όσον αφορά τις διαφορές που ανακύπτουν στο πλαίσιο καλυπτόμενης συμφωνίας που αποτελεί πλειομερή εμπορική συμφωνία, με τον όρο "μέλος" όπως χρησιμοποιείται στο παρόν μνημόνιο, νοούνται μόνον τα μέλη που αποτελούν συμβαλλόμενα μέρη της σχετικής πλειομερούς εμπορικής συμφωνίας. Σε περιπτώσεις που το ΟΕΔ ρυθμίζει τις διατάξεις επίλυσης διαφορών μιας πλειομερούς εμπορικής συμφωνίας, μόνον τα μέλη πού είναι συμβαλλόμενα μέρη της εν λόγω συμφωνίας δύνανται να συμμετέχουν στις αποφάσεις ή στις ενέργειες του ΟΕΔ σχετικά με τη συγκεκριμένη διαφορά.

2. Το ΟΕΔ ενημερώνει τα αρμόδια συμβούλια και επιτροπές του ΠΟΕ σχετικά με την εξέλιξη των διαφορών που συνδέονται με τις διατάξεις των αντίστοιχων καλυπτόμενων συμφωνιών.

3. Το ΟΕΔ συνεδριάζει τόσο συχνά όσο απαιτείται για την εκτέλεση των καθηκόντων του, εντός των χρονικών πλαισίων που καθορίζονται στο παρόν μνημόνιο συμφωνίας.

4. Σε περίπτωση που στο πλαίσιο των κανόνων και διαδικασιών του παρόντος μνημονίου συμφωνίας προβλέπεται η λήψη απόφασης από το ΟΕΔ, το τελευταίο αυτό λαμβάνει απόφαση με συναίνεση[1].

Άρθρο 3

Γενικές διατάξεις

1. Τα μέλη επιβεβαιώνουν την προσήλωσή τους στις αρχές ρύθμισης διαφορών που προηγουμένως εφαρμόζονταν βάσει των άρθρων XXII και XXIII της GATT του 1947, καθώς και στους κανόνες και τις διαδικασίες, που αποτέλεσαν αντικείμενο περαιτέρω επεξεργασίας και τροποποιήσεων στο πλαίσιο του παρόντος μνημονίου συμφωνίας.

2. Το σύστημα επίλυσης διαφορών του ΠΟΕ αποτελεί καθοριστικό στοιχείο για την παροχή ασφάλειας και την εξασφάλιση της δυνατότητας πρόβλεψης σε ένα πολυμερές εμπορικό σύστημα. Τα μέλη αναγνωρίζουν ότι συμβάλλει στη διατήρηση των δικαιωμάτων και υποχρεώσεων των μελών στο πλαίσιο των καλυπτόμενων συμφωνιών και στην αποσαφήνιση των υφιστάμενων διατάξεων των συγκεκριμένων συμφωνιών, βάσει των συνήθων κανόνων ερμηνείας του δημοσίου διεθνούς δικαίου. Οι συστάσεις και οι αποφάσεις του ΟΕΔ δεν είναι δυνατόν να αυξήσουν ή να μειώσουν τα δικαιώματα και τις υποχρεώσεις που προβλέπονται στις καλυπτόμενες συμφωνίες.

3. Η ταχεία ρύθμιση των καταστάσεων, κατά τις οποίες ένα μέλος θεωρεί ότι οποιαδήποτε ωφέλεια η οποία απορρέει γι'αυτό άμεσα ή έμμεσα από τις καλυπτόμενες συμφωνίες θίγεται εξαιτίας μέτρων που λαμβάνονται από άλλο μέρος, είναι ουσιαστική για την αποτελεσματική λειτουργία του ΠΟΕ και τη διατήρηση της δέουσας ισορροπίας μεταξύ των δικαιωμάτων και των υποχρεώσεων των μελών.

4. Οι συστάσεις ή οι αποφάσεις του ΟΕΔ αποσκοπούν στην επίτευξη ικανοποιητικής διευθέτησης του θέματος, σύμφωνα με τα δικαιώματα και τις υποχρεώσεις που απορρέουν από το παρόν μνημόνιο συμφωνίας και τις καλυπτόμενες συμφωνίες.

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1 Το ΟΕΔ θεωρείται ότι έχει λάβει απόφαση με συναίνεση σχετικά με θέμα το οποίο παραπέμφθηκε σε αυτό για εξέταση εάν κανένα μέλος, που παρίσταται στη συνεδρίαση του ΟΕΔ όταν λαμβάνεται η απόφαση, δεν προβάλλει επίσημη αντίρρηση για την προτεινόμενη απόφαση.

5. Όλες οι λύσεις που δίδονται σε θέματα τα οποία προκύπτουν στο πλαίσιο των διατάξεων των καλυπτόμενων συμφωνιών για τις διαβουλεύσεις και την επίλυση διαφορών συμπεριλαμβανομένων των αποφάσεων διαιτησίας, συνάδουν με τις εν λόγω συμφωνίες και δεν αναιρούν εν όλω ή εν μέρει οφέλη που απορρέουν για οποιοδήποτε μέλος από τις συμφωνίες αυτές, ούτε παρεμποδίζουν την επίτευξη των στόχων των εν λόγω συμφωνιών.

6. Οι αμοιβαία αποδεκτές λύσεις σε θέματα που θίγονται επισήμως, στο πλαίσιο των διατάξεων των καλυπτόμενων συμφωνιών για τις διαβουλεύσεις και την επίλυση διαφορών γνωστοποιούνται στο ΟΕΔ και στα σχετικά συμβούλια και επιτροπές, ενώπιον των οποίων τα μέλη δύνανται να θέσουν οποιοδήποτε σχετικό θέμα.

7. Προτού να ασκηθεί προσφυγή, τα μέλη εξετάζουν τη σκοπιμότητα ανάληψης δράσεων στο πλαίσιο των σχετικών διαδικασιών. Στόχος του μηχανισμού επίλυσης διαφορών είναι η εξασφάλιση της θετικής επίλυσης των διαφορών. Προτιμούνται σαφώς λύσεις αμοιβαία αποδεκτές στους διαδίκους και σύμφωνες με τις καλυπτόμενες συμφωνίες. Ελλείψει αμοιβαία αποδεκτών λύσεων, πρώτος στόχος του μηχανισμού επίλυσης διαφορών είναι, συνήθως, η εξασφάλιση της ανάκλησης των σχετικών μέτρων, εάν αυτά αποδεικνύεται ότι αντιβαίνουν στις διατάξεις οποιασδήποτε από τις καλυπτόμενες συμφωνίες. Η προσφυγή στις διατάξεις παροχής αντισταθμιστικού ανταλλάγματος είναι δυνατή μόνο σε περίπτωση που η άμεση ανάκληση του μέτρου είναι πρακτικώς αδύνατη και προσωρινά, μέχρις ότου ανακληθεί το μέτρο που αντιβαίνει σε καλυπτόμενη συμφωνία. Η τελευταία δυνατότητα που παρέχεται βάσει του παρόντος μνημονίου συμφωνίας στο μέρος που επικαλείται τις διαδικασίες επίλυσης διαφορών είναι το δικαίωμα αναστολής της εφαρμογής παραχωρήσεων ή άλλων υποχρεώσεων στο πλαίσιο των καλυπτομένων συμφωνιών σε διακριτική βάση εις βάρος του άλλου μέλους, υπό τον όρο χορήγησης σχετικής άδειας από το ΟΕΔ.

8. Σε περιπτώσεις παραβίασης των υποχρεώσεων που αναλαμβάνονται στο πλαίσιο καλυπτόμενων συμφωνιών, το προβλεπόμενο μέτρο θεωρείται εκ πρώτης όψεως ότι αποτελεί περίπτωση μερικής ή ολικής ανατρεσης των οφελών. Αυτό σημαίνει ότι υφίσταται συνήθως η υπόθεση ότι η παραβίαση των κανόνων έχει αρνητικές επιπτώσεις στα άλλα μέλη, που είναι συμβαλλόμενα μέρη στη σχετική καλυπτόμενη συμφωνία, και ότι σε αυτές τις περιπτώσεις, εναπόκειται στο μέλος κατά του οποίου στρέφεται η καταγγελία να προβάλει στοιχεία προς αντίκρουση των σχετικών ισχυρισμών.

9. Οι διατάξεις του παρόντος μνημονίου συμφωνίας δεν θίγουν το δικαίωμα των μελών να ζητούν επίσημη ερμηνεία των διατάξεων καλυπτόμενης συμφωνίας μέσω διαδικασίας λήψης αποφάσεων στο πλαίσιο της συμφωνίας για τον ΠΟΕ ή καλυπτόμενης συμφωνίας που συνιστά πλειομερή εμπορική συμφωνία.

10. Εννοείται ότι οι αιτήσεις για συμβιβασμό ή για προσφυγή σε διαδικασίες επίλυσης διαφορών δεν πρέπει να θεωρούνται ως πράξεις που δημιουργούν αντιπαραθέσεις και ότι, όταν προκύψει διαφορά, όλα τα μέλη οφείλουν να συμμετέχουν στις σχετικές διαδικασίες καλοπίστως επιδιώκοντας την επίλυση της διαφοράς. Είναι επίσης, σαφές ότι είναι σκόπιμο να μη συνδέονται τα πρωτοβάθμια και δευτεροβάθμια ένδικα μέσα σε περίπτωση διαφορετικών θεμάτων.

11. Το παρόν μνημόνιο συμφωνίας εφαρμόζεται μόνον όσον αφορά νέες αιτήσεις για διαβουλεύσεις στο πλαίσιο των διατάξεων των καλυπτομένων συμφωνιών για τις διαβουλεύσεις που υποβάλλονται κατά την ημερομηνία έναρξης ισχύος της συμφωνίας για τον ΠΟΕ ή μετέπειτα. Όσον αφορά τις διαφορές για τις οποίες η αίτηση για την έναρξη διαβουλεύσεων υπεβλήθη βάσει της GATT του 1947, ή βάσει οποιαδήποτε άλλης συμφωνίας που

προηγείτο των καλυπτομένων συμφωνιών πριν από την έναρξη ισχύος της συμφωνίας για τον ΠΟΕ, εξακολουθούν να εφαρμόζονται οι σχετικοί κανόνες και διαδικασίες επίλυσης διαφορών που ίσχυαν αμέσως πριν από την ημερομηνία έναρξης ισχύος της συμφωνίας για τον ΠΟΕ[2].

12. Κατά παρέκκλιση της παραγράφου 11, σε περίπτωση που αναπτυσσόμενη χώρα μέλος ασκεί καταγγελία βασιζόμενη σε οποιαδήποτε από τις καλυπτόμενες συμφωνίες κατά ανεπτυγμένης χώρας μέλους, ο καταγγέλλων έχει το δικαίωμα να επικαλείται αντί για τις διατάξεις που περιλαμβάνονται στα άρθρα 4, 5, 6 και 12 του μνημονίου συμφωνίας, τις αντίστοιχες διατάξεις της απόφασης της 5ης Απριλίου 1966 (BISD 14S/18), εκτός εάν η ειδική ομάδα (πάνελ) θεωρεί ότι η προθεσμία που προβλέπεται στην παράγραφο 7 της σχετικής απόφασης δεν επαρκεί για τη σύνταξη της έκθεσης και ότι με τη σύμφωνη γνώμη του καταγγέλλοντος υπάρχει δυνατότητα παράτασης. Στο βαθμό που υφίσταται διαφορά μεταξύ των κανόνων και διαδικασιών που προβλέπονται στα άρθρα 4, 5, 6 και 12 και των αντίστοιχων κανόνων και διαδικασιών της απόφασης, υπερέχουν οι κανόνες και οι διαδικασίες της απόφασης.

Άρθρο 4

Διαβουλεύσεις

1. Τα μέλη επιβεβαιώνουν την απόφασή τους να ενισχύσουν και να βελτιώσουν την αποτελεσματικότητα των διαδικασιών διαβούλευσης που εφαρμόζονται από τα μέλη.

2. Κάθε μέλος αναλαμβάνει την υποχρέωση να εξετάζει με πνεύμα κατανόησης τις ενέργειες άλλου μέλους σχετικά με τα μέτρα που επηρεάζουν τη λειτουργία οποιασδήποτε καλυπτόμενης συμφωνίας που συνάπτεται εντός του εδάφους του πρώτου μέλους και παρέχει κατάλληλες ευκαιρίες για τη διεξαγωγή σχετικών διαβουλεύσεων[3].

3. Εάν η αίτηση για τη διεξαγωγή διαβουλεύσεων υποβάλλεται στο πλαίσιο καλυπτόμενης συμφωνίας, το μέλος στο οποίο απευθύνεται η αίτηση, εκτός εάν συμφωνηθεί αμοιβαία διαφορετικά, απαντά στην αίτηση εντός δέκα ημερών από την ημερομηνία παραλαβής και προσέρχεται σε διαβουλεύσεις, καλοπίστως, το αργότερο εντός τριάντα ημερών μετά την ημερομηνία παραλαβής της αίτησης, με στόχο την επίτευξη αμοιβαία ικανοποιητικής λύσης. Εάν το εν λόγω μέρος δεν απαντήσει εντός δέκα ημερών από την ημερομηνία παραλαβής της αίτησης ή δεν προσέλθει σε διαβουλεύσεις το αργότερο εντός τριάντα ημερών, ή εντός διαφορετικού αμοιβαία συμφωνηθέντος χρονικού διαστήματος μετά την ημερομηνία παραλαβής της αίτησης, το μέλος που ζήτησε τη διεξαγωγή διαβουλεύσεων δύναται να προβεί άμεσα στη σύσταση ειδικής ομάδας.

4. Το μέλος που ζητεί τη διεξαγωγή διαβουλεύσεων κοινοποιεί όλες τις σχετικές αιτήσεις στο ΟΕΔ και στα αρμόδια συμβούλια και επιτροπές. Οι αιτήσεις για τη διεξαγωγή διαβουλεύσεων υποβάλλονται εγγράφως και περιέχουν τους λόγους υποβολής της αίτησης, συμπεριλαμβανομένων στοιχείων σχετικών με τα υπό εξέταση μέτρα και τη νομική βάση της καταγγελίας.

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2 Η παρούσα παράγραφος εφαρμόζεται, επίσης, σε διαφορές σχετικά με τις οποίες οι εκθέσεις των ειδικών ομάδων δεν έχουν εγκριθεί ή τεθεί πλήρως σε εφαρμογή.

3. Σε περίπτωση που οι διατάξεις άλλων καλυπτομένων συμφωνιών σχετικά με τα μέτρα που λαμβάνονται από περιφερειακούς ή τοπικούς δημόσιους οργανισμούς και αρχές εντός του εδάφους ενός μέλους περιλαμβάνουν διατάξεις διαφορετικές από τις διατάξεις της παρούσας παραγράφου, υπερισχύουν οι διατάξεις των εν λόγω άλλων καλυπτομένων συμφωνιών.

5. Κατά τη διάρκεια των διαβουλεύσεων που διεξάγονται σύμφωνα με τις διατάξεις καλυπτόμενης συμφωνίας και πριν να προσφύγουν σε περαιτέρω ενέργειες στο πλαίσιο του παρόντος μνημονίου συμφωνίας, τα μέλη πρέπει να επιδιώκουν την ικανοποιητική διευθέτηση του ζητήματος.

6. Οι διαβουλεύσεις έχουν εμπιστευτικό χαρακτήρα και διεξάγονται χωρίς να θίγονται τα δικαιώματα των μελών σε περίπτωση που συνεχίζεται, ενδεχομένως, η διαδικασία.

7. Εάν οι διαβουλεύσεις δεν καταλήξουν σε επίλυση της διαφοράς εντός εξήντα ημερών από την ημερομηνία παραλαβής της αίτησης διαβουλεύσεων ο καταγγέλων δύναται να ζητήσει τη σύσταση ειδικής ομάδας . Ο καταγγέλων δύναται να ζητήσει τη σύσταση ειδικής ομάδας εντός του διαστήματος των εξήντα ημερών, εάν τα μέρη που συμμετέχουν στις διαβουλεύσεις εκτιμούν από κοινού ότι οι διαβουλεύσεις δεν κατέληξαν στην επίλυση της διαφοράς.

8. Σε επείγουσες περιπτώσεις, συμπεριλαμβανομένων αυτών που αφορούν ευπαθή προϊόντα, τα μέλη προβαίνουν σε διαβουλεύσεις το αργότερο εντός δέκα ημερών από την ημερομηνία παραλαβής της αίτησης. Ο καταγγέλων δύναται να ζητήσει τη σύσταση ειδικής ομάδας σε περίπτωση που οι διαβουλεύσεις δεν καταλήξουν σε επίλυση της διαφοράς εντός 20 ημερών από την ημερομηνία παραλαβής της αίτησης.

9. Σε επείγουσες περιπτώσεις, συμπεριλαμβανομένων των περιπτώσεων που αφορούν ευπαθή προϊόντα, οι διάδικοι, οι ειδικές ομάδες και το δευτεροβάθμιο δικαιοδοτικό όργανο, καταβάλλουν κάθε προσπάθεια για την επιτάχυνση των εργασιών, στο μεγαλύτερο δυνατό βαθμό.

10. Κατά τη διάρκεια των διαβουλεύσεων, τα μέλη οφείλουν να δίνουν ιδιαίτερη προσοχή στα ειδικά προβλήματα και συμφέροντα των αναπτυσσομένων χωρών μελών.

11. Οποτεδήποτε ένα μέλος εκτός των μελών που συμμετέχουν στις διαβουλεύσεις θεωρεί ότι έχει ουσιαστικό εμπορικό ενδιαφέρον για τη διεξαγωγή διαβουλεύσεων σύμφωνα με το άρθρο XXII, παράγραφος 1 της GATT του 1994, το άρθρο XXIII, παράγραφος 1 της GATS ή με τις αντίστοιχες διατάξεις σε άλλες καλυπτόμενες συμφωνίες[4], το μέλος αυτό δύναται να γνωστοποιεί στα μέλη που συμμετέχουν στις διαβουλεύσεις και στο ΟΕΔ εντός δέκα ημερών από την ημερομηνία διαβίβασης της αίτησης για τη διεξαγωγή διαβουλεύσεων βάσει του εν λόγω άρθρου, την επιθυμία του να συμμετάσχει στις διαβουλεύσεις. Το μέλος αυτό συμμετέχει στις

4 Οι αντίστοιχες διατάξεις για τις διαβουλεύσεις στο πλαίσιο των καλυπτόμενων συμφωνιών είναι οι εξής: συμφωνία για τη γεωργία, άρθρο 19· συμφωνία για την εφαρμογή των υγειονομικών και φυτοϋγειονομικών μέτρων, άρθρο 11, παράγραφος 1· συμφωνία για τα κλωστοϋφαντουργικά προϊόντα και τα είδη ένδυσης, άρθρο 8, παράγραφος 4· συμφωνία για τα τεχνικά εμπόδια στο εμπόριο, άρθρο 14, παράγραφος 1· συμφωνία για τα επενδυτικά μέτρα στον τομέα του εμπορίου, άρθρο 8· συμφωνία για την εφαρμογή του άρθρου VI της GATT του 1994, άρθρο 17, παράγραφος 2· συμφωνία για την εφαρμογή του άρθρου VII της GATT του 1994, άρθρο 19, παράγραφος 2· συμφωνία για τον έλεγχο πριν από την αποστολή, άρθρο 7· συμφωνία για τους κανόνες καταγωγής, άρθρο 7· συμφωνία για τις διαδικασίες έκδοσης αδειών εισαγωγής, άρθρο 6· συμφωνία για τις επιδοτήσεις και τα αντισταθμιστικά μέτρα, άρθρο 30· συμφωνία για τα μέτρα διασφάλισης, άρθρο 14· συμφωνία για τα δικαιώματα πνευματικής ιδιοκτησίας στον τομέα του εμπορίου, άρθρο 64, παράγραφος 1· και οι σχετικές διατάξεις για τις διαβουλεύσεις στο πλαίσιο των πλειομερών εμπορικών συμφωνιών, όπως ορίζονται από τα αρμόδια όργανα εκάστης συμφωνίας και γνωστοποιούνται στο ΟΕΔ.

διαβουλεύσεις υπό την προϋπόθεση ότι το μέλος στο οποίο απευθύνθηκε η αίτηση διαβουλεύσεων σύμφωνεί ότι το επιχείρημα σχετικά με την ύπαρξη ουσιαστικού ενδιαφέροντος είναι καλά θεμελιωμένο. Στην περίπτωση αυτή, ενημερώνουν σχετικά το ΟΕΔ. Σε περίπτωση που η αίτηση συμμετοχής στις διαβουλεύσεις δεν γίνεται αποδεκτή, το μέλος που υποβάλλει την αίτηση έχει το δικαίωμα να ζητήσει τη διεξαγωγή διαβουλεύσεων βάσει του άρθρου XXII, παράγραφος 1 ή του άρθρου XXIII, παράγραφος 1 της GATT του 1994, του άρθρου XXII, παράγραφος 1 ή του άρθρου XXIII, παράγραφος 1 της GATS ή βάσει των αντίστοιχων διατάξεων σε άλλες καλυπτόμενες συμφωνίες.

Άρθρο 5

Καλές Υπηρεσίες, Συμβιβασμός και Διαμεσολάβηση

1. Οι καλές υπηρεσίες, ο συμβιβασμός και η διαμεσολάβηση αποτελούν διαδικασίες που αναλαμβάνονται εκουσίως, εάν συμφωνήσουν σχετικά οι διάδικοι.

2. Οι διαδικασίες παροχής καλών υπηρεσιών, συμβιβασμού και διαμεσολάβησης και ειδικότερα, οι θέσεις που λαμβάνονται από τους διαδίκους έχουν εμπιστευτικό χαρακτήρα και δεν θίγουν τα δικαιώματα εκάστου των δύο μερών όσον αφορά περαιτέρω ενέργειες, στο πλαίσιο των σχετικών διαδικασιών.

3. Οι διαδικασίες καλών υπηρεσιών, συμβιβασμού και διαμεσολάβησης είναι δυνατόν να ζητηθούν οποτεδήποτε από τους διαδίκους. Οι διαδικασίες αυτές δύνανται να αρχίσουν και να τελειώσουν ανά πάσα στιγμή. Εφόσον ολοκληρωθούν οι διαδικασίες καλών υπηρεσιών, συμβιβασμού και διαμεσολάβησης, ο καταγγέλων δύναται να υποβάλει αίτηση για τη σύσταση ειδικής ομάδας.

4. Εφόσον οι διαδικασίες καλών υπηρεσιών, συμβιβασμού και διαμεσολάβησης αναλαμβάνονται εντός εξήντα ημερών από την ημερομηνία υποβολής της αίτησης διαβουλεύσεων, ο καταγγέλλων οφείλει να αναμείνει την πάροδο εξήντα ημερών μετά την ημερομηνία παραλαβής της αίτησης για να ζητήσει τη σύσταση ειδικής ομάδας. Ο καταγγέλλων δύναται να ζητήσει τη σύσταση ειδικής ομάδας κατά τη διάρκεια του διαστήματος εξήντα ημερών, εάν οι διάδικοι θεωρούν από κοινού ότι η διαδικασία καλών υπηρεσιών, συμβιβασμού ή διαμεσολάβησης δεν κατέληξε στην επίλυση της διαφοράς.

5. Καθόλη συμφωνίας των διαδίκων είναι δυνατόν να συνεχίζονται οι διαδικασίες καλών υπηρεσιών, συμβιβασμού και διαμεσολάβησης καθόσον διεξάγονται οι εργασίες της ειδικής ομάδας.

6. Ο Γενικός Διευθυντής δύναται, ενεργώντας αυτεπαγγέλτως να προσφέρει καλές υπηρεσίες καθώς και υπηρεσίες συμβιβασμού και διαμεσολάβησης, προκειμένου να βοηθήσει τα μέλη να επιλύσουν τη διαφορά.

Άρθρο 6

Σύσταση ειδικών ομάδων (πάνελ)

1. Κατόπιν αιτήσεως του καταγγέλοντος, συστήνεται ειδική ομάδα, το αργότερο κατά τη συνεδρίαση του ΟΕΔ που έπεται της συνεδρίασης κατά την οποία η σχετική αίτηση εγγράφεται για πρώτη φορά στην ημερήσια διάταξη του ΟΕΔ, εκτός εάν κατά τη συνεδρίαση αυτή το ΟΕΔ αποφασίσει με συναίνεση να μη συστήσει ειδική ομάδα[5].

5 Εάν ζητηθεί από τον καταγγέλοντα, συγκαλείται για το σκοπό αυτό το ΟΕΔ εντός δεκαπέντε ημερών από την υποβολή της αίτησης, εφόσον ειδοποιηθεί σχετικά τουλάχιστον δέκα ημέρες πριν.

2. Η αίτηση για τη σύσταση της ειδικής ομάδας υποβάλλεται εγγράφως. Στην εν λόγω αίτηση αναφέρεται κατά πόσον έχουν διεξαχθεί διαβουλεύσεις, προσδιορίζονται τα συγκεκριμένα υπό εξέταση μέτρα και παρέχεται συνοπτική περίληψη της νομικής βάσης της καταγγελίας, στην οποία δίνεται σαφής περιγραφή του προβλήματος. Σε περίπτωση που ο αιτών ζητεί τη σύσταση ειδικής ομάδας με αρμοδιότητες διαφορετικές από τις συνήθεις, στη γραπτή αίτηση περιλαμβάνονται οι προτεινόμενες ειδικές αρμοδιότητες.

Άρθρο 7

Αρμοδιότητες των ειδικών ομάδων

1. Εκτός εάν οι διάδικοι αποφασίσουν διαφορετικά, εντός είκοσι ημερών από τη σύσταση των ειδικών ομάδων, οι τελευταίες αυτές έχουν τις ακόλουθες αρμοδιότητες:

> "Να εξετάζουν υπό το φως των σχετικών διατάξεων της .... (καλυπτόμενη συμφωνία ή συμφωνίες που αναφέρονται από τους διαδίκους), το θέμα που παραπέμφθηκε στο ΟΕΔ από .... (όνομα του μέρους) με το έγγραφο ..... και να διατυπώνουν συμπεράσματα κατάλληλα να βοηθήσουν το ΟΕΔ να προβαίνει σε συστάσεις και να λαμβάνει αποφάσεις, όπως προβλέπεται στην ή στις εν λόγω συμφωνίες."

2. Οι ειδικές ομάδες εξετάζουν τις σχετικές διατάξεις σε οποιαδήποτε καλυπτόμενη συμφωνία ή συμφωνίες που αναφέρονται από τους διαδίκους.

3. Κατά τη σύσταση ειδικής ομάδας το ΟΕΔ δύναται να εξουσιοδοτεί τον πρόεδρό του να ορίζει τις αρμοδιότητες της ειδικής ομάδας σε συνεννόηση με τους διαδίκους, με την επιφύλαξη των διατάξεων της παραγράφου 1. Οι κατ'αυτόν τον τρόπο καθοριζόμενες αρμοδιότητες κοινοποιούνται σε όλα τα μέλη. Σε περίπτωση που συμφωνηθούν αρμοδιότητες διαφορετικές από τις συνήθεις, τα μέλη έχουν το δικαίωμα να φέρουν οποιοδήποτε σχετικό θέμα ενώπιον του ΟΕΔ.

Άρθρο 8

Σύνθεση των ειδικών ομάδων

1. Οι ειδικές ομάδες αποτελούνται από δημόσιους και/ή μη δημόσιους υπαλλήλους με υψηλά προσόντα, συμπεριλαμβανομένων προσώπων που έχουν διατελέσει μέλη ειδικής ομάδας ή έχουν φέρει υπόθεση ενώπιόν της, που έχουν διατελέσει εκπρόσωποι ενός μέλους ή ενός συμβαλλόμενου μέρους της GATT του 1947 ή εκπρόσωποι στο συμβούλιο ή στην επιτροπή οποιασδήποτε καλυπτόμενης συμφωνίας ή της προηγούμενης από αυτή συμφωνίας ή που έχουν αποτελέσει μέλη της Γραμματείας, που έχουν διδάξει ή υποβάλει δημοσιεύσεις σε θέματα διεθνούς εμπορικού δικαίου και πολιτικής ή που έχουν υπηρετήσει ως ανώτεροι υπάλληλοι ενός μέλους στον τομέα εμπορικής πολιτικής.

2. Τα μέλη των ειδικών ομάδων επιβάλλεται να επιλέγονται με στόχο την εξασφάλιση της ανεξαρτησίας των μελών, της συμμετοχής ατόμων με διαφορετικές ειδικότητες και ευρύ φάσμα εμπειριών.

3. Υπήκοοι χωρών μελών των οποίων η κυβέρνηση[6] είναι διάδικος ή τρίτο μέρος, όπως ορίζεται στο άρθρο 10, παράγραφος 2, δεν δύνανται να είναι μέλη ειδικής ομάδας, η οποία ασχολείται με τη διαφορά αυτή, εκτός εάν οι διάδικοι αποφασίσουν διαφορετικά.

4. Προκειμένου να διευκολυνθεί η επιλογή των μελών των ειδικών ομάδων, η Γραμματεία καταρτίζει ενδεικτικό κατάλογο δημοσίων και μη δημοσίων υπαλλήλων, οι οποίοι διαθέτουν τα προσόντα που αναφέρονται στην παράγραφο 1, από τον οποίο επιλέγονται, κατά περίπτωση, τα μέλη των ειδικών ομάδων. Στον κατάλογο περιλαμβάνεται ο πίνακας των δημοσίων υπαλλήλων, μελών ειδικών ομάδων που καταρτίσθηκε στις 30 Νοεμβρίου 1984 (BISD 31S/9), και άλλοι πίνακες και ενδεικτικοί κατάλογοι που καταρτίσθηκαν στο πλαίσιο των καλυπτόμενων συμφωνιών και αναφέρονται τα ονόματα των προσώπων που παρατίθενται στους σχετικούς πίνακες και ενδεικτικούς καταλόγους κατά την έναρξη ισχύος της συμφωνίας για τον ΠΟΕ. Τα μέλη δύνανται κατά τακτά διαστήματα, να υποδεικνύουν ονόματα δημοσίων και μη δημοσίων υπαλλήλων που θα ήταν δυνατόν να συμπεριληφθούν στον ενδεικτικό κατάλογο, παρέχοντας πληροφορίες σχετικές με τις γνώσεις τους σε θέματα διεθνούς εμπορίου και σε τομείς ή θέματα που αποτελούν αντικείμενο των καλυπτόμενων συμφωνιών. Τα ονόματα αυτά προστίθενται στο σχετικό κατάλογο ύστερα από έγκριση του ΟΕΔ. Για κάθε άτομο που περιέχεται στον κατάλογο, προσδιορίζονται τα συγκεκριμένα πεδία εμπειρίας ή ειδικευμένων γνώσεων στους τομείς ή τα θέματα που αποτελούν αντικείμενο των καλυπτομένων συμφωνιών.

5. Οι ειδικές ομάδες αποτελούνται από τρία μέλη, εκτός εάν οι διάδικοι αποφασίσουν, εντός δέκα ημερών από τη σύσταση αυτών, ότι θα αποτελούνται από πέντε μέλη. Τα μέλη ενημερώνονται αμελλητί σχετικά με τη σύνθεση της ειδικής ομάδας.

6. Η Γραμματεία προτείνει στους διαδίκους υποψηφίους για την ειδική ομάδα. Οι διάδικοι δύνανται να διατυπώσουν αντιρρήσεις για τους εν λόγω υποψηφίους μόνο για επιτακτικούς λόγους.

7. Εάν δεν επιτευχθεί συμφωνία σχετικά με τη σύνθεση της ειδικής ομάδας εντός είκοσι ημερών από την ημερομηνία σύστασης αυτής, κατόπιν αιτήσεως ενός εκ των δύο μερών, ο Γενικός Διευθυντής, σε συνεννόηση με τον πρόεδρο του ΟΕΔ και τον πρόεδρο του αρμόδιου συμβουλίου ή επιτροπής, καθορίζει τη σύνθεση της ειδικής ομάδας, διορίζοντας ως μέλη αυτής τα άτομα που θεωρεί πλέον κατάλληλα, βάσει των σχετικών ειδικών ή πρόσθετων κανόνων ή διαδικασιών της καλυπτόμενης συμφωνίας ή των καλυπτόμενων συμφωνιών που αποτελούν αντικείμενο της διαφοράς κατόπιν διαβουλεύσεων με τους διαδίκους. Ο πρόεδρος του ΟΕΔ ενημερώνει τα μέλη σχετικά με τη σύνθεση της ειδικής ομάδας, το αργότερο εντός δέκα ημερών από την ημερομηνία παραλαβής της σχετικής αίτησης από τον πρόεδρο.

8. Τα μέλη επιτρέπουν, κατά γενικό κανόνα, στους δημοσίους υπαλλήλους τους να αποτελούν μέλη των ειδικών ομάδων.

9. Τα μέλη των ειδικών ομάδων συμμετέχουν σε ατομική βάση και όχι υπό την ιδιότητα των εκπροσώπων κυβέρνησης ή οργανισμού. Συνεπώς, τα μέλη δεν τους δίνουν οδηγίες ούτε επιδιώκουν να τα επηρεάσουν ως άτομα, όσον αφορά τα θέματα τα οποία έχουν τεθεί ενώπιον της ειδικής ομάδας.

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6 Σε περίπτωση που τελωνειακές ενώσεις ή κοινές αγορές είναι διάδικοι, η παρούσα διάταξη εφαρμόζεται σε υπηκόους όλων των χωρών μελών των τελωνειακών ενώσεων ή κοινών αγορών.

10. Σε περίπτωση που η διαφορά υφίσταται μεταξύ αναπτυσσόμενης χώρας μέλους και ανεπτυγμένης χώρας μέλους, και εάν ζητηθεί από την αναπτυσσόμενη χώρα μέλος, τουλάχιστον ένα μέλος της ειδικής ομάδας προέρχεται από αναπτυσσόμενη χώρα μέλος.

11. Οι δαπάνες των μελών των ειδικών ομάδων, συμπεριλαμβανομένων των εξόδων ταξιδίου και των ημερησίων αποζημιώσεων, καλύπτονται από τον προϋπολογισμό του ΠΟΕ σύμφωνα με τα κριτήρια που εγκρίνονται από το Γενικό Συμβούλιο και τα οποία βασίζονται σε συστάσεις της επιτροπής προϋπολογισμού, οικονομικών και διοίκησης.

Άρθρο 9

Διαδικασίες που ισχύουν σε περίπτωση πολλών καταγγελλόντων

1. Σε περίπτωση που περισσότερα από ένα μέλη ζητούν τη σύσταση ειδικής ομάδας σχετικά με το ίδιο θέμα, υπάρχει δυνατότητα σύστασης ενιαίας ειδικής ομάδας που εξετάζει τις συγκεκριμένες καταγγελίες λαμβάνοντας υπόψη τα δικαιώματα όλων των ενδιαφερομένων μελών. Οποτεδήποτε υπάρχει δυνατότητα, είναι σκόπιμο να συστήνεται ενιαία ειδική ομάδα για την εξέταση των σχετικών καταγγελιών.

2. Η ενιαία ειδική ομάδα οργανώνει την εξέτασή της και υποβάλλει τα πορίσματά της στο ΟΕΔ κατά τρόπον ώστε να μη θίγονται τα δικαιώματα που θα είχαν οι διάδικοι εάν ξεχωριστές ειδικές ομάδες εξέταζαν τις καταγγελίες τους. Εάν ζητηθεί από έναν από τους διαδίκους, η ειδική ομάδα υποβάλλει ξεχωριστές εκθέσεις αναφορικά με τις σχετικές διαφορές. Τα στοιχεία που υποβάλλονται εγγράφως από έκαστο των καταγγελλόντων τίθενται στη διάθεση των λοιπών καταγγελλόντων και κάθε καταγγέλλων έχει το δικαίωμα να παρίσταται όταν οποιοσδήποτε από τους λοιπούς καταγγέλλοντες εκθέτει τις απόψεις του στην ειδική ομάδα.

3. Σε περίπτωση σύστασης περισσοτέρων της μιας ειδικών ομάδων για την εξέταση των καταγγελιών που αφορούν το ίδιο θέμα, τα ίδια πρόσωπα συμμετέχουν στο μεγαλύτερο δυνατό βαθμό, σε κάθε μια από τις ξεχωριστές ειδικές ομάδες, ενώ το χρονοδιάγραμμα των εργασιών των ειδικών ομάδων, όσον αφορά τις εν λόγω διαφορές, αποτελεί αντικείμενο εναρμόνισης.

Άρθρο 10

Τρίτα μέρη

1. Κατά τη διάρκεια των εργασιών της ειδικής ομάδας, λαμβάνονται υπόψη τόσο τα συμφέροντα των διαδίκων όσο και τα συμφέροντα άλλων μελών καλυπτόμενης συμφωνίας που αποτελούν αντικείμενο της διαφοράς.

2. Κάθε μέλος που έχει ουσιώδες ενδιαφέρον για ένα θέμα που τίθεται ενώπιον ειδικής ομάδας και που έχει γνωστοποιήσει το ενδιαφέρον του στο ΟΕΔ (που στο παρόν μνημόνιο συμφωνίας καλείται "τρίτο μέρος") έχει τη δυνατότητα να εκθέσει τις απόψεις του και να υποβάλει εγγράφως στοιχεία στην ειδική ομάδα. Τα στοιχεία αυτά τίθενται, επίσης, στη διάθεση των διαδίκων και συμπεριλαμβάνονται στην έκθεση της ειδικής ομάδας.

3. Τα τρίτα μέρη λαμβάνουν τα στοιχεία που υποβάλλουν οι διάδικοι κατά την πρώτη συνεδρίαση της ειδικής ομάδας.

4. Εάν ένα τρίτο μέρος κρίνει ότι ένα μέτρο που έχει ήδη αποτελέσει αντικείμενο των εργασιών ειδικής ομάδας, αναιρεί εν όλω ή εν μέρει οφέλη που απορρέουν για αυτό από τις καλυπτόμενες συμφωνίες, το μέλος αυτό δύναται να προσφύγει στις κανονικές διαδικασίες επίλυσης διαφορών, στο πλαίσιο του παρόντος μνημονίου συμφωνίας. Όταν είναι δυνατόν, η διαφορά αυτή παραπέμπεται στην αρχική ειδική ομάδα.

Άρθρο 11

Εργο των ειδικών ομάδων

Βασικό καθήκον της ειδικής ομάδας είναι η παροχή επικουρικών υπηρεσιών προς το ΟΕΔ κατά την εκτέλεση των αρμοδιοτήτων του στο πλαίσιο του παρόντος μνημονίου συμφωνίας και των καλυπτόμενων συμφωνιών. Κατά συνέπεια, η ειδική ομάδα οφείλει αφενός να πραγματοποιεί αντικειμενική αξιολόγηση του θέματος που φέρεται ενώπιόν της, συμπεριλαμβανομένης της αντικειμενικής εκτίμησης των πραγματικών περιστατικών της υπόθεσης, της δυνατότητας εφαρμογής των σχετικών καλυπτόμενων συμφωνιών και της συμμόρφωσης προς αυτές, και, αφετέρου, να διατυπώνει συμπεράσματα κατάλληλα να βοηθήσουν το ΟΕΔ κατά τη διατύπωση συστάσεων ή τη λήψη αποφάσεων, όπως προβλέπεται στις καλυπτόμενες συμφωνίες. Οι ειδικές ομάδες οφείλουν να προβαίνουν ταχτικά σε διαβουλεύσεις με τους διαδίκους και να τους παρέχουν δυνατότητες για την επίτευξη αμοιβαίως ικανοποιητικής λύσης.

Άρθρο 12

Διαδικασίες των ειδικών ομάδων

1. Οι ειδικές ομάδες ακολουθούν τις διαδικασίες λειτουργίας που καθορίζονται στο προσάρτημα 3 εκτός εάν η ειδική ομάδα αποφασίσει διαφορετικά κατόπιν διαβουλεύσεων με τους διαδίκους.

2. Οι διαδικασίες των ειδικών ομάδων παρέχουν επαρκή βαθμό ευελιξίας προκειμένου να εξασφαλίζουν υψηλή ποιότητα των εκθέσεων των ειδικών ομάδων χωρίς αδικαιολόγητη καθυστέρηση των εργασιών αυτών.

3. Κατόπιν διαβουλεύσεων με τους διαδίκους, τα μέλη των ειδικών ομάδων καθορίζουν, το συντομότερο δυνατό και εάν είναι εφικτό εντός μιας εβδομάδας από την απόφαση για τη σύνθεση και τις αρμοδιότητες της ειδικής ομάδας, το χρονοδιάγραμμα των εργασιών των εν λόγω ομάδων, λαμβάνοντας υπόψη, εάν είναι σκόπιμο, τις διατάξεις του άρθρου 4, παράγραφος 9.

4. Κατά τον καθορισμό του χρονοδιαγράμματος των εργασιών της, η ειδική ομάδα, παρέχει επαρκή χρόνο στους διαδίκους για την προετοιμασία των προς υποβολή στοιχείων.

5. Οι ειδικές ομάδες οφείλουν να θέτουν ακριβείς προθεσμίες για την γραπτή υποβολή στοιχείων από τα μέρη, τα οποία οφείλουν να τις τηρούν.

6. Κάθε διάδικος υποβάλλει εγγράφως στοιχεία στη γραμματεία τα οποία αυτή διαβιβάζει αμέσως στην ειδική ομάδα και στους λοιπούς διαδίκους. Ο καταγγέλων υποβάλλει για πρώτη φορά στοιχεία προτού ο καθού να υποβάλει τα δικά του, εκτός εάν η ειδική ομάδα αποφασίσει, κατά τον καθορισμό του χρονοδιαγράμματος που αναφέρεται στην παράγραφο 3, και κατόπιν διαβουλεύσεων με τους διαδίκους ότι οι διάδικοι πρέπει να υποβάλουν για πρώτη φορά στοιχεία συγχρόνως. Σε περίπτωση, που προβλέπεται η διαδοχική υποβολή στοιχείων, η ειδική ομάδα θέτει αυστηρή προθεσμία για την υποβολή των στοιχείων από τον καθού. Τα επόμενα στοιχεία υποβάλλονται εγγράφως ταυτόχρονα.

7. Εάν οι διάδικοι δεν καταλήξουν σε αμοιβαία ικανοποιητική λύση, η ειδική ομάδα υποβάλλει τα πορίσματά της υπό μορφή έκθεσης, στο ΟΕΔ. Στις περιπτώσεις αυτές, στην έκθεση της ειδικής ομάδας αναφέρονται τα πραγματικά περιστατικά, η δυνατότητα εφαρμογής των σχετικών διατάξεων και η βασική αιτιολόγηση των διαπιστώσεων και συστάσεων στις οποίες αυτή προβαίνει. Σε περίπτωση που έχει επιτευχθεί επίλυση της διαφοράς μεταξύ των διαδίκων, η έκθεση της ειδικής ομάδας περιορίζεται σε

συνοπτική περιγραφή της υπόθεσης και στη διαπίστωση ότι έχει βρεθεί λύση.

8. Προκειμένου να βελτιωθεί η αποτελεσματικότητα των διαδικασιών, το χρονικό διάστημα κατά το οποίο η ειδική ομάδα πραγματοποιεί την εξέταση, από την ημερομηνία της απόφασης για τη σύνθεση και τις αρμοδιότητες της ειδικής ομάδας έως την ημερομηνία υποβολής της οριστικής έκθεσης στους διαδίκους δεν υπερβαίνει, κατά γενικό κανόνα, τους έξι μήνες. Σε επείγουσες περιπτώσεις, συμπεριλαμβανομένων αυτών που αφορούν τα ευπαθή προϊόντα, η ειδική ομάδα καταβάλλει προσπάθειες για την υποβολή της έκθεσης στους διαδίκους εντός προθεσμίας τριών μηνών.

9. Όταν η ειδική ομάδα εκτιμά ότι δεν είναι δυνατόν να υποβάλλει την έκθεσή της εντός έξι μηνών ή εντός τριών μηνών σε επείγουσες περιπτώσεις, ενημερώνει εγγράφως το ΟΕΔ σχετικά με τους λόγους της καθυστέρησης παρέχοντας, συγχρόνως, εκτίμηση του χρονικού διαστήματος εντός του οποίου θα υποβάλει την αίτηση. Σε καμία περίπτωση, το χρονικό διάστημα από τη σύσταση της ειδικής ομάδας έως τη διανομή της έκθεσης στα μέλη δεν υπερβαίνει τους εννέα μήνες.

10. Στο πλαίσιο διαβουλεύσεων σχετικών με μέτρο που λαμβάνεται από αναπτυσσόμενη χώρα μέλος, τα μέρη δύνανται να συμφωνήσουν να παρατείνουν τα χρονικά διαστήματα που αναφέρονται στο άρθρο 4, παράγραφοι 7 και 8. Εάν, μετά την εκπνοή του σχετικού χρονικού διαστήματος, τα μέρη που συμμετέχουν στις διαβουλεύσεις δεν είναι δυνατόν να συμφωνήσουν ότι έχουν περατωθεί οι διαβουλεύσεις, ο πρόεδρος του ΟΕΔ αποφασίζει, κατόπιν διαβουλεύσεων με τα μέρη, εάν θα παραταθεί το χρονικό διάστημα και για πόσο. Επίσης, κατά την εξέταση καταγγελίας που στρέφεται κατά αναπτυσσόμενης χώρας μέλους η ειδική ομάδα παρέχει επαρκή χρόνο στην αναπτυσσόμενη χώρα μέλος προκειμένου αυτή να ετοιμάσει την επιχειρηματολογία της. Οι διατάξεις του άρθρου 20, παράγραφος 1 και του άρθρου 21, παράγραφος 4 δεν θίγονται από τη λήψη μέτρων σύμφωνα με την παρούσα παράγραφο.

11. Σε περίπτωση που ένα ή περισσότερα από τα μέρη είναι αναπτυσσόμενη χώρα μέλος, στην έκθεση της ειδικής ομάδας ορίζεται ρητώς ο τρόπος κατά τον οποίο ελήφθησαν υπόψη οι σχετικές διατάξεις που αφορούν τη διακριτική και περισσότερο ευνοϊκή μεταχείριση που παρέχεται στις αναπτυσσόμενες χώρες μέλη, οι οποίες αποτελούν μέρος των καλυπτόμενων συμφωνιών που εθίγησαν από την αναπτυσσόμενη χώρα μέλος κατά τη διάρκεια των διαδικασιών επίλυσης διαφορών.

12. Η ειδική ομάδα μπορεί οποτεδήποτε να αναστείλει τις εργασίες της μετά από αίτηση του καταγγέλλοντος και για χρονικό διάστημα που δεν υπερβαίνει τους 12 μήνες. Σε περίπτωση τέτοιας αναστολής, τα χρονικά πλαίσια που τίθενται στο παρόν άρθρο, στις παραγράφους 8 και 9, στο άρθρο 20, παράγραφος 1 και στο άρθρο 21, παράγραφος 4, επεκτείνονται κατά το χρόνο αναστολής των εργασιών. Αν οι εργασίες της ειδικής ομάδας ανασταλούν για περισσότερους από 12 μήνες, εκλείπει η εξουσία για τη σύσταση ειδικής ομάδας.

Άρθρο 13

Δικαίωμα υποβολής αιτήματος για πληροφορίες

1. Κάθε ειδική ομάδα έχει το δικαίωμα να ζητεί πληροφορίες και τεχνικές συμβουλές από οποιοδήποτε άτομο ή οργανισμό θεωρεί κατάλληλο. Ωστόσο, πριν ζητήσει τέτοιες πληροφορίες ή συμβουλές από άτομο ή οργανισμό που υπάγεται στη δικαιοδοσία μέλους, η ειδική ομάδα ενημερώνει σχετικά τις αρχές του μέλους αυτού. Κάθε μέλος απαντά το συντομότερο δυνατό και κατά σαφή τρόπο σε κάθε αίτημα για πληροφορίες

που υποβάλλεται από ειδική ομάδα, η οποία κρίνει ως απαραίτητες και κατάλληλες τις πληροφορίες αυτές. Οι εμπιστευτικές πληροφορίες που κοινοποιούνται σε ειδική ομάδα δεν ανακοινώνονται χωρίς τη ρητή έγκριση του προσώπου, οργανισμού ή της αρχής που τις παρέσχε.

2. Οι ειδικές ομάδες δύνανται να ζητούν πληροφορίες από οποιαδήποτε σχετική πηγή και να συμβουλεύονται εμπειρογνώμονες προκειμένου να έχουν τις απόψεις τους επί ορισμένων πλευρών του θέματος. Όσον αφορά τα πραγματικά περιστατικά σχετικά με επιστημονικά ή άλλα τεχνικής φύσεως θέματα που θίγονται από διάδικο, η ειδική ομάδα δύναται να ζητεί γραπτή συμβουλευτική έκθεση από συμβουλευτική ειδική ομάδα . Οι κανόνες για τη σύσταση της ομάδας αυτής και των διαδικασιών της παρατίθενται στο προσάρτημα 4.

Άρθρο 14

Εμπιστευτικός χαρακτήρας

1. Οι εργασίες των ειδικών ομάδων έχουν εμπιστευτικό χαρακτήρα.

2. Οι εκθέσεις των ειδικών ομάδων συντάσσονται χωρίς να παρίστανται οι διάδικοι, βάσει των παρεχομένων στοιχείων και των δηλώσεων.

3. Οι απόψεις που εκφράζονται στην έκθεση της ειδικής ομάδας από επιμέρους εμπειρογνώμονες που συμμετέχουν σ'αυτή είναι ανώνυμες.

Άρθρο 15

Στάδιο ενδιάμεσης επανεξέτασης

1. Σε συνέχεια της εξέτασης των υποβαλλομένων αντικρούσεων και προφορικών επιχειρημάτων, η ειδική ομάδα, υποβάλλει στους διαδίκους το περιγραφικό μέρος του σχεδίου έκθεσής της (πραγματικά περιστατικά και επιχειρήματα). Εντός χρονικού διαστήματος που καθορίζεται από την ειδική ομάδα, οι διάδικοι υποβάλλουν τις παρατηρήσεις τους εγγράφως.

2. Μετά την εκπνοή της καθορισμένης ημερομηνίας για την υποβολή των παρατηρήσεων εκ μέρους των διαδίκων, η ειδική ομάδα υποβάλλει σε αυτούς ενδιάμεση έκθεση στην οποία περιλαμβάνονται, αφενός, το περιγραφικό μέρος και, αφετέρου, οι διαπιστώσεις και τα συμπεράσματα της εν λόγω ομάδας. Εντός προθεσμίας που καθορίζεται από την ειδική ομάδα, οποιοδήποτε μέρος δύναται να της υποβάλλει εγγράφως αίτημα για επανεξέταση συγκεκριμένων θεμάτων της ενδιάμεσης έκθεσης πριν από τη διαβίβαση της τελικής έκθεσης στα μέλη. Κατόπιν αιτήσεως μέλους, η ειδική ομάδα συνεδριάζει εκ νέου με τα μέρη σχετικά με τα θέματα που προδιορίζονται στις γραπτές παρατηρήσεις. Εάν, εντός της προθεσμίας υποβολής παρατηρήσεων, δεν υποβάλλεται καμία παρατήρηση από τα μέλη, η ενδιάμεση έκθεση θεωρείται ως η τελική έκθεση της ειδικής ομάδας και διανέμεται το συντομότερο δυνατό στα μέλη.

3. Στα πορίσματα της τελικής έκθεσης της ειδικής ομάδας περιλαμβάνεται συζήτηση των επιχειρημάτων που αναπτύχθηκε κατά το στάδιο της ενδιάμεσης επανεξέτασης. Το στάδιο ενδιάμεσης επανεξέτασης ολοκληρώνεται εντός της προθεσμίας που ορίζεται στο άρθρο 12, παράγραφος 8.

Άρθρο 16

Σχέση των εκθέσεων των ειδικών ομάδων

1. Προκειμένου να παρασχεθεί επαρκής χρόνος στα μέλη να εξετάσουν τις εκθέσεις της ειδικής ομάδας, το ΟΣΔ προβαίνει σε εξέταση των σχετικών

εκθέσεων εν όψει της έγκρισής τους είκοσι ημέρες μετά την υποβολή τους στα μέλη.

2. Τα μέλη, τα οποία δεν συμφωνούν με κάποια έκθεση της ειδικής ομάδας, κοινοποιούν εγγράφως τους λόγους των αντιρρήσεών τους, τουλάχιστον δέκα ημέρες πριν από τη συνεδρίαση του ΟΕΔ κατά την οποία εξετάζεται η σχετική έκθεση της ειδικής ομάδας.

3. Οι διάδικοι έχουν το δικαίωμα να συμμετέχουν ως πλήρη μέλη κατά την εξέταση της έκθεσης της ειδικής ομάδας από το ΟΕΔ και οι απόψεις τους καταγράφονται στο σύνολό τους.

4. Εντός εξήντα ημερών από την ημερομηνία διαβίβασης της έκθεσης της ειδικής ομάδας στα μέλη, η έκθεση αυτή εγκρίνεται κατά τη διάρκεια συνεδρίασης του ΟΕΔ[7], εκτός εάν διάδικο μέρος γνωστοποιήσει επισήμως στο ΟΕΔ την απόφασή του να προσβάλει την έκθεση ή εάν το ΟΕΔ αποφασίσει με συναίνεση την απόρριψή της. Εάν κάποιος διάδικος έχει γνωστοποιήσει την απόφασή του να ασκήσει έφεση, η έκθεση της ειδικής ομάδας υποβάλλεται στο ΟΕΔ για έγκριση μόνο μετά την ολοκλήρωση της διαδικασίας έφεσης. Η συγκεκριμένη διαδικασία έγκρισης δεν θίγει το δικαίωμα των μελών να εκφράζουν τις απόψεις τους επί της έκθεσης ειδικής ομάδας.

Άρθρο 17

Κατ' έφεση εξέταση της υπόθεσης

Μόνιμο δευτεροβάθμιο δικαιοδοτικό όργανο

1. Το ΟΕΔ συστήνει μόνιμο δευτεροβάθμιο δικαιοδοτικό όργανο. Στο εν λόγω όργανο υποβάλλονται εφέσεις που αφορούν υποθέσεις ειδικών ομάδων. Το δευτεροβάθμιο δικαιοδοτικό όργανο αποτελείται από επτά πρόσωπα εκ των οποίων τρία παρίστανται σε όλες τις υποθέσεις. Τα πρόσωπα που είναι μέλη του δευτεροβάθμιου δικαιοδοτικού οργάνου συμμετέχουν εκ περιτροπής. Το εκ περιτροπής αυτό σύστημα καθορίζεται στις διαδικασίες λειτουργίας του εν λόγω οργάνου.

2. Το ΟΕΔ διορίζει τα μέλη του δευτεροβάθμιου δικαιοδοτικού οργάνου. Η θητεία του κάθε μέλους είναι τετραετής και υπάρχει δυνατότητα ανανέωσης για μια φορά. Ωστόσο, η θητεία τριών από τα επτά πρόσωπα που διορίζονται αμέσως μετά την έναρξη ισχύος της συμφωνίας για τον ΠΟΕ λήγει μετά την πάροδο διετίας. Η επιλογή των τριών αυτών προσώπων γίνεται με κλήρωση. Οι θέσεις πληρούνται όταν κενώνονται. Το πρόσωπο που ορίζεται να αντικαταστήσει μέλος του οποίου η θητεία δεν έχει λήξει παραμένει στη θέση του μέχρις ότου λήξει η θητεία του προκατόχου του.

3. Το δευτεροβάθμιο δικαιοδοτικό όργανο αποτελείται από πρόσωπα αναγνωρισμένου κύρους, με αποδεδειγμένη εμπειρία στους τομείς δικαίου διεθνούς εμπορίου και, γενικώς, σε θέματα που αποτελούν αντικείμενο των καλυπτομένων συμφωνιών. Τα μέλη του δευτεροβάθμιου δικαιοδοτικού οργάνου δεν είναι δημόσιοι υπάλληλοι. Η σύνθεση του δευτεροβάθμιου δικαιοδοτικού οργάνου είναι, σε γενικές γραμμές αντιπροσωπευτική της σύνθεσης του ΠΟΕ. Όλα τα πρόσωπα που αποτελούν μέλη του δευτεροβάθμιου δικαιοδοτικού οργάνου είναι διαθέσιμα ανά πάσα στιγμή και χωρίς καθυστέρηση και είναι διαρκώς ενημερωμένα για τις δραστηριότητες που αποτελούν αντικείμενο επίλυσης διαφορών, καθώς και για άλλες σχετικές δραστηριότητες του ΠΟΕ. Τα πρόσωπα αυτά δεν συμμετέχουν στην εξέταση

7 Εάν εντός της συγκεκριμένης προθεσμίας δεν έχει προγραμματισθεί συνεδρίαση του ΟΕΔ σε χρόνο που να καθιστά δυνατή την ικανοποίηση των απαιτήσεων του άρθρου 16, παράγραφοι 1 και 4, το ΟΕΔ συνεδριάζει για το σκοπό αυτό.

διαφορών που θα ήταν δυνατόν να προκαλέσουν, άμεσα ή έμμεσα σύγκρουση συμφερόντων.

4. Μόνον οι διάδικοι και όχι τρίτα μέρη έχουν δικαίωμα να προσβάλουν έκθεση ειδικής ομάδας. Τα τρίτα μέρη που έχουν γνωστοποιήσει στο ΟΕΔ το ουσιώδες ενδιαφέρον τους ως προς το θέμα, σύμφωνα με το άρθρο 10, παράγραφος 2, δύνανται να υποβάλουν εγγράφως στοιχεία και να εκθέσουν τις απόψεις τους στο δευτεροβάθμιο δικαιοδοτικό όργανο.

5. Κατά γενικό κανόνα, η διάρκεια της διαδικασίας, από την ημερομηνία κατά την οποία διάδικος ανακοινώνει επισήμως την απόφασή του να ασκήσει έφεση έως την ημερομηνία που το δευτεροβάθμιο δικαιοδοτικό όργανο κοινοποιεί την έκθεσή του, δεν υπερβαίνει τις εξήντα ημέρες. Κατά τον καθορισμό του χρονοδιαγράμματος των εργασιών του, το δευτεροβάθμιο δικαιοδοτικό όργανο, εάν κρίνει σκόπιμο, λαμβάνει υπόψη τις διατάξεις του άρθρου 4, παράγραφος 9. Σε περίπτωση που το δευτεροβάθμιο δικαιοδοτικό όργανο κρίνει ότι δεν δύναται να υποβάλει την έκθεσή του εντός εξήντα ημερών, ενημερώνει εγγράφως το ΟΕΔ σχετικά με τους λόγους της καθυστέρησης και παρέχει, συγχρόνως, εκτίμηση του χρονικού διαστήματος εντός του οποίου θα υποβάλει την έκθεσή του. Σε καμία περίπτωση, η σχετική διαδικασία δεν υπερβαίνει τις ενενήντα ημέρες.

6. Η έφεση περιορίζεται σε νομικά ζητήματα που θίγονται στην έκθεση της ειδικής ομάδας, καθώς και στην ερμηνεία των νομικών εννοιών την οποία πραγματοποιεί η ειδική ομάδα.

7. Στο δευτεροβάθμιο δικαιοδοτικό όργανο παρέχεται η κατάλληλη διοικητική και νομική στήριξη.

8. Τα έξοδα των προσώπων που είναι μέλη του δευτεροβάθμιου δικαιοδοτικού οργάνου, συμπεριλαμβανομένων των εξόδων ταξιδίων και των ημερησίων αποζημιώσεων καλύπτονται από τον προϋπολογισμό του ΠΟΕ, σύμφωνα με τα κριτήρια που πρόκειται να υιοθετηθούν από το Γενικό Συμβούλιο, βάσει των συστάσεων της επιτροπής προϋπολογισμού, οικονομικών και διαχείρισης.

Διαδικασίες κατ' έφεση εξέτασης

9. Οι διαδικασίες εργασίας καθορίζονται από το δευτεροβάθμιο δικαιοδοτικό όργανο, σε συνεννόηση με τον πρόεδρο του ΟΕΔ και το Γενικό Διευθυντή και ανακοινώνονται στα μέλη προς ενημέρωσή τους.

10. Οι εργασίες του δευτεροβάθμιου δικαιοδοτικού οργάνου έχουν εμπιστευτικό χαρακτήρα. Οι εκθέσεις του δευτεροβάθμιου δικαιοδοτικού οργάνου συντάσσονται χωρίς να παρίστανται οι διάδικοι και βάσει των παρεχομένων στοιχείων και δηλώσεών τους.

11. Οι απόψεις που εκτίθενται στην έκθεση του δευτεροβάθμιου δικαιοδοτικού οργάνου από άτομα που αποτελούν μέλη αυτού είναι ανώνυμες.

12. Το δευτεροβάθμιο δικαιοδοτικό όργανο εξετάζει κάθε θέμα που θίγεται κατά τη διάρκεια της κατ' έφεση διαδικασίας, σύμφωνα με την παράγραφο 6.

13. Το δευτεροβάθμιο δικαιοδοτικό όργανο δύναται να υποστηρίζει, να τροποποιεί ή να αναιρεί τις νομικές διαπιστώσεις και πορίσματα της ειδικής ομάδας.

Σύγκριση των εκθέσεων του δευτεροβάθμιου δικαιοδοτικού οργάνου

14. Η έκθεση του δευτεροβάθμιου δικαιοδοτικού οργάνου εγκρίνεται από το ΟΕΔ και γίνεται αποδεκτή άνευ όρων από τους διαδίκους, εκτός εάν το ΟΕΔ αποφασίσει με συναίνεση να μην εγκρίνει την έκθεση του δευτεροβάθμιου δικαιοδοτικού οργάνου εντός τριάντα ημερών από την υποβολή της στα μέλη[8]. Η διαδικασία αυτή έγκρισης δεν θίγει το δικαίωμα των μελών να εκφέρουν τις απόψεις τους επί της έκθεσης του δευτεροβάθμιου δικαιοδοτικού οργάνου.

Άρθρο 18

Ανακοινώσεις στην ειδική ομάδα και στο δευτεροβάθμιο δικαιοδοτικό όργανο

1. Δεν πραγματοποιούνται ανακοινώσεις ex parte στην ειδική ομάδα ή στο δευτεροβάθμιο δικαιοδοτικό όργανο, όσον αφορά θέματα που εξετάζονται από την ειδική ομάδα ή το δευτεροβάθμιο δικαιοδοτικό όργανο.

2. Τα στοιχεία που υποβάλλονται εγγράφως στην ειδική ομάδα ή στο δευτεροβάθμιο δικαιοδοτικό όργανο αντιμετωπίζονται ως εμπιστευτικά, αλλά τίθενται στη διάθεση των διαδίκων. Καμία διάταξη στο παρόν μνημόνιο συμφωνίας δεν απαγορεύει σε διάδικο να κοινοποιήσει τις απόψεις του. Τα μέλη αντιμετωπίζουν ως εμπιστευτικού χαρακτήρα τα στοιχεία που υποβάλλονται από άλλο μέλος στην ειδική ομάδα ή στο δευτεροβάθμιο δικαιοδοτικό όργανο και που το εν λόγω μέλος έχει χαρακτηρίσει ως εμπιστευτικού χαρακτήρα. Επίσης οι διάδικοι υποβάλλουν μη εμπιστευτικού χαρακτήρα περιλήψεις των πληροφοριών που περιέχονται στις γραπτές ανακοινώσεις τους, οι οποίες δύνανται να κοινοποιηθούν.

Άρθρο 19

Συστάσεις που διατυπώνονται από την ειδική ομάδα και το δευτεροβάθμιο δικαιοδοτικό όργανο

1. Σε περίπτωση που μια ειδική ομάδα ή το δευτεροβάθμιο δικαιοδοτικό όργανο συμπεραίνει ότι ένα μέτρο είναι ασυμβίβαστο με καλυπτόμενη συμφωνία συστήνει στο ενδιαφερόμενο μέλος[9] να αναπροσαρμόσει το μέτρο ώστε να συμβαδίζει προς τη σχετική συμφωνία[10]. Πέραν των συστάσεών τους, η ειδική ομάδα ή το δευτεροβάθμιο δικαιοδοτικό όργανο δύνανται να προτείνουν τρόπους κατά τους οποίους το ενδιαφερόμενο μέλος θα ήταν δυνατόν να υλοποιήσει τις συστάσεις.

2. Σύμφωνα με το άρθρο 3, παράγραφος 2, στο πλαίσιο των διαπιστώσεων και συστάσεών τους, η ειδική ομάδα και το δευτεροβάθμιο δικαιοδοτικό όργανο δεν δύνανται να αυξήσουν ή να μειώσουν τα δικαιώματα και τις υποχρεώσεις που προβλέπονται στις καλυπτόμενες συμφωνίες.

Άρθρο 20

Χρονοδιάγραμμα των αποφάσεων του ΟΕΔ

Εκτός εάν οι διάδικοι αποφασίσουν διαφορετικά, το χρονικό διάστημα από την ημερομηνία σύστασης της ειδικής ομάδας από το ΟΕΔ έως την ημερομηνία εξέτασης από αυτό της έκθεσης της ειδικής ομάδας ή του

8 Εάν δεν έχει προγραμματισθεί η πραγματοποίηση συνεδρίασης του ΟΕΔ εντός της συγκεκριμένης προθεσμίας, το ΟΕΔ συνέρχεται για το σκοπό αυτό.

9 "Ενδιαφερόμενο μέλος" είναι διάδικος προς τον οποίο η ειδική ομάδα και το δευτεροβάθμιο δικαιοδοτικό όργανο απευθύνουν συστάσεις.

10 Σχετικά με τις συστάσεις σε υποθέσεις που δεν αφορούν παράβαση της GATT του 1994 ή λοιπών καλυπτόμενων συμφωνιών, βλέπε το άρθρο 26.

δευτεροβάθμιου δικαιοδοτικού οργάνου προς έγκριση δεν υπερβαίνει, κατά γενικό κανόνα, εννέα μήνες εάν δεν ασκηθεί έφεση κατά της έκθεσης της ειδικής ομάδας, ή δώδεκα μήνες αν ασκηθεί έφεση κατά της εν λόγω έκθεσης. Σε περίπτωση που είτε η ειδική ομάδα είτε το δευτεροβάθμιο δικαιοδοτικό όργανο έχουν ζητήσει, σύμφωνα με το άρθρο 12, παράγραφος 9 ή το άρθρο 17, παράγραφος 5, παράταση της προθεσμίας υποβολής της έκθεσης του, ο επιπλέον χρόνος που παρέχεται προστίθεται στα ανωτέρω χρονικά διαστήματα.

Άρθρο 21

Παρακολούθηση της εφαρμογής των συστάσεων και αποφάσεων

1. Η ταχεία συμμόρφωση με τις συστάσεις ή αποφάσεις του ΟΕΔ είναι ουσιαστικής σημασίας προκειμένου να εξασφαλισθεί η αποτελεσματική επίλυση των διαφορών προς όφελος όλων των μελών.

2. Ιδιαίτερη προσοχή πρέπει να δοθεί σε θέματα που θίγουν τα συμφέροντα των αναπτυσσομένων χωρών μελών, όσον αφορά τα μέτρα που έχουν αποτελέσει αντικείμενο της διαδικασίας επίλυσης διαφορών.

3. Στο πλαίσιο συνεδρίασης του ΟΕΔ που πραγματοποιείται εντός 30 ημερών[11] μετά την ημερομηνία έγκρισης της έκθεσης της ειδικής ομάδας ή του δευτεροβάθμιου δικαιοδοτικού οργάνου, το ενδιαφερόμενο μέλος ενημερώνει το ΟΕΔ σχετικά με τις προθέσεις του, όσον αφορά την υλοποίηση των συστάσεων και αποφάσεων του ΟΕΔ. Εάν η άμεση συμμόρφωση με τις συστάσεις και αποφάσεις είναι πρακτικώς αδύνατη, παρέχεται για το σκοπό αυτό εύλογο χρονικό διάστημα στο ενδιαφερόμενο μέλος. Το εύλογο χρονικό διάστημα συνίσταται:

(α) στο χρονικό διάστημα που προτείνεται από το ενδιαφερόμενο μέλος, υπό τον όρο ότι το σχετικό διάστημα εγκρίνεται από το ΟΕΔ, ή ελλείψει της έγκρισης αυτής,

(β) σε χρονικό διάστημα που συμφωνείται αμοιβαία από τους διαδίκους εντός σαρανταπέντε ημερών από την ημερομηνία έγκρισης των συστάσεων και αποφάσεων· ή, ελλείψει τέτοιας συμφωνίας,

(γ) σε χρονικό διάστημα που καθορίζεται μέσω υποχρεωτικής διαιτησίας εντός ενενήντα ημερών μετά την ημερομηνία έγκρισης των συστάσεων και αποφάσεων[12]. Κατά την εν λόγω διαιτησία, μια αρχή που θα πρέπει να κατευθύνει τις εργασίες του διαιτητή[13] είναι ότι το εύλογο χρονικό διάστημα για την υλοποίηση των συστάσεων της ειδικής ομάδας ή του δευτεροβάθμιου δικαιοδοτικού οργάνου δεν είναι σκόπιμο να υπερβαίνει τους δεκαπέντε μήνες από την ημερομηνία έγκρισης της έκθεσης ειδικής ομάδας ή δευτεροβάθμιου δικαιοδοτικού οργάνου. Ωστόσο, το σχετικό χρονικό διάστημα ενδέχεται να είναι μικρότερο ή μεγαλύτερο, ανάλογα με τις εκάστοτε περιστάσεις.

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11 Εάν κατά τη διάρκεια του συγκεκριμένου χρονικού διαστήματος δεν έχει προγραμματισθεί συνεδρίαση του ΟΕΔ, το τελευταίο συνεδριάζει για το σκοπό αυτόν.

12 Εάν τα μέρη δεν δύνανται να συμφωνήσουν σχετικά με την επιλογή διαιτητή εντός δέκα ημερών από την παραπομπή του θέματος σε διαιτησία, ο διαιτητής ορίζεται από το Γενικό Διευθυντή εντός δέκα ημερών, κατόπιν διαβουλεύσεων με τα μέρη.

13 Ο όρος "διαιτητής" νοείται ότι αναφέρεται είτε σε άτομο είτε σε ομάδα.

4. Εκτός εάν η ειδική ομάδα ή το δευτεροβάθμιο δικαιοδοτικό όργανο παρατείνει την προθεσμία υποβολής της έκθεσης, σύμφωνα με το άρθρο 12, παράγραφος 9 ή το άρθρο 17, παράγραφος 5, το χρονικό διάστημα από την ημερομηνία σύστασης της ειδικής ομάδας από το ΟΕΔ έως την ημερομηνία καθορισμού του εν λόγω χρονικού διαστήματος δεν υπερβαίνει τους δεκαπέντε μήνες, εκτός εάν αποφασίσουν διαφορετικά οι διάδικοι. Σε περίπτωση που είτε η ειδική ομάδα είτε το δευτεροβάθμιο δικαιοδοτικό όργανο έχουν ενεργήσει για την παράταση της προθεσμίας υποβολής της έκθεσης, ο επιπλέον χρόνος που παρέχεται προστίθεται στο διάστημα των δεκαπέντε μηνών, υπό τον όρο ότι μόνον εφόσον οι διάδικοι αποφασίσουν ότι υφίστανται εξαιρετικές περιστάσεις, ο συνολικός χρόνος υπερβαίνει τους δεκαοχτώ μήνες.

5. Σε περίπτωση διαφωνίας ως προς την ύπαρξη μέτρων ή ως προς το αν συμβιβάζονται με καλυπτόμενη συμφωνία μέτρα που λαμβάνονται προς συμμόρφωση με τις συστάσεις και αποφάσεις, η εν λόγω διαφορά ρυθμίζεται σύμφωνα με τις σχετικές διαδικασίες επίλυσης διαφορών, με προσφυγή, όταν είναι δυνατόν, στην αρχική ειδική ομάδα. Η ειδική ομάδα υποβάλλει την έκθεσή της εντός ενενήντα ημερών από την ημερομηνία παραπομπής τους θέματος σε αυτή. Σε περίπτωση που η ειδική ομάδα εκτιμά ότι δεν δύναται να υποβάλει την έκθεσή της εντός καθορισμένης προθεσμίας, γνωστοποιεί εγγράφως στο ΟΕΔ τους λόγους της καθυστέρησης, παρέχοντας ταυτόχρονα, εκτίμηση του χρονικού διαστήματος εντός του οποίου θα υποβάλει την έκθεσή της.

6. Το ΟΕΔ παρακολουθεί την εφαρμογή των εγκεκριμένων συστάσεων ή αποφάσεων. Το θέμα της εφαρμογής των συστάσεων ή αποφάσεων ενδέχεται να θιγεί στο ΟΕΔ από κάθε μέλος και οποτεδήποτε μετά την έγκρισή τους. Εκτός εάν το ΟΕΔ αποφασίσει διαφορετικά, το θέμα της εφαρμογής των συστάσεων και αποφάσεων εγγράφεται στην ημερήσια διάταξη της συνεδρίασης του ΟΕΔ έξι μήνες μετά την ημερομηνία καθορισμού του εν λόγω χρονικού διαστήματος, σύμφωνα με την παράγραφο 3 και παραμένει στην ημερήσια διάταξη του ΟΕΔ μέχρις ότου επιλυθεί. Τουλάχιστον δέκα ημέρες πριν από κάθε σχετική συνεδρίαση του ΟΕΔ, το ενδιαφερόμενο μέλος υποβάλλει εγγράφως στο ΟΕΔ έκθεση σχετική με την πρόοδο εφαρμογής των συστάσεων και αποφάσεων.

7. Σε περίπτωση που το θέμα έχει θιγεί από αναπτυσσόμενη χώρα μέλος, το ΟΕΔ εξετάζει τις περαιτέρω ενέργειες που θα ήταν δυνατόν να αναλάβει και οι οποίες θα ήταν κατάλληλες για τις περιστάσεις.

8. Εάν ασκείται έφεση από αναπτυσσόμενη χώρα μέλος, κατά την εξέταση των μέτρων που αρμόζει να ληφθούν, το ΟΕΔ λαμβάνει υπόψη όχι μόνο τις συναλλαγές που προβλέπονται στο πλαίσιο των εν λόγω μέτρων, αλλά, επίσης, τις επιπτώσεις τους στην οικονομία των ενδιαφερομένων αναπτυσσομένων χωρών μελών.

Άρθρο 22

Παροχή αντισταθμιστικών ανταλλαγμάτων και αναστολή των παραχωρήσεων

1. Η παροχή αντισταθμιστικών ανταλλαγμάτων και η αναστολή των παραχωρήσεων ή άλλων υποχρεώσεων αποτελούν προσωρινά μέτρα που

λαμβάνονται σε περίπτωση που οι συστάσεις και οι αποφάσεις δεν εφαρμόζονται εντός ευλόγου χρονικού διαστήματος. Ωστόσο, ούτε η παροχή αντισταθμιστικών ανταλλαγμάτων ούτε η αναστολή των παραχωρήσεων ή άλλων υποχρεώσεων δεν προτιμώνται έναντι της πλήρους εφαρμογής σύστασης για τη συμμόρφωση μέτρου με τις καλυπτόμενες συμφωνίες. Τα αντισταθμιστικά ανταλλάγματα αποτελούν εθελοντικά μέτρα, και όταν παρέχονται, είναι σύμφωνα με τις καλυπτόμενες συμφωνίες.

2. Εάν το ενδιαφερόμενο μέλος δεν επιτύχει τη συμμόρφωση ενός μέτρου που απεδείχθη ασυμβίβαστο με καλυπτόμενη συμφωνία, ή τη συμμόρφωσή του με τις συστάσεις και αποφάσεις εντός ευλόγου χρονικού διαστήματος που καθορίζεται βάσει του άρθρου 21, παράγραφος 3, το μέλος αυτό, εάν ζητηθεί, και όχι αργότερα από το πέρας του ευλόγου χρονικού διαστήματος, προβαίνει σε διαβουλεύσεις με οποιοδήποτε μέρος έχει επικαλεσθεί τις διαδικασίες επίλυσης διαφορών, προκειμένου να συμφωνηθούν αμοιβαία αποδεκτά αντισταθμιστικά ανταλλάγματα. Εάν δεν επιτευχθεί συμφωνία για την παροχή ικανοποιητικού αντισταθμιστικού ανταλλάγματος, εντός είκοσι ημερών από το πέρας του ευλόγου χρονικού διαστήματος, κάθε μέλος που έχει επικαλεσθεί τις διαδικασίες επίλυσης διαφορών δύναται να ζητήσει τη χορήγηση άδειας από το ΟΣΔ για να αναστείλει έναντι του ενδιαφερόμενου μέλους την εφαρμογή παραχωρήσεων ή άλλων υποχρεώσεων που απορρέουν από τις καλυπτόμενες συμφωνίες.

3. Προκειμένου να επιλέξει τις παραχωρήσεις ή άλλες υποχρεώσεις που θα αναστείλει, ο καταγγέλων εφαρμόζει τις ακόλουθες αρχές και διαδικασίες:

(α) η γενική αρχή είναι η εξής: ο καταγγέλων οφείλει κατ' αρχήν να προβεί στην αναστολή των παραχωρήσεων ή άλλων υποχρεώσεων όσον αφορά τον ίδιο τομέα με αυτόν, στον οποίο η ειδική ομάδα ή το δευτεροβάθμιο δικαιοδοτικό όργανο διαπίστωσε παράβαση ή τυχόν μερική ή ολική ανάίρεση των οφελών·

(β) σε περίπτωση που το εν λόγω μέλος θεωρεί ότι δεν είναι εφικτή ή αποτελεσματική η αναστολή των παραχωρήσεων ή άλλων υποχρεώσεων όσον αφορά τον ίδιο τομέα, δύναται να προβεί σε αναστολή των παραχωρήσεων ή λοιπών υποχρεώσεων στο πλαίσιο άλλων τομέων που καλύπτονται από την ίδια συμφωνία·

(γ) εάν το εν λόγω μέλος θεωρεί ότι δεν είναι εφικτή ή αποτελεσματική η αναστολή παραχωρήσεων ή άλλων υποχρεώσεων όσον αφορά τους λοιπούς τομείς στο πλαίσιο της ίδιας συμφωνίας, και ότι οι περιστάσεις είναι αρκετά σοβαρές, δύναται να επιδιώξει την αναστολή παραχωρήσεων ή άλλων υποχρεώσεων στο πλαίσιο άλλης καλυπτόμενης συμφωνίας·

(δ) κατά την εφαρμογή των ανωτέρω αρχών, το εν λόγω μέρος λαμβάνει υπόψη:

(i) τις συναλλαγές στο πλαίσιο του τομέα ή της συμφωνίας ως προς την οποία η ειδική ομάδα ή το δευτεροβάθμιο δικαιοδοτικό όργανο διαπίστωσε παράβαση ή τυχόν μερική ή ολική ανάίρεση οφελών, και τη σημασία αυτών των συναλλαγών για το εν λόγω μέρος·

(ii) τα ευρύτερα οικονομικά στοιχεία που συνοδεύονται από την ανάίρεση ή μείωση των προνομίων και τις ευρύτερες οικονομικές επιπτώσεις της αναστολής των παραχωρήσεων ή άλλων υποχρεώσεων·

(ε) εάν το εν λόγω μέρος αποφασίσει να ζητήσει άδεια για την αναστολή των παραχωρήσεων ή λοιπών υποχρεώσεων, σύμφωνα με τα στοιχεία β) ή γ), αναφέρει στην αίτησή του τους σχετικούς λόγους. Ταυτόχρονα με την αποστολή της στο ΟΕΔ η αίτηση διαβιβάζεται επίσης στα αρμόδια συμβούλια καθώς και, σε περίπτωση αίτησης που υποβάλλεται σύμφωνα με το στοιχείο β), στα αρμόδια τομεακά όργανα.

στ) για τους σκοπούς της παρούσας παραγράφου, ως "τομέας" νοείται:

(i) όσον αφορά τα εμπορεύματα, το σύνολο των εμπορευμάτων·

(ii) όσον αφορά τις υπηρεσίες, ένας βασικός τομέας όπως καθορίζεται στον ισχύοντα "κατάλογο τομεακής κατάταξης των υπηρεσιών", στον οποίο παρατίθενται οι εν λόγω τομείς[14]·

(iii) όσον αφορά τα δικαιώματα πνευματικής ιδιοκτησίας στον τομέα του εμπορίου, εκάστη των κατηγοριών δικαιωμάτων πνευματικής ιδιοκτησίας στον τομέα του εμπορίου (TRIP)·

(ζ) για τους σκοπούς της παρούσας παραγράφου, ως "συμφωνία" νοείται:

(i) όσον αφορά τα εμπορεύματα, οι συμφωνίες που παρατίθενται στο παράρτημα 1Α της συμφωνίας για τον ΠΟΕ, στο σύνολό τους καθώς και οι πλειομερείς εμπορικές συμφωνίες στο μέτρο που οι ενδιαφερόμενοι διάδικοι είναι μέρη στις εν λόγω συμφωνίες·

(ii) όσον αφορά τις υπηρεσίες, η GATS·

(iii) όσον αφορά τα δικαιώματα πνευματικής ιδιοκτησίας, στον τομέα του εμπορίου, η συμφωνία για τα TRIP.

4. Το επίπεδο της αναστολής των παραχωρήσεων ή άλλων υποχρεώσεων για το οποίο χορηγείται άδεια από το ΟΕΔ αντιστοιχεί στο επίπεδο μερικής ή ολικής ακύρωσης των οφελών.

5. Το ΟΕΔ δεν χορηγεί άδεια για την αναστολή των παραχωρήσεων ή άλλων υποχρεώσεων σε περίπτωση που μια καλυπτόμενη συμφωνία απαγορεύει τη σχετική αναστολή.

6. Σε περίπτωση που ισχύουν οι συνθήκες που περιγράφονται στην παράγραφο 2, το ΟΕΔ, κατόπιν αιτήσεως, χορηγεί άδεια για την αναστολή των παραχωρήσεων ή άλλων υποχρεώσεων εντός τριάντα ημερών από το πέρας του ευλόγου χρονικού διαστήματος, εκτός εάν το ΟΕΔ αποφασίσει με συναίνεση την απόρριψη της αίτησης. Ωστόσο, εάν το ενδιαφερόμενο μέλος έχει αντιρρήσεις ως προς το προτεινόμενο επίπεδο αναστολής, ή ισχυρίζεται ότι δεν τηρήθηκαν οι αρχές και οι διαδικασίες που αναφέρονται στην παράγραφο 3 όταν ο καταγγέλων ζήτησε άδεια αναστολής των παραχωρήσεων ή άλλων υποχρεώσεων, βάσει της παραγράφου 3, στοιχεία β) ή γ), το θέμα παραπέμπεται σε διαιτησία. Η διαδικασία της διαιτησίας αναλαμβάνεται από την αρχική ειδική ομάδα, σε περίπτωση που είναι διαθέσιμα τα μέλη ή από διαιτητή[15] που ορίζεται από το γενικό διευθυντή, και ολοκληρώνεται εντός εξήντα ημερών μετά το πέρας του ευλόγου χρονικού διαστήματος. Οι παραχωρήσεις ή άλλες υποχρεώσεις δεν αναστέλλονται κατά τη διάρκεια της διαιτησίας.

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14 Στον κατάλογο που παρατίθεται στο έγγραφο MTN.GNS/W/120 προσδιορίζονται ένδεκα τομείς.

15 Ο όρος "διαιτητής" αναφέρεται είτε σε άτομο είτε σε ομάδα.

7. Ο διαιτητής[16], ενεργώντας σύμφωνα με την παράγραφο 6, δεν εξετάζει τη φύση των παραχωρήσεων ή των άλλων υποχρεώσεων που θα ανασταλούν αλλά κρίνει κατά πόσον το επίπεδο των εν λόγω παραχωρήσεων αντιστοιχεί στο επίπεδο ολικής ή μερικής αναίρεσης οφελών. Ο διαιτητής δύναται, επίσης, να προσδιορίζει εάν η προτεινόμενη αναστολή παραχωρήσεων ή άλλων υποχρεώσεων επιτρέπεται στο πλαίσιο της καλυπτόμενης συμφωνίας. Ωστόσο, εάν το θέμα που παραπέμπεται σε διαιτησία περιλαμβάνει καταγγελία ότι δεν έχουν τηρηθεί οι αρχές και οι διαδικασίες που ορίζονται στην παράγραφο 3, ο διαιτητής εξετάζει τη σχετική καταγγελία. Σε περίπτωση που ο διαιτητής εκτιμά ότι οι εν λόγω αρχές και διαδικασίες δεν έχουν τηρηθεί, ο καταγγέλων τις εφαρμόζει σύμφωνα με την παράγραφο 3. Τα μέρη δέχονται την απόφαση του διαιτητή ως οριστική και τα μέλη δεν προβαίνουν σε δεύτερη διαιτησία. Το ΟΕΔ ενημερώνεται, αμελλητί, σχετικά με την απόφαση του διαιτητή και χορηγεί κατόπιν αίτησης άδεια για την αναστολή των παραχωρήσεων ή άλλων υποχρεώσεων, όταν η αίτηση είναι σύμφωνη με την απόφαση του διαιτητή, εκτός εάν το ΟΕΔ αποφασίσει με συναίνεση την απόρριψη της αίτησης.

8. Η αναστολή των παραχωρήσεων ή άλλων υποχρεώσεων είναι προσωρινή και εφαρμόζεται μόνον έως ότου καταργηθεί το μέτρο που απεδείχθη ότι δεν είναι σύμφωνο με καλυπτόμενη συμφωνία ή έως ότου το μέλος, το οποίο οφείλει να εφαρμόσει συστάσεις ή αποφάσεις εξεύρει λύση ως προς το θέμα της μερικής ή ολικής αναίρεσης οφελών, ή επιτευχθεί αμοιβαίως ικανοποιητική λύση. Σύμφωνα με το άρθρο 21, παράγραφος 6, το ΟΕΔ συνεχίζει να παρακολουθεί την εφαρμογή εγκεκριμένων συστάσεων ή αποφάσεων, συμπεριλαμβανομένων των περιπτώσεων που έχουν παρασχεθεί αντισταθμιστικά ανταλλάγματα ή που έχουν ανασταλεί παραχωρήσεις ή άλλες υποχρεώσεις, αλλά δεν έχουν τεθεί σε εφαρμογή συστάσεις για τη συμμόρφωση του μέτρου με τις καλυπτόμενες συμφωνίες.

9. Η επίκληση των διατάξεων επίλυσης διαφορών των καλυπτομένων συμφωνιών είναι δυνατή μόνο όσον αφορά μέτρα που επηρεάζουν την τήρησή τους και που λαμβάνονται από περιφερειακές ή τοπικές διοικήσεις ή αρχές εντός του εδάφους μέλους. Σε περίπτωση που το ΟΕΔ αποφανθεί ότι δεν έχει τηρηθεί διάταξη καλυπτόμενης συμφωνίας, το αρμόδιο μέλος λαμβάνει όλα τα μέτρα που έχει στη διάθεσή του για την εξασφάλιση της εν λόγω τήρησης. Οι διατάξεις των καλυπτομένων συμφωνιών και του παρόντος μνημονίου συμφωνίας όσον αφορά την παροχή αντισταθμιστικών ανταλλαγμάτων και την αναστολή των παραχωρήσεων ή άλλων υποχρεώσεων εφαρμόζονται σε περιπτώσεις που δεν κατέστη δυνατή η εξασφάλιση της σχετικής τήρησης[17].

Άρθρο 23

Ενίσχυση του πολυμερούς συστήματος

1. Όταν τα μέλη επιδιώκουν την αποκατάσταση της παραβίασης των υποχρεώσεων ή τυχόν μερικής ή ολικής αναίρεσης των οφελών στο πλαίσιο των καλυπτομένων συμφωνιών, ή ενός εμποδίου στην επίτευξη στόχων των καλυπτομένων συμφωνιών προσφεύγουν ή/και συμμορφούνται προς τους κανόνες και διαδικασίες του παρόντος μνημονίου συμφωνίας.

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16 Με τον όρο "διαιτητής" νοείται είτε άτομο είτε ομάδα είτε τα μέλη της αρχικής ειδικής ομάδας που ενεργούν με την ιδιότητα του διαιτητή.

17 Στις περιπτώσεις που οι διατάξεις καλυπτόμενης συμφωνίας, όσον αφορά μέτρα που λαμβάνονται από περιφερειακές ή τοπικές διοικήσεις ή αρχές εντός του εδάφους ενός μέλους περιλαμβάνουν διατάξεις διαφορετικές από τις διατάξεις της παρούσας παραγράφου, υπερέχουν οι διατάξεις της καλυπτόμενης συμφωνίας.

2. Στις περιπτώσεις αυτές τα μέλη:

(α) δεν καθορίζουν ότι υπήρξε παράβαση ή ότι έχουν αναιρεθεί εν όλω ή εν μέρει τα οφέλη ή ότι έχει εμποδισθεί ή επιτευξη οποιουδήποτε στόχου των καλυπτομένων συμφωνιών, παρά μόνον αφού προσφύγουν στη διαδικασία επίλυσης διαφορών, σύμφωνα με τους κανόνες και τις διαδικασίες του παρόντος μνημονίου συμφωνίας προβαίνουν δε στη σχετική διαπίστωση σύμφωνα με τα πορίσματα που περιέχονται στην έκθεση της ειδικής ομάδας ή του δευτεροβάθμιου δικαιοδοτικού οργάνου, η οποία έχει εγκριθεί από το ΟΕΔ ή σύμφωνα με την απόφαση διαιτησίας που εκδίδεται στο πλαίσιο του παρόντος μνημονίου συμφωνίας.

(β) ακολουθούν τις διαδικασίες που ορίζονται στο άρθρο 21 για τον καθορισμό του εύλογου χρονικού διαστήματος που παρέχεται στα ενδιαφερόμενα μέλη, για την εφαρμογή των συστάσεων και αποφάσεων, και

(γ) ακολουθούν τις διαδικασίες που ορίζονται στο άρθρο 22, για τον καθορισμό του επιπέδου αναστολής παραχωρήσεων ή άλλων υποχρεώσεων και τη χορήγηση άδειας από το ΟΕΔ, σύμφωνα με τις εν λόγω διαδικασίες, πριν να προβούν στην αναστολή των παραχωρήσεων ή άλλων υποχρεώσεων, στο πλαίσιο των καλυπτομένων συμφωνιών, εξαιτίας της αδυναμίας του ενδιαφερόμενου μέλους να εφαρμόσει τις σχετικές συστάσεις και αποφάσεις εντός ευλόγου χρονικού διαστήματος.

Αρθρο 24

Ειδικές διαδικασίες όσον αφορά τις λιγότερο ανεπτυγμένες χώρες μέλη

1. Σε όλα τα στάδια του καθορισμού των αιτιών μιας διαφοράς και των διαδικασιών επίλυσης διαφορών που αφορούν μια λιγότερη ανεπτυγμένη χώρα μέλος, ιδιαίτερη προσοχή δίνεται στην ιδιάζουσα κατάσταση των λιγότερο ανεπτυγμένων χωρών μελών. Τα μέλη επιδεικνύουν σχετικά την αρμόζουσα μετριοπάθεια όταν θίγουν θέματα, στο πλαίσιο των σχετικών διαδικασιών, που αφορούν μια λιγότερο ανεπτυγμένη χώρα μέλος. Σε περίπτωση που αποδειχθεί ότι ένα μέτρο που λαμβάνεται από αναπτυσσόμενη χώρα μέλος έχει ως συνέπεια την ολική ή μερική αναίρεση των οφελών, οι καταγγέλοντες επιδεικνύουν την αρμόζουσα μετριοπάθεια όταν ζητούν την παροχή αντισταθμιστικών ανταλλαγμάτων ή τη χορήγηση αδείας για την αναστολή των παραχωρήσεων ή άλλων υποχρεώσεων, βάσει των σχετικών διαδικασιών.

2. Σε υποθέσεις επίλυσης διαφορών που αφορούν μία λιγότερο ανεπτυγμένη χώρα, όταν δεν έχει εξευρεθεί ικανοποιητική λύση κατά τη διάρκεια των διαβουλεύσεων, ο Γενικός Διευθυντής ή ο πρόεδρος του ΟΕΔ, κατόπιν αιτήσεως μιας λιγότερο ανεπτυγμένης χώρας μέλους, προσφέρει τις καλές του υπηρεσίες καθώς και υπηρεσίες συμβιβασμού και διαμεσολάβησης με στόχο την παροχή βοήθειας στα μέρη για την επίλυση της διαφοράς, προτού υποβληθεί αίτηση για τη σύσταση ειδικής ομάδας. Κατά την παροχή της ανωτέρω βοήθειας, ο Γενικός Διευθυντής ή ο πρόεδρος του ΟΕΔ δύναται να συμβουλεύεται οποιαδήποτε πηγή κρίνει κατάλληλη.

Άρθρο 25

Διαιτησία

1. Η ταχεία διαδικασία διαιτησίας στο πλαίσιο του ΠΟΕ ως εναλλακτικό μέσο επίλυσης διαφορών δύναται να διευκολύνει την επίλυση ορισμένων διαφορών που αφορούν θέματα σαφώς καθορισμένα από αμφότερα τα μέρη.

2. Εκτός εάν προβλέπεται διαφορετικά στο παρόν μνημόνιο συμφωνίας, η προσφυγή στη διαιτησία είναι δυνατή μόνον κατόπιν αμοιβαίας συμφωνίας των μερών τα οποία αποφασίζουν επίσης, τις διαδικασίες που θα ακολουθηθούν. Οι συμφωνίες οι σχετικές με την προσφυγή σε διαιτησία γνωστοποιούνται σε όλα τα μέλη αρκετά πριν από την ουσιαστική έναρξη της εν λόγω διαδικασίας.

3. Η συμμετοχή άλλων μελών στη διαδικασία διαιτησίας είναι δυνατή μόνον κατόπιν συμφωνίας των μερών που έχουν αποφασίσει να προσφύγουν σε αυτή. Τα μέρη που συμμετέχουν στη σχετική διαδικασία συμφωνούν να συμμορφωθούν προς την απόφαση διαιτησίας. Οι αποφάσεις διαιτησίας γνωστοποιούνται στο ΟΕΔ και στο συμβούλιο ή στην επιτροπή οποιασδήποτε σχετικής συμφωνίας, στο πλαίσιο των οποίων κάθε μέλος δύναται να θίξει οποιοδήποτε σχετικό θέμα.

4. Τα άρθρα 21 και 22 του παρόντος μνημονίου συμφωνίας εφαρμόζονται κατ' αναλογία στις αποφάσεις διαιτησίας.

Άρθρο 26

1. Καταγγελίες που δεν αφορούν περιπτώσεις παραβιάσεων, του τύπου που περιγράφεται στο άρθρο XXIII της GATT του 1994, παράγραφος 1, στοιχείο β)

Σε περίπτωση που οι διατάξεις του άρθρου XXIII, παράγραφος 1, στοιχείο β) της GATT του 1994, εφαρμόζονται σε καλυπτόμενη συμφωνία, μια ειδική ομάδα ή το δευτεροβάθμιο δικαιοδοτικό όργανο δύνανται να προβαίνουν σε αποφάσεις ή συστάσεις μόνον όταν ένας διάδικος θεωρεί ότι οποιαδήποτε ωφέλεια που απορρέει υπέρ αυτού, είτε άμεσα είτε έμμεσα, από τη σχετική καλυπτόμενη συμφωνία αναιρείται εν όλω ή εν μέρει ή ότι παρεμποδίζεται η επίτευξη οποιουδήποτε στόχου της εν λόγω συμφωνίας εξαιτίας της εφαρμογής από μέλος οποιουδήποτε μέτρου, ανεξάρτητα από το αν αυτό αντιτίθεται ή όχι στις διατάξεις της συμφωνίας. Όταν ο διάδικος αυτός θεωρεί και η ειδική ομάδα ή το δευτεροβάθμιο δικαιοδοτικό όργανο αποφαίνονται ότι μια υπόθεση αφορά μέτρο το οποίο δεν αντιβαίνει στις διατάξεις καλυπτόμενης συμφωνίας για την οποία ισχύουν οι διατάξεις του άρθρου XXIII, παράγραφος 1), στοιχείο β της GATT 1994, εφαρμόζονται οι διαδικασίες του παρόντος μνημονίου συμφωνίας, υπό την προϋπόθεση ότι :

(α) ο καταγγέλων υποβάλλει εμπεριστατωμένη αιτιολόγηση για τη στήριξη οποιασδήποτε καταγγελίας που αφορά μέτρο, το οποίο δεν αντιβαίνει στη σχετική καλυπτόμενη συμφωνία·

(β) σε περίπτωση που ένα μέτρο αποδείχθη ότι αναιρεί εν όλω ή εν μέρει οφέλη που απορρέουν από τη σχετική καλυπτόμενη συμφωνία ή ότι παρεμποδίζει την επίτευξη των στόχων αυτής χωρίς να υφίσταται παράβαση, η ανάκληση του συγκεκριμένου μέτρου δεν είναι υποχρεωτική. Ωστόσο, σε τέτοιες περιπτώσεις, η ειδική ομάδα ή το δευτεροβάθμιο δικαιοδοτικό όργανο εισηγείται την πραγματοποίηση αμοιβαίως ικανοποιητικής προσαρμογής από το ενδιαφερόμενο μέλος·

(γ) κατόπιν αιτήσεως ενός εκ των δύο μερών, κατά παρέκκλιση των διατάξεων του άρθρου 21, η διαδικασία διαιτησίας που προβλέπεται στο άρθρο 21, παράγραφος 3, μπορεί να περιλαμβάνει τον καθορισμό του ύψους των οφελών που έχουν αναιρεθεί εν όλω ή εν μέρει καθώς, επίσης να προτείνει τρόπους και μέσα επίτευξης αμοιβαίως ικανοποιητικής προσαρμογής. οι προτάσεις αυτές δεν είναι δεσμευτικές για τους διαδίκους·

(δ) κατά παρέκκλιση των διατάξεων του άρθρου 22, παράγραφος 1, η παροχή αντισταθμιστικού ανταλλάγματος δύναται να αποτελεί μέρος αμοιβαίως ικανοποιητικής προσαρμογής που οδηγεί σε οριστική επίλυση της διαφοράς.

2. Καταγγελίες του τύπου που περιγράφονται στο άρθρο XXIII, παράγραφος 1, στοιχείο γ) της GATT 1994.

Σε περιπτώσεις που οι διατάξεις του άρθρου XXIII, παράγραφος 1, στοιχείο γ) της GATT του 1994, ισχύουν για καλυπτόμενες συμφωνίες, μία ειδική ομάδα δύναται να προβαίνει σε αποφάσεις ή συστάσεις μόνον όταν ένα διάδικος θεωρεί ότι οποιαδήποτε ωφέλεια η οποία απορρέει υπέρ αυτού, είτε άμεσα είτε έμμεσα, από τη σχετική καλυπτόμενη συμφωνία αναιρείται εν όλω ή εν μέρει ή ότι παρεμποδίζεται η επίτευξη οποιουδήποτε στόχου της εν λόγω συμφωνίας, εξαιτίας της ύπαρξης συνθηκών διαφορετικών από τις συνθήκες υπό τις οποίες εφαρμόζονται οι διατάξεις του άρθρου XXIII, παράγραφος 1, στοιχεία α) και β), της GATT του 1994. Εάν ο εν λόγω διάδικος θεωρεί και η ειδική ομάδα κρίνει ότι το υπό εξέταση θέμα καλύπτεται από την παρούσα παράγραφο, οι διαδικασίες που προβλέπονται στο παρόν μνημόνιο συμφωνίας εφαρμόζονται μόνον μέχρι και το στάδιο της διαδικασίας κατά το οποίο η έκθεση της ειδικής ομάδας κοινοποιείται στα μέλη. Οι κανόνες και οι διαδικασίες για την επίλυση διαφορών που περιλαμβάνονται στην απόφαση της 12ης Απριλίου 1989 (BISD 36S/61-67) εφαρμόζονται κατά την εξέταση της σχετικής έκθεσης ενόψει της έγκρισής της καθώς και κατά την παρακολούθηση και εφαρμογή των συστάσεων και των αποφάσεων. Ισχύουν επίσης, τα ακόλουθα:

(α) ο καταγγέλων υποβάλλει εμπεριστατωμένη αιτιολόγηση για τη στήριξη οποιουδήποτε ισχυρισμού αναφορικά με θέματα που προβλέπονται στην παρούσα παράγραφο·

(β) σε υποθέσεις που αφορούν ζητήματα τα οποία καλύπτονται από την παρούσα παράγραφο, εάν μια ειδική ομάδα διαπιστώσει ότι οι υποθέσεις αυτές αφορούν και άλλα ζητήματα επίλυσης διαφορών εκτός αυτών που καλύπτονται από την παρούσα παράγραφο, αυτή διαβιβάζει στο ΟΕΔ δύο ξεχωριστές εκθέσεις, μια για τα εν λόγω ζητήματα και μια για τα ζητήματα που εμπίπτουν στην παρούσα παράγραφο.

Άρθρο 27

Αρμοδιότητες της γραμματείας

1. Η γραμματεία έχει καθήκον να παρέχει βοήθεια στις ειδικές ομάδες ειδικότερα όσον αφορά τις νομικές, ιστορικές και διαδικαστικές πλευρές των υπό εξέταση θεμάτων και να παρέχει γραμματειακή και τεχνική υποστήριξη.

2. Ενώ η γραμματεία παρέχει βοήθεια στα μέλη, κατόπιν αιτήσεών τους, σε ότι αφορά την επίλυση των διαφορών, ενδέχεται να υπάρξει ανάγκη

πρόσθετης παροχής νομικών συμβουλών και βοήθειας σχετικά με την επίλυση διαφορών σε αναπτυσσόμενες χώρες μέλη. Για το σκοπό αυτό, η γραμματεία θέτει στη διάθεση οποιασδήποτε αναπτυσσόμενης χώρας μέλους το ζητήσει εμπειρογνώμονα ειδικευμένο σε νομικά θέματα από τις υπηρεσίες τεχνικής συνεργασίας του ΠΟΕ. Ο εμπειρογνώμονας αυτός παρέχει βοήθεια στην αναπτυσσόμενη χώρα μέλος κατά τρόπον ώστε να εξασφαλίζεται η διαρκής αμεροληψία της γραμματείας.

3. Η γραμματεία οργανώνει ειδικές σειρές μαθημάτων για τα ενδιαφερόμενα μέλη, όσον αφορά τις συγκεκριμένες διαδικασίες και πρακτικές επίλυσης διαφορών, προκειμένου οι εμπειρογνώμονες των μελών να ενημερώνονται πληρέστερα σχετικά με το θέμα.

ΠΡΟΣΑΡΤΗΜΑ 1

ΣΥΜΦΩΝΙΕΣ ΠΟΥ ΚΑΛΥΠΤΟΝΤΑΙ ΑΠΟ ΤΟ ΜΝΗΜΟΝΙΟ ΣΥΜΦΩΝΙΑΣ

(Α) Συμφωνία για την ίδρυση του Παγκόσμιου Οργανισμού Εμπορίου

(Β) Πολυμερείς Εμπορικές Συμφωνίες

Παράρτημα 1Α: Πολυμερείς συμφωνίες για το εμπόριο αγαθών
Παράρτημα 1Β: Γενική Συμφωνία για τις συναλλαγές στον τομέα των υπηρεσιών
Παράρτημα 1Γ: Συμφωνία για τα δικαιώματα πνευματικής ιδιοκτησίας στον τομέα του εμπορίου

Παράρτημα 2: Μνημόνιο συμφωνίας σχετικά με τους κανόνες και τις διαδικασίες που διέπουν την επίλυση των διαφορών.

(Γ) Πλειομερείς εμπορικές συμφωνίες

Παράρτημα 4: Συμφωνία για το εμπόριο αεροσκαφών πολιτικής αεροπορίας
Συμφωνία για τις δημόσιες συμβάσεις
Διεθνής συμφωνία για τα γαλακτοκομικά προϊόντα
Διεθνής συμφωνία για το βόειο κρέας

Η εφαρμογή του παρόντος μνημονίου συμφωνίας στις πλειομερείς εμπορικές συμφωνίες υπόκειται στη σχετική απόφαση των συμβαλλομένων μερών κάθε συμφωνίας, στην οποία θα ορίζονται οι όροι εφαρμογής του μνημονίου συμφωνίας στις επί μέρους συμφωνίες, συμπεριλαμβανομένων τυχόν ειδικών ή πρόσθετων κανόνων ή διαδικασιών που θα συμπεριληφθούν στο προσάρτημα 2, και θα γνωστοποιηθούν στο ΟΕΔ.

ΠΡΟΣΑΡΤΗΜΑ 2

ΕΙΔΙΚΟΙ Ή ΠΡΟΣΘΕΤΟΙ ΚΑΝΟΝΕΣ ΚΑΙ ΔΙΑΔΙΚΑΣΙΕΣ ΠΟΥ ΠΕΡΙΛΑΜΒΑΝΟΝΤΑΙ ΣΤΙΣ ΚΑΛΥΠΤΟΜΕΝΕΣ ΣΥΜΦΩΝΙΕΣ

Συμφωνία	Κανόνες και διαδικασίες
Συμφωνία για την εφαρμογή υγειονομικών και φυτοϋγειονομικών μέτρων	11.2
Συμφωνία για κλωστοϋφαντουργικά προϊόντα και τα είδη ένδυσης	2.14, 2.21, 4.4, 5.2, 5.4, 5.6, 6.9, 6.10, 6.11, 8.1 έως 8.12
Συμφωνία για τα τεχνικά εμπόδια στο εμπόριο	14.2 έως 14.4, παράρτημα 2
Συμφωνία για την εφαρμογή του άρθρου VI της GATT του 1994	17.4 έως 17.7
Συμφωνία για την εφαρμογή του άρθρου VII της GATT του 1994	19.3 έως 19.5, παράρτημα II.2 (στ), 3, 9, 21
Συμφωνία για τις επιδοτήσεις και τα αντισταθμιστικά μέτρα	4.2 έως 4.12, 6.6. 7.2 έως 7.10 8.5, υποσημείωση 35, 24.4, 27.7 παράρτημα V
Γενική συμφωνία για τις συναλλαγές στον τομέα των υπηρεσιών	XXII:3, XXIII:3
Παράρτημα για τις χρηματοπιστωτικές υπηρεσίες	4
Παράρτημα για τις υπηρεσίες στον τομέα των αεροπορικών μεταφορών	4
Απόφαση για ορισμένες διαδικασίες επίλυσης διαφορών για τη Γενική Συμφωνία Συναλλαγών στον Τομέα του Εμπορίου (GATS)	1 έως 5

Ο κατάλογος κανόνων και διαδικασιών στο παρόν προσάρτημα περιλαμβάνει διατάξεις, των οποίων ένα μέρος μόνο δύναται να είναι σχετικό με τα υπό εξέταση θέματα.

Ειδικοί ή πρόσθετοι κανόνες και διαδικασίες των πλειομερών εμπορικών συμφωνιών καθορίζονται από τα αρμόδια όργανα για κάθε μία από τις συμφωνίες και γνωστοποιούνται στο ΟΕΔ.

ΠΡΟΣΑΡΤΗΜΑ 3

ΔΙΑΔΙΚΑΣΙΕΣ ΛΕΙΤΟΥΡΓΙΑΣ

1. Κατά τις εργασίες της, η ειδική ομάδα τηρεί τις σχετικές διατάξεις του παρόντος μνημονίου συμφωνίας. Επιπροσθέτως, εφαρμόζονται οι ακόλουθες διαδικασίες λειτουργίας.

2. Η ειδική ομάδα συνεδριάζει κεκλεισμένων των θυρών. Οι διάδικοι και τα ενδιαφερόμενα μέρη παρίστανται στις συνεδριάσεις μόνον εφόσον προσκληθούν για το σκοπό αυτό από τη ειδική ομάδα.

3. Οι αποφάσεις της ειδικής ομάδας και τα έγγραφα που υποβάλλονται σε αυτή έχουν εμπιστευτικό χαρακτήρα. Καμία διάταξη στο παρόν μνημόνιο συμφωνίας δεν εμποδίζει ένα διάδικο να κοινοποιήσει δηλώσεις των δικών του θέσεων. Τα μέλη αντιμετωπίζουν ως εμπιστευτικού χαρακτήρα τις πληροφορίες που υποβάλλονται στην ειδική ομάδα από άλλο μέλος και για τις οποίες το εν λόγω μέλος έχει δηλώσει ότι είναι εμπιστευτικού χαρακτήρα. Όταν ένας διάδικος υποβάλλει εγγράφως εμπιστευτικού χαρακτήρα εκθέσεις στην ειδική ομάδα, παρέχει, επίσης, κατόπιν αιτήσεως ενός μέλους, μη εμπιστευτικού χαρακτήρα περιλήψεις των πληροφοριών που περιέχονται σε αυτές τις εκθέσεις, οι οποίες είναι κοινοποιήσιμες.

4. Πριν από την πρώτη επί της ουσίας συνεδρίαση της ειδικής ομάδας, οι διάδικοι υποβάλλουν σε αυτή γραπτές εκθέσεις στις οποίες παραθέτουν τα περιστατικά της υπόθεσης και τα επιχειρήματά τους.

5. Κατά την πρώτη επί της ουσίας συνεδρίαση με τους διαδίκους, η ειδική ομάδα ζητεί από το διάδικο που υπέβαλε την καταγγελία να παρουσιάσει την υπόθεση. Στην συνέχεια, ακόμη και κατά την ίδια συνεδρίαση, ο διάδικος κατά του οποίου υπεβλήθη η καταγγελία καλείται να εκθέσει τις απόψεις του.

6. Όλα τα τρίτα μέρη, που έχουν γνωστοποιήσει στο ΟΕΔ το ενδιαφέρον τους για τη διαφορά προσκαλούνται εγγράφως να εκθέσουν τις απόψεις τους, κατά τη διάρκεια συζήτησης, στο πλαίσιο της πρώτης επί της ουσίας συνεδρίασης της ειδικής ομάδας που προορίζεται για το σκοπό αυτό. Όλα τα εν λόγω τρίτα μέρη δύνανται να παρίστανται καθ' όλη τη διάρκεια της εν λόγω συνόδου.

7. Οι επίσημες αντικρούσεις πραγματοποιούνται κατά τη διάρκεια της δεύτερης επί της ουσίας συνεδρίασης της ειδικής ομάδας. Ο καθού έχει το δικαίωμα να λάβει πρώτος το λόγο ακολουθούμενος από τον καταγγέλοντα. Πριν από την εν λόγω συνεδρίαση, τα μέρη υποβάλλουν εγγράφως αντικρούσεις στην ειδική ομάδα.

8. Η ειδική ομάδα δύναται οποτεδήποτε να θέσει ερωτήματα στα μέρη και να τους ζητήσει εξηγήσεις, είτε κατά τη διάρκεια συσκέψεων με αυτά είτε εγγράφως.

9. Οι διάδικοι και τα τρίτα μέρη που καλούνται να εκθέσουν τις απόψεις τους, σύμφωνα με το άρθρο 10, θέτουν στη διάθεση της ειδικής ομάδας γραπτό κείμενο των προφορικών τους δηλώσεων.

10. Προκειμένου να εξασφαλισθεί πλήρης διαφάνεια, οι παρουσιάσεις, αντικρούσεις και δηλώσεις που αναφέρονται στις παραγράφους 5 έως 9 πραγματοποιούνται παρουσία των μερών. Επίσης, τα στοιχεία που υποβάλλονται εγγράφως από κάθε μέρος, συμπεριλαμβανομένων τυχόν

παρατηρήσεων επί του περιγραφικού μέρους της έκθεσης και των απαντήσεων σε ερωτήματα που τέθηκαν από την ειδική ομάδα, τίθενται στη διάθεση του άλλου μέρους ή μερών

11. Κάθε επιπλέον διαδικασία που αφορά συγκεκριμένα την ειδική ομάδα.

12. Προτεινόμενο χρονοδιάγραμμα εργασιών των ειδικών ομάδων:

(α) Παραλαβή των πρώτων εγγράφων στοιχείων των μερών:

(1) από τον καταγγέλοντα: 3-6 εβδομάδες
(2) από τον καθού 2-3 εβδομάδες

(β) Ημερομηνία, χρόνος και τόπος της πρώτης επί της ουσίας συνεδρίασης με τους διαδίκους· σύσκεψη με τα τρίτα μέρη: 1-2 εβδομάδες

(γ) Παραλαβή των εγγράφων αντικρούσεων των μερών: 2-3 εβδομάδες

(δ) Ημερομηνία, χρόνος και τόπος της δεύτερης επί της ουσίας συνεδρίασης με τους διαδίκους: 1-2 εβδομάδες

(ε) Υποβολή του περιγραφικού μέρους της έκθεσης στους διαδίκους: 2-4 εβδομάδες

στ) Παραλαβή παρατηρήσεων από τους διαδίκους επί του περιγραφικού μέρους της έκθεσης: 2 εβδομάδες

(ζ) Υποβολή της ενδιάμεσης έκθεσης, συμπεριλαμβανομένων των διαπιστώσεων και των πορισμάτων στους διαδίκους: 2-4 εβδομάδες

(η) Προθεσμία που παρέχεται στους διαδίκους για να ζητήσουν επανεξέταση τμήματος της έκθεσης: 1 εβδομάδα

(θ) Χρονικό διάστημα επανεξέτασης από την ειδική ομάδα συμπεριλαμβανομένης πιθανής επιπλέον συνάντησης με τους διαδίκους: 2 εβδομάδες

(ι) Υποβολή τελικής έκθεσης στα μέλη: 2 εβδομάδες

(κ) Κοινοποίηση της τελικής έκθεσης στα μέρη: 3 εβδομάδες

Το ανωτέρω χρονοδιάγραμμα είναι δυνατόν να μεταβληθεί υπό το φως απρόβλεπτων εξελίξεων. Εάν χρειασθεί, προγραμματίζονται επιπλέον συνεδριάσεις με τους διαδίκους.

ΠΡΟΣΑΡΤΗΜΑ 4

ΣΥΜΒΟΥΛΕΥΤΙΚΕΣ ΟΜΑΔΕΣ ΕΜΠΕΙΡΟΓΝΩΜΟΝΩΝ

Οι ακόλουθοι κανόνες και διαδικασίες εφαρμόζονται στις συμβουλευτικές ομάδες εμπειρογνωμόνων, οι οποίες συστήνονται σύμφωνα με τις διατάξεις του άρθρου 13, παράγραφος 2.

1. Οι συμβουλευτικές ομάδες εμπειρογνωμόνων υπάγονται στη δικαιοδοσία της ειδικής ομάδας. Οι αρμοδιότητες και λεπτομερείς διαδικασίες εργασίας τους καθορίζονται από την ειδική ομάδα στην οποία και αναφέρονται.

2. Η συμμετοχή σε συμβουλευτικές ομάδες εμπειρογνωμόνων περιορίζεται σε άτομα που διαθέτουν επαγγελματικές ικανότητες και εμπειρία στον υπό εξέταση τομέα.

3. Οι υπήκοοι χωρών των οποίων η κυβέρνηση είναι διάδικος δύνανται να αποτελούν μέλη συμβουλευτικών ομάδων εμπειρογνωμόνων μόνον κατόπιν κοινής συμφωνίας των διαδίκων, εκτός εξαιρετικών περιπτώσεων κατά τις οποίες, η ειδική ομάδα θεωρεί ότι δεν είναι δυνατόν να ικανοποιηθεί με άλλο τρόπο η ανάγκη για εξειδικευμένες επιστημονικές γνώσεις. Δημόσιοι υπάλληλοι χωρών των οποίων οι κυβερνήσεις είναι διάδικοι, δεν συμμετέχουν σε συμβουλευτικές ομάδες εμπειρογνωμόνων. Τα μέλη συμβουλευτικών ομάδων εμπειρογνωμόνων συμμετέχουν σε ατομική βάση και όχι υπό την ιδιότητα εκπροσώπων κυβέρνησης ή οργανισμού. Οι κυβερνήσεις ή οι οργανισμοί δεν τους δίνουν επομένως οδηγίες όσον αφορά τα θέματα τα οποία εξετάζει η ειδική ομάδα.

4. Οι συμβουλευτικές ομάδες εμπειρογνωμόνων δύνανται να συμβουλεύονται οποιαδήποτε πηγή κρίνουν κατάλληλη και να ζητούν από αυτή πληροφορίες και συμβουλές τεχνικής φύσεως. Πριν ζητήσει τέτοιες πληροφορίες ή συμβουλές από πηγή που υπάγεται στη δικαιοδοσία μέλους, η συμβουλευτική ομάδα εμπειρογνωμόνων ενημερώνει σχετικά την κυβέρνηση αυτού του μέλους. Κάθε μέλος απαντά το συντομότερο δυνατό και εμπεριστατωμένα σε οποιοδήποτε αίτημα για πληροφορίες που υποβάλλεται από συμβουλευτική ομάδα εμπειρογνωμόνων, η οποία κρίνει ως απαραίτητες και κατάλληλες τις πληροφορίες αυτές.

5. Οι διάδικοι έχουν πρόσβαση σε όλες τις σχετικές πληροφορίες που παρέχονται σε συμβουλευτική ομάδα εμπειρογνωμόνων, εκτός εάν αυτές είναι εμπιστευτικές. Οι εμπιστευτικές πληροφορίες που παρέχονται σε συμβουλευτική ομάδα εμπειρογνωμόνων δεν ανακοινώνονται χωρίς τη ρητή έγκριση της κυβέρνησης, του οργανισμού ή του προσώπου που τις παρέσχε. Όταν οι πληροφορίες αυτές ζητούνται από τη συμβουλευτική ομάδα εμπειρογνωμόνων αλλά αυτή δεν εγκρίνει την ανακοίνωσή τους, εκδίδεται περίληψη μη εμπιστευτικού χαρακτήρα από την κυβέρνηση, τον οργανισμό ή το πρόσωπο που τις παρέσχε.

6. Η συμβουλευτική ομάδα εμπειρογνωμόνων υποβάλλει σχέδιο της έκθεσης στους διαδίκους με σκοπό να συγκεντρώσει τις απόψεις της και να της λάβει δεόντως υπόψη στην τελική έκθεση, η οποία ταυτόχρονα με την υποβολή της στην ειδική ομάδα, κοινοποιείται και στους διαδίκους. Η τελική έκθεση της συμβουλευτικής ομάδας εμπειρογνωμόνων έχει αποκλειστικά συμβουλευτικό χαρακτήρα.

ΠΑΡΑΡΤΗΜΑ 3

ΜΗΧΑΝΙΣΜΟΣ ΕΛΕΓΧΟΥ ΕΜΠΟΡΙΚΩΝ ΠΟΛΙΤΙΚΩΝ

Τα μέλη συμφωνούν τα εξής:

Α. Στόχοι

(i) Σκοπός του μηχανισμού ελέγχου εμπορικών πολιτικών ("ΜΕΕΠ") είναι να συνεισφέρει στη βελτίωση της τήρησης από όλα τα μέλη των κανόνων, των ρυθμίσεων και των αναλήψεων υποχρεώσεων που περιλαμβάνονται στις εμπορικές πολυμερείς συμφωνίες και, ενδεχομένως, στις πλειομερείς εμπορικές συμφωνίες, και συνεπώς στην ομαλότερη λειτουργία του πολυμερούς εμπορικού συστήματος, επιτυγχάνοντας μεγαλύτερη διαφάνεια και κατανόηση των εμπορικών πολιτικών και πρακτικών των μελών. Ομοίως, ο μηχανισμός ελέγχου επιτρέπει την τακτική συλλογική εκτίμηση και αξιολόγηση του συνόλου των επιμέρους εμπορικών πολιτικών και πρακτικών των μελών και των επιπτώσεών τους στη λειτουργία του πολυμερούς εμπορικού συστήματος. Εντούτοις, δεν προορίζεται να χρησιμοποιηθεί ως βάση για την επιβολή συγκεκριμένων υποχρεώσεων που απορρέουν από τις συμφωνίες ή για διαδικασίες επίλυσης των διαφορών, ούτε για να επιβάλει νέες υποχρεώσεις στα μέλη όσον αφορά την πολιτική τους.

(ii) Η αξιολόγηση που πραγματοποιείται δυνάμει του μηχανισμού ελέγχου τοποθετείται, στον αναγκαίο βαθμό, επί του ιστορικού των ευρύτερων οικονομικών και αναπτυξιακών αναγκών, πολιτικών και στόχων του ενδιαφερόμενου μέλους, καθώς και του εξωτερικού του περιβάλλοντος. Εντούτοις, ο ρόλος του μηχανισμού ελέγχου είναι να εξετάζει τις επιπτώσεις των εμπορικών πολιτικών και πρακτικών του μέλους στο πολυμερές εμπορικό σύστημα.

Β. Εσωτερική διαφάνεια

Τα μέλη αναγνωρίζουν την εγγενή αξία της εσωτερικής διαφάνειας της διαδικασίας λήψης αποφάσεων της κυβέρνησης για θέματα εμπορικής πολιτικής τόσο για την οικονομία των μελών όσο και για το πολυμερές εμπορικό σύστημα και συμφωνούν να ενθαρρύνουν και να προωθήσουν μεγαλύτερη διαφάνεια στο πλαίσιο των οικείων συστημάτων, παραδεχόμενοι ότι η εσωτερική διαφάνεια επιβάλλεται να πραγματοποιείται σε εθελοντική βάση και να λαμβάνει υπόψη το νομοθετικό και πολιτικό σύστημα κάθε μέλους.

Γ. Διαδικασίες ελέγχου

(i) Συστήνεται το όργανο ελέγχου εμπορικών πολιτικών (καλούμενο "ΟΕΕΠ") για τη διενέργεια ελέγχου εμπορικών πολιτικών.

(ii) Οι εμπορικές πολιτικές και πρακτικές όλων των μελών υπόκεινται σε περιοδικό έλεγχο. Η σημασία των επιμέρους μελών για τη λειτουργία του πολυμερούς εμπορικού συστήματος, εκφραζόμενη με το μερίδιο τους στο διεθνές εμπόριο κατά τη διάρκεια προσφάτου αντιπροσωπευτικής περιόδου, αποτελεί τον καθοριστικό παράγοντα για τον προσδιορισμό

συχνότητας των ελέγχων. οι πρώτες τέσσερις εμπορικές οντότητες που έχουν προσδιοριστεί κατ'αυτόν τον τρόπο (η Ευρωπαϊκή Κοινότητα υπολογίζεται ως ενότητα) υπόκεινται σε έλεγχο κάθε δύο έτη. οι επόμενες δεκαέξι ελέγχονται κάθε τέσσερα έτη. Τα λοιπά μέλη ελέγχονται κάθε έξι έτη, εκτός από την περίπτωση καθορισμού μεγαλύτερης περιόδου για τις λιγότερο ανεπτυγμένες χώρες μέλη. Εννοείται ότι ο έλεγχος οντοτήτων οι οποίες ασκούν κοινή εξωτερική πολιτική που καλύπτει περισσότερα από ένα μέλη αφορά όλες τις συνιστώσες της πολιτικής που επηρεάζουν τις συναλλαγές, συμπεριλαμβανομένων των σχετικών πολιτικών και πρακτικών των επιμέρους μελών. Κατ' εξαίρεση, σε περίπτωση μεταβολών των εμπορικών πολιτικών ή πρακτικών ενός μέλους, οι οποίες μπορεί να έχουν σημαντικές επιπτώσεις στους εμπορικούς εταίρους του, το ΟΕΕΠ μπορεί να ζητήσει από το ενδιαφερόμενο μέλος, μετά από διαβουλεύσεις, να επισπεύσει τον επόμενο έλεγχό του.

(iii) οι συζητήσεις κατά τις συνεδριάσεις του ΟΕΕΠ διέπονται από τους στόχους που ορίζονται στην παράγραφο Α. οι εν λόγω συζητήσεις επικεντρώνονται στις εμπορικές πολιτικές και πρακτικές του μέλους, οι οποίες αποτελούν αντικείμενο της αξιολόγησης δυνάμει του μηχανισμού ελέγχου.

(iv) Το ΟΕΕΠ καταρτίζει γενικό σχέδιο για τη διεξαγωγή των ελέγχων. Δύναται επίσης να συζητήσει και να λάβει υπόψη πρόσφατες εκθέσεις των μελών. Το ΟΕΕΠ καταρτίζει πρόγραμμα ελέγχων για κάθε έτος μετά από διαβουλεύσεις με τα άμεσα ενδιαφερόμενα μέλη. Μετά από διαβουλεύσεις με τα μέλη που υπόκεινται σε έλεγχο, ο πρόεδρος μπορεί να επιλέξει εισηγητές οι οποίοι, ενεργούντες εξ ιδίας πρωτοβουλίας, φέρουν το θέμα προς συζήτηση στο ΟΕΕΠ.

(v) Το ΟΕΕΠ έχει στη διάθεσή του για τις εργασίες του την ακόλουθη τεκμηρίωση:

(α) πλήρη έκθεση, που αναφέρεται στην παράγραφο Δ, την οποία υποβάλλουν τα μέλη που υπόκεινται σε έλεγχο·

(β) έκθεση, που συντάσσει η γραμματεία με δική της ευθύνη, η οποία βασίζεται στις πληροφορίες που διαθέτει η ίδια καθώς και σε αυτές που παρέχονται από τα ενδιαφερόμενα μέλη. Η γραμματεία ζητά αποσαφηνίσεις από τα ενδιαφερόμενα μέλη σχετικά με τις εμπορικές τους πολιτικές και πρακτικές.

(vi) οι εκθέσεις που υποβάλλονται από το μέλος που υπόκειται σε έλεγχο και από τη γραμματεία, μαζί με τα πρακτικά της αντίστοιχης συνεδρίασης του ΟΕΕΠ, δημοσιεύονται αμέσως μετά τον έλεγχο.

(vii) Τα έγγραφα αυτά διαβιβάζονται στην υπουργική συνδιάσκεψη, η οποία τα λαμβάνει υπόψη.

Δ. Υποβολή εκθέσεων

Προκειμένου να επιτευχθεί ο μεγαλύτερος δυνατόν βαθμός διαφάνειας, κάθε μέλος υποβάλλει τακτικές εκθέσεις στο ΟΕΕΠ. οι πλήρεις αυτές εκθέσεις περιγράφουν τις εμπορικές πολιτικές και πρακτικές που ακολουθούν τα ενδιαφερόμενα μέλη, βάσει συμφωνημένου υπόδειγματος που καθορίζεται

από το ΟΕΕΠ. Το εν λόγω υπόδειγμα αρχικά βασίζεται στις γενικές γραμμές του υποδείγματος των εκθέσεων των χωρών που καταρτίσθηκε με την απόφαση της 19ης Ιουλίου 1989 (BISD 36S/406-409), τροποποιημένου όπως απαιτείται ώστε να διευρυνθεί το πεδίο εφαρμογής των εκθέσεων για όλες τις πτυχές των εμπορικών πολιτικών που καλύπτονται από τις πολυμερείς εμπορικές συμφωνίες στο παράρτημα Ι και, ενδεχομένως, των πλειομερών εμπορικών συμφωνιών. Το εν λόγω υπόδειγμα μπορεί να αναθεωρηθεί από το ΟΕΕΠ με βάση την εμπειρία που θα αποκτηθεί. Στο ενδιάμεσο των εκθέσεων διάστημα, τα μέλη υποβάλουν συνοπτικές εκθέσεις όταν υπάρξουν σημαντικές μεταβολές στις εμπορικές πολιτικές τους, και παρέχεται ετήσια ενημέρωση των στατιστικών στοιχείων σύμφωνα με το συμφωνημένο υπόδειγμα. Οι δυσκολίες που αντιμετωπίζουν οι λιγότερο ανεπτυγμένες χώρες μέλη για τη σύνταξη των εκθέσεων λαμβάνονται ιδιαίτερα υπόψη. Η γραμματεία θέτει, μετά από αίτηση, στη διάθεση των αναπτυσσομένων χωρών μελών, και ιδιαίτερα των λιγότερο ανεπτυγμένων χωρών μελών, τεχνική βοήθεια. Οι πληροφορίες που περιλαμβάνονται στις εκθέσεις επιβάλλεται να είναι συντονισμένες στο μεγαλύτερο δυνατό βαθμό με τις γνωστοποιήσεις που πραγματοποιούνται δυνάμει των διατάξεων των πολυμερών εμπορικών συμφωνιών και, ενδεχομένως, των πλειομερών εμπορικών συμφωνιών.

Ε. Σχέση με τις διατάξεις για το ισοζύγιο πληρωμών της GATT του 1994 και της GATS

Τα μέρη αναγνωρίζουν την ανάγκη να ελαχιστοποιηθεί η επιβάρυνση των κυβερνήσεων που προβαίνουν επίσης σε πλήρεις διαβουλεύσεις δυνάμει των διατάξεων για το ισοζύγιο πληρωμών της GATT του 1994 ή της GATS. Για τον σκοπό αυτό, ο πρόεδρος του ΟΕΕΠ, μετά από διαβουλεύσεις με τα ενδιαφερόμενα μέλη, και με τον πρόεδρο της επιτροπής για τους περιορισμούς του ισοζυγίου πληρωμών, καταρτίζουν διοικητικές ρυθμίσεις οι οποίες εναρμονίζουν τον κανονικό ρυθμό των ελέγχων εμπορικής πολιτικής με το χρονοδιάγραμμα για τις διαβουλεύσεις επί του ισοζυγίου πληρωμών, αλλά δεν αναβάλλουν τον έλεγχο της εμπορικής πολιτικής για περισσότερο από 12 μήνες.

ΣΤ. Αξιολόγηση του μηχανισμού

Το ΟΕΕΠ αναλαμβάνει την αξιολόγηση της λειτουργίας του ΜΕΕΠ το αργότερο πέντε έτη μετά την έναρξη ισχύος της συμφωνίας για τη σύσταση του ΠΟΕ. Τα αποτελέσματα της αξιολόγησης υποβάλλονται στην υπουργική συνδιάσκεψη. Κατά συνέπεια, το ΟΕΕΠ μπορεί να αναλάβει αξιολογήσεις του ΜΕΕΠ σε διαστήματα που καθορίζονται από το ίδιο ή όταν ζητείται από την υπουργική συνδιάσκεψη.

Ζ. Επισκόπηση των εξελίξεων στο διεθνές εμπορικό περιβάλλον

Το ΟΕΕΠ αναλαμβάνει επίσης ετήσια επισκόπηση των εξελίξεων στο διεθνές εμπορικό περιβάλλον, οι οποίες έχουν επιπτώσεις στο πολυμερές εμπορικό σύστημα. Η εν λόγω επισκόπηση ενισχύεται και με ετήσια έκθεση του γενικού διευθυντή που παραθέτει τις βασικές δραστηριότητες του ΠΟΕ και επισημαίνει σημαντικά θέματα πολιτικής που επηρεάζουν το εμπορικό σύστημα.

ΠΑΡΑΡΤΗΜΑ 4

ΠΛΕΙΟΜΕΡΕΙΣ ΕΜΠΟΡΙΚΕΣ ΣΥΜΦΩΝΙΕΣ

ΣΥΜΦΩΝΙΑ ΓΙΑ ΤΟ ΕΜΠΟΡΙΟ ΑΕΡΟΣΚΑΦΩΝ ΠΟΛΙΤΙΚΗΣ ΑΕΡΟΠΟΡΙΑΣ

Η συμφωνία για το εμπόριο αεροσκαφών πολιτικής αεροπορίας, που συνήφθη στη Γενεύη στις 12 Απριλίου 1979 (BISD 26S/162), όπως διορθώθηκε ή τροποποιήθηκε στη συνέχεια.

ΣΥΜΦΩΝΙΑ ΓΙΑ ΤΙΣ ΔΗΜΟΣΙΕΣ ΣΥΜΒΑΣΕΙΣ

Η συμφωνία για τις δημόσιες συμβάσεις που συνήφθη στο Μαρακές στις 15 Απριλίου 1994.

ΔΙΕΘΝΗΣ ΣΥΜΦΩΝΙΑ ΓΙΑ ΤΑ ΓΑΛΑΚΤΟΚΟΜΙΚΑ ΠΡΟΪΟΝΤΑ

Η διεθνής συμφωνία για τα γαλακτοκομικά προϊόντα που συνήφθη στο Μαρακές στις 15 Απριλίου 1994.

ΔΙΕΘΝΗΣ ΣΥΜΦΩΝΙΑ ΓΙΑ ΤΟ ΒΟΕΙΟ ΚΡΕΑΣ

Η διεθνής συμφωνία για το βόειο κρέας που συνήφθη στο Μαρακές στις 15 Απριλίου 1994.

ΑΠΟΦΑΣΗ ΓΙΑ ΤΑ ΜΕΤΡΑ ΥΠΕΡ ΤΩΝ ΛΙΓΟΤΕΡΟ ΑΝΕΠΤΥΓΜΕΝΩΝ ΧΩΡΩΝ

οι υπουργοί,

Αναγνωρίζοντας τη δυσχερή θέση των λιγότερο ανεπτυγμένων χωρών και την ανάγκη να εξασφαλίσουν την αποτελεσματική συμμετοχή τους στο διεθνές εμπορικό σύστημα, και να λάβουν περαιτέρω μέτρα για την αύξηση των εμπορικών τους ευκαιριών·

Αναγνωρίζοντας τις ιδιαίτερες ανάγκες των λιγότερο ανεπτυγμένων χωρών στον τομέα της πρόσβασης της αγοράς όπου η συνέχιση της προτιμησιακής πρόσβασης παραμένει ουσιαστικό μέσο για την αύξηση των εμπορικών τους ευκαιριών·

Επαναβεβαιώνοντας ότι δεσμεύονται να εφαρμόζουν πλήρως τις διατάξεις σχετικά με τις λιγότερο ανεπτυγμένες χώρες που αναφέρονται στις παραγράφους 2 στοιχείο δ), 6 και 8 της απόφασης της 28ης Νοεμβρίου 1979 για την κριτική και περισσότερο ευνοϊκή μεταχείριση, την αμοιβαιότητα και την πληρέστερη συμμετοχή των αναπτυσσομένων χωρών·

Εχοντας υπόψη τη δέσμευση των συμμετεχόντων όπως ορίζεται στο τμήμα Β σημείο (vii) του μέρους Ι της δήλωσης της Punta del Este·

1. Αποφασίζουν ότι, εάν δεν προβλέπεται ήδη στα έγγραφα που απετέλεσαν αντικείμενο διαπραγματεύσεων κατά τη διάρκεια του Γύρου της ουρουγουάης, παρά την εκ μέρους τους αποδοχή των εν λόγω εγγράφων, οι λιγότερο ανεπτυγμένες χώρες, και για όσο διάστημα παραμένουν στην κατηγορία αυτή, ενώ συμμορφώνονται με τους γενικούς κανόνες που ορίζονται στα προαναφερόμενα έγγραφα, θα κληθούν να προβούν σε αναλήψεις υποχρεώσεων και παραχωρήσεις μόνο σε βαθμό που συμβιβάζεται με τις επιμέρους αναπτυξιακές, χρηματοδοτικές και εμπορικές ανάγκες τους, ή με τις διοικητικές και θεσμικές ικανότητές τους. Στις λιγότερο ανεπτυγμένες χώρες θα δοθεί πρόσθετη προθεσμία ενός έτους αρχομένου από την 15η Απριλίου 1994 προκειμένου να υποβάλουν τους πίνακες που απαιτούνται στο άρθρο XI της συμφωνίας για την ίδρυση του Παγκόσμιου Οργανισμού Εμπορίου.

2. Συμφωνούν ότι:

(i) Η ταχεία εφαρμογή όλων των ειδικών και διαφοροποιημένων μέτρων που έχουν ληφθεί υπέρ των λιγότερο ανεπτυγμένων χωρών περιλαμβανομένων αυτών που ελήφθησαν στο πλαίσιο του Γύρου της ουρουγουάης εξασφαλίζεται μέσω, μεταξύ άλλων, τακτικών ελέγχων.

(ii) Στο μέτρο του δυνατού, οι παραχωρήσεις στο πλαίσιο της ρήτρας του μάλλον ευνοουμένου κράτους για δασμολογικά και μη δασμολογικά μέτρα που συνεφωνήθησαν στον Γύρο της Ουρουγουάης για προϊόντα εξαγωγικού ενδιαφέροντος για τις λιγότερο ανεπτυγμένες χώρες μπορούν να εφαρμόζονται αυτόνομα, εκ των προτέρων και χωρίς κλιμάκωση. Θα εξετασθεί η περαιτέρω βελτίωση του συστήματος γενικευμένων προτιμήσεων και άλλων συστημάτων για προϊόντα ιδιαιτέρου εξαγωγικού ενδιαφέροντος για τις λιγότερο ανεπτυγμένες χώρες.

(iii) οι κανόνες που ορίζονται στις διάφορες συμφωνίες και έγγραφα και οι μεταβατικές διατάξεις του Γύρου της Ουρουγουάης είναι σκόπιμο να εφαρμόζονται με ευέλικτο και ευνοϊκό τρόπο για τις λιγότερο ανεπτυγμένες χώρες. Για τον σκοπό αυτόν, εξετάζονται θετικά οι ειδικές και αιτιολογημένες ανησυχίες που εκφράζονται από τις λιγότερο ανεπτυγμένες χώρες στα αρμόδια συμβούλια και επιτροπές.

(iv) Κατά την εφαρμογή των μέτρων απαλλαγών κατά την εισαγωγή που αναφέρονται στο άρθρο XXXVII, παράγραφος 3, στοιχείο γ) της GATT του 1947 και στις αντίστοιχες διατάξεις της GATT του 1994, δίδεται ιδιαίτερη προσοχή στα εξαγωγικά συμφέροντα των λιγότερο ανεπτυγμένων χωρών.

(v) Παρέχεται σημαντικά αυξημένη τεχνική βοήθεια στις λιγότερο ανεπτυγμένες χώρες για την ανάπτυξη, την ενίσχυση και τη διαφοροποίηση της παραγωγικής και εξαγωγικής βάσης τους περιλαμβανομένης αυτής των υπηρεσιών, καθώς και για την προώθηση του εμπορίου, προκειμένου να τους επιτρέψει να μεγιστοποιήσουν τα οφέλη από την ελεύθερη πρόσβαση στις αγορές.

3. Συμφωνούν να διατηρήσουν υπό έλεγχο τις ιδιαίτερες ανάγκες των λιγότερο ανεπτυγμένων χωρών και να συνεχίσουν να αναζητούν τη θέσπιση θετικών μέτρων τα οποία διευκολύνουν τη διεύρυνση των εμπορικών ευκαιριών υπέρ των χωρών αυτών.

ΔΗΛΩΣΗ ΓΙΑ ΤΗ ΣΥΜΒΟΛΗ ΤΟΥ ΠΑΓΚΟΣΜΙΟΥ ΟΡΓΑΝΙΣΜΟΥ ΕΜΠΟΡΙΟΥ ΣΤΗΝ ΕΠΙΤΕΥΞΗ ΜΕΓΑΛΥΤΕΡΗΣ ΣΥΝΟΧΗΣ ΣΤΗ ΧΑΡΑΞΗ ΠΑΓΚΟΣΜΙΑΣ ΟΙΚΟΝΟΜΙΚΗΣ ΠΟΛΙΤΙΚΗΣ

1. Οι υπουργοί αναγνωρίζουν ότι ο παγκόσμιος χαρακτήρας που απέκτησε η οικονομία οδήγησε σε ολοένα αυξανόμενες αλληλεπιδράσεις μεταξύ των οικονομικών πολιτικών που ασκούν οι επιμέρους χώρες, περιλαμβανομένων των αλληλεπιδράσεων μεταξύ των διαρθρωτικών, μακροοικονομικών, εμπορικών, χρηματοδοτικών και αναπτυξιακών πτυχών της χάραξης οικονομικής πολιτικής. Το καθήκον της επίτευξης ισορροπίας μεταξύ των εν λόγω πολιτικών ανήκει πρωτίστως στις κυβερνήσεις σε εθνικό επίπεδο, αλλά η συνοχή των εν λόγω πολιτικών σε διεθνές επίπεδο, αποτελεί σημαντικό και πολύτιμο στοιχείο για την αύξηση της αποτελεσματικότητάς τους σε εθνικό επίπεδο. Οι συμφωνίες που συνήφθησαν στο πλαίσιο του Γύρου της Ουρουγουάης δεικνύουν ότι όλες οι συμμετέχουσες κυβερνήσεις αναγνωρίζουν τη συνεισφορά που μπορούν να παράσχουν οι φιλελεύθερες εμπορικές πολιτικές στην υγιή μεγέθυνση και ανάπτυξη των οικονομιών τους και στο σύνολο της παγκοσμίου οικονομίας.

2. Η επιτυχής συνεργασία σε κάθε τομέα της οικονομικής πολιτικής συνεισφέρει στην πρόοδο άλλων τομέων. Η μεγαλύτερη σταθερότητα των

συναλλαγματικών ισοτιμιών, που βασίζεται σε ομαλότερες οικονομικές και χρηματοδοτικές συνθήκες, αναμένεται ότι θα συνεισφέρει στην επέκταση του εμπορίου, τη βιώσιμη μεγέθυνση και ανάπτυξη, και τη διόρθωση των εξωτερικών ανισορροπιών. Υπάρχει επίσης ανάγκη για κατάλληλη και έγκαιρη ροή χρηματοδοτικών πόρων υπό ευνοϊκούς και μη όρους και πόρων για πραγματικές επενδύσεις προς τις αναπτυσσόμενες χώρες και για περαιτέρω προσπάθειες αντιμετώπισης των προβλημάτων χρέους, προκειμένου να εξασφαλισθεί η οικονομική αύξηση και ανάπτυξη. Η απελευθέρωση του εμπορίου συμβάλλει ολοένα και περισσότερο στην επιτυχία των προγραμμάτων προσαρμογής που αναλαμβάνουν πολλές χώρες, τα οποία περικλείουν σημαντικό μεταβατικό κοινωνικό κόστος. Σε σχέση με αυτό, οι υπουργοί επισημαίνουν το ρόλο της Διεθνούς Τραπέζης και του ΔΝΤ στη στήριξη της προσαρμογής μέσω της απελευθέρωσης του εμπορίου, περιλαμβανομένης της ενίσχυσης των αναπτυσσομένων χωρών που εισάγουν αποκλειστικά τρόφιμα και αντιμετωπίζουν βραχυπρόθεσμο κόστος που προκύπτει από τις μεταρρυθμίσεις του εμπορίου γεωργικών προϊόντων.

3. Το θετικό αποτέλεσμα του Γύρου της Ουρουγουάης συνεισφέρει σημαντικά στη χάραξη συνεκτικότερων και συμπληρωματικών διεθνών οικονομικών πολιτικών. Τα αποτελέσματα του Γύρου της Ουρουγουάης εξασφαλίζουν διεύρυνση της πρόσβασης στην αγορά προς όφελος όλων των χωρών, καθώς και πλαίσιο ενισχυμένων πολυμερών υποχρεώσεων για το εμπόριο. Εγγυώνται επίσης ότι η εμπορική πολιτική θα ασκηθεί κατά τρόπον περισσότερο διαφανή και με μεγαλύτερη επίγνωση των οφελών που προκύπτουν για την εγχώρια ανταγωνιστικότητα από ένα ανοικτό εμπορικό περιβάλλον. Το ενισχυμένο πολυμερές εμπορικό σύστημα που προκύπτει από τον Γύρο της Ουρουγουάης έχει την ικανότητα να παράσχει βελτιωμένο πλαίσιο για την απελευθέρωση, να συνεισφέρει στην αποτελεσματικότερη εποπτεία, και να εξασφαλίσει την αυστηρή τήρηση των πολυμερώς συμφωνηθέντων κανόνων και υποχρεώσεων. Οι εν λόγω βελτιώσεις σημαίνουν ότι η εμπορική πολιτική μπορεί στο μέλλον να διαδραματίσει σημαντικότερο ρόλο στην εξασφάλιση της συνοχής στη χάραξη παγκόσμιας οικονομικής πολιτικής.

4. Εντούτοις, οι υπουργοί αναγνωρίζουν ότι οι δυσκολίες των οποίων η προέλευση βρίσκεται εκτός του εμπορικού τομέα δεν μπορούν να αντιμετωπισθούν με μέτρα που λαμβάνονται μόνο στον εμπορικό τομέα. Το ανωτέρω υπογραμμίζει τη σημασία των προσπαθειών για τη βελτίωση των λοιπών στοιχείων της χάραξης παγκόσμιας οικονομικής πολιτικής προκειμένου να συμπληρωθεί η αποτελεσματική εφαρμογή των αποτελεσμάτων που επετεύχθησαν στον Γύρο της Ουρουγουάης.

5. Οι διασυνδέσεις μεταξύ των διαφόρων πτυχών της οικονομικής πολιτικής απαιτούν από τους διεθνείς οργανισμούς με αρμοδιότητες σε κάθε έναν από αυτούς τους τομείς να ακολουθούν συνεκτικές πολιτικές που αλληλοστηρίζονται. Ο ΠΟΕ οφείλει συνεπώς να επιδιώξει και να αναπτύξει τη συνεργασία με τους διεθνείς οργανισμούς οι οποίοι είναι υπεύθυνοι για νομισματικά και χρηματοδοτικά θέματα, σεβόμενος ταυτόχρονα την εντολή, τις απαιτήσεις εμπιστευτικότητας και την απαραίτητη αυτονομία κάθε οργανισμού κατά τις διαδικασίες λήψης αποφάσεων, αποφεύγοντας την επιβολή διασταυρούμενων προϋποθέσεων ή προσθέτων όρων στις κυβερνήσεις. Οι υπουργοί καλούν στη συνέχεια τον γενικό διευθυντή του ΠΟΕ να εξετάσει με τον διευθύνοντα σύμβουλο του Διεθνούς Νομισματικού Ταμείου και τον πρόεδρο της Διεθνούς Τραπέζης, τη σημασία των αρμοδιοτήτων του ΠΟΕ για τη συνεργασία του με τα όργανα του Bretton Woods, καθώς και τις μορφές που μπορεί να λάβει η εν λόγω συνεργασία, προκειμένου να επιτευχθεί μεγαλύτερη συνοχή στη χάραξη παγκόσμιας οικονομικής πολιτικής.

ΑΠΟΦΑΣΗ ΓΙΑ ΤΙΣ ΔΙΑΔΙΚΑΣΙΕΣ ΓΝΩΣΤΟΠΟΙΗΣΗΣ

Οι υπουργοί συνιστούν στην υπουργική συνδιάσκεψη να εκδώσει την απόφαση για τη βελτίωση και τον έλεγχο των διαδικασιών γνωστοποίησης που ορίζεται κατωτέρω.

Τα μέλη,

Επιθυμώντας να βελτιώσουν τη λειτουργία των διαδικασιών γνωστοποίησης δυνάμει της συμφωνίας για την ίδρυση του ΠΟΕ (εφεξής καλούμενης "συμφωνίας για τον ΠΟΕ") και να συνεισφέρουν έτσι στη διαφάνεια των εμπορικών πολιτικών των μελών και στην αποτελεσματικότητα των διακανονισμών εποπτείας που θεσπίζονται για τον σκοπό αυτόν·

Υπενθυμίζοντας τις υποχρεώσεις δημοσίευσης και γνωστοποίησης δυνάμει της συμφωνίας για τον ΠΟΕ, περιλαμβανομένων των υποχρεώσεων που αναλαμβάνονται δυνάμει των όρων συγκεκριμένων πρωτοκόλλων προσχώρησης, απαλλαγών και άλλων συμφωνιών που έχουν συνάψει τα μέλη·

Συμφωνούν τα ακόλουθα:

I. Γενική υποχρέωση γνωστοποίησης

Τα μέλη βεβαιώνουν ότι δεσμεύονται να τηρήσουν τις υποχρεώσεις στο πλαίσιο των πολυμερών εμπορικών συμφωνιών και, ενδεχομένως, των πλειομερών εμπορικών συμφωνιών, σχετικά με τη δημοσίευση και τη γνωστοποίηση.

Τα μέλη υπενθυμίζουν τις υποχρεώσεις τους που ορίζονται στο μνημόνιο συμφωνίας σχετικά με τη γνωστοποίηση, τις διαβουλεύσεις, την επίλυση διαφορών και την εποπτεία που εκδόθηκε την 28η Νοεμβρίου 1979 (BISD 26S/210). Όσον αφορά την υποχρέωσή τους να γνωστοποιούν, στον μέγιστο δυνατό βαθμό, τη θέσπιση εμπορικών μέτρων που επηρεάζουν τη λειτουργία της GATT του 1994, γνωστοποίηση η οποία γίνεται με την επιφύλαξη των απόψεων σχετικά με τη συμβατότητα των μέτρων ή με τη σχέση τους με τα δικαιώματα και τις υποχρεώσεις δυνάμει των πολυμερών εμπορικών συμφωνιών και, ενδεχομένως, των πλειομερών εμπορικών συμφωνιών, τα μέλη συμφωνούν να λαμβάνουν υπόψη τους, κατά περίπτωση, τον συνημμένο κατάλογο μέτρων. Τα μέλη συμφωνούν συνεπώς ότι η εισαγωγή ή η τροποποίηση τέτοιων μέτρων υπόκειται στις απαιτήσεις γνωστοποίησης του μνημονίου συμφωνίας του 1979.

II. Κεντρικό μητρώο γνωστοποιήσεων

Συστήνεται κεντρικό μητρώο γνωστοποιήσεων υπό την ευθύνη της γραμματείας. Ενώ τα μέλη θα συνεχίσουν να ακολουθούν τις υπάρχουσες διαδικασίες γνωστοποίησης, η γραμματεία εξασφαλίζει ότι η υπηρεσία κεντρικού μητρώου καταχωρεί στοιχεία από τις πληροφορίες που παρέχονται σχετικά με το μέτρο από το ενδιαφερόμενο μέλος, όπως το σκοπό του, τις συναλλαγές που καλύπτει και την απαίτηση στο πλαίσιο της οποίας γνωστοποιήθηκε. Η υπηρεσία κεντρικού μητρώου αρχειοθετεί τους φακέλλους των γνωστοποιήσεων κατά μέλος και υποχρέωση.

Η υπηρεσία κεντρικού μητρώου ενημερώνει ετησίως κάθε μέλος σχετικά με τις υποχρεώσεις τακτικής γνωστοποίησης, στις οποίες αναμένεται να ανταποκριθεί το μέλος κατά τη διάρκεια του επομένου έτους.

Η υπηρεσία κεντρικού μητρώου επισημαίνει στα επιμέρους μέλη τις απαιτήσεις ταχτικής γνωστοποίησης, οι οποίες παραμένουν ανεκπλήρωτες.

Οι πληροφορίες του κεντρικού μητρώου σχετικά με τις επιμέρους γνωστοποιήσεις τίθενται, μετά από αίτηση, στη διάθεση οποιουδήποτε μέλους το οποίο είναι εξουσιοδοτημένο να λάβει τη σχετική γνωστοποίηση.

III. Ελεγχος των υποχρεώσεων και των διαδικασιών γνωστοποίησης

Το Συμβούλιο Εμπορευματικών Συναλλαγών θα αναλάβει τον έλεγχο των υποχρεώσεων και των διαδικασιών κοινοποίησης δυνάμει των συμφωνιών του παραρτήματος 1 Α της συμφωνίας για τον ΠΟΕ. Ο έλεγχος θα πραγματοποιηθεί από ομάδα εργασίας, στην οποία μπορούν να συμμετάσχουν όλα τα μέλη. Η ομάδα θα συσταθεί αμέσως μετά την ημερομηνία θέσης σε ισχύ της συμφωνίας για τον ΠΟΕ.

Οι αρμοδιότητες της ομάδας εργασίας θα είναι οι εξής:

- να αναλάβει λεπτομερή έλεγχο όλων των υφισταμένων υποχρεώσεων γνωστοποίησης των μελών που θεσπίζονται από τις συμφωνίες του παραρτήματος 1 Α της συμφωνίας για τον ΠΟΕ, με σκοπό να απλοποιήσει, να τυποποιήσει και να ενοποιήσει τις εν λόγω υποχρεώσεις στον μέγιστο εφικτό βαθμό, καθώς και να βελτιώσει τη συμμόρφωση με αυτές τις υποχρεώσεις, έχοντας υπόψη τον σφαιρικό στόχο της βελτίωσης της διαφάνειας των εμπορικών πολιτικών των μελών και της αποτελεσματικότητας των διακανονισμών εποπτείας που έχουν θεσπισθεί για τον σκοπό αυτόν, και έχοντας επίσης υπόψη την πιθανή ανάγκη για παροχή βοήθειας σε ορισμένες αναπτυσσόμενες χώρες μέλη για την τήρηση των υποχρεώσεων γνωστοποίησης·

- να προβαίνει σε συστάσεις προς το Συμβούλιο Εμπορευματικών Συναλλαγών το αργότερο δύο έτη μετά τη θέση σε ισχύ της συμφωνίας για τον ΠΟΕ.

ΠΑΡΑΡΤΗΜΑ

ΕΝΔΕΙΚΤΙΚΟΣ ΚΑΤΑΛΟΓΟΣ[1] ΓΝΩΣΤΟΠΟΙΗΣΙΜΩΝ ΜΕΤΡΩΝ

Δασμοί (περιλαμβανομένου του εύρους και του πεδίου εφαρμογής των παγιοποιήσεων, των διατάξεων του ΣΓΠ, των συντελεστών που εφαρμόζονται σε μέλη ζωνών ελευθέρων συναλλαγών/τελωνειακών ενώσεων, και λοιπών προτιμήσεων).

Δασμολογικές ποσοστώσεις και πρόσθετες επιβαρύνσεις

Ποσοτικοί περιορισμοί, περιλαμβανομένων των αυτοπεριορισμών κατά την εξαγωγή και των διακανονισμών ομαλής εμπορίας που επηρεάζουν τις εισαγωγές

Λοιπά μη δασμολογικά μέτρα όπως η χορήγηση αδειών και οι απαιτήσεις για μείγματα· διάφορες εισφορές

Δασμολογητέα αξία

Κανόνες καταγωγής

(1) Ο παρών κατάλογος δεν μεταβάλλει τις υπάρχουσες απαιτήσεις γνωστοποίησης των πολυμερών εμπορικών συμφωνιών του παραρτήματος 1 Α της συμφωνίας για τον ΠΟΕ, ή, ενδεχομένως, των πλειομερών εμπορικών συμφωνιών του παραρτήματος 4 της συμφωνίας για τον ΠΟΕ.

Δημόσιες συμβάσεις

Τεχνικά εμπόδια

Μέτρα διασφάλισης

Μέτρα αντιντάμπινγκ

Αντισταθμιστικά μέτρα

Φόροι κατά την εξαγωγή

Εξαγωγικές επιδοτήσεις, φορολογικές απαλλαγές και προνομιακή χρηματοδότηση των εξαγωγών

Ζώνες ελευθέρων συναλλαγών, περιλαμβανομένης της παραγωγής εντός τελωνειακού εδάφους

Περιορισμοί των εξαγωγών, περιλαμβανομένων των αυτοπεριορισμών των εξαγωγών και των διακανονισμών ομαλής εμπορίας

Λοιπές κρατικές ενισχύσεις, περιλαμβανομένων των επιδοτήσεων, φορολογικές απαλλαγές

Ο ρόλος των κρατικών εμπορικών επιχειρήσεων

Συναλλαγματικός έλεγχος σχετικά με τις εισαγωγές και τις εξαγωγές

Εμπόριο με ανταλλαγή προϊόντων με εντολή της κυβέρνησης

Λοιπά μέτρα που καλύπτονται από τις πολυμερείς εμπορικές συμφωνίες του παραρτήματος 1 Α της συμφωνίας για τον ΠΟΕ

ΔΗΛΩΣΗ ΓΙΑ ΤΗΝ ΣΧΕΣΗ ΜΕΤΑΞΥ ΠΑΓΚΟΣΜΙΟΥ ΟΡΓΑΝΙΣΜΟΥ ΕΜΠΟΡΙΟΥ ΚΑΙ ΔΙΕΘΝΟΥΣ ΝΟΜΙΣΜΑΤΙΚΟΥ ΤΑΜΕΙΟΥ

Οι υπουργοί,

Σημειώνοντας την στενή σχέση μεταξύ των συμβαλλομένων μερών της GATT του 1947 και του Διεθνούς Νομισματικού Ταμείου, καθώς και τις διατάξεις της GATT του 1947 που διέπουν την εν λόγω σχέση, και ιδίως το άρθρο XV της GATT του 1947·

Αναγνωρίζοντας την επιθυμία των συμμετεχόντων να βασίσουν την σχέση του Παγκοσμίου Οργανισμού Εμπορίου με το Διεθνές Νομισματικό Ταμείο, όσον αφορά τους τομείς που καλύπτονται από τις πολυμερείς εμπορικές συμφωνίες του παραρτήματος 1 Α της συμφωνίας για τον ΠΟΕ, στις διατάξεις που διέπουν την σχέση των συμβαλλομένων μερών της GATT του 1947 με το Διεθνές Νομισματικό Ταμείο·

Επαναβεβαιώνουν ότι, εκτός εάν προβλέπεται διαφορετικά στην Τελική Πράξη, η σχέση του ΠΟΕ με το Διεθνές Νομισματικό Ταμείο, όσον αφορά τους τομείς που καλύπτονται από τις πολυμερείς εμπορικές συμφωνίες του παραρτήματος 1 Α της συμφωνίας για τον ΠΟΕ, θα βασίζεται στις διατάξεις που διέπουν την σχέση των συμβαλλομένων μερών της GATT του 1947 με το Διεθνές Νομισματικό Ταμείο·

ΑΠΟΦΑΣΗ ΓΙΑ ΤΑ ΜΕΤΡΑ ΣΧΕΤΙΚΑ ΜΕ ΤΙΣ ΕΝΔΕΧΟΜΕΝΕΣ ΑΡΝΗΤΙΚΕΣ ΕΠΙΠΤΩΣΕΙΣ ΤΟΥ ΜΕΤΑΡΡΥΘΜΙΣΤΙΚΟΥ ΠΡΟΓΡΑΜΜΑΤΟΣ ΣΤΙΣ ΛΙΓΟΤΕΡΟ ΑΝΕΠΤΥΓΜΕΝΕΣ ΧΩΡΕΣ ΚΑΙ ΣΤΙΣ ΑΝΑΠΤΥΣΣΟΜΕΝΕΣ ΧΩΡΕΣ ΠΟΥ ΕΙΣΑΓΟΥΝ ΑΠΟΚΛΕΙΣΤΙΚΑ ΕΙΔΗ ΔΙΑΤΡΟΦΗΣ

1. Οι υπουργοί αναγνωρίζουν ότι η προσδευτική εφαρμογή των αποτελεσμάτων του Γύρου της Ουρουγουάης στο σύνολό τους θα δημιουργήσει πολλαπλασιαζόμενες ευκαιρίες για την επέκταση του εμπορίου και την οικονομική αύξηση προς όφελος όλων των συμμετεχόντων.

2. Οι υπουργοί αναγνωρίζουν ότι κατά τη διάρκεια του μεταρρυθμιστικού προγράμματος που οδηγεί σε μεγαλύτερη απελευθέρωση του εμπορίου γεωργικών προϊόντων, οι λιγότερο ανεπτυγμένες χώρες και οι αναπτυσσόμενες χώρες που εισάγουν αποκλειστικά είδη διατροφής μπορεί να αντιμετωπίσουν αρνητικές συνθήκες σε σχέση με τη δυνατότητα προμήθειας βασικών τροφίμων από εξωτερικές πηγές με λογικούς γενικούς και ειδικούς όρους, περιλαμβανομένων και των βραχυπροθέσμων δυσκολιών για τη χρηματοδότηση των κανονικών επιπέδων των εμπορικών εισαγωγών βασικών τροφίμων.

3. Οι υπουργοί, κατά συνέπεια, συμφωνούν να θεσπίσουν κατάλληλους μηχανισμούς προκειμένου να εξασφαλίσουν ότι η εφαρμογή των αποτελεσμάτων του Γύρου της ουρουγουάης για το εμπόριο γεωργικών προϊόντων δεν επηρεάζει αρνητικά τη διαθεσιμότητα της επισιτιστικής βοήθειας σε επίπεδα που είναι επαρκή για τη συνέχιση της παροχής βοήθειας προκειμένου να καλυφθούν οι επισιτιστικές ανάγκες των αναπτυσσομένων χωρών, και ιδίως των λιγότερο ανεπτυγμένων χωρών και των αναπτυσσομένων χωρών που εισάγουν αποκλειστικά είδη διατροφής. Για τον σκοπό αυτόν οι υπουργοί συμφωνούν τα εξής:

(i) να ελέγχουν το επίπεδο της επισιτιστικής βοήθειας που παρέχεται περιοδικά από την επιτροπή επισιτιστικής βοήθειας στο πλαίσιο της σύμβασης επισιτιστικής βοήθειας το 1986 και να αρχίσουν διαπραγματεύσεις στην κατάλληλη συνέλευση για την καθιέρωση επιπέδου αναλήψεων υποχρεώσεων επισιτιστικής βοήθειας επαρκούς για να καλύψει τις θεμιτές ανάγκες των αναπτυσσομένων χωρών κατά τη διάρκεια του μεταρρυθμιστικού προγράμματος·

(ii) να εκδώσουν κατευθυντήριες γραμμές για να εξασφαλίσουν ότι παρέχεται ένα συνεχώς μεγαλύτερο ποσοστό βασικών τροφίμων στις λιγότερο ανεπτυγμένες χώρες και στις αναπτυσσόμενες χώρες που εισάγουν αποκλειστικά είδη διατροφής με μορφή εξ ολοκλήρου μη επιστρεπτέας ενίσχυσης η/τα με τις αρμόζουντες παραχωρήσεις σύμφωνα με το άρθρο IV της σύμβασης επισιτιστικής βοήθειας του 1986·

(iii) να λάβουν πλήρως υπόψη, στο πλαίσιο των προγραμμάτων τους βοηθείας, τις αιτήσεις για την παροχή τεχνικής και χρηματοδοτικής βοήθειας στις λιγότερο ανεπτυγμένες χώρες και στις αναπτυσσόμενες χώρες που εισάγουν αποκλειστικά τρόφιμα προκειμένου οι τελευταίες να βελτιώσουν τη γεωργική παραγωγικότητα και υποδομή.

4. Οι υπουργοί συμφωνούν εξάλλου να διασφαλίσουν ότι κάθε συμφωνία που έχει σχέση με πιστώσεις εξαγωγών γεωργικών προϊόντων περιλαμβάνει τις

κατάλληλες διατάξεις για διακριτική μεταχείριση υπέρ των λιγότερο ανεπτυγμένων χωρών και των αναπτυσσομένων χωρών που εισάγουν αποκλειστικά είδη διατροφής.

5. Οι υπουργοί αναγνωρίζουν ότι, ως αποτέλεσμα του Γύρου της ουρουγουάης, ορισμένες αναπτυσσόμενες χώρες μπορεί να αντιμετωπίσουν βραχυπρόθεσμες δυσκολίες όσον αφορά τη χρηματοδότηση των κανονικών επιπέδων εμπορικών εισαγωγών και ότι οι εν λόγω χώρες μπορεί να είναι επιλέξιμες να λάβουν πόρους των διεθνών χρηματοδοτικών οργανισμών στο πλαίσιο υφισταμένων διευκολύνσεων ή διευκολύνσεων που μπορεί να θεσπισθούν, στο πλαίσιο προγραμμάτων προσαρμογής, προκειμένου να καλύψουν τέτοιου είδους χρηματοδοτικές δυσκολίες. Σχετικά με αυτό, οι υπουργοί σημειώνουν την παράγραφο 37 της έκθεσης του γενικού διευθυντή των συμβαλλομένων μερών της GATT του 1947 σχετικά με τις διαβουλεύσεις του με τον διευθύνοντα σύμβουλο του Διεθνούς Νομισματικού Ταμείου και των προέδρων της Διεθνούς Τραπέζης (MTN.GNG/NG14/W/35).

6. Οι διατάξεις της παρούσας απόφασης υπόκεινται σε τακτικό έλεγχο από την υπουργική συνδιάσκεψη, και η συνέχεια που δίδεται στην παρούσα απόφαση παρακολουθείται, κατά περίπτωση, από την επιτροπή γεωργίας.

ΑΠΟΦΑΣΗ ΓΙΑ ΤΗ ΓΝΩΣΤΟΠΟΙΗΣΗ ΤΗΣ ΠΡΩΤΗΣ ΕΝΣΩΜΑΤΩΣΗΣ ΣΤΟ ΠΛΑΙΣΙΟ ΤΟΥ ΑΡΘΡΟΥ 2.6 ΤΗΣ ΣΥΜΦΩΝΙΑΣ ΓΙΑ ΤΑ ΚΛΩΣΤΟΫΦΑΝΤΟΥΡΓΙΚΑ ΠΡΟΪΟΝΤΑ ΚΑΙ ΤΑ ΕΙΔΗ ΕΝΔΥΣΗΣ

Οι υπουργοί συμφωνούν ότι οι συμμετέχοντες που διατηρούν περιορισμούς, οι οποίοι εμπίπτουν στις διατάξεις του άρθρου 2 παράγραφος 1 της συμφωνίας για τα κλωστοϋφαντουργικά προϊόντα και τα είδη ένδυσης, γνωστοποιούν τις πλήρεις λεπτομέρειες των ενεργειών που πρέπει να αναληφθούν δυνάμει του άρθρου 2, παράγραφος 6 της εν λόγω συμφωνίας προς τη γραμματεία της GATT το αργότερο την 1η οκτωβρίου 1994. Η γραμματεία της GATT διαβιβάζει αμέσως τις εν λόγω γνωστοποιήσεις στους λοιπούς συμμετέχοντες για πληροφόρησή τους. Οι εν λόγω γνωστοποιήσεις τίθενται στη διάθεση του εποπτικού οργάνου των κλωστοϋφαντουργικών προϊόντων, όταν αυτό συσταθεί, για τους σκοπούς του άρθρου 2, παράγραφος 21 της συμφωνίας για τα κλωστοϋφαντουργικά προϊόντα και τα είδη ένδυσης.

ΑΠΟΦΑΣΗ ΓΙΑ ΤΟ ΠΡΟΤΕΙΝΟΜΕΝΟ ΜΝΗΜΟΝΙΟ ΣΥΜΦΩΝΙΑΣ ΣΧΕΤΙΚΑ ΜΕ ΤΟ ΣΥΣΤΗΜΑ ΠΛΗΡΟΦΟΡΙΩΝ ΓΙΑ ΤΑ ΠΡΟΤΥΠΑ ΤΟΥ ΠΟΕ-ISO

Οι υπουργοί συνιστούν στη γραμματεία του Παγκοσμίου Οργανισμού Εμπορίου να συνάψει μνημόνιο συμφωνίας με τον Διεθνή Οργανισμό Τυποποίησης ("ISO") για τη δημιουργία συστήματος πληροφοριών στα πλαίσια του οποίου:

1. Τα μέλη του ISONET διαβιβάζουν στο κέντρο πληροφοριών ISO/IEC στη Γενεύη τις γνωστοποιήσεις που αναφέρονται στις παραγράφους Γ και ΙΑ του κώδικα δεοντολογίας για την εκπόνηση, έκδοση και εφαρμογή των προτύπων του παραρτήματος 3 της συμφωνίας για τα τεχνικά εμπόδια στο εμπόριο, με τον τρόπο που αναφέρεται σε αυτό·

2. χρησιμοποιούνται τα ακόλουθα συστήματα αλφαριθμητικής κατάταξης για τα προγράμματα εργασιών που αναφέρονται στην παράγραφο ΙΑ:

   (α) σύστημα κατάταξης προτύπων, το οποίο θα επιτρέπει στους οργανισμούς τυποποίησης να προσδίδουν σε κάθε πρότυπο που αναφέρεται στο πρόγραμμα εργασιών μία αλφαριθμητική ένδειξη του αντικειμένου του προτύπου·

   (β) σύστημα κωδικών σταδίου, το οποίο θα επιτρέψει στους φορείς τυποποίησης να προσδίδουν για κάθε πρότυπο που αναφέρεται στο πρόγραμμα εργασιών μία αλφαριθμητική ένδειξη του σταδίου στο οποίο βρίσκεται η εκπόνηση του προτύπου· για τον σκοπό αυτόν, είναι σκόπιμο να διακρίνονται τουλάχιστον πέντε στάδια εκπόνησης: (1) το στάδιο κατά το οποίο έχει ληφθεί η απόφαση για την εκπόνηση ενός προτύπου, αλλά οι τεχνικές εργασίες δεν έχουν ακόμα ξεκινήσει· (2) το στάδιο κατά το οποίο οι τεχνικές εργασίες έχουν ξεκινήσει, αλλά η περίοδος για την υποβολή των σχολίων δεν έχει ακόμη ξεκινήσει· (3) το στάδιο κατά το οποίο η περίοδος για την υποβολή σχολίων έχει ξεκινήσει αλλά δεν έχει ακόμη ολοκληρωθεί· (4) το στάδιο κατά το οποίο η περίοδος για την υποβολή σχολίων έχει ολοκληρωθεί, αλλά το πρότυπο δεν έχει ακόμα εκδοθεί· και (5) το στάδιο κατά το οποίο το πρότυπο έχει εκδοθεί·

   (γ) σύστημα αναγνώρισης το οποίο θα καλύπτει όλα τα διεθνή πρότυπα και το οποίο θα επιτρέπει στους φορείς τυποποίησης να προσδίδουν σε κάθε πρότυπο που αναφέρεται στο πρόγραμμα εργασιών μία αλφαριθμητική ένδειξη του διεθνούς προτύπου ή προτύπων που έχουν χρησιμοποιηθεί ως βάση·

3. το κέντρο πληροφοριών ISO/IEC διαβιβάζει αμέσως στη γραμματεία αντίγραφα όλων των κοινοποιήσεων που αναφέρονται στην παράγραφο Γ του κώδικα δεοντολογίας·

4. το κέντρο πληροφοριών ISO/IEC δημοσιεύει τακτικά τις πληροφορίες που λαμβάνει με τις γνωστοποιήσεις οι οποίες του έχουν αποσταλεί δυνάμει των παραγράφων Γ και ΙΑ του κώδικα δεοντολογίας· η εν λόγω δημοσίευση, για την οποία μπορεί να χρεώνεται κάποιο λογικό αντίτιμο, διατίθεται στα μέλη του ISONET και μέσω της γραμματείας, στα μέλη του ΠΟΕ.

ΑΠΟΦΑΣΗ ΓΙΑ ΤΟΝ ΕΛΕΓΧΟ ΤΟΥ ΕΝΤΥΠΟΥ ΠΟΥ ΕΚΔΙΔΕΙ ΤΟ ΚΕΝΤΡΟ ΠΛΗΡΟΦΟΡΙΩΝ ΤΟΥ ISO/IEC

Οι υπουργοί αποφασίζουν ότι, σύμφωνα με το άρθρο 13 παράγραφος 1 της συμφωνίας για τα τεχνικά εμπόδια στο εμπόριο που περιλαμβάνεται στο παράρτημα 1 Α της συμφωνίας για τον ΠΟΕ, η επιτροπή των τεχνικών εμποδίων στο εμπόριο που συστήνεται βάσει αυτού ελέγχει, με την επιφύλαξη των διατάξεων σχετικά με τις διαβουλεύσεις και την επίλυση των διαφορών, τουλάχιστον μία φορά το έτος το έντυπο που εκδίδει το κέντρο πληροφοριών του ISO/IEC σχετικά με τις πληροφορίες που έχει λάβει σύμφωνα με τον κώδικα δεοντολογίας για την εκπόνηση, έκδοση και εφαρμογή των προτύπων του παραρτήματος 3 της συμφωνίας, προκειμένου να παρασχεθεί στα μέλη η ευκαιρία να συζητήσουν θέματα σχετικά με τη λειτουργία του εν λόγω κώδικα.

Προκειμένου να διευκολυνθεί η εν λόγω συζήτηση, η γραμματεία του ΠΟΕ παρέχει κατάλογο ανά μέλος όλων των φορέων τυποποίησης, οι οποίοι έχουν αποδεχθεί τον κώδικα, καθώς και κατάλογο των φορέων τυποποίησης οι οποίοι έχουν αποδεχθεί ή απορρίψει τον κώδικα μετά τον τελευταίο έλεγχο.

Η γραμματεία του ΠΟΕ διανέμει επίσης αμέσως στα μέλη αντίγραφα των κοινοποιήσεων που λαμβάνει από το κέντρο πληροφοριών του ISO/IEC.

ΑΠΟΦΑΣΗ ΚΑΤΑ ΤΗΣ ΚΑΤΑΣΤΡΑΤΗΓΗΣΗΣ

Οι υπουργοί,

Σημειώνοντας ότι ενώ το πρόβλημα της καταστρατήγησης των μέτρων δασμών αντιντάμπινγκ απετέλεσε μέρος των διαπραγματεύσεων, οι οποίες προηγήθησαν της συμφωνίας για την εφαρμογή του άρθρου VI της GATT του 1994, οι διαπραγματεύσεις δεν μπόρεσαν να καταλήξουν σε συμφωνία όσον αφορά κάποιο συγκεκριμένο κείμενο,

Σχοντας επίγνωση της επιθυμίας για την εφαρμογή ομοιόμορφων κανόνων στον τομέα αυτόν, το συντομότερο δυνατόν,

Αποφασίζουν να παραπέμψουν το εν λόγω θέμα στην επιτροπή πρακτικών αντιντάμπινγκ, που έχει συσταθεί δυνάμει της συμφωνίας αυτής, προς επίλυση.

ΑΠΟΦΑΣΗ ΓΙΑ ΤΟΝ ΕΛΕΓΧΟ ΤΟΥ ΑΡΘΡΟΥ 17 ΠΑΡΑΓΡΑΦΟΣ 6 ΤΗΣ ΣΥΜΦΩΝΙΑΣ ΓΙΑ ΤΗΝ ΕΦΑΡΜΟΓΗ ΤΟΥ ΑΡΘΡΟΥ VI ΤΗΣ ΓΕΝΙΚΗΣ ΣΥΜΦΩΝΙΑΣ ΔΑΣΜΩΝ ΚΑΙ ΕΜΠΟΡΙΟΥ ΤΟΥ 1994

Οι υπουργοί αποφασίζουν τα εξής:

Το κριτήριο ελέγχου του άρθρου 17, παράγραφος 6 της συμφωνίας για την εφαρμογή του άρθρου VI της GATT του 1994 επανεξετάζεται μετά από περίοδο τριών ετών, προκειμένου να μελετηθεί το θέμα της δυνατότητας γενικής εφαρμογής του.

ΔΗΛΩΣΗ ΓΙΑ ΤΗΝ ΕΠΙΛΥΣΗ ΔΙΑΦΟΡΩΝ ΔΥΝΑΜΕΙ ΤΗΣ ΣΥΜΦΩΝΙΑΣ ΓΙΑ ΤΗΝ ΕΦΑΡΜΟΓΗ ΤΟΥ ΑΡΘΡΟΥ VI ΤΗΣ ΓΕΝΙΚΗΣ ΣΥΜΦΩΝΙΑΣ ΔΑΣΜΩΝ ΚΑΙ ΕΜΠΟΡΙΟΥ ΤΟΥ 1994 Η ΤΟΥ ΜΕΡΟΥΣ V ΤΗΣ ΣΥΜΦΩΝΙΑΣ ΓΙΑ ΤΙΣ ΕΠΙΔΟΤΗΣΕΙΣ ΚΑΙ ΤΑ ΑΝΤΙΣΤΑΘΜΙΣΤΙΚΑ ΜΕΤΡΑ

Οι υπουργοί αναγνωρίζουν, όσον αφορά την επίλυση διαφορών δυνάμει της συμφωνίας για την εφαρμογή του άρθρου VI της GATT του 1994 ή του μέρους V της συμφωνίας για τις επιδοτήσεις και τα αντισταθμιστικά μέτρα, την ανάγκη για συνεκτική λύση των διαφορών που προκύπτουν από τα μέτρα που έχουν ως αντικείμενο την επιβολή δασμών αντιντάμπινγκ και αντισταθμιστικών δασμών.

ΑΠΟΦΑΣΗ ΣΧΕΤΙΚΑ ΜΕ ΠΕΡΙΠΤΩΣΕΙΣ ΟΠΟΥ ΟΙ ΤΕΛΩΝΕΙΑΚΕΣ ΑΡΧΕΣ ΕΧΟΥΝ ΛΟΓΟΥΣ ΝΑ ΑΜΦΙΒΑΛΛΟΥΝ ΓΙΑ ΤΟ ΑΛΗΘΕΣ Η ΤΗΝ ΑΚΡΙΒΕΙΑ ΤΗΣ ΔΗΛΩΘΕΙΣΑΣ ΑΞΙΑΣ

Οι υπουργοί καλούν την επιτροπή δασμολογητέας αξίας που έχει συσταθεί στο πλαίσιο της συμφωνίας για την εφαρμογή του άρθρου VII της GATT του 1994 να λάβει την ακόλουθη απόφαση:

Η επιτροπή δασμολογητέας αξίας,

Επιβεβαιώνοντας ότι η συναλλακτική αξία είναι η πρωτεύουσα βάση για τον υπολογισμό της αξίας στο πλαίσιο της συμφωνίας για την εφαρμογή του άρθρου VII της GATT του 1994 (εφεξής καλούμενη η "συμφωνία"),

Αναγνωρίζοντας ότι οι τελωνειακές αρχές μπορεί να αντιμετωπίσουν περιπτώσεις όπου έχουν λόγους να αμφιβάλλουν για το αληθές ή την ακρίβεια των πληροφοριών ή των εγγράφων που προσκομίζουν οι έμποροι ως συνοδευτικά έγγραφα της δηλωθείσας αξίας,

Υπογραμμίζοντας ότι οι τελωνειακές αρχές δεν θα πρέπει με αυτόν τον τρόπο να ζημιώνουν σε κίνδυνο τα νόμιμα εμπορικά συμφέροντα των εμπόρων,

Λαμβάνοντας υπόψη το άρθρο 17 της συμφωνίας, την παράγραφο 6 του παραρτήματος III της συμφωνίας, και τις σχετικές αποφάσεις της τεχνικής επιτροπής δασμολογητέας αξίας,

Αποφασίζει τα εξής:

1. Σε περίπτωση που προσκομίζεται διασάφηση και οι τελωνειακές αρχές έχουν λόγους να αμφιβάλλουν για το αληθές ή την ακρίβεια των πληροφοριών ή των εγγράφων που προσκομίζονται ως συνοδευτικά της εν λόγω διασάφησης, οι τελωνειακές αρχές μπορούν να ζητούν από τον εισαγωγέα να παράσχει περαιτέρω εξηγήσεις, περιλαμβανομένων των εγγράφων ή άλλων αποδεικτικών στοιχείων, σχετικά με το ότι η δηλωθείσα αξία αντιπροσωπεύει τη συνολική πράγματι πληρωθείσα ή πληρωτέα τιμή για τα εισαγόμενα εμπορεύματα, προσαρμοσμένη σύμφωνα με τις διατάξεις του άρθρου 8. Εάν, αφού λάβουν περαιτέρω πληροφορίες ή ελλείψει απάντησης, οι τελωνειακές αρχές έχουν ακόμη εύλογες αμφιβολίες σχετικά με το αληθές ή την ακρίβεια της δηλωθείσας αξίας, είναι δυνατόν να θεωρηθεί, έχοντας υπόψη τις διατάξεις του άρθρου 11, ότι η δασμολογητέα αξία των εισαχθέντων εμπορευμάτων δεν μπορεί να προσδιοριστεί δυνάμει των διατάξεων του άρθρου 1. Πριν από τη λήψη οριστικής απόφασης, οι τελωνειακές αρχές ανακοινώνουν στον εισαγωγέα, εγγράφως εάν ζητηθεί, τα επιχειρήματα στα οποία βασίζεται η αμφιβολία ως προς το αληθές ή την ακρίβεια των πληροφοριών ή των εγγράφων που προσκομίζονται και δίδει στον εισαγωγέα την εύλογη δυνατότητα να απαντήσει. Όταν ληφθεί η οριστική απόφαση, οι τελωνειακές αρχές ανακοινώνουν εγγράφως στον εισαγωγέα την απόφασή τους και τα επιχειρήματά τους.

2. Είναι απολύτως αρμόζον κατ' εφαρμογήν της συμφωνίας, ένα μέλος να συνδράμει κάποιο άλλο μέλος βάσει αμοιβαίως συμφωνηθέντων όρων.

ΑΠΟΦΑΣΗ ΓΙΑ ΤΑ ΚΕΙΜΕΝΑ ΣΧΕΤΙΚΑ ΜΕ ΤΙΣ ΕΛΑΧΙΣΤΕΣ ΑΞΙΕΣ ΚΑΙ ΤΙΣ ΕΙΣΑΓΩΓΕΣ ΑΠΟ ΑΠΟΚΛΕΙΣΤΙΚΟΥΣ ΠΡΑΚΤΟΡΕΣ, ΑΠΟΚΛΕΙΣΤΙΚΟΥΣ ΔΙΑΝΟΜΕΙΣ ΚΑΙ ΑΠΟΚΛΕΙΣΤΙΚΟΥΣ ΑΝΤΙΠΡΟΣΩΠΟΥΣ

Οι υπουργοί αποφασίζουν να παραπέμψουν τα ακόλουθα κείμενα στην επιτροπή δασμολογητέας αξίας που έχει συσταθεί στο πλαίσιο της συμφωνίας για την εφαρμογή του άρθρου VII της GATT του 1994, προς έγκριση.

I

Οταν αναπτυσσόμενη χώρα εκφράζει επιφυλάξεις σχετικά με τη διατήρηση επισήμως ορισθεισών ελαχίστων αξιών στο πλαίσιο των όρων της παραγράφου 2 του παραρτήματος III και δεικνύει καλή προαίρεση, η επιτροπή εξετάζει θετικά τη σχετική αίτηση.

Οταν η επιφύλαξη γίνει αποδεκτή, οι ειδικοί και γενικοί όροι που αναφέρονται στην παράγραφο 2 του παραρτήματος III λαμβάνουν πλήρως υπόψη τις αναπτυξιακές, χρηματοδοτικές και εμπορικές ανάγκες της ενδιαφερόμενης αναπτυσσόμενης χώρας.

II

1. Ορισμένες αναπτυσσόμενες χώρες ανησυχούν για την ενδεχόμενη ύπαρξη προβλημάτων κατά τον υπολογισμό της αξίας των εισαγωγών από αποκλειστικούς πράκτορες, αποκλειστικούς διανομείς και αποκλειστικούς αντιπροσώπους. Δυνάμει του άρθρου 20, παράγραφος 1, οι αναπτυσσόμενες χώρες μέλη τυγχάνουν προθεσμίας μέχρι πέντε ετών πριν από την εφαρμογή της συμφωνίας. Στο πλαίσιο αυτό, οι αναπτυσσόμενες χώρες μέλη που επωφελούνται από την εν λόγω διάταξη θα μπορούσαν να χρησιμοποιήσουν την περίοδο αυτή για την διενέργεια καταλλήλων μελετών και για την ανάληψη δράσεων που απαιτούνται για τη διευκόλυνση της εφαρμογής.

2. Λαμβανομένων υπόψη των ανωτέρω, η επιτροπή συνιστά στο Συμβούλιο Τελωνειακής Συνεργασίας να συνδράμει τις αναπτυσσόμενες χώρες μέλη, σύμφωνα με τις διατάξεις του παραρτήματος II, για την εκπόνηση και την εφαρμογή μελετών σε τομείς οι οποίοι έχει προσδιοριστεί ότι παρουσιάζουν ενδιαφέρον, περιλαμβανομένων των σχετικών με τις εισαγωγές από αποκλειστικούς πράκτορες, αποκλειστικούς διανομείς και αποκλειστικούς αντιπροσώπους.

ΑΠΟΦΑΣΗ ΓΙΑ ΤΟΥΣ ΘΕΣΠΙΚΟΥΣ ΔΙΑΚΑΝΟΝΙΣΜΟΥΣ ΣΧΕΤΙΚΑ ΜΕ ΤΗ ΓΕΝΙΚΗ ΣΥΜΦΩΝΙΑ ΓΙΑ ΤΙΣ ΣΥΝΑΛΛΑΓΕΣ ΣΤΟΝ ΤΟΜΕΑ ΤΩΝ ΥΠΗΡΕΣΙΩΝ

Οι υπουργοί συνιστούν στο συμβούλιο εμπορευματικών συναλλαγών να εγκρίνει, κατά την πρώτη συνεδρίασή του, την απόφαση για τα επικουρικά όργανα που αναφέρονται κατωτέρω.

Το Συμβούλιο Εμπορευματικών Συναλλαγών,

Ενεργώντας δυνάμει του άρθρου XXIV με σκοπό να διευκολύνει τη λειτουργία και να διευρύνει τους στόχους της Γενικής Συμφωνίας για τις συναλλαγές στον τομέα των υπηρεσιών,

Αποφασίζει τα εξής:

1. Ολα τα επικουρικά όργανα, τα οποία συστήνει ενδεχομένως το συμβούλιο, αναφέρονται σε αυτό ετησίως ή συχνότερα εάν απαιτείται. Καθένα από αυτά τα όργανα θεσπίζει τον δικό του εσωτερικό κανονισμό και δύναται να προβεί σε σύσταση των δικών του επικουρικών οργάνων κατά περίπτωση.

2. Ολες οι τομεακές επιτροπές αναλαμβάνουν αρμοδιότητες οι οποίες ορίζονται από το συμβούλιο, και παρέχουν στα μέλη τη δυνατότητα να προβαίνουν σε διαβουλεύσεις για κάθε θέμα σχετικά με τις συναλλαγές στον τομέα των υπηρεσιών για το σχετικό κλάδο και τη λειτουργία του τομεακού παραρτήματος στο οποίο αναφέρεται. Οι εν λόγω αρμοδιότητες περιλαμβάνουν τα εξής:

(α) την τήρηση υπό συνεχή έλεγχο και εποπτεία της εφαρμογής της συμφωνίας σε σχέση με το σχετικό τομέα·

(β) τη διατύπωση προτάσεων ή συστάσεων προς εξέταση από το συμβούλιο σε σχέση με όλα τα θέματα που αφορούν τις συναλλαγές στον σχετικό τομέα·

(γ) σε περίπτωση που υπάρχει παράρτημα σχετικό με τον τομέα, την εξέταση προτάσεων τροποποίησης του τομεακού παραρτήματος, και την πραγματοποίηση καταλλήλων συστάσεων προς το συμβούλιο·

(δ) την εξασφάλιση του πλαισίου για τεχνικές συζητήσεις, για τη διενέργεια μελετών σχετικά με τα μέτρα των μελών και τη διενέργεια εξέτασης οποιουδήποτε τεχνικού θέματος που επηρεάζει τις συναλλαγές στον τομέα των υπηρεσιών στον σχετικό κλάδο·

(ε) την παροχή τεχνικής βοήθειας στις αναπτυσσόμενες χώρες μέλη και στις αναπτυσσόμενες χώρες, οι οποίες διαπραγματεύονται την προσχώρηση στη συμφωνία για την ίδρυση του Παγκοσμίου οργανισμού Εμπορίου σε σχέση με την τήρηση των υποχρεώσεών ή με άλλα θέματα που επηρεάζουν τις συναλλαγές στον τομέα των υπηρεσιών στο σχετικό κλάδο· και

(στ) τη συνεργασία με όλα τα λοιπά επικουρικά όργανα που έχουν συσταθεί δυνάμει της Γενικής Συμφωνίας για τις συναλλαγές στον τομέα των υπηρεσιών ή άλλων διεθνών οργανισμών με δραστηριότητες σε οποιοδήποτε σχετικό κλάδο.

3. Συστήνεται επιτροπή συναλλαγών στον τομέα των χρηματοπιστωτικών υπηρεσιών η οποία έχει τις αρμοδιότητες που αναφέρονται στην παράγραφο 2.

ΑΠΟΦΑΣΗ ΣΧΕΤΙΚΑ ΜΕ ΟΡΙΣΜΕΝΕΣ ΔΙΑΔΙΚΑΣΙΕΣ ΕΠΙΛΥΣΗΣ ΔΙΑΦΟΡΩΝ ΓΙΑ ΤΗ ΓΕΝΙΚΗ ΣΥΜΦΩΝΙΑ ΓΙΑ ΤΙΣ ΣΥΝΑΛΛΑΓΕΣ ΣΤΟΝ ΤΟΜΕΑ ΤΩΝ ΥΠΗΡΕΣΙΩΝ

Οι υπουργοί συνιστούν στο συμβούλιο συναλλαγών στον τομέα των υπηρεσιών να εγκρίνει κατά την πρώτη συνεδρίασή του την απόφαση που αναφέρεται κατωτέρω.

Το συμβούλιο συναλλαγών στον τομέα των υπηρεσιών,

Λαμβάνοντας υπόψη τον ιδιαίτερο χαρακτήρα των υποχρεώσεων και των συγκεκριμένων αναλήψεων υποχρεώσεων που απορρέουν από τη συμφωνία, και των συναλλαγών στον τομέα των υπηρεσιών, σε σχέση με την επίλυση διαφορών δυνάμει των άρθρων XXII και XXIII,

Αποφασίζει τα ακόλουθα:

1. Καταρτίζεται κατάλογος προσώπων που προορίζονται για τις ειδικές ομάδες (πάνελ) που παρέχουν βοήθεια στα μέλη κατά την επιλογή των προσώπων αυτών.

2. Για το σκοπό αυτό, τα μέλη δύναται να προτείνουν ονόματα προσώπων που διαθέτουν τα προσόντα που αναφέρονται στην παράγραφο 3, ώστε να περιληφθούν στον κατάλογο, και παρέχουν βιογραφικό σημείωμα που περιλαμβάνει, κατά περίπτωση, τις γνώσεις στο συγκεκριμένο τομέα.

3. Οι ομάδες αποτελούνται από κυβερνητικούς και/ή μη κυβερνητικούς υπαλλήλους υψηλών προσόντων, οι οποίοι έχουν εμπειρία σε θέματα σχετικά με τη Γενική Συμφωνία για τις συναλλαγές στον τομέα των υπηρεσιών και/ή

στις συναλλαγές στον τομέα των υπηρεσιών, περιλαμβανομένων των σχετικών κανονιστικών θεμάτων. Τα μέλη των ειδικών ομάδων απασχολούνται ως ιδιώτες και όχι ως εκπρόσωποι κάποιας κυβέρνησης ή οργανισμού.

4. Οι ομάδες που καλούνται να επιλύσουν διαφορές σχετικά με τομεακά θέματα διαθέτουν τις απαραίτητες γνώσεις σχετικά με τους συγκεκριμένους τομείς των υπηρεσιών τους οποίους αφορά η διαφορά.

5. Η γραμματεία τηρεί τον κατάλογο και καθορίζει διαδικασίες για τη διαχείρισή του μετά από διαβουλεύσεις με τον πρόεδρο του συμβουλίου.

ΑΠΟΦΑΣΗ ΓΙΑ ΤΗ ΣΧΕΣΗ ΜΕΤΑΞΥ ΤΩΝ ΣΥΝΑΛΛΑΓΩΝ ΣΤΟΝ ΤΟΜΕΑ ΤΩΝ ΥΠΗΡΕΣΙΩΝ ΚΑΙ ΤΟΥ ΠΕΡΙΒΑΛΛΟΝΤΟΣ

Οι υπουργοί συνιστούν στο συμβούλιο για τις συναλλαγές στον τομέα των υπηρεσιών να εγκρίνει στην πρώτη του συνεδρίαση την απόφαση που ορίζεται κατωτέρω.

Το συμβούλιο συναλλαγών στον τομέα των υπηρεσιών,

Αναγνωρίζοντας ότι τα απαραίτητα μέτρα για την προστασία του περιβάλλοντος μπορεί να είναι αντίθετα με τις διατάξεις της συμφωνίας, και

Σημειώνοντας ότι, εφόσον τα απαραίτητα μέτρα για την προστασία του περιβάλλοντος έχουν κατ'εξοχήν στόχο την προστασία της ζωής ή της υγείας των ανθρώπων, των ζώων και των φυτών, δεν είναι σαφές ότι υπάρχει ανάγκη να προβλεφθούν περισσότερα από όσα περιλαμβάνονται στο άρθρο XIV παράγραφος (β)·

Αποφασίζει τα εξής:

1. Προκειμένου να καθοριστεί εάν απαιτείται τροποποίηση του άρθρου XIV της συμφωνίας ώστε να ληφθούν υπόψη αυτά τα μέτρα, συστήνεται επιτροπή για τη σχέση μεταξύ των συναλλαγών στον τομέα των υπηρεσιών και του περιβάλλοντος που εξετάζει και υποβάλλει εκθέσεις, προβαίνοντας σε συστάσεις εάν υπάρχουν, όσον αφορά τη σχέση μεταξύ των συναλλαγών στον τομέα των υπηρεσιών και του περιβάλλοντος περιλαμβανομένου του θέματος της αειφόρου ανάπτυξης. Η επιτροπή εξετάζει επίσης τη σχέση των διακυβερνητικών συμφωνιών με το περιβάλλον καθώς και τις σχέσεις αυτών με τη συμφωνία.

2. Η επιτροπή υποβάλλει εκθέσεις για τα αποτέλεσματα των εργασιών της εντός τριών ετών από την έναρξη ισχύος της συμφωνίας για την ίδρυση του Παγκοσμίου Οργανισμού Εμπορίου.

ΑΠΟΦΑΣΗ ΓΙΑ ΤΙΣ ΔΙΑΠΡΑΓΜΑΤΕΥΣΕΙΣ ΣΧΕΤΙΚΑ ΜΕ ΤΗΝ ΚΥΚΛΟΦΟΡΙΑ ΤΩΝ ΦΥΣΙΚΩΝ ΠΡΟΣΩΠΩΝ

Οι υπουργοί,

Σημειώνοντας τις αναλήψεις υποχρεώσεων που προκύπτουν από τις διαπραγματεύσεις του Γύρου της Ουρουγουάης σχετικά με την κυκλοφορία των φυσικών προσώπων με σκοπό την παροχή υπηρεσιών,

Εχοντας επίγνωση των στόχων της Γενικής Συμφωνίας για τις Συναλλαγές στον τομέα των υπηρεσιών, περιλαμβανομένης της ευρύτερης συμμετοχής των αναπτυσσομένων χωρών στις συναλλαγές στον τομέα των υπηρεσιών και της διεύρυνσης των εξαγωγών τους στον τομέα των υπηρεσιών,

Αναγνωρίζοντας τη σημασία της επίτευξης υψηλοτέρων επιπέδων αναλήψεων υποχρεώσεων όσον αφορά την κυκλοφορία των φυσικών προσώπων, προκειμένου να υπάρξει ισορροπία των οφελών δυνάμει της Γενικής Συμφωνίας για τις συναλλαγές στον τομέα των υπηρεσιών,

Αποφασίζουν τα εξής:

1. Οι διαπραγματεύσεις για την περαιτέρω απελευθέρωση της κυκλοφορίας των φυσικών προσώπων με σκοπό την παροχή υπηρεσιών συνεχίζονται πέραν της ολοκλήρωσης του Γύρου της Ουρουγουάης, προκειμένου να επιτραπεί η επίτευξη υψηλοτέρων επιπέδων αναλήψεων υποχρεώσεων από τους συμμετέχοντες δυνάμει της Γενικής Συμφωνίας για τις συναλλαγές στον τομέα των υπηρεσιών.

2. Για τη διεξαγωγή των διαπραγματεύσεων συστήνεται ομάδα που θα διαπραγματευθεί την κυκλοφορία των φυσικών προσώπων . Η ομάδα θεσπίζει τις δικές της διαδικασίες και υποβάλλει περιοδική έκθεση στο συμβούλιο συναλλαγών στον τομέα των υπηρεσιών.

3. Η διαπραγματευτική ομάδα πραγματοποιεί την πρώτη της διαπραγματευτική σύνοδο το αργότερο την 16η Μαΐου 1994. Ολοκληρώνει τις εν λόγω διαπραγματεύσεις και συντάσσει τελική έκθεση το αργότερο έξι μήνες μετά την έναρξη ισχύος της συμφωνίας για την ίδρυση του Παγκόσμιου Οργανισμού Εμπορίου.

4. Οι αναλήψεις υποχρεώσεων που προκύπτουν από αυτές τις διαπραγματεύσεις εντάσσονται στους πίνακες των μελών για συγκεκριμένες αναλήψεις υποχρεώσεων.

ΑΠΟΦΑΣΗ ΓΙΑ ΤΙΣ ΧΡΗΜΑΤΟΠΙΣΤΩΤΙΚΕΣ ΥΠΗΡΕΣΙΕΣ

Οι υπουργοί,

Σημειώνοντας ότι οι αναλήψεις υποχρεώσεων που έχουν προγραμματισθεί από τους συμμετέχοντες σχετικά με τις χρηματοπιστωτικές υπηρεσίες κατά την ολοκλήρωση του Γύρου της Ουρουγουάης, αρχίζουν να ισχύουν με βάση τη ρήτρα ΜΕΚ ταυτόχρονα με τη συμφωνία για την ίδρυση του Παγκοσμίου Οργανισμού Εμπορίου (εφεξής καλούμενη η "συμφωνία για τον ΠΟΕ"),

Αποφασίζουν τα εξής.

1. Με την ολοκλήρωση της περιόδου που λήγει το αργότερο έξι μήνες μετά την ημερομηνία έναρξης ισχύος της συμφωνίας για τον ΠΟΕ , τα μέλη είναι ελεύθερα να βελτιώσουν, να τροποποιήσουν ή να αποσύρουν το σύνολο ή μέρος των αναλήψεων υποχρεώσεών τους στον εν λόγω τομέα χωρίς να προσφέρουν αντισταθμιστικό αντάλλαγμα, με την επιφύλαξη των διατάξεων του άρθρου XXI της Γενικής Συμφωνίας για τις συναλλαγές στον τομέα των υπηρεσιών. Ταυτόχρονα τα μέλη οριστικοποιούν τις θέσεις τους σχετικά με τις απαλλαγές από τη ρήτρα ΜΕΚ στον εν λόγω τομέα, με την επιφύλαξη των διατάξεων του παραρτήματος σχετικά με τις εξαιρέσεις του άρθρου II. Από την ημερομηνία έναρξης ισχύος της συμφωνίας για την ίδρυση του Παγκοσμίου Οργανισμού Εμπορίου και μέχρι το τέλος της περιόδου που αναφέρεται ανωτέρω, οι εξαιρέσεις που απαριθμούνται στο παράρτημα σχετικά με τις απαλλαγές από τις υποχρεώσεις του άρθρου II και οι οποίες εξαρτώνται από το επίπεδο των αναλήψεων υποχρεώσεων άλλων συμμετεχόντων ή από τις απαλλαγές υπέρ άλλων συμμετεχόντων, δεν ισχύουν.

2. Η επιτροπή συναλλαγών χρηματοπιστωτικών υπηρεσιών παρακολουθεί την πρόοδο ενδεχομένων διαπραγματεύσεων που έχουν αναληφθεί δυνάμει των όρων της παρούσας συμφωνίας και υποβάλλουν έκθεση στο συμβούλιο συναλλαγών στον τομέα των υπηρεσιών το αργότερο τέσσερις μήνες μετά την ημερομηνία έναρξης ισχύος της συμφωνίας για τον ΠΟΕ.

ΑΠΟΦΑΣΗ ΣΧΕΤΙΚΑ ΜΕ ΤΙΣ ΔΙΑΠΡΑΓΜΑΤΕΥΣΕΙΣ ΓΙΑ ΤΙΣ ΥΠΗΡΕΣΙΕΣ ΘΑΛΑΣΣΙΩΝ ΜΕΤΑΦΟΡΩΝ

οι υπουργοί,

Σημειώνοντας, ότι οι αναλήψεις υποχρεώσεων που έχουν προγραμματισθεί από τους συμμετέχοντες για τις υπηρεσίες θαλασσίων μεταφορών κατά την ολοκλήρωση του Γύρου της Ουρουγουάης αρχίζουν να ισχύουν με βάση τη ρήτρα ΜΕΚ ταυτόχρονα με τη συμφωνία για την ίδρυση του Παγκοσμίου Οργανισμού Εμπορίου (εφεξής καλούμενη η "συμφωνία για τον ΠΟΕ"),

Αποφασίζουν τα εξής:

1. Οι διαπραγματεύσεις εντάσσονται σε εθελοντική βάση στον τομέα των υπηρεσιών θαλασσίων μεταφορών στο πλαίσιο της Γενικής Συμφωνίας για τις συναλλαγές στον τομέα των υπηρεσιών. Οι διαπραγματεύσεις έχουν σαφές πεδίο εφαρμογής με σκοπό τις αναλήψεις υποχρεώσεων στη διεθνή ναυτιλία, τις βοηθητικές υπηρεσίες και την πρόσβαση και την χρήση των λιμενικών εγκαταστάσεων, οδηγώντας έτσι στην κατάργηση των περιορισμών, εντός καθορισμένης χρονικής προθεσμίας.

2. Συστήνεται διαπραγματευτική ομάδα για τις υπηρεσίες θαλασσίων μεταφορών (εφεξής καλούμενη η "ΔΟΥΘΜ") για να εκτελέσει την εν λόγω εντολή. Η ΔΟΥΘΜ υποβάλλει περιοδικές εκθέσεις σχετικά με την πρόοδο των εν λόγω διαπραγματεύσεων.

3. Οι διαπραγματεύσεις στη ΔΟΥΘΜ είναι ανοικτές για όλες τις κυβερνήσεις και τις Ευρωπαϊκές Κοινότητες που δηλώνουν την πρόθεσή τους να συμμετάσχουν. Μέχρι σήμερα, έχουν δηλώσει την πρόθεσή τους να συμμετάσχουν στις διαπραγματεύσεις τα ακόλουθα κράτη:

Αργεντινή, Καναδάς, Ευρωπαϊκές Κοινότητες και τα κράτη μέλη τους, Φινλανδία, Χόνγκ-Κόνγκ, Ισλανδία, Ινδονησία, Κορέα, Μαλαισία, Μεξικό, Πολωνία, Νέα Ζηλανδία, Νορβηγία, Φιλιππίνες, Ρουμανία, Σιγκαπούρη, Σουηδία, Ελβετία, Ταϋλάνδη, Τουρκία, Ηνωμένες Πολιτείες.

Περαιτέρω ανακοινώσεις πρόθεσης συμμετοχής απευθύνονται στον θεματοφύλακα της συμφωνίας για τον ΠΟΕ.

4. Η ΔΟΥΘΜ πραγματοποιεί την πρώτη διαπραγματευτική σύνοδό της το αργότερο την 16η Μαΐου 1994. Ολοκληρώνει τις εν λόγω διαπραγματεύσεις και υποβάλλει τελική έκθεση το αργότερο τον Ιούνιο του 1996. Η τελική έκθεση της ΔΟΥΘΜ περιλαμβάνει ημερομηνία για την εφαρμογή των αποτελεσμάτων των εν λόγω διαπραγματεύσεων.

5. Μέχρι την ολοκλήρωση των διαπραγματεύσεων, το άρθρο ΙΙ και οι παράγραφοι 1 και 2 του παραρτήματος σχετικά με τις εξαιρέσεις του άρθρου ΙΙ αναστέλλονται, όσον αφορά την εφαρμογή τους στον εν λόγω τομέα, και δεν είναι απαραίτητο να απαριθμούνται οι εξαιρέσεις από τη ρήτρα ΜΕΚ. Μετά την ολοκλήρωση των διαπραγματεύσεων, τα μέλη είναι ελεύθερα να βελτιώσουν, να τροποποιήσουν ή να αποσύρουν οποιεσδήποτε αναλήψεις υποχρεώσεων οι οποίες έχουν πραγματοποιηθεί στον εν λόγω τομέα κατά τη διάρκεια του Γύρους της Ουρουγουάης χωρίς να προσφέρουν αντισταθμιστικά ανταλλάγματα, κατά παρέκκλιση των διατάξεων του άρθρου ΧΧΙ της συμφωνίας. Ταυτόχρονα τα μέλη οριστικοποιούν τις θέσεις τους σχετικά με τις εξαιρέσεις από τη ρήτρα ΜΕΚ

στον εν λόγω τομέα, κατά παρέκκλιση των διατάξεων του παραρτήματος σχετικά με τις εξαιρέσεις του άρθρου ΙΙ. Εάν οι διαπραγματεύσεις δεν ολοκληρωθούν με επιτυχία, το συμβούλιο συναλλαγών στον τομέα των υπηρεσιών αποφασίζει εάν θα συνεχιστούν οι διαπραγματεύσεις σύμφωνα με την παρούσα εντολή.

6. Όλες οι αναλήψεις υποχρεώσεων που προκύπτουν από τις διαπραγματεύσεις, περιλαμβανομένης της ημερομηνίας έναρξης της ισχύος τους, εγγράφονται στους πίνακες που επισυνάπτονται στη Γενική Συμφωνία για τις συναλλαγές στον τομέα των υπηρεσιών και υπόκεινται σε όλες τις διατάξεις της συμφωνίας.

7. Εννοείται ότι, αρχίζοντας αμέσως και συνεχίζοντας μέχρι να καθοριστεί η ημερομηνία εφαρμογής δυνάμει της παραγράφου 4, οι συμμετέχοντες δεν εφαρμόζουν κανένα μέτρο που να επηρεάζει τις συναλλαγές στις υπηρεσίες θαλασσίων μεταφορών εκτός αν κάτι τέτοιο αποτελεί αντίδραση στα μέτρα που εφαρμόζονται από άλλες χώρες και γίνεται με σκοπό να διατηρηθεί ή να βελτιωθεί η ελευθερία παροχής υπηρεσιών θαλασσίων μεταφορών· σε καμία περίπτωση δεν επιτρέπεται να αποβλέπουν οι συμμετέχοντες σε βελτίωση της διαπργματευτικής τους θέσης ή επιρροής.

8. Η εφαρμογή της παραγράφου 7 υπόκειται στην εποπτεία της ΔΟΥΘΜ. Όλοι οι συμμετέχοντες μπορούν να θέσουν υπόψη της ΔΟΥΘΜ κάθε ενέργεια ή παράλειψη την οποία θεωρούν σχετική με την τήρηση της παραγράφου 7. Οι ανακοινώσεις αυτού του είδους θεωρείται ότι υποβάλλονται στην ΔΟΥΘΜ μόλις παραληφθούν από τη γραμματεία.

ΑΠΟΦΑΣΗ ΣΧΕΤΙΚΑ ΜΕ ΤΙΣ ΔΙΑΠΡΑΓΜΑΤΕΥΣΕΙΣ ΓΙΑ ΤΙΣ ΒΑΣΙΚΕΣ ΤΗΛΕΠΙΚΟΙΝΩΝΙΕΣ

Οι υπουργοί αποφασίζουν τα εξής:

1. Οι διαπραγματεύσεις διεξάγονται σε εθελοντική βάση με σκοπό τη σταδιακή απελευθέρωση των συναλλαγών στον τομέα των δικτύων μεταφοράς και των υπηρεσιών τηλεπικοινωνιών (οι οποίες καλούνται εφεξής "βασικές τηλεπικοινωνίες") στο πλαίσιο της Γενικής Συμφωνίας για τις συναλλαγές στον τομέα των υπηρεσιών.

2. Με την επιφύλαξη του αποτελέσματός τους, οι διαπραγματεύσεις έχουν σαφές πεδίο εφαρμογής, χωρίς να αποκλείεται κανένα είδος βασικών τηλεπικοινωνιών εκ των προτέρων.

3. Συστήνεται διαπραγματευτική ομάδα για τις βασικές τηλεπικοινωνίες (εφεξής καλούμενη η "ΔΟΒΤ") για να εκτελέσει την εν λόγω εντολή. Η ΔΟΒΤ υποβάλλει περιοδικές εκθέσεις σχετικά με την πρόοδο των εν λόγω διαπραγματεύσεων.

4. Οι διαπραγματεύσεις στη ΔΟΒΤ είναι ανοικτές για όλες τις κυβερνήσεις και τις Ευρωπαϊκές Κοινότητες που δηλώνουν την πρόθεσή τους να συμμετάσχουν. Μέχρι σήμερα, έχουν δηλώσει την πρόθεσή τους να συμμετάσχουν στις διαπραγματεύσεις τα ακόλουθα κράτη:

> Αυστραλία, Αυστρία, Καναδάς, Χιλή, Κύπρος, Ευρωπαϊκές Κοινότητες και τα κράτη μέλη τους, Φινλανδία, Χόνγκ-Κόνγκ, Ουγγαρία, Ιαπωνία, Κορέα, Μεξικό, Νέα Ζηλανδία, Νορβηγία, Σλοβακική Δημοκρατία, Σουηδία, Ελβετία, Τουρκία, Ηνωμένες Πολιτείες.

Περαιτέρω ανακοινώσεις πρόθεσης συμμετοχής απευθύνονται στον θεματοφύλακα της συμφωνίας για τον ΠΟΕ.

5. Η ΔΟΒΤ πραγματοποιεί την πρώτη διαπραγματευτική σύνοδό της το αργότερο την 16η Μαΐου 1994. Ολοκληρώνει τις εν λόγω διαπραγματεύσεις και υποβάλλει τελική έκθεση το αργότερο την 30ή Απριλίου 1996. Η τελική έκθεση της ΔΟΒΤ περιλαμβάνει ημερομηνία για την εφαρμογή των αποτελεσμάτων των εν λόγω διαπραγματεύσεων.

6. Όλες οι αναλήψεις υποχρεώσεων που προκύπτουν από τις διαπραγματεύσεις, περιλαμβανομένης της ημερομηνίας έναρξης της ισχύος τους, εγγράφονται στους πίνακες που επισυνάπτονται στη Γενική Συμφωνία για τις συναλλαγές στον τομέα των υπηρεσιών και υπόκεινται σε όλες τις διατάξεις της συμφωνίας.

7. Εννοείται ότι, αρχίζοντας αμέσως και συνεχίζοντας μέχρι να καθοριστεί η ημερομηνία εφαρμογής δυνάμει της παραγράφου 5, οι συμμετέχοντες δεν εφαρμόζουν κανένα μέτρο που επηρεάζει τις συναλλαγές στον τομέα των βασικών τηλεπικοινωνιών εις τρόπον ώστε να βελτιωθεί η διαπραγματευτική τους θέση και επιρροή. Εννοείται ότι η παρούσα διάταξη δεν εμποδίζει την εφαρμογή εμπορικών και κυβερνητικών διακανονισμών σχετικά με την παροχή υπηρεσιών βασικών τηλεπικοινωνιών.

8. Η εφαρμογή της παραγράφου 7 υπόκειται στην εποπτεία της ΔΟΒΤ. Όλοι οι συμμετέχοντες μπορούν να θέσουν υπόψη της ΔΟΒΤ κάθε ενέργεια ή παράλειψη την οποία θεωρούν σχετική με την τήρηση της παραγράφου 7. Οι κοινοποιήσεις αυτού του είδους θεωρείται ότι υποβάλλονται στην ΔΟΒΤ μόλις παραληφθούν από τη γραμματεία.

ΑΠΟΦΑΣΗ ΓΙΑ ΤΙΣ ΕΠΑΓΓΕΛΜΑΤΙΚΕΣ ΥΠΗΡΕΣΙΕΣ

Οι υπουργοί συνιστούν στο συμβούλιο συναλλαγών στον τομέα των υπηρεσιών να εγκρίνει κατά την πρώτη συνεδρίασή του την απόφαση που ορίζεται κατωτέρω.

Το συμβούλιο συναλλαγών στον τομέα των υπηρεσιών,

Αναγνωρίζοντας τις επιπτώσεις των κανονιστικών μέτρων σχετικά με τα επαγγελματικά προσόντα, τα τεχνικά πρότυπα και την χορήγηση αδειών, στην επέκταση των συναλλαγών στις επαγγελματικές υπηρεσίες,

Επιθυμώντας να θεσπίσουν πολυμερείς υποχρεώσεις προκειμένου να εξασφαλίσουν ότι, σε περίπτωση που πραγματοποιούνται συγκεκριμένες αναλήψεις υποχρεώσεων, τα κανονιστικά μέτρα αυτού του είδους δεν αποτελούν περιττά εμπόδια για την παροχή επαγγελματικών υπηρεσιών,

Αποφασίζει τα εξής:

1. Το πρόγραμμα εργασίας που προβλέπεται στο άρθρο VI, παράγραφος 4, σχετικά με τις εγχώριες ρυθμίσεις επιβάλλεται να τεθεί σε ισχύ αμέσως. Για το σκοπό αυτό, συστήνεται ομάδα εργασίας για τις επαγγελματικές υπηρεσίες προκειμένου να εξετάσει και να υποβάλει εκθέσεις, μαζί με συστάσεις, σχετικά με τις υποχρεώσεις που απαιτούνται ώστε να εξασφαλιστεί ότι τα μέτρα σχετικά με τις απαιτήσεις και τις διαδικασίες για τα προσόντα, τα τεχνικά πρότυπα και τις απαιτήσεις χορήγησης αδειών στον τομέα των επαγγελματικών υπηρεσιών δεν αποτελούν περιττά εμπόδια για το εμπόριο.

2. Κατά προτεραιότητα, η ομάδα εργασίας προβαίνει σε συστάσεις για την κατάρτιση πολυμερών υποχρεώσεων στον τομέα της λογιστικής, προκειμένου να υπάρξουν λειτουργικά αποτελέσματα από συγκεκριμένες αναλήψεις υποχρεώσεων. Κατά τη διατύπωση των συστάσεων αυτών, η ομάδα εργασίας επικεντρώνει το ενδιαφέρον της στα εξής:

(α) στην καθιέρωση πολυμερών υποχρεώσεων σχετικά με την πρόσβαση στην αγορά προκειμένου να εξασφαλιστεί ότι οι εγχώριες κανονιστικές απαιτήσεις: (i) βασίζονται σε αντικειμενικά και διαφανή κριτήρια, όπως τα προσόντα και η ικανότητα παροχής υπηρεσιών, (ii) δεν είναι περισσότερο επιβαρυντικές από όσο απαιτείται, ώστε να εξασφαλιστεί η ποιότητα των υπηρεσιών, με ταυτόχρονη διευκόλυνση της αποτελεσματικής ελευθέρωσης των λογιστικών υπηρεσιών·

(β) στη χρήση διεθνών προτύπων και, με τον τρόπο αυτό, στην ενθάρρυνση της συνεργασίας με τους σχετικούς διεθνείς οργανισμούς, όπως ορίζεται στο άρθρο VI, παραγράφος 5, στοιχείο β), προκειμένου να δοθεί πλήρης ισχύ στο άρθρο VII, παράγραφος 5·

(γ) στη διευκόλυνση της αποτελεσματικής εφαρμογής του άρθρου VI, παράγραφος 6 της συμφωνίας μέσω της κατάρτισης κατευθυντηρίων γραμμών για την αναγνώριση των προσόντων.

Κατά την κατάρτιση των εν λόγω υποχρεώσεων, η ομάδα εργασίας λαμβάνει υπόψη τη σημασία των κυβερνητικών και μη κυβερνητικών φορέων που ρυθμίζουν τις επαγγελματικές υπηρεσίες.

ΑΠΟΦΑΣΗ ΓΙΑ ΤΗΝ ΠΡΟΣΧΩΡΗΣΗ ΣΤΗ ΣΥΜΦΩΝΙΑ ΓΙΑ ΤΙΣ ΔΗΜΟΣΙΕΣ ΣΥΜΒΑΣΕΙΣ

1. Οι υπουργοί καλούν την επιτροπή δημοσίων συμβάσεων που έχει συσταθεί δυνάμει της συμφωνίας για τις δημόσιες συμβάσεις στο παράρτημα 4 στοιχείο (β) της συμφωνίας για την ίδρυση του Παγκοσμίου Οργανισμού Εμπορίου να αποσαφηνίσει ότι:

(α) το μέλος που ενδιαφέρεται για προσχώρηση σύμφωνα με το άρθρο XIV παράγραφος 2 της συμφωνίας για τις δημόσιες συμβάσεις θα πρέπει να εκδηλώσει το ενδιαφέρον του στο γενικό διευθυντή του ΠΟΕ, με την υποβολή σχετικών πληροφοριών, περιλαμβανομένης προσφοράς κάλυψης για ενσωμάτωση στο προσάρτημα I, όσον αφορά τις σχετικές διατάξεις της συμφωνίας, ιδίως το άρθρο I και, κατά περίπτωση, το άρθρο V·

(β) η ανακοίνωση διαβιβάζεται στα μέρη της συμφωνίας·

(γ) το μέλος που ενδιαφέρεται για προσχώρηση προβαίνει σε διαβουλεύσεις με τα μέρη σχετικά με τους όρους της προσχώρησής τους στη συμφωνία·

(δ) προκειμένου να διευκολυνθεί η προσχώρηση, η επιτροπή συνιστά ομάδα εργασίας εάν το ζητήσει το εν λόγω μέλος ή κάποιο από τα μέρη της συμφωνίας. Η ομάδα εργασίας εξετάζει: (i) την προσφορά κάλυψης που έχει υποβάλλει το αιτούν μέλος· και (ii) τις σχετικές πληροφορίες που αφορούν τις δυνατότητες εξαγωγών στις αγορές των μερών, λαμβανομένης υπόψη της υφιστάμενης και δυνητικής ικανότητας εξαγωγών του αιτούντος μέλους και των δυνατοτήτων εξαγωγών των μερών στην αγορά του αιτούντος μέλους·

(ε) με απόφαση της επιτροπής με την οποία συμφωνούνται οι όροι προσχώρησης περιλαμβανομένων των καταλόγων κάλυψης του προσχωρούντος μέλους, το προσχωρούν μέλος θά καταθέτει στο γενικό διευθυντή του ΠΟΕ πράξη προσχώρησης η οποία αναφέρει τούς όρους που έχουν συμφωνηθεί. οι κατάλογοι κάλυψης του προσχωρούντος μέλους στην αγγλική, γαλλική και ισπανική γλώσσα προσαρτούνται στη συμφωνία·

(στ) πριν από την ημερομηνία θέσης σε ισχύ της συμφωνίας για τον ΠΟΕ, οι ανωτέρω διαδικασίες εφαρμόζονται κατ' αναλογία στα συμβαλλόμενα μέρη της GATT του 1947 τα οποία ενδιαφέρονται για προσχώρηση και τα καθήκοντα που έχουν ανατεθεί στο γενικό διευθυντή του ΠΟΕ εκτελούνται από το γενικό διευθυντή των συμβαλλομένων μερών της GATT του 1947.

2. Σημειώνεται ότι οι αποφάσεις της επιτροπής λαμβάνονται σε συναινετική βάση. Σημειώνεται επίσης ότι η ρήτρα μη εφαρμογής του άρθρου XXIV παράγραφος 11 παρέχεται σε όλα τα μέρη.

ΑΠΟΦΑΣΗ ΓΙΑ ΤΗΝ ΕΦΑΡΜΟΓΗ ΚΑΙ ΤΗΝ ΕΠΑΝΕΞΕΤΑΣΗ ΤΟΥ ΜΝΗΜΟΝΙΟΥ ΣΥΜΦΩΝΙΑΣ ΓΙΑ ΤΟΥΣ ΚΑΝΟΝΕΣ ΚΑΙ ΤΙΣ ΔΙΑΔΙΚΑΣΙΕΣ ΠΟΥ ΔΙΕΠΟΥΝ ΤΗΝ ΕΠΙΛΥΣΗ ΔΙΑΦΟΡΩΝ

οι υπουργοί,

Υπενθυμίζοντας την απόφαση της 22ας Φεβρουαρίου 1994, ότι οι υφιστάμενοι κανόνες και οι διαδικασίες της GATT του 1947 στον τομέα της επίλυσης διαφορών παραμένουν σε ισχύ έως την ημερομηνία θέσης σε ισχύ της συμφωνίας για την ίδρυση του Παγκοσμίου Οργανισμού Εμπορίου,

Καλούν τα αρμόδια συμβούλια και επιτροπές να αποφασίσουν να συνεχίσουν τη λειτουργία τους με σκοπό να αντιμετωπίσουν όλες τις διαφορές για τις οποίες έχει γίνει αίτηση για διαβουλεύσεις πριν από αυτήν την ημερομηνία·

Καλούν την υπουργική συνδιάσκεψη να προβεί σε πλήρη επανεξέταση των κανόνων και των διαδικασιών της επίλυσης διαφορών στο πλαίσιο του Παγκοσμίου Οργανισμού Εμπορίου εντός τεσσάρων ετών μετά τη θέση σε ισχύ της συμφωνίας για την ίδρυση του Παγκοσμίου Οργανισμού Εμπορίου, και να αποφασίσει με την ευκαιρία της πρώτης συνεδριάσεώς της μετά την ολοκλήρωση της επανεξέτασης, εάν θα εξακολουθήσει να εφαρμόζει, ή θα τροποποιήσει ή καταργήσει αυτούς τους κανόνες και διαδικασίες επίλυσης διαφορών.

ΜΝΗΜΟΝΙΟ ΣΥΜΦΩΝΙΑΣ ΓΙΑ ΤΙΣ ΑΝΑΛΗΨΕΙΣ ΥΠΟΧΡΕΩΣΕΩΝ ΣΤΟΝ ΤΟΜΕΑ ΤΩΝ ΧΡΗΜΑΤΟΠΙΣΤΩΤΙΚΩΝ ΥΠΗΡΕΣΙΩΝ

Οι συμμετέχοντες στο Γύρο της Ουρουγουάης είχαν τη δυνατότητα να αναλάβουν συγκεκριμένες υποχρεώσεις σχετικά με τις χρηματοπιστωτικές υπηρεσίες δυνάμει της Γενικής Συμφωνίας Συναλλαγών στον τομέα των υπηρεσιών (εφεξής καλούμενης "συμφωνίας") βάσει εναλλακτικής προσέγγισης που καλύπτεται από τις διατάξεις του μέρους III της συμφωνίας. Συνεφωνήθη ότι η εν λόγω προσέγγιση θα μπορούσε να εφαρμοστεί με την επιφύλαξη του ακόλουθου μνημονίου συμφωνίας, ήτοι ότι:

(i) δεν έρχεται σε σύγκρουση με τις διατάξεις της συμφωνίας·

(ii) δεν αφαιρεί από τα μέλη το δικαίωμα να προγραμματίσουν τις δικές τους συγκεκριμένες αναλήψεις υποχρεώσεων σύμφωνα με την προσέγγιση δυνάμει του μέρους III της συμφωνίας·

(iii) οι συγκεκριμένες αναλήψεις υποχρεώσεων που προκύπτουν εφαρμόζονται με βάση τη ρήτρα του μάλλον ευνοουμένου κράτους·

(iv) δεν δημιουργείται καμία υπόθεση όσον αφορά το βαθμό απελευθέρωσης στον οποίο δεσμεύονται τα μέλη δυνάμει της συμφωνίας.

Τα ενδιαφερόμενα μέλη, βάσει των διαπραγματεύσεων, και με την επιφύλαξη, ενδεχομένως, των όρων και των χαρακτηριστικών, έχουν περιλάβει στον προγραμματισμό τους συγκεκριμένες αναλήψεις υποχρεώσεων σύμφωνα με την προσέγγιση που ορίζεται κατωτέρω.

Α. Αναστολή

Οι όροι, οι περιορισμοί και τα χαρακτηριστικά των αναλήψεων υποχρεώσεων που σημειώνονται κατωτέρω περιορίζονται στα υφιστάμενα μη σύμφωνα μέτρα.

Β. Πρόσβαση στην αγορά

Μονοπωλιακά δικαιώματα

1. Πέραν του άρθρου VIII της συμφωνίας, ισχύουν και τα ακόλουθα:

Κάθε μέλος περιλαμβάνει στον πίνακά του σχετικά με τις χρηματοπιστωτικές υπηρεσίες τα υφιστάμενα μονοπωλιακά δικαιώματα και προσπαθεί να τα καταργήσει ή να μειώσει το πεδίο εφαρμογής τους. Κατά παρέκκλιση της παραγράφου 1, στοιχείο (β) του παραρτήματος για τις χρηματοπιστωτικές υπηρεσίες, η εν λόγω παράγραφος ισχύει για τις δραστηριότητες που αναφέρονται στην παράγραφο 1, στοιχείο (β), σημείο (iii) του παραρτήματος.

Χρηματοπιστωτικές υπηρεσίες που παρέχονται σε δημόσιους φορείς

2. Κατά παρέκκλιση του άρθρου XIII της συμφωνίας, κάθε μέλος εξασφαλίζει ότι οι προμηθευτές χρηματοπιστωτικών υπηρεσιών κάθε άλλου μέλους που εδρεύει στην επικράτειά του τυγχάνουν μεταχείρισης σύμφωνα με τη ρήτρα του μάλλον ευνοουμένου κράτους και εθνικής μεταχείρισης όσον αφορά την αγορά ή την απόκτηση χρηματοπιστωτικών υπηρεσιών από δημόσιους φορείς του μέλους της επικρατείας του.

Διασυνοριακές συναλλαγές

3. Όλα τα μέλη επιτρέπουν σε προμηθευτές χρηματοπιστωτικών υπηρεσιών που δεν είναι μόνιμοι κάτοικοι να προμηθεύουν, ως κύριοι προμηθευτές με μεσάζοντα, ή ως μεσάζοντες, και με ειδικούς και γενικούς όρους που προσδίδουν εθνική μεταχείριση, τις ακόλουθες υπηρεσίες:

(α) ασφάλιση έναντι των κινδύνων που έχουν σχέση με:

(i) τις θαλάσσιες μεταφορές και την εμπορική αεροπορία και τις διαστημικές εκτοξεύσεις και φορτία (περιλαμβανομένων των δορυφόρων), η οποία καλύπτει το σύνολο ή τμήμα από τα ακόλουθα: τα μεταφερόμενα εμπορεύματα, το όχημα μεταφοράς των εμπορευμάτων και όλες τις υποχρεώσεις που προκύπτουν· και

(ii) τα εμπορεύματα υπό διεθνή διαμετακόμιση·

(β) αντασφάλιση και εκχώρηση αντασφάλισης και βοηθητικές υπηρεσίες ασφάλισης, όπως αναφέρονται στην παράγραφο 5, στοιχείο (α), σημείο (iv) του παραρτήματος·

(γ) παροχή και μεταφορά χρηματοπιστωτικών πληροφοριών και επεξεργασία χρηματοπιστωτικών δεδομένων, όπως αναφέρονται στην παράγραφο 5, στοιχείο (α), σημείο (xv) του παραρτήματος καθώς και συμβουλευτικές και άλλες βοηθητικές υπηρεσίες, εξαιρουμένης της μεσολάβησης, σχετικά με τις τραπεζικές και άλλες χρηματοπιστωτικές υπηρεσίες, όπως αναφέρονται στην παράγραφο 5, στοιχείο (α) σημείο (xvi) του παραρτήματος.

4. Κάθε μέλος επιτρέπει στους κατοίκους του να προμηθευτούν στο έδαφος οποιουδήποτε άλλου μέλους τις χρηματοπιστωτικές υπηρεσίες που αναφέρονται:

(α) στην παράγραφο 3 στοιχείο (α)·

(β) στην παράγραφο 3 στοιχείο (β)· και

(γ) στην παράγραφο 5, στοιχείο (α) σημεία (v) έως (xvi) του παραρτήματος

Εμπορική παρουσία

5. Κάθε μέλος παρέχει στους προμηθευτές χρηματοπιστωτικών υπηρεσιών οποιουδήποτε άλλου μέλους το δικαίωμα να συστήσουν ή να επεκτείνουν εντός του εδάφους του, ακόμα και μέσω αγοράς υφισταμένων επιχειρήσεων, εμπορική παρουσία.

6. Κάθε μέλος μπορεί να επιβάλει όρους, προϋποθέσεις και διαδικασίες για τη χορήγηση άδειας σύστασης και επέκτασης εμπορικής παρουσίας, στο βαθμό που δεν καταστρατηγείται η υποχρέωση του μέλους δυνάμει της παραγράφου 5 και εφόσον αυτές συμφωνούν με τις υπόλοιπες υποχρεώσεις της παρούσας συμφωνίας.

Νέες χρηματοπιστωτικές υπηρεσίες

7. Τα μέλη επιτρέπουν στους προμηθευτές χρηματοπιστωτικών υπηρεσιών οποιουδήποτε άλλου μέλους με έδρα εντός του εδάφους τους να παράσχουν εντός του εδάφους τους οποιαδήποτε νέα χρηματοπιστωτική υπηρεσία.

Μεταφορά και επεξεργασία πληροφοριών

8. Κανένα από τα μέλη δεν λαμβάνει μέτρα που εμποδίζουν τη μεταφορά πληροφοριών ή την επεξεργασία χρηματοπιστωτικών πληροφοριών, περιλαμβανομένης της μεταφοράς δεδομένων με ηλεκτρονικά μέσα, ή μέτρα τα οποία, με την επιφύλαξη των κανόνων εισαγωγής σύμφωνα με τις διεθνείς συμφωνίες, εμποδίζουν τη μεταφορά εξοπλισμού, στις περιπτώσεις όπου η μεταφορά πληροφοριών, η επεξεργασία χρηματοπιστωτικών πληροφοριών ή η μεταφορά εξοπλισμού είναι αναγκαία για την άσκηση της συνήθους επιχειρηματικής δραστηριότητας ενός προμηθευτού χρηματοπιστωτικών υπηρεσιών. Η παρούσα παράγραφος δεν περιορίζει κατ' ουδένα τρόπο το δικαίωμα των μελών να προστατεύσουν στοιχεία προσωπικού χαρακτήρα, το ιδιωτικό απόρρητο και τον εμπιστευτικό χαρακτήρα μεμονωμένων φακέλων και λογαριασμών καθόσον διάστημα το δικαίωμα αυτό δεν χρησιμοποιείται για την καταστρατήγηση των διατάξεων της συμφωνίας.

Προσωρινή είσοδος προσωπικού

9. (α) Κάθε μέλος επιτρέπει να εισέρχεται προσωρινά στο έδαφός του, το ακόλουθο προσωπικό προμηθευτού χρηματοπιστωτικών υπηρεσιών οποιουδήποτε άλλου μέλους, ο οποίος συστήνει ή έχει συστήσει εμπορική παρουσία στο έδαφος του μέλους:

(i) ανώτερο διοικητικό προσωπικό που κατέχει αποκλειστικές πληροφορίες, οι οποίες είναι ουσιαστικές για τη σύσταση, τον έλεγχο και τη λειτουργία των δραστηριοτήτων του προμηθευτού χρηματοπιστωτικών υπηρεσιών· και

(ii) ειδικό προσωπικό για τις εργασίες του προμηθευτού χρηματοπιστωτικών υπηρεσιών.

(β) Κάθε μέλος επιτρέπει, με την επιφύλαξη ύπαρξης ειδικευμένου προσωπικού στο έδαφός του, την προσωρινή είσοδο εντός του εδάφους του, του ακόλουθου προσωπικού που συνδέεται με την εμπορική παρουσία προμηθευτού χρηματοπιστωτικών υπηρεσιών οποιουδήποτε άλλου μέλους:

(i) ειδικών στις υπηρεσίες πληροφορικής, τις υπηρεσίες τηλεπικοινωνιών και λογιστικής του προμηθευτού χρηματοπιστωτικών υπηρεσιών· και

(ii) εμπειρογνωμόνων ασφαλίσεων και νομικών συμβούλων.

Μη διακριτικά μέτρα

10. Κάθε μέλος προσπαθεί να καταργήσει ή να περιορίσει οποιεσδήποτε ουσιαστικές αρνητικές επιπτώσεις στους προμηθευτές χρηματοπιστωτικών υπηρεσιών οποιουδήποτε άλλου μέλους των ακολούθων:

(α) μη διακριτικών μέτρων που εμποδίζουν τους προμηθευτές χρηματοπιστωτικών υπηρεσιών να παράσχουν στο έδαφος του μέλους, σε μορφή που έχει καθοριστεί από το μέλος, όλες τις χρηματοπιστωτικές υπηρεσίες που επιτρέπονται από το μέλος·

(β) μη διακριτικών μέτρων που εμποδίζουν την επέκταση των δραστηριοτήτων των προμηθευτών χρηματοπιστωτικών υπηρεσιών στο σύνολο του εδάφους του μέλους·

(γ) μέτρων ενός μέλους, στην περίπτωση που το μέλος αυτό εφαρμόζει τα ίδια μέτρα για την παροχή τόσο τραπεζικών όσο και ασφαλιστικών υπηρεσιών, και κάποιος προμηθευτής χρηματοπιστωτικών υπηρεσιών οποιουδήποτε άλλου μέλους επικεντρώνει τις δραστηριότητές του στην παροχή ασφαλιστικών υπηρεσιών· και

(δ) άλλων μέτρων τα οποία, παρόλο που είναι σύμφωνα με τις διατάξεις της παρούσας συμφωνίας, επηρεάζουν αρνητικά την ικανότητα των προμηθευτών χρηματοπιστωτικών υπηρεσιών οποιουδήποτε άλλου μέλους να λειτουργήσουν, να είναι ανταγωνιστικοί ή να εισέλθουν στην αγορά του μέλους·

υπό την προϋπόθεση ότι οποιαδήποτε ενέργεια που αναλαμβάνεται δυνάμει της παρούσας παραγράφου δεν αποτελεί αθέμιτη διάκριση έναντι των προμηθευτών χρηματοπιστωτικών υπηρεσιών του μέλους που αναλαμβάνει αυτή την ενέργεια.

11. Όσον αφορά τα μη διακριτικά μέτρα που αναφέρονται στην παράγραφο 10, στοιχεία (α) και (β), τα μέλη προσπαθούν να μην περιορίζουν ή να περιστέλλουν τον τρέχοντα βαθμό εμπορικών ευκαιριών ούτε τα ήδη υπάρχοντα οφέλη των προμηθευτών χρηματοπιστωτικών υπηρεσιών όλων των άλλων μελών, εκλαμβανομένων ως ομάδα στο έδαφος των μελών, υπό την προϋπόθεση ότι η εν λόγω δέσμευση δεν επιφέρει αθέμιτη διάκριση εις βάρος των προμηθευτών χρηματοπιστωτικών υπηρεσιών του μέλους που εφαρμόζει τέτοιου είδους μέτρα.

Γ. Εθνική μεταχείριση

1. Δυνάμει των ειδικών και γενικών όρων για την παροχή εθνικής μεταχείρισης, κάθε μέλος παρέχει στους προμηθευτές χρηματοπιστωτικών υπηρεσιών οποιουδήποτε άλλου μέλους που εδρεύει στο έδαφός του πρόσβαση στα συστήματα πληρωμών και εκκαθαρίσεων που λειτουργούν σε δημόσιους φορείς, και στις επίσημες πηγές χρηματοδότησης και αναχρηματοδότησης που υφίστανται κατά την κανονική διάρκεια της συνήθους επιχειρηματικής δραστηριότητας. Η παρούσα παράγραφος δεν έχει σκοπό να παράσχει πρόσβαση στις δυνατότητες δανεισμού εσχάτης ανάγκης του μέλους.

2. Όταν ένα μέλος απαιτεί από τους προμηθευτές χρηματοπιστωτικών υπηρεσιών οποιουδήποτε άλλου μέλους υπαγωγή ή συμμετοχή ή προσχώρηση σε οποιονδήποτε αυτενεργούντα ρυθμιστικό φορέα, χρηματιστήριο ή αγορά αξιών ή προθεσμιακών συμβολαίων, γραφεία συμψηφισμού, ή οποιοδήποτε άλλο οργανισμό ή ένωση, προκειμένου οι εν λόγω προμηθευτές να παράσχουν χρηματοπιστωτικές υπηρεσίες επί ίσοις όροις με τους προμηθευτές χρηματοπιστωτικών υπηρεσιών του μέλους ή σε περίπτωση που το μέλος παρέχει άμεσα ή έμμεσα στους εν λόγω φορείς, προνόμια και πλεονεκτήματα κατά την παροχή χρηματοπιστωτικών υπηρεσιών, το μέλος εξασφαλίζει ότι οι εν λόγω φορείς παρέχουν εθνική μεταχείριση στους προμηθευτές χρηματοπιστωτικών υπηρεσιών οποιουδήποτε άλλου μέλους που κατοικεί στο έδαφος του μέλους.

Δ. Ορισμοί

Για τους σκοπούς της παρούσας προσέγγισης:

1. Μη εγκατεστημένος προμηθευτής χρηματοπιστωτικών υπηρεσιών είναι ο προμηθευτής χρηματοπιστωτικών υπηρεσιών ενός μέλους, ο οποίος παρέχει χρηματοπιστωτικές υπηρεσίες στο έδαφος άλλου μέλους από κατάστημα που εδρεύει στο έδαφος άλλου μέλους, ανεξάρτητα από το εάν ο εν λόγω προμηθευτής χρηματοπιστωτικών υπηρεσιών έχει εμπορική παρουσία στο

έδαφος του μέλους στο οποίο παρέχονται οι χρηματοπιστωτικές υπηρεσίες.

2. Ως "εμπορική παρουσία" νοείται η επιχείρηση εντός του εδάφους ενός μέλους για την παροχή χρηματοπιστωτικών υπηρεσιών και περιλαμβάνει τις θυγατρικές εταιρείες πλήρους ή μερικής ιδιοκτησίας, τις κοινές επιχειρήσεις, τους συνεταιρισμούς, τις προσωπικές επιχειρήσεις, τις επιχειρήσεις δικαιόχρησης, τα παραρτήματα, τα πρακτορεία, τα γραφεία αντιπροσώπων ή άλλες οντότητες.

3. Νέες χρηματοπιστωτικές υπηρεσίες είναι οι υπηρεσίες χρηματοπιστωτικού χαρακτήρα, περιλαμβανομένων των υπηρεσιών που έχουν σχέση με υφιστάμενα και νέα προϊόντα ή με τον τρόπο παράδοσης ενός προϊόντος, οι οποίες δεν παρέχονται από κανέναν προμηθευτή χρηματοπιστωτικών υπηρεσιών στο έδαφος συγκεκριμένου μέλους, παρέχονται όμως στο έδαφος άλλου μέλους.

Άρθρο δεύτερο

Η ισχύς του παρόντος νόμου αρχίζει από τη δημοσίευσή του στην Εφημερίδα της Κυβερνήσεως και της Τελικής Πράξης, που περιλαμβάνει τα αποτελέσματα των πολυμερών εμπορικών διαπραγματεύσεων στο πλαίσιο του Γύρου Ουρουγουάης, που κυρώνεται από την 1η Ιανουαρίου 1995.

Παραγγέλλομε τη δημοσίευση του παρόντος στην Εφημερίδα της Κυβερνήσεως και την εκτέλεσή του ως νόμου του Κράτους.

Αθήνα, 4 Φεβρουαρίου 1995

Ο ΠΡΟΕΔΡΟΣ ΤΗΣ ΔΗΜΟΚΡΑΤΙΑΣ
ΚΩΝΣΤΑΝΤΙΝΟΣ Γ. ΚΑΡΑΜΑΝΛΗΣ

ΟΙ ΥΠΟΥΡΓΟΙ

ΕΞΩΤΕΡΙΚΩΝ
Κ. ΠΑΠΟΥΛΙΑΣ

ΕΘΝΙΚΗΣ ΟΙΚΟΝΟΜΙΑΣ
Γ. ΠΑΠΑΝΤΩΝΙΟΥ

ΟΙΚΟΝΟΜΙΚΩΝ
Α. ΠΑΠΑΔΟΠΟΥΛΟΣ

ΓΕΩΡΓΙΑΣ
Γ. ΜΩΡΑΪΤΗΣ

ΒΙΟΜΗΧΑΝΙΑΣ, ΕΝΕΡΓΕΙΑΣ ΚΑΙ ΤΕΧΝΟΛΟΓΙΑΣ ΚΑΙ ΕΜΠΟΡΙΟΥ
Κ. ΣΗΜΙΤΗΣ

Θεωρήθηκε και τέθηκε η Μεγάλη Σφραγίδα του Κράτους

Αθήνα, 6 Φεβρουαρίου 1995

Ο ΕΠΙ ΤΗΣ ΔΙΚΑΙΟΣΥΝΗΣ ΥΠΟΥΡΓΟΣ
Γ. ΚΟΥΒΕΛΑΚΗΣ

ΕΘΝΙΚΟ ΤΥΠΟΓΡΑΦΕΙΟ

Εκδίδει την ΕΦΗΜΕΡΙΔΑ ΤΗΣ ΚΥΒΕΡΝΗΣΕΩΣ από το 1833

Διεύθυνση	:	Καποδιστρίου 34	Οι Υπηρεσίες του **ΕΘΝΙΚΟΥ ΤΥΠΟΓΡΑΦΕΙΟΥ**
Ταχ. Κώδικας	:	104 32	λειτουργούν καθημερινά από **8.00'** έως **13.00'**
TELEX	:	22.3211 YPET GR	
FAX	:	5234312	

ΧΡΗΣΙΜΕΣ ΠΛΗΡΟΦΟΡΙΕΣ

* Πώληση ΦΕΚ όλων των Τευχών Σολωμού 51 τηλ.: 52.39.762
* ΒΙΒΛΙΟΘΗΚΗ: Σολωμού 51 τηλ.: 52.48.188
* Για φωτοαντίγραφα παλαιών τευχών στην οδό Σολωμού 51 τηλ.: 52.48.141
* Τμήμα πληροφόρησης: Για τα δημοσιεύματα των ΦΕΚ Σολωμού 51 τηλ.: 52.25.713 – 52.49.547

* Οδηγίες για δημοσιεύματα Ανωνύμων Εταιρειών και ΕΠΕ τηλ.: 52.48.785
Πληροφορίες για δημοσιεύματα Ανωνύμων Εταιρειών και ΕΠΕ τηλ.: 52.25.761

* Αποστολή ΦΕΚ στην επαρχία με καταβολή της αξίας του δια μέσου Δημοσίου Ταμείου Για πληροφορίες: τηλ.: 52.48.320

Τιμές κατά τεύχος της ΕΦΗΜΕΡΙΔΑΣ ΤΗΣ ΚΥΒΕΡΝΗΣΕΩΣ:

Κάθε τεύχος μέχρι 8 σελίδες δρχ. 100. Από 9 σελίδες μέχρι 16 δρχ. 150, από 17 έως 24 δρχ. 200

Από 25 σελίδες και πάνω η τιμή πώλησης κάθε φύλλου (8σέλιδου ή μέρους αυτού) αυξάνεται κατά 50 δρχ.

Μπορείτε να γίνετε συνδρομητής για όποιο τεύχος θέλετε. Θα σας αποστέλλεται με το Ταχυδρομείο.

ΕΤΗΣΙΕΣ ΣΥΝΔΡΟΜΕΣ

Κωδικός αριθ. κατάθεσης στο Δημόσιο Ταμείο 2531		Κωδικός αριθ. κατάθεσης στο Δημόσιο Ταμείο 3512
Η ετήσια συνδρομή είναι:		Ποσοστό 5% υπέρ του Ταμείου Αλληλοβοηθείας του Προσωπικού (ΤΑΠΕΤ)
α) Για το Τεύχος Α'	Δρχ. 20.000	Δρχ. 1.000
β) » » » Β'	» 40.000	» 2.000
γ) » » » Γ'	» 10.000	» 500
δ) » » » Δ'	» 40.000	» 2.000
ε) » » » Αναπτυξιακών Πράξεων	» 25.000	» 1.250
στ) » » » Ν.Π.Δ.Δ.	» 10.000	» 500
ζ) » » » ΠΑΡΑΡΤΗΜΑ	» 5.000	» 250
η) » » » Δελτ. Εμπ.& Βιομ. Ιδ.	» 10.000	» 500
θ) » » » Αν. Ειδικού Δικαστηρίου	» 3.000	» 150
ι) » » » Α.Ε. & Ε.Π.Ε.	» 210.000	» 10.500
ια) Για όλα τα Τεύχη εκτός ΤΑΕ-ΕΠΕ	» 110.000	» 5.500

Πληροφορίες: τηλ. 52.48.320

ΑΠΟ ΤΟ ΕΘΝΙΚΟ ΤΥΠΟΓΡΑΦΕΙΟ