

WORLD TRADE ORGANIZATION

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WORKING PARTY ON THE ACCESSION OF THE REPUBLIC OF PANAMA TO THE WORLD TRADE ORGANIZATION

DRAFT REPORT

1. At its meeting on 8 October 1991, the Council of Representatives established a Working Party to examine the application of the Government of Panama to accede to the General Agreement pursuant to Article XXXIII, and to submit to the Council recommendations which might include a draft Protocol of Accession. On 19 December 1995, the Government of Panama advised that it had decided to negotiate the terms of accession of Panama to the Agreement Establishing the World Trade Organization (hereinafter referred to as the "WTO Agreement") under Article XII of the Agreement. Pursuant to the decision of the General Council of 31 January 1995, the Working Party on the Accession of Panama to the GATT 1947 continued as a WTO Accession Working Party.

2. The Working Party met on 20 April 1994, 7 February and 10 July 1995, 5 March and [19 September] 1996. The Chairman of the Working Party is H.E. Mr. E. Tironi (Chile). The terms of reference of the Working Party were set out in document WT/L/37.

3. The Working Party had before it, to serve as a basis for its discussions, a Memorandum on the Foreign Trade Régime of Panama (document L/7228, and Add.1), and the questions submitted by Members on the Foreign Trade Régime of Panama together with the replies of the Panamanian Government thereto (documents L/7426 and Add.1-2, L/7624, WT/ACC/PAN/5). In addition, the representative of Panama made available the following documents:

The Constitution of the Republic of Panama;

The Import Tariff; a table of Panama's tariff structure correlating the Harmonized System with the CCCN (Customs Cooperation Council Nomenclature); a table of the new tariff as at 31 May 1994;

Cabinet Decree No. 20 of 26 July 1995 Amending the Import Tariff; Official Journal No. 22706 of 19 January 1995 containing Cabinet Decree No. 2 of 10 January 1995 Amending the Import Tariff;

Cabinet Decree No. 23 (2 October 1995) Amending the Import Tariff; and Cabinet Decree No. 24 (12 October 1995) Amending the Import Tariff and Enacting Other Measures;

The Fiscal Code of Panama, and a summary of the Draft Law amending certain articles of the Fiscal Code and eliminating the Consular Invoice;

Decree No. 33 of 3 May 1985 containing regulations under Chapter IV of Book I, Title I of the Fiscal Code, on public tendering, competitions, price requests and contracts with the Government;

Preliminary draft law setting out measures covering the regulation of and procedures for import licences, and a summary of the Draft Law on Regulation of Import Licensing Procedures;

Law No. 36 of 1 July 1995 amending provisions of the Tax Code relating to the documents that must accompany goods imported into Panama, customs services fees and the elimination of the consular invoice;

Draft Cabinet Decree establishing the system of valuation of goods for customs purposes;

Summary of the Draft Cabinet Decree on Valuation Procedures for Customs Purposes;

The Draft Law on Valuation;

Preliminary draft law on protection of animal health; a copy of the preliminary draft law on plant health; a summary of the Draft Law on Phytosanitary Measures, a copy of the Draft Law Establishing Sanitary Measures for the Purpose of Improving the Health Conditions of Animals, Humans and the Environment and Bestowing Special Powers on the Ministry of Agricultural Development; a summary of the Draft Law on Zoosanitary Measures; and a Draft Law Enacting Phytosanitary Protection Measures and Adopting Other Provisions;

A list of Sanitary Requirements for Agricultural Products, in document WT/ACC/PAN/17;

Decree No. 3 of 5 April 1978 creating the National Seed Committee, regulating production, processing and marketing of seeds;

Information concerning the régime on technical barriers to trade;

Law No. 28 of 20 June 1995 on the Universalization of Tax Incentives to Production, and a summary of that law;

Informal communication on domestic support and export subsidies in conformity with the Agreement on Agriculture; and details of the supports and incentives available to the Agricultural Sector in Panama in document WT/ACC/PAN/7/Add.1, together with an Agriculture country schedule;

Law on Defence of Competition, containing provisions governing anti-dumping, countervailing measures and safeguards, and abolishing price controls, and a summary of that Draft Law. Information on Industrial Subsidies (document WT/ACC/PAN/7), Information on Fiscal Exemptions Granted to Industry to the Working Party (document WT/ACC/PAN/7/Add.1);

Draft Law No. 92, abrogating the whole of Title VI and Title XXI of Book IV of the Tax Code and Cabinet Decrees No. 35 of 12 February 1970 and No. 22 of 1 February 1972 and other provisions, and establishing the Selective Consumption Tax on Aerated and Alcoholic Beverages and Cigarettes;

Law No. 41 of 13 July 1995 Approving the Paris Convention for the Protection of Industrial Property, of 20 March 1883, as revised at Brussels on 14 December 1900, at Washington on 2 June 1911, at

The Hague on 6 November 1925, at London on 2 June 1934, at Lisbon on 31 October 1958 and at Stockholm on 14 July 1967;

Law No. 35 of 10 May 1996 on Industrial Property and an index of its provisions in document WT/ACC/PAN/9;

Information on the remedies available to enforce intellectual property rights in Panama (documents WT/ACC/PAN/5 and 8);

Law No. 15 of 1994 approving the Law on Copyright and Neighbouring Rights;

Cabinet Decree No. 238 of 2 July 1970 reforming the Banking Regulations and creating the National Banking Commission; and

Laws 55 and 56 of 20 December 1984 regulating the conduct of insurance and reinsurance business.

The representative of Panama also submitted the text of the following Agreements:

Agreement between Panama and the United States of America;

Agreement on Free and Preferential Trade with Costa Rica;

Agreement on Free and Preferential Trade with Guatemala;

Agreement on Free and Preferential Trade with El Salvador;

Agreement on Free and Preferential Trade with Nicaragua ;

Agreement on Free and Preferential Trade with Honduras;

Agreement on Free and Preferential Trade with the Dominican Republic;

Partial-Scope Agreement with the United Mexican States within the Framework of the Latin American Integration Association (LAIA);

Caribbean Basin Initiative;

Enterprise for the Americas Initiative;

Trade Agreement between the Government of the Republic of Panama and the Government of the Union of the Soviet Socialist Republics (now the Commonwealth of Independent States, CIS);

Trade Agreement between the People's Republic of Bulgaria and the Republic of Panama;

Trade Agreement between the Republic of Panama and the People's Republic of Hungary;

Trade Agreement between the Government of the Republic of Panama and the Government of the People's Republic of Poland; and

Trade Agreement between the Government of the Republic of Panama and the Government of Romania.

General Statements

4. In his statements the representative of Panama stated that Panama was committed to being an active participant and contributor in the family of nations involved in international trade. The Government had spared no effort in promoting the development of the country through a process of socio-economic transformations. These transformations required a number of economic adjustments aimed at making the economy more open and efficient, as well as the alleviation of poverty and the modernization of the Panamanian State institutions. His Government had realized that the opening up of markets and the globalization of the Panamanian economy represented the only viable way of modernizing the country. Fortunately, the transformation of the economy was becoming a concrete reality. Panama had taken a number of difficult decisions, and was ready to carry out difficult reforms in spite of their economic and political impact which would obviously affect the productive branches of the economy as well as the social sector. Draft laws aimed at developing a free market economy in full conformity with WTO obligations had been prepared in response to the views expressed by members, and had been submitted to the Working Party. The drafts included legislation with respect to the application of import surcharges, the elimination of consular invoices, licensing, customs valuation, unfair international competition, such as anti-dumping and countervailing measures, safeguards, legislation eliminating the system of price regulation and export subsidies. In addition, draft laws regulating phytosanitary and zoosanitary measures and bringing the entire body of domestic legislation into line with the Agreement on the Application of Sanitary and Phytosanitary Measures had also been submitted. His Government was ready to do its utmost to ensure the smooth and rapid accession of Panama to the World Trade Organization.

5. In their general remarks, members of the Working Party welcomed Panama's initial application for accession to the General Agreement, and later on Panama's request for accession to the WTO. Members noted that Panama had undertaken a substantial process of economic and trade liberalisation aimed at improving the standard of living of the population, increasing employment opportunities and achieving diversification of the productive sectors. Although Panama had made significant progress in reforming the economy and the foreign trade régime, further work was necessary to bring Panama's trade régime into conformity with WTO obligations. Recalling the negative costs of protection, some members stressed that pursuing liberalization would be of economic benefit to Panama's future economic growth and development and to the well being of its consumers. These members also expressed support for an early conclusion of the proceedings of the Working Party. Some members recalled their strong regional ties with Panama and welcomed Panama's long lasting and earnest decision to be fully integrated into the multilateral trading system. Recalling the recent comprehensive economic reforms introduced

by Panama, some members stressed that this would facilitate the assumption of WTO obligations. Some members of the Working Party notified the intention to enter into bilateral market access negotiations with Panama. With reference to the possible membership of Panama in the World Trade Organization, some members stressed the need for comprehensive information concerning the WTO related issues and for the early commencement of negotiations concerning market access on goods including agriculture as well as services and TRIPS, etc. The information submitted by Panama in this respect is described hereunder in the corresponding sections of this report.

Foreign Trade Régime

6. The Working Party reviewed the foreign trade régime of Panama and the possible terms of a draft decision and Protocol of Accession to the WTO. The views expressed by the members of the Working Party are summarized below in paragraphs 7 to 115.

Economic Policies

7. The representative of Panama informed the Working Party that his country has no Central Bank and no restrictions on the movements of capitals. The United States dollar together with the national currency, the Balboa, are of legal tender in the Republic of Panama by virtue of a 1904 monetary agreement between the two countries. He also stated that Panama is a member of the International Monetary Fund since 1946. Regarding fiscal policies he stated that they were based on three main objectives: reduction of government expenses, through modernization of public institutions and privatization of public enterprises; restructuring and amortization of public debt; and more equitable and efficient tax collection.

Price controls

8. In response to members' questions concerning the Government's authority to impose price controls with regard to some 361 products which, inter alia, included vitamins, medicines and food products, including poultry, apples and grape juice, certain cereals, certain vegetable oils etc., the representative of Panama explained that the prices of a substantial number of products classified as essential had previously been subject to government control. Panama supplied a list, by HS tariff line, of all imports currently subject to price controls. Steps to eliminate these controls had been undertaken. In 1989 174 products and 2 types of services had been subject to control; by the end of 1995 price controls had been reduced to 36 products and 2 types of services. These are listed in Annex 1. Panama

provided information concerning the operations of the Office of Price Regulation which was subsequently replaced by the Office of Consumer Protection. The prices of the covered products had been fixed on the basis of an application from the producer or distributor of the good or service. Price controls, when applied to imported products are equally applied to domestic products. However, in some cases, price controls applied to domestic products are not always applied to imported products.

9. The representative of Panama supplied the text of the Law on Defence of Competition to the Working Party. He stated that the Law on Defence of Competition, enacted as Law No. 29 of 1 February 1996, provided for the abolition of most of the remaining price controls. The representative of Panama stated that the law did not completely eliminate all price controls. During a transitional period of five years, from 1996 to February 2001, the Government could regulate, on the same basis, the prices of domestic and imported products which were subject to an import tariff of greater than 40 per cent, or if the Government otherwise had cause to believe that a distributor or marketer of the product was engaging in anti-competitive behaviour constituting a threat to consumers and to free trade. At the end of that five year transitional period, the provision permitting the Government to impose price controls would expire. The representative of Panama said that the Government of Panama is trying to convert its economy into a market economy. In order to do that, reforms will take place during a transitional period in which the economy will not be centrally planned nor a market economy, requiring the Government to intervene on behalf of the consumer, every time anti-competitive behaviour arises from the possible distortions to the market economy. This might be the case for domestic goods when they are shielded from foreign competition through import tariffs equal or above 40 per cent. Some members noted that the effect of Article III of the GATT 1994 was to oblige WTO Members to apply price controls strictly in conformity with national treatment obligations and to be mindful of the need to take into account the interests of exporting Members. Some members of the Working Party said that price controls could prejudice the interests of members supplying imported products. The representative of Panama stated that no legislation in force nor planned legislation contravened the obligations contained in Article III of the GATT 1994.

10. The representative of Panama confirmed that price controls on products and services in Panama have been eliminated with the exception of those listed in Annex 1 and commits that these controls, and any that are introduced or reintroduced in the future, would be applied in a manner consistent with the requirements of the WTO Agreement, in particular Article III.9 of the GATT 1994. The Working Party took note of this commitment.

Framework of Foreign Trade Policies

11. The representative of Panama explained that regarding foreign trade, the political Constitution of the Republic of Panama empowered the Executive Branch of the Government to conduct all foreign relations of the Republic including trade matters. As for import tariff policies, the Constitution establishes that both the Executive and the Legislative Branches are responsible. The Judicial Branch is empowered to review under the Constitution and the Law all administrative acts of the Executive Branch, and any person affected by the administrative act is entitled to this recourse. The Judicial Branch is also empowered to review the constitutionality of any law adopted by the Legislative Branch and any citizen or resident of the Republic is entitled to this recourse.

Tariff nomenclature

12. Members of the Working Party enquired whether Panama applied the Harmonised System of import classification. The representative of Panama stated that on 15 July 1994 the Harmonized System had been fully implemented in Panama, and provided the Working Party with a copy of the new Harmonized Tariff.

Tariff régime

13. Members of the Working Party sought information from Panama on the tariff régime as a basis for subsequent tariff negotiations. Some members of the Working Party noted that since 1986 in pursuance of Law No. 3, Panama had put into effect a tariff reduction programme which had reduced ceiling duty rates to 60 per cent for industrial products and 90 per cent for agro-industrial products. Nonetheless, for some 48 tariff headings such as lentils, rice, pork, tomato juice, etc. import duties were equal to or higher than 90 per cent. These members asked Panama to update the information on the reduction of rates of duty. Noting that the authority of the Executive to alter duties, customs fees and other trade measures have been challenged in the courts, they requested information on the status of this challenge. These members stressed moreover that the Panamanian Executive would be expected to undertake to exercise this authority in conformity with WTO conditions. In addition, some members noted that some 20 per cent of Panama's imports were exempted from duties as inputs to domestic production and enquired whether Panama would maintain such programmes in effect after accession to the WTO. In response, the representative of Panama stated that, regarding the Executive's authority to alter duties, the Panamanian Supreme Court of Justice upheld the authority of the Executive to alter tariffs, and as for the exceptions of duties for inputs, Panama not only would maintain this

programme, but has recently approved Law No. 28 of 1995, that would allow all producers to import their inputs with a special tariff rate of 3 per cent ad valorem, if those inputs are not produced in the country. The programme is applied to imports of all countries. Panama made its customs tariff, as well as all subsequent revisions, available to members of the Working Party. In response to statements that the tariff system lacked transparency, the representative of Panama responded that the system was similar to that applied by certain WTO Members, but that Panama was willing to discuss any suggestions for future reform of the tariff.

14. In reply to questions from members of the Working Party, the representative of Panama stated that Panama applied a mixed (both specific and ad valorem) tariff system. The mixed tariffs were composed of two different types of tariff, one specific and one ad valorem. The specific tariff included an amount which represented an additional surcharge calculated as a percentage of the value of the merchandise. Once the amount of the ad valorem and the specific tariff (including its surcharge) were calculated, the rate applied was the tariff that produced the higher amount of tax. Some members stated that they considered that the amount of the surcharge on the specific rate of duty (which was 2.5, 3.5 or 7.5 per cent, depending on the product), was high and did not seem compatible with the GATT 1994. The representative of Panama stated that the amount of the surcharge formed part of the import tariff. His Government had no intention of removing the surcharge, which had been developed to fund a social housing programme.

15. In accordance with usual procedures, Panama entered into bilateral market access negotiations on goods with interested WTO members. In response to questions about how Panama intended to bind mixed duties which required choosing from two duty calculations and applying whichever amount was higher, the representative of Panama initially stated that Panama reserved the right to bind, in the market access schedule on goods, any of the types of duties in effect which had been negotiated with WTO members consistently with the GATT 1994. Later on he said that Panama would incorporate surcharges and bind import duties at single ad valorem rates. The Schedule of market access concessions on goods which reflects the result of those negotiations is reproduced in Part I of the Annex to Panama's Protocol of Accession to the WTO.

16. The representative of Panama stated that Panama would bind all duties and charges, other than the ordinary customs duties, listed in its goods schedule annexed to its Protocol of Accession under Article II.1(b) of the GATT 1994, at zero on all products. The Working Party took note of this commitment.

Other Fees and Charges for Services Rendered

17. The representative of Panama informed members of the Working Party that in addition to customs duty, several other charges were imposed. Stamp duties and fees related to the processing of import documents consisted of: (i) a stamp duty on each package, two cents (0.02 cts.) per package; (ii) a peace and social security stamp, twenty cents (0.20 cts.) on each customs declaration-assessment document; and, (iii) a revenue stamp, one dollar per copy of the customs declaration-assessment document. In addition, a Consular Administrative Costs Fee (TCAC) was applied. The representative of Panama stated that the two cents stamp duty on each package and the 20 cents peace and social security stamp were eliminated by Law No. 36 of 1995.

18. The representative of Panama noted that in addition to the charges specified in the preceding paragraph, imports of spirits and tobacco were subject to the following taxes:

- (a) Stamp duty for the anti-tuberculosis campaign; 0.06cts. to 0.21 cts. per litre
- (b) Domestic consumption stamps: these stamp duties were levied according to the amount of contents of the bottle or container (beer and some wines are exempted).
 - containers with a capacity of not more than 100 c.c.; stamp duty of 20 cents (0.20 cts.)
 - containers with a capacity of more than 100 c.c. but not more than 900 c.c.; stamp duty of 2.50 dollars (\$2.50)
 - containers with a capacity of more than 900 c.c. but not more than 1,800 c.c.; stamp duty of 3.50 dollars (\$3.50)
 - containers with a capacity of more than 1,800 c.c.; stamp duty of 4.50 dollars (\$4.50)

19. In connection with the stamp duty, some members considered that certain provisions concerning its application to liquors and cigarettes were discriminatory and contrary to the national treatment provision of the WTO, inter alia, Article III of GATT 1994. In response, the representative of Panama stated that the stamp duty for the anti-tuberculosis campaign and the domestic consumption stamps applied to spirits and tobacco had been eliminated by Law No. 45 of 1995.

20. In response to questions from some members of the Working Party, the representative of Panama stated that all importers of goods to Panama were required to submit a "consular invoice" when clearing

the goods. The consular invoice was a document prepared by the Panamanian Consulate in the country of export. The purpose of the requirement for a consular invoice was to certify the veracity of the commercial invoices and the description of the goods to be imported. In addition, the consular officials converted the value of the goods in the currency of export into Panamanian currency. If the consular officers determined that the value recorded on the invoice was not consistent with the currently prevailing price for the goods in the exporting country, the currently prevailing price in the country of export would be substituted.

21. The representative of Panama stated that a "consular administrative fee" was also payable, which varied depending on the f.o.b. value of the goods. He provided the Working Party with details of the amount of that fee. In response to questions concerning the compatibility of the consular administrative fee with the requirements of Article VIII, the representative of Panama stated that it considered that the fee represented the cost of the service provided by the Government of Panama. Following further questions and comments from members of the Working Party concerning the compatibility of the consular administrative fee with the requirements of Article VIII, the representative of Panama stated that the requirement of consular approval in the exporting country of forms and documentation required for importation of goods and the corresponding fee had been eliminated by Law No. 36 of 6 July 1995.

22. The representative of Panama confirmed that Panama had abolished consular fees and invoices and document certification requirements, as provided for in Law no. 36 of 6 July 1995, and would not reintroduce them. The Working Party took note of this commitment.

23. The representative of Panama also stated that prior to accession the customs service fee of \$70 for transactions over \$2000 would replace other customs fees and charges for services rendered and would be the only customs charges other than the customs duty applied to imports and would not be included in the base for calculation of the customs duty. He added that from the date of accession any application of fees and charges by Panama for services rendered for imports or exports would be in accordance with the relevant provisions of the WTO Agreements, in particular, Articles VIII and X of GATT 1994. The Working Party took note of these commitments.

Application of Internal Taxes

24. At the request of some members of the Working Party, the representative of Panama also provided details of the "ITBM" tax. That tax applied to the transfer of tangible property in Panama

by sale, exchange, payment, contribution, assignment or any other act, contract or agreement which involved the transferring of title in the goods, regardless of their origin, i.e., it also applied to domestic goods. In the case of sales, the tax was payable at the moment when the seller issued the invoice, even if delivery occurred later. He stated that in the case of imports, Article 1057(v) of the Fiscal Code provided that the taxable base of the tax was the c.i.f. value plus all the taxes, charges, levies, and customs duties that apply to the imported goods. If the c.i.f. value was not known, the value was determined by adding 15 per cent to the f.o.b. value. The ITBM tax on the transfer of personal property was also collected on domestic products. The transfer of property tax was applied to all imports when they entered the Panamanian customs territory. Since it was a tax on value added, once the importer sold the product, the importer collected 5 per cent (5%) of the selling price from the purchaser and remitted the difference between the price obtained from the purchaser and what was paid at the time of importation to the Treasury. In the case of spirits and tobacco, the ITBM is 10 per cent and is applied in the same manner to domestic and imported goods. Only in the case of soft drinks was the ITBM applied exclusively to imports, to balance the production tax collected on domestic soft drinks, which was also 5 per cent (5%). In cases other than imports and leases, the ITBM was applied when the deed or contract was signed, or when the goods were delivered by any of the means authorized by law. He further informed the Working Party that paragraphs 7 and 8 of Article 1057(v) of the Fiscal Code of Panama provided for certain exceptions from the ITBM tax. Paragraph 7 provided that the following were not subject to the ITBM tax:

- (a) Transfers of goods *mortis causa*, free of charge, or by deed between living persons already subject to inheritance and gift tax;
- (b) transfers in connection with marriage settlements, and contribution or separation of conjugal property;
- (c) expropriation and sales by the State, except those made by State industrial and commercial companies;
- (d) sale of property under any ordinary or special proceedings, including proceedings for the separation of property;
- (e) transfers of negotiable instruments and securities in general.

Paragraph 8 of Article 1057 (v) of the Fiscal Code provided that the following were exempt from the ITBM tax:

- (a) Sales of agricultural, poultry, cattle and other similar products, in their natural state or subjected only to a fattening, butchering or chilling process by the producers;

- (b) sales of fishermen's and hunters' products, in their natural state or subjected only to a chilling or freezing process by the producers;
- (c) exports and re-exports;
- (d) transfers made to the Panama Canal Commission or to the United States Armed Forces; as defined by the Panama Canal Treaty of 7 September 1977 and its related agreements;
- (e) transfers of tangible personal property in the free zones legally authorized in the Republic of Panama;
- (f) operations involving tangible personal property located in customs areas and warehouses where ownership was transferred through the endorsement of documents;
- (g) transfers of soft drinks already subject to the Soft Drinks Tax;
- (h) imports and transfers of oils, lubricants and related products specified in the following subdivisions of the Tariff: 313-01-01, 313-01-01A, 313-01-01B, 313-01-01C, 313-01-02, 313-01-03, 313-01-04, 313-01-05, 313-02-00, 313-03-01, 313-03-02, 313-03-99, 313-04-01, 313-04-02, 313-09-00, 314-01-00, 314-02-00;
- (i) imports and transfers of food products;
- (j) imports and transfers of medicinal and pharmaceutical products specified in Group 541 of the Tariff; and
- (k) imports and transfers of the following products:
 - 1. Manufactured fertilizers of tariff subdivisions: 271-01-00; 271-02-00; 271-03-00; 271-04-00; 561-01-00; 561-02-00; 561-03-00 and 561-09-00.
 - 2. Insecticides, fungicides, herbicides, disinfectants and the like, used in agriculture and animal husbandry, of tariff subdivisions: 599-02-01 and 599-02-02.
 - 3. All seeds used in agriculture.
 - 4. Barbed wire specified in tariff subdivision 699-05-01.
 - 5. Hand tools used in agriculture, such as machetes, grub hoes, hoes, shovel-hoes, and goads.

In the case of exemptions provided for in paragraphs (c) and (d), a tax credit was allowed on the amount of tax charged on domestic purchases and imports incorporated in the cost of the exports, re-exports or goods transferred to authorized agencies of the Government of the United States located in the Panama Canal Zone.

25. The representative of Panama stated that the ITBM would be retained after accession. In his Government's view the ITBM was a value added tax like those applied in most countries of the world,

and was consistent with WTO rules. Some members of the Working Party stated that they considered that some of the exemptions had the effect of applying the ITBM to imported goods and not to domestically produced goods, in particular the exemption for producers of agricultural products in a raw or slightly processed state. The representative of Panama stated that the exemption for agricultural products in a raw or slightly processed state was applied to both domestically produced and imported products. In response to a further question, the representative of Panama provided the Working Party with the HS Codes of the agricultural products which were subject to the ITBM, as well as a list, also by HS Code, of those products exempted from the ITBM.

26. The representative of Panama stated that, as of the date of accession, the only domestic tax or internal charge applied to imports would be the Tax on the Transfer of Tangible Personal Property (ITBM). He further stated that, from the date of accession, any application to imports of domestic taxes or other internal charges of any kind would be in accordance with the provisions of the WTO Agreements. The Working Party took note of this commitment.

Import Formalities Including Customs Valuation

27. In response to questions from members of the Working Party, Panama explained that it had taken steps to simplify some of the procedures for importation. In that respect, a new and simpler customs declaration form has been adopted and the necessary steps to obtain a commercial licence have been reduced. Commercial licences are necessary to engage in any economic activity, other than agriculture, and any person or corporation can obtain one provided that it complies with the following requirements: to fill the form with general information and, when requesting a licence for retail trade, to be Panamanian or, in the case of corporations, be owned by Panamanians.

28. The representative of Panama stated that, on average, customs formalities took three business days. Import formalities could be commenced prior to the actual arrival of the goods, provided that the original shipping documents were available. If the original documents could not be produced, the importer could clear the goods following lodgement of a declaration with a deposit of a bond in the amount of the tax payable, plus a surcharge of 5 per cent of the c.i.f. value of the merchandise.

29. As of 1 January 1995, and as part of its efforts to comply with WTO requirements, Panama adopted the Harmonized System of Customs Classification and it became a member of the World Customs Organization since the beginning of 1996. Currently Panama is studying the possibility of becoming

a member of the Kyoto Convention, the Rules of Origin Agreement, and the Harmonized System Convention.

30. Some members of the Working Party noted that in the case of some products, e.g. rice, maize, sorghum, poultry meat and steel, Panama applied fixed levels of valuation for imports. In addition, Panama had created a data base of reference prices for customs valuation appraisal of imports; if the import value declared by the importer was over the margins established in the data base, the importer was forced to support this price or to pay the duty over the adjusted value calculated according to the data base. In their view, this practice operated de facto if not de jure as a minimum valuation scheme. In accordance with the WTO Agreement on Customs Valuation, the use of a list of average import prices as a surrogate valuation method was not permissible. Panama was invited to submit for review by the Working Party a draft response to the questionnaire on customs valuation.

31. The representative of Panama explained that the taxable basis of imported merchandise was costs paid or payable prior to entry into the first Panamanian port of call. Following arrival at that first Panamanian port, all expenses for services performed within the national territory of Panama, such as insurance, were excluded from the base value in order to avoid double taxation of the goods.

32. In response to questions from some members of the Working Party, the representative of Panama said that Panama had prepared a draft law on Customs Valuation which was in conformity with the Agreement on Customs Valuation. The draft of that law was supplied to WTO Members in document WT/ACC/PAN/5. In response to concerns raised by some Working Party members in relation to Panama's system of reference prices, the representative of Panama explained that although Panama had previously used a system of reference prices, the Draft Law on Customs Valuation would eliminate that system of valuation.

33. Concerning the importation of motor vehicles, the representative of Panama noted that at the time of entry, the declared price for the motor vehicle was checked against the factory price list covering the precise specification of motor vehicle imported. That price list was supplied to Customs by the vehicle importer. In the event that the declared price was significantly different from the declared value, the value appearing on the factory price list was used. Imports of used motor vehicles were valued and taxed as if they were new, although vehicles more than three years old could be depreciated by specified amounts. The base price used as the basis for the valuation of the used motor vehicle was derived from industry publications.

34. With reference to customs practices and procedures, the representative of Panama said that his Government would apply customs practices and procedures in accordance with the relevant WTO provisions including those of Articles VII, VIII and X of the GATT 1994 from the date of its accession. By that date, Panama would amend any provision of law or administrative regulation that provided for practices inconsistent with the above-mentioned provisions. He further stated that from the date of accession the use of minimum import prices would be eliminated and, that in accordance with the WTO Agreements on Agriculture and Implementation of Article VII of the GATT 1994, such measures would not be reintroduced. The Working Party took note of these commitments.

35. The representative of Panama stated that by July 1996, his Government would enact a decree law on customs valuation that would be in full conformity with the WTO Agreement on the Implementation of Article VII of the GATT 1994, and that that law would come into effect by 1 January 1997. Panama would not require recourse to any additional transitional period for implementation of the Agreement. The Working Party took note of this commitment.

36. The representative of Panama said that should the services of a preshipment inspection firm be used to assist Panama in the implementation of its customs procedures, the Government of Panama would ensure that the operations of such firms were consistent with the relevant WTO Agreements, in particular, on Preshipment Inspection and Customs Valuation. The Working Party took note of this commitment.

Non-tariff measures

37. Some members of the Working Party welcomed the removal of products from the list of those subject to quantitative protection a process which Panama had initiated unilaterally. They requested that Panama submit a chart describing the universe of remaining quotas, import licensing or permit requirements and authorizations applied to imports with their specific justification in terms of WTO, indicating also if permits were granted on an automatic or discretionary basis. These members noted that quota levels were not generally announced and that for some products the amount of local production that an importer had purchased conferred eligibility on a request for a quota. In their view, these practices appeared to be inconsistent with Articles III, X and XI of GATT 1994. In general, the WTO favoured the application of price based measures instead of quantitative restrictions for protection. Any remaining restrictions, or those applied by Panama during a scheduled period of elimination, should be published at a central point established for information as provided in the Agreement on Import

Licensing Procedures. The provisions of other WTO Agreements, such as the Agreement on Safeguards, should also be observed.

38. In response to questions from members of the Working Party, the representative of Panama stated that Panama had previously applied import quotas to imports of, *inter alia*, potatoes, onions, beans (Vigna), kidney beans, lentils, vetches, peas, dwarf beans, maize, sorghum, pork and poultry meat. Those import quotas had been abolished through the following decrees: Decree No. 51 of 22 September 1993 (amended by Decree No. 61 of 27 October 1993); Decree No. 55 of 13 October 1993; and Decree No. 56 of 13 October 1993 (amended by Decree No. 61 of 27 October 1993, in turn amended by Decree No. 69 of 24 December 1993). The Representative of Panama stated that the remaining import quotas on agricultural products were currently administered by the Ministry of Agricultural Development, the Controller General and the Ministry of Finance and the Treasury. The representative of Panama supplied the Working Party with Information on Import Licensing Procedures, including a list of items by tariff line that were subject to non-tariff measures in documents WT/ACC/PAN/5 and 6.

39. In response to further questions, the representative of Panama provided more detailed information on the system of import quotas and bans. In document WT/ACC/PAN/8, the representative of Panama supplied the Working Party with a current list, by current and HS classification, of all imports no longer subject to Quotas and Prior Licensing. The representative of Panama reported that import quotas and bans, prior authorizations or permits and other quantitative restrictions were abolished for, *inter alia*, kidney beans, maize, sorghum, and pork and poultry meat by a series of decrees in late 1993. The representative of Panama also stated that the remaining products under quantitative restriction were: quotas on dairy products, fats and oils, sugar, yeast, fishmeal, and salt; licensing restrictions on animal fats, certain vegetables, and preparations for food processing; and reference prices on poultry, maize, rice, sorghum, corn meal, and steel reinforcing bars. He added that his Government did not, in general, publish the quota levels for imports restricted by such measures. He acknowledged that this was not consistent with Articles X.1 and XI.2 of the GATT 1994 and were not justified by Article XIX and the Agreement on Safeguards, nor with the WTO Agreement on Import Licensing Procedures, which require that quotas be published indicating the total quantity and value permitted for importation during a specified period. Import authorizations were granted on a discretionary basis only if there are no domestic substitutes available. The representative of Panama also stated that tariff rate quotas would be administered on a case-by-case basis, giving preference to a public bidding process when possible. The representative of Panama noted that his Government had supplied comprehensive information to the Working Party concerning its import licensing régime in document WT/ACC/PAN/6.

40. In light of members' questions and comments, the representative of Panama made available to members of the Working Party a draft law revising the import licensing régime in Panama. Following members' further comments on that draft law, the representative of Panama informed members of the Working Party that the draft law had been revised to take account of members' comments, and the requirements of the Agreement on Import Licensing. The draft law would simplify the procedure for obtaining licences and would eliminate any discrimination arising from their application.

41. The representative of Panama stated that from the date of accession to the WTO, trade in goods including agricultural products would be administered in accordance with WTO obligations, including the Agreement on Import Licensing Procedures. As of its date of accession to the WTO, Panama would eliminate all quotas, restrictive import permit requirements, bans and reference prices, except as expressly permitted under the WTO Agreement. All unnecessary permit requirements would be eliminated. Panama would not seek a delay in the application of Article 2 of the Agreement on Import Licensing. The Working Party took note of these commitments.

42. The representative of Panama confirmed that, from the date of accession, the authority of his Government to suspend imports and exports or to apply licensing requirements that could be used to suspend, ban, or otherwise restrict the quantity of trade would be applied in conformity with the requirements of the WTO, in particular Articles XI, XIII, XVIII, XIX, XX, and XXI of the GATT 1994, and the Multilateral Trade Agreements on Agriculture, Sanitary and Phytosanitary Measures, Import Licensing Procedures, Safeguards and Technical Barriers to Trade, and that his Government would eliminate from the date of its accession, non-tariff import measures, including bans, quotas, permits, prior authorization requirements and licences that could not be justified specifically under WTO provisions. In particular, Panama would apply no less favourable controls, criteria and rules regarding technical regulations, standards certification and labelling requirements to imported and domestic goods, and would not use such regulations to restrict imports unnecessarily. Panama would ensure that its technical regulations, standards, certification and labelling requirements were not applied to imports in an arbitrary manner, in a way that discriminated between supplier countries where the same conditions apply or as a disguised restriction on international trade, in accordance with WTO provisions. Panama would also ensure that from the date of its accession its criteria for granting prior authorization or for securing required certification or "sanitary registration" for imported products would be published and made available to traders, and would be administered in a transparent, expeditious and nondiscriminatory manner. Panama would be willing to consult with WTO Members concerning the effect of these requirements on WTO Members trade with a view to resolving specific problems. The Working Party took note of these commitments.

Agreement on Technical Barriers to Trade

43. In response to requests for information from members of the Working Party concerning technical barriers to trade in Panama, the representative of Panama stated that the following legislation regulated technical and industrial standards: Decree 282 of 13 August 1970; Law 2 of the 11 February 1982, Creating and assigning functions to the Dirección General de Normas y Tecnología Industrial (the Directorate-General for Industrial Standards and Technology); and Decree 63 of 4 May 1971, To approve the regulations implementing Cabinet Decree 283 of 13 August 1970, which established the Comisión Panameña de Normas Industriales y Técnicas (COPANIT) (Panamanian Commission for Industrial and Technical Standards). Decree 63 determined the powers and functions of the Panamanian Commission for Industrial and Technical Standards (COPANIT) which was responsible for studying and recommending technical standards and establishing the general system for technical standardization practices.

44. He explained that the procedure for amending existing regulations consisted of three phases: the Preparation of the draft; study of the draft; and the public discussion of the draft. Once the draft had been approved it went through a preliminary draft stage which consisted of the publication of an announcement in a local newspaper, setting a time-limit of 60 days for comments on the document (Article 6 of Executive Decree No. 63 of 4 May 1971). If as a result of comments it proved necessary to draft a second proposal, that must be published for public inspection for a period of 30 days. Once comments were received the preliminary draft was submitted to the plenary of the Panamanian Commission for Industrial and Technical Standards (COPANIT) for approval and ratification by the Ministry of Trade and Industry. Thereafter the document was published in the Boletín de la Propiedad Industrial (Industrial Property Bulletin) of the Ministry of Trade and Industry. Once the standard had been approved and published in the Industrial Property Bulletin, the Directorate-General for Industrial Standards and Technology sent a copy to all national entities and international standardization bodies (Article 7 of Executive Decree No. 63 of 4 May 1971). Panama supplied detailed information concerning its régime on Technical Barriers to Trade in document WT/SPEC/2.

45. In response to comments from members of the Working Party, the representative of Panama stated that his Government had joined the International Organization for Standardization (ISO). He added that his Government was drafting new provisions in order to adapt the relevant legislation and make it consistent with the requirements of the Agreement on Technical Barriers to Trade, when Panama becomes a Member of the WTO.

46. Specific functions under the Agreement on Technical Barriers to Trade were carried out through the Directorate-General for Industrial and Technical Standards (COPANIT). COPANIT was a member of the Pan-American Standards Commission, an international standardization and certification body and a member of the International Organization for Standardization (ISO). The system was thereby harmonized with international systems. COPANIT worked in close communication with the Ministry of Trade and Industry, an institution of the Central Government. The Commission had the authority to undertake its activities, including inspections of institutions, at national and local levels.

47. The representative of Panama stated that upon accession to the WTO, Panama would comply with all the provisions of the Agreement on Technical Barriers to Trade without recourse to any transitional arrangements. The Working Party took note of this commitment.

Agreement on Sanitary and Phytosanitary Measures

48. A member of the Working Party noted that Section I of Decree No. 57 (2 July 1956) established the basis of Panama's protection in the area of sanitary and phytosanitary measures. Law No. 7 of 30 March 1993 had expanded the Government's protective authority. The information available to this member demonstrated that the sanitary regulations established in Law No. 7 applied only to poultry parts and not to other poultry products and that these requirements appeared to be applicable exclusively to imports and not to competing domestic poultry production. Moreover, the sanitary requirements with regard to poultry appeared to exceed the requirements of the International Organisation of Epizootics (OIE) and, in some cases, imposed standards impossible to meet. As every agricultural product which entered Panama was subject to either a sanitary or phytosanitary certificate, the additional precautions seemed redundant. In the view of this member, these requirements were inconsistent with Articles XI and XX of the GATT 1994 and the provisions of the Agreement on SPS. Panama should repeal these provisions and establish WTO-consistent sanitary requirements for poultry products. Some members of the Working Party also noted that Panama should provide assurances that current protective practices would be reformed to comply with WTO norms. In particular, these members noted that some of the draft laws provided to the Working Party did not appear to reflect the requirements of the Agreement on Sanitary and Phytosanitary Measures and the principle of equivalency. Under the SPS Agreement, an importing country is obliged to accept the SPS measures of another country as equivalent if the exporting country objectively demonstrates that its measures achieve the importing country's level of protection. The draft laws also included public health issues in the area of additives, maximum residue levels, etc. which were not plant and/or animal health issues.

49. The representative of Panama replied that Panama was free of disease in the poultry sector. In order to maintain high health standards, the Ministries of Agricultural Development and Health had qualified veterinary doctors carry out regular field inspections and inspections of processing plants. The sanitary regulations in effect with regard to imports were aimed at preventing the introduction into Panama of exotic diseases or pests harmful to human or animal health and had no protectionist aim or design. Not all imports of agricultural products were subject to phytosanitary certificates. The representative of Panama provided the Working Party with a list of the sanitary requirement for imports of agricultural products in document WT/ACC/PAN/17. Imports of agricultural products in a natural state required this certificate but, except in a few cases, processed agricultural products did not require such a certificate. With regard to the sanitary certificate, he said that all products for human consumption, both domestically produced and imported, must have a sanitary register issued by the Ministry of Health. This was nothing more than a customs health control measure and the certificate could be obtained rapidly. Recently prepared draft laws had, *inter alia*, reflected the principle of equivalency in Article 19 of the Draft Law on Animal Health, Title II, General Provisions; and Article 11 of the Draft Law on Plant Health, Title II, Chapter II, Principles and Definitions. The representative of Panama explained that those laws set the criteria for and empowered the Ministries to issue regulations on sanitary and phytosanitary matters. Following preparation of the draft regulations, a National Consultative Regulatory Committee would examine the draft regulations, the regulations would be published in the Official Gazette, and the regulations would become law thereafter. Some members stated that the WTO Agreement on Sanitary and Phytosanitary Measures required that at least sixty days prior to any modification of such a law, a notification be provided to the WTO. The representative of Panama stated that Panama was aware of the requirement to notify any such legislative change at least sixty days prior to its entry into force. The laws would apply to all imports following Panama's entry into the WTO.

50. In reply to further questions, the representative of Panama stated that in the case of a decision that a product was not acceptable, all natural or legal persons could lodge an administrative appeal to the decision maker and following that to the Minister for Agricultural Development. Concerning diseases subject to compulsory notification, Article 4 of the Law on Animal Health provided that all Organisation Internationale des Epizooties (OIE) Classes A and B diseases were required to be notified. In addition, the Ministry of Agricultural Development retained the power to require other diseases to be notified. In response to further questions and comments from members of the Working Party indicating that they considered certain aspects of Panama's régime on Sanitary and Phytosanitary Measures to be contrary to provisions of the Agreement on Sanitary and Phytosanitary Measures, the representative of Panama made available to members of the Working Party two draft laws modifying

Panama's régime on Sanitary and Phytosanitary Measures. Following further comments from members of the Working Party, the representative of Panama indicated that the draft laws had been modified to take account of members' concerns. He further indicated that those draft laws were before the National Assembly for approval.

51. The representative of Panama stated that from the date of accession to the WTO, Panama would apply all its sanitary requirements consistently with the requirements of the WTO Agreements on Sanitary and Phytosanitary Measures and Import Licensing Procedures without recourse to any transitional arrangements. In particular, he stated that if a decision was taken to require notification of diseases other than those listed in Organisation Internationale des Epizooties (OIE) Classes A and B, any such decision would be taken in conformity with the requirements of the Agreement on Sanitary and Phytosanitary Measures. He also stated that Panama will allow a reasonable interval between the publication of the sanitary or phytosanitary regulation and its entry into force in order to allow time for producers in exporting Members, to adapt to the new requirements. The Working Party took note of these commitments.

Agreements on Agriculture and on Subsidies and Countervailing Measures

52. Regarding incentives for the agricultural sector, the representative of Panama stated that total domestic supports to the agriculture sector were very low in absolute terms - less than \$9 million per annum. The aid provided consisted of the following elements: (i) preferential tariffs for installation and consumption of electricity used in farming activities (a reduction of 30 per cent on the market rate); (ii) an income tax deduction of 30 per cent on investments in livestock, fisheries and agro-industrial activities, with a maximum deduction of 40 per cent of taxable income in the tax period prior to the investment; (iii) exemption from tax on profits derived from timber plantations planted within the last seven years; (iv) exemption from tax on income of less than \$100,000 per annum derived from agricultural or livestock production; (v) a deduction of a percentage of the capital invested in farming activity when farm incomes exceed \$100,000 per annum (the deduction being limited to the average rate of interest for fixed term deposits plus three per cent of that average); and (vi) an exemption from payment of property tax on farming estates with a land registry value of less than \$100,000. The representative of Panama also indicated that agricultural producers had access to credit at preferential interest rates and to an export subsidy in the form of a tax allowance certificate (CAT) that could be used to pay taxes to an amount equivalent to 20 per cent of the national value-added of exported goods. The representative of Panama supplied the Working Party with an informal communication on domestic support and export subsidies based on the model of justification of the Agreement on Agriculture

including details of the supports and incentives available to the agricultural sector in Panama in document WT/ACC/PAN/7/Add.1.

53. Regarding export subsidies, the representative of Panama stated that because of the nature of the CAT programme, it is not possible to provide for detailed commitments on the reduction of amounts of the subsidies and volume of agricultural products benefitting from such subsidies during the implementation period as compared to the base period. However, Panama would reduce the base in which the CAT subsidy is calculated from 20 per cent to 15 per cent of the national value added by 1 January 2001, and would terminate the CAT programme on 31 December 2002. This commitment is reflected in the relevant column of the supporting tables and document reference of Part IV of the agricultural country schedule. The agricultural country schedule of Panama is reproduced in Part I - Goods of the Annex to the Protocol of Accession of Panama.

54. With reference to incentives for industry, the representative of Panama stated that his Government had granted specific privileges by means of special contracts to certain investors whose activities required the use of large areas of land. Those areas of land had ordinarily been granted under a concession system. Existing arrangements included the mineral resources exploration and exploitation contracts regulated by Decree Law No. 23 of 22 August 1963, the Contract between the State and the Refinery of Panama under Law No. 31 of 31 December 1992 concerning the regulation of the refining of crude petroleum and the Contract between the State and Vidrios Panameños S.A. under Law No. 43 of 17 November 1977 for the manufacture of glass containers.

55. The representative of Panama added that those contracts granted exemptions from direct and indirect taxes and set out the rights and duties of the enterprises in connection with their activities. The contracts for the exploitation of mineral resources were valid for varying periods, depending on the size of the project. By way of example the representative of Panama indicated that the contract for the production of glass containers would expire in 1998, whereas the refinery contract was operative for 20 years as from 30 September 1992.

56. Following further questions from members of the Working Party, the representative of Panama stated that in response to the questions raised the laws on industrial incentives had been substantially reformed. Law No. 3 of March 1986 (dealing with incentives for small and medium-sized enterprises) had been superseded by Law No. 28 of 20 June 1995, copies of which were made available to members of the Working Party. Law No. 28 of 20 June 1995 provided that the benefits accruing to enterprises

registered under the earlier law would expire 15 years after registration. Law No. 28 of 20 June 1995 also provided that no further registrations for participation in the scheme would be accepted.

57. The representative of Panama also explained that Law No. 3 of 1986 had provided that all manufacturers registered in the Official Industry Registry could take advantage of a tariff reduction for imports used in manufacturing. If the same type of goods were not manufactured in Panama, eligible manufacturers could, upon request, import those goods at the tariff rate of 3 per cent of their c.i.f. value. The law also established income tax and land tax exemptions for those manufacturers that dedicated their production to exports. In addition, exporters of non-traditional products were eligible to receive discounts on purchases of electricity and a Tax Credit Certificate. In response to questions from members of the Working Party, the representative of Panama stated that Panama considered that these incentives were compatible with the GATT 1994, and the Agreement on Subsidies and Countervailing Measures, since those incentives were granted in order to improve Panama's competitiveness, growth and economic development. In addition, those measures did not cause serious prejudice to the trade or production of any WTO Member. In Panama's case, a minimal number of exports benefitted from the incentives and the measures had no impact on world trade, and thus Article XVI was not violated. The representative of Panama provided the Working Party with an Informal Communication on Industrial Subsidies including a notification of Fiscal Exemptions Granted to Industry to the Working Party in document WT/ACC/PAN/7/Add.1.

58. On the subject of export incentives, in response to questions from members of the Working Party, the representative of Panama stated that agricultural exports were exempted from income tax on income derived from the exported goods, and in the case of a non-traditional agricultural product, a Tax Credit Certificate was granted. He also provided copies of the laws that provided export incentives. Some members of the Working Party expressed concern that the rebate of direct taxation was inconsistent with Article XVI of the GATT 1994 and the Agreement on Subsidies and Countervailing Measures. The representative of Panama replied that the incentive laws were not inconsistent with the GATT 1994 nor the Agreement on Subsidies and Countervailing Measures because of Panama's status as a developing country. The representative of Panama provided further information in relation to Panama's policy of incentives in relation to agricultural and industrial products in document WT/ACC/PAN/7/Add.1, in order to facilitate the consideration of the requirements provided for in the WTO Agreement on Subsidies and Countervailing Measures.

59. The representative of Panama further stated that Panama's industrial policy encouraged industrial development by granting tax exemptions which were generally applicable. Direct assistance in the

form of payments to producers, financial assistance to specific sectors and other similar measures were not applied. He said that incentives for industrial activities including small and medium-sized enterprises were provided by means of Law No. 3 of 1986. That law was designed to encourage small and medium-sized enterprises in their industrial and assembly activities. A régime of tax exemptions existed for enterprises producing goods for the domestic market or for export. Enterprises wishing to take advantage of the exemption were required to be entered in the Official Industry Register of the Ministry of Trade and Industry before they could utilise the exemptions. Enterprises that geared industrial production to the domestic market received:

- preferential treatment in the payment of import duties on raw materials, semi-finished or intermediate products, parts for machines and equipment, containers, packing and other imported inputs. They were required to pay only 3 per cent of the c.i.f. value of the imported inputs, in addition to the Tax on the Transfer of Tangible Personal Property (ITBM);
- an exemption from income tax on net profits reinvested to expand production capacity or to produce new articles. Those enterprises also came under a special régime permitting the carry over of losses for income tax purposes, and a special depreciation calculation;
- an exemption from property tax for 10 years on land, structures and installations intended for manufacturing, full exemption from payment of income on profits from sales on the domestic market for the enterprise's first five years of production, and a 50 per cent exemption for the subsequent three years. Those exemptions were applied to enterprises in the regions specified in the law.

60. The representative of Panama also stated that under Law No.3 of 1986 enterprises wholly engaged in the production of exports received:

- full exemption from taxes on introduction, contributions, and customs duties, fees and charges, along with the ITBM on imports of machinery, equipment and parts for use in the production process;
- credit for duties or charges used in producing a product;
- full exemption from income tax on profits, with the exception of mining industries or those using the country's natural resources;

- full exemption from export taxes;
- full exemption from sales tax;
- full exemption from production taxes; and
- full exemption from taxes on the enterprises' capital or shares, except licence and immovable property taxes.

In addition, enterprises that produced partially for export received tax exemptions in proportion to the amount intended for export. This régime would have a total life of 10-15 years. It was estimated that approximately 75 per cent of enterprises' registrations would expire in the year 2002. All other registrations would expire in 2010.

61. In relation to small and micro-enterprises, the representative of Panama said that incentives were provided pursuant to Law No. 9 of 19 January 1989. That law provided for tax incentives for micro-enterprises and small enterprises within the territory of the Republic that were engaged in manufacturing activities using mechanized equipment, cottage industry methods or a combination of the two. The tax exemptions available to such businesses were as follows:

- full exemption from income tax for the first five years, 75 per cent for the following five years and 25 per cent during the remaining life of the company;
- full exemption from stamp duty;
- full exemption from import tax on production and maintenance equipment, parts and raw materials;
- exemption from immovable property tax for the first 10 years; and
- exemption from tax on capitalized dividends.

An enterprise could lose its eligibility to the exemptions in the following circumstances (i) if following an initial period of five years, the enterprises' assets and capital increased by twenty-five per cent or more, or, (ii) if they had increased the value of annual sales of one hundred thousand dollars (\$100,000) for three consecutive years or (iii) if for five alternating years, the annual sales increased by more than twenty per cent (20%). The régime would operate for a total period of 15 years.

62. In response to questions and comments from members of the Working Party, indicating concerns in relation to the compatibility of the various export incentive schemes with the provisions of the GATT 1994 and the Agreement on Subsidies and Countervailing Measures, the representative of Panama stated that, in his Government's view, the CAT scheme was compatible with the provisions of

Article XVI of the GATT 1994 and with the provisions of the Agreement on Subsidies and Countervailing Measures in so far as transitional arrangements are foreseen to permit the elimination of this programme over an extended period of time, as they applied to developing countries. The representative of Panama also provided details of Panama's export promotion scheme. The legislative basis for the scheme was Law No. 108 of 30 December 1974. That law established an export incentive mechanism for non-traditional goods wholly or partly produced or processed in Panama, by granting a certificate which could be used as a credit towards direct taxes payable to the State. The Tax Allowance Certificate (CAT) could be used to pay taxes up to an amount equivalent to 20 per cent of the national value added of the exported goods. Such certificates were transferable by endorsement, were exempt from any kind of tax and did not bear interest. He added that following the provisions set out in the Agreement on Subsidies and Countervailing Measures, Panama had decided to eliminate these tax benefits progressively. Law No. 28 of 20 June 1995 Adopting Measures for General Production Tax Incentives and Establishing Other Provisions, provided that up to 31 December 2000, the value of the CAT will remain 20 per cent of the national value added. From 2001 through December 2002, CATs would fall to 15 per cent of the national added value. The incentive was scheduled to be fully eliminated by 31 December 2002. Enterprises in receipt of other tax exemptions could not use the CAT scheme.

63. The representative of Panama stated that his Government would progressively eliminate all measures which meet the definition of a prohibited subsidy, within the meaning of Article 3 of the Agreement on Subsidies and Countervailing Measures, including those prohibited subsidies covered by Law No. 3 of 1986, including all registrations granted to enterprises prior to enactment of the law Adopting General Production Tax Incentives and Establishing Other Provisions, (Law No. 28 of 20 June 1995) and Incentives for Export Promotion under Law No. 108 of 30 December 1974 (as amended by Law No. 28 of 20 June 1995). Consistent with this obligation, Panama would provide explanatory information in its annual notification of subsidies under Article 25 of the Agreement on Subsidies and Countervailing Measures and Article XVI:1 of the GATT 1994 to enable other Members to confirm that such programmes are being progressively eliminated. The above-mentioned subsidy measures would be notified as provided for in the WTO Agreement on Subsidies and Countervailing Measures upon accession. The Government of Panama would eliminate all subsidies inconsistent with the provisions of Article 3 of the Agreement on Subsidies and Countervailing Measures by no later than 31 December 2002 as provided by Article 27 of the Agreement on Subsidies and Countervailing Measures. The Working Party took note of these commitments.

Legislation on Anti-Dumping and Subsidies and Countervailing Measures

64. Following the examination of Panama's régime in relation to anti-dumping and countervailing duties, some members stated that they considered that not all the requirements of the Agreements on Anti-Dumping and Subsidies and Countervailing Measures appeared to be reflected in Panama's legislation. Members expressed particular concerns in relation to the provisions containing the definition of specificity and non-actionable subsidies, as well as in respect of the provisions governing the assessment of the level of domestic support for a petition, retroactive duty price undertakings, public notifications of negative decisions, and the elements required to be contained in a petition. The representative of Panama stated that Panama had altered its draft laws to take account of Members' concerns. In reply to questions concerning the draft laws' definition of material injury, the representative of Panama replied that in his Government's view, the definition provided was compatible with Article 3 of the Anti-Dumping Agreement and Article 15 of the Subsidies and Countervailing Measures Agreement. Some members of the Working Party also considered that certain other provisions of the draft law, such as the definitions of a subsidy, and the provisions dealing with anti-circumvention required improvement. The representative of Panama requested further clarification of those members' concerns. Following further discussions, the representative of Panama informed the Working Party that the draft law had been altered to take account of members' concerns and that the revised draft law was before the National Assembly for approval. The draft law was approved by the National Assembly as Law No. 29, on 1 February 1996. The law is now in full conformity with the requirements of the Agreements regarding definitions of specificity and non-actionable subsidies (Articles 72 and 73); assessment of legitimacy to support a petition (Article 149); retroactive duty price undertakings (Article 163); publicity (Articles 152, 164, 166 and 171); elements required in a petition (Article 150) and material injury (Articles 92 to 95). The definition of subsidy (Article 71) and the dispositions dealing with anti-circumvention (Article 90) were improved. The law is also in conformity with the Safeguards Agreement. Regarding procedures, it also complies with WTO requisites. Law No. 29 of 1 February 1996 will be notified to the relevant Committees of the WTO.

Government Procurement

65. In response to questions from members of the Working Party, the representative of Panama provided details of the Central Government procurement system. Article 29 of the Fiscal Code required that for all State purchases that exceeded one hundred and fifty thousand balboas (B 150,000), public tenders must be called for. Invitations to tender were required to be publicly announced in the Official Gazette and national newspapers at least 15 calendar days in advance. The announcement was required

to indicate the date of the meeting for interested bidders. That meeting was for the purpose of answering any inquiries in relation to the tender specifications and other documents. The Ministry or corresponding public entity was responsible for formulation of the specifications, in which the conditions of the contract and base price for the bid would be clearly indicated. The specifications would indicate: the date, time and place of bidding, and the base price; the obligation on the bidders to lodge a temporary bond to participate in the bidding, and a final bond to be lodged by the contractor to whom the contract is awarded; the obligations required to be assumed and the rights acquired by the contractor; the obligations assumed and the rights acquired by the State; the fines that could be imposed on the contractor, and the liabilities incurred by failure to perform; and the obligation to present a bidder's certificate. The Fiscal Code required that the tender specifications, as well as documents, blueprints, objects or samples relating to the subject-matter of the contract, be displayed at the office where the bidding was to take place, so that they could be examined by the interested parties.

66. The representative of Panama explained that prospective bidders must submit the following documents in support of the tender: a Bidder's Certificate for Public Bids issued by the Treasury, as well as documents proving that the tenderer was not a delinquent debtor vis-à-vis the State, that the tenderer had not cheated the public treasury, that the tenderer had a commercial or industrial licence to engage in the activity, that the tenderer was registered with the Technical Board of Engineering and Architecture, if the tenderer wished to participate in contracts for public works or in others for which this requirement must be fulfilled, and any other document required by law. Tenders were submitted to a designated official. Following the opening of the tenders, a certificate attesting to the validity of the bid is issued. Certified tenders were circulated to the different State agencies. Based upon the proposals received the presiding official will provisionally award the contract to the bidder who has offered the most advantageous proposal among those received. Because the provisional award did not constitute a definitive or firm administrative act, no appeal could be made against it. Once the public bidding procedure had been concluded, bidding files containing all the proposals received were assembled. The temporary bonds were also filed unless the unsuccessful bidders requested their return, on the understanding that by so doing they waived any rights to present a claim on the awarding of the contract. All interested parties had right of access to the file, as well as the right to obtain copies of all the documents therein. On the day after the public bidding, the file went to the Proposal Evaluation Committee for consideration. The Committee concluded examination of all bids within the next eight calendar days. Within eight days following the expiration of the time-limit interested parties could present submissions for inclusion in the file. The opinion of the Evaluation Committee was not binding on the deciding authority provided that the latter would show that the opinion was not in the best interests of the State. The contract was awarded on the basis of the economic advantages of the proposals and

the technical economic, administrative, and financial capacity of the bidders, and the bid considered to be of the highest quality at the lowest price. Dissatisfied parties could use government channels to appeal to the body that awarded the contract, without prejudicing any action for annulment before the Third Chamber of the Supreme Court of Justice. Once the definitive award is made, the corresponding Minister required the successful bidder to lodge the final bond within three days. If the successful bidder did not post the final bond or does not pay the bid price in cash within the corresponding term, the temporary bond was forfeit to the National Treasury.

67. In response to inquiries whether Panama would consider accession to the Agreement on Government Procurement, the representative of Panama stated that Panama was considering the possibility of acceding to the WTO Government Procurement Agreement and was studying the possible implications of such a decision, in terms of both legislative reform and restrictions on development policies.

68. The representative of Panama confirmed that his Government was currently an observer in the Committee for the Agreement on Government Procurement. He stated that his Government would notify the Committee at the time of Panama's accession to the WTO of its intention to accede to the Agreement on Government Procurement, and that Panama would initiate negotiations for membership in the Agreement by tabling an entity offer prior to 30 June 1997. He also confirmed that, if the results of the negotiations are satisfactory to the interests of Panama and other members of the Agreement, Panama would complete negotiations for membership in the Agreement by 31 December 1997. The Working Party took note of this commitment.

Freedom of transit

69. Regarding the freedom of transit, the representative of Panama stated that his country applies the provisions of traffic and transit as provided for in Article V of the GATT 1994.

Export duties

70. In response to questions from members of the Working Party, the representative of Panama stated that export duties were charged on bananas, scrap iron, copper, bronze, silver, gold and platinum in order to generate revenue to the Treasury. Certain other products were subject to export quotas during periods of short supply. The representative of Panama also stated that currently export duties are applied with the intent of collecting revenue for the Central Government and they are not used to promote local investment; in that sense, he added that there is no manufacturing industry for any

of these commodities currently in Panama; that the tax rate is low and therefore does not generate incentive for the establishment of manufacturing industry.

71. The representative of Panama stated that following accession to the WTO, his Government would only apply export controls in conformity with relevant WTO provisions including Article XI paragraph 2(a) of the GATT 1994. The Working Party took note of this commitment.

Free zones

72. The representative of Panama also provided details of Panama's export promotion zones. The purpose of those schemes was to promote investment and Panama's scientific, technological, cultural, educational, economic and social development. He stated that the legislative basis for the schemes was Law No. 25 of 30 November 1992. That law established a régime for the creation and operation of export processing zones. Export Processing Zones were tax-free zones. Both the enterprises operating within those zones and the activities undertaken therein were 100 per cent free of direct and indirect taxes. Both the capital invested within the processing zones and the capital of the enterprises operating in the zones were free of direct or indirect national taxes, including patent or licence taxes. Earnings in the form of dividends and interest creating shares, bonds and other securities issued by the enterprises and placed on the international market were also free of national direct or indirect taxes and duties. There was no time limit for expiry of the scheme. The representative of Panama stated that the export Promotion Free Zones did not differ from the Export Processing Zones: the free zones were classified in two categories: commercial free zones, which included the Colon Free Zone, and industrial free zones, which included the export processing zones and petroleum free zones.

Colón Free Zone

73. The representative of Panama said that most important of the free zones was the Colón Free Zone. Imports from the Colón Free Zone represented Panama's second largest import market. Exports to the Colón Free Zone were not so significant. Panama's Imports and Exports to and from the Colón Free Zone amounted to the following in 1995:

(Millions of dollars)

Detail		Years		Jan. to April
		1993	1994	1995
(a)	Fiscal Territory			
	Imports	2,187.4	2,404.1	732.2
	Exports	507.6	532.5	184.9
(b)	Colon Free Zone			
	Imports	4,492.8	5,009.9	1,651.6
	Exports	5,115.2	5,721.0	1,825.4
(c)	Panama with Colon Free Zone			
	Imports from C. Free Zone	241.9	370.1	n.a.
	Exports to C. Free Zone	5.8	6.9	n.a.

n.a. Not available.

74. The Colon Free Zone was created by Decree No. 18 of 17 June 1948. It comprised several adjoining zones close to the Cristobal Port. The operations carried out in the Colon Free Zone were the import and re-export of merchandise and the consolidation of consignments. The Zone was managed and administered by a Board of Directors chaired by the Minister of Trade and Industry, an Executive Committee of the Board of Directors and a manager.

75. All natural or legal persons could operate in the CFZ provided they had obtained an authorization to engage in business from the Administration of the CFZ. No commercial licence or minimum capital investment was required. All activities carried out in the Zone were exempt from all taxes as stipulated in the laws of Panama, excepting income tax. Goods imported *into* the Zone were not subject to Panamanian import duties. Imports *from* the Colón Free Zone were liable to pay all tariffs and duties payable under Panamanian legislation. Any type of good from any country may be imported into and re-exported from the Zone, with the exception of prohibited imports such as explosive or inflammable substances, weapons and narcotics. There were no quantitative restrictions on imports to the Zone. There were no taxes, duties or restrictions on foreign investment in the zone.

76. All goods and other commercial articles or effects imported into the Zone which had been manufactured, altered, assembled, packed or processed there, could be exported without payment of import duties and taxes to: official departments of the United States located in the Canal area, intended for use or consumption by persons entitled to duty-free purchases under inter-governmental agreements; to ships transitting the Panama Canal destined for foreign ports and sailing between any authorized port in the Republic and foreign ports; and for export outside the territory of Panama. The representative of Panama stated that his Government did not consider that the incentives provided to

the Free Zones were based on export activity, *de jure or de facto*, as established in Article 3 of the Subsidies Agreement. Furthermore, the representative of Panama explained that none of the licensing requirements necessary for the establishment of an enterprise within an Export Processing Zone and the Colón Free Zone, adopted by Law No. 25 of 30 November 1992 and Law No. 18 of 17 June 1948, respectively, are based on export performance considerations. The representative of Panama also stated that these requirements were based on national treatment and are fully compatible with the TRIMs Agreement.

77. The representative of Panama stated that free zones including the Colon Free Zone and Export Processing Zones are sovereign Panamanian Territory. As such, they are fully subject to the coverage of Panama's commitments in its Protocol of Accession to the WTO Agreement. In this regard Panama would ensure enforcement of its WTO obligations in those zones, including those commitments derived from the Agreement on Trade Related Aspects of Intellectual Property Rights. In addition, when goods produced or imported into the zones under the special tax and tariff régime existing in these areas enter into the rest of Panama, normal customs formalities, tariffs and taxes would be applied. The Working Party took note of these commitments.

Trade Agreements

78. With the long term objective of integration into the Central American Common Market, Panama launched a process of negotiation and signature of bilateral agreements on free trade and preferential treatment with each of the countries in Central America in the 1970's. These treaties are of indefinite duration and envision the negotiated incorporation of products originating in either contracting State. The goods traded under the preferential régime are subject to either low tariffs or zero tariff, and are exempted from all surcharges and fees that are incidental to the importation and exportation of goods. In the context of a modality agreed under the 1980 Treaty of Montevideo establishing the Latin American Integration Association (LAIA), Panama has signed trade agreements (Partial Scope Agreements) with the United Mexican States and the Republic of Colombia.

79. Panama has signed other agreements, with a view to expanding its trade relations, with the following countries: the former Union of Soviet Socialist Republics (now the Commonwealth of Independent States, CIS), People's Republic of Bulgaria, People's Republic of Hungary, People's Republic of Poland and the Government of Romania. These agreements only provided for a bilateral most-favoured-nation treatment and do not provide for any exemptions from normal tariffs, surcharges or fees.

80. The representative of Panama also stated that Panama would observe the provisions of the WTO including Article XXIV of the GATT 1994, paragraph 3 of the Enabling Clause, and Article V of the GATS in its trade agreements, and would ensure that the provisions of these WTO Agreements concerning preferential trading systems, free trade areas, and customs unions of which Panama is a member are met from the date of its accession. The Working Party took note of these commitments.

Privatization/State Trading Organizations

81. In response to questions concerning the privatization process in Panama, the representative of Panama stated that progress had been made in the privatization of the following enterprises:

Empresa Estatal de Cemento Bayano:	Privatized
Ferrocarril de Panamá:	Preliminary studies for privatization were being made.
Corporación de Desarrollo Integral de Bayano:	Real property was being sold.
ATLAPA:	The precise means for privatization modality had yet to be determined.
Corporación Azucarera La Victoria:	A study was being conducted by the Ministry of Economics to determine the most appropriate method of privatization.
Generación de Energía Eléctrica:	Law 9 of February 1995 had granted authority to the Institute of Electrical Resources to give private concessions for the generation of electricity.
Corredor Norte:	An administrative concession had been granted to a private foreign enterprise.
Drinking Water Services:	The method of privatization would be determined shortly.
Cellular Channel:	The law to privatize Band A of Cellular Telephony was being revised to proceed with the public bidding.

82. The representative of Panama stated that in the view of his government, only Corporación Azucarera La Victoria (CALV) (Sugar Company of La Victoria), Instituto de Seguro Agropecuario (ISA) (Agricultural Insurance Company), Instituto Nacional de Telecomunicaciones (INTEL) (National Telecommunications Institute), Instituto de Recursos Hidráulicos y Electrificación (IRHE) (Water Resources and Hydro Electricity Company), Instituto de Acueductos y Alcantarillados Nacionales (IDAAN) (National Sewers and Canals Company), Dirección Metropolitana de Aseo (Metropolitan Cleanliness Authority) were engaged in State trading pursuant to Article XVII of the GATT 1994. With the exception of those firms specifically granted a monopoly by the Government (National Telecommunication Institute, Water Resources and Hydroelectricity Company, National Sewers and

Canals Company, National Bingo, National Casinos, National Lottery, President Remon Horse Racing Track), those firms were also subject to the anti-monopoly provisions of the Law on Defence of Competition. The Ministry of Agriculture and the Agriculture and Marketing Institute (AMI) retained the right to State-trading even though they were not engaged in such trade at the present time.

83. The representative of Panama confirmed that his Government would apply its laws and regulations governing the trading activities of these enterprises listed in paragraph 83 in conformity with the relevant provisions of the WTO Agreement, in particular Article XVII of the GATT 1994, the Understanding on that Article and Article VIII of the GATS. He also said that Panama would abide by the provisions for notification, non-discrimination, and the application of commercial considerations for trade transactions, and that it would submit its notification under Article XVII at the time of its accession. The representative of Panama also said that his Government would apply its laws and regulations governing the trading activities of State-owned enterprises and other enterprises with special and exclusive privileges and would otherwise act in full conformity with the provisions of the WTO Agreements. The Working Party took note of these commitments.

84. Some members of the Working Party noted that the Agriculture and Marketing Institute (AMI) had not been listed by Panama as a State trading enterprise even though at various points in Panama's documentation, the AMI had been described as a State purchaser of agricultural products and involved in the distribution of import authorization after ensuring that there were no domestic substitutes. These members asked Panama to clarify the role of the AMI.

85. In response to further questions from Working Party members, the representative of Panama explained that the Agricultural Marketing Institute (AMI) had been established by Law No. 70 of 15 December 1975, to: regulate supplies of agricultural products in the internal market of both national and imported agricultural products; to promote the improvement of marketing systems for agricultural output; and to implement the marketing policies formulated by the Ministry of Agricultural Development. The AMI had also been responsible for administering import permits for some agricultural products. In 1990 an overhaul of AMI had been commenced, resulting in it ceasing to buy and sell agricultural products and concentrating instead on the promotion of the provision of services to the agricultural community. Since 1990, AMI had not bought, sold, imported or exported any agricultural products. It had also privatized or closed the infrastructure owned by the organization, including the National Slaughterhouse. Since 1994 AMI has operated solely as a facilitating enterprise for agricultural producers, by providing information on export markets, training activities and other specialized support services. A draft law restructuring AMI, eliminating its authority to engage in State-trading is in the

process of approval. No agricultural products are marketed through State enterprises. However, the Executive power has the constitutional authority to promote and create State enterprises, which may be engaged in trade in agricultural products. The only other State institution with legal authority to engage in State trading is the Ministry of Agriculture.

86. The representative of Panama affirmed that when Panama acceded to the WTO, trade in agricultural products would be administered in conformity with the relevant provisions of the WTO Agreements. The Working Party took note of this commitment.

General Agreement on Trade in Services (GATS)

87. In response to inquiries concerning Panama's services sector, the representative of Panama supplied a Memorandum on the Services Régime in document WT/ACC/PAN/4. The representative of Panama stated that the largest services sectors were tourism, the Colon Free Zone, the Panama Canal and the Transisthmian Oil Pipeline. Services such as banking, air transport, insurance and retail sales to tourists represent more than 25 per cent of the GDP. The Services Balance had averaged US\$1,000 million over the last three years. No restrictions on remittance of capital nor foreign exchange controls were in place. The Constitution and the common law régime provided that investment law applied equally to national and foreign investors. Panama's schedule of specific commitments on services was reproduced in WT/SPEC/1. The views expressed by the representative of Panama concerning various service sectors are summarized hereunder.

88. With reference to the banking sector, the representative of Panama said that within Panama there were 108 banks in operation, of which 84 were foreign banks. Banking was regulated by Cabinet Decree No. 238 of 1970, as amended by Law No. 93 of November 1974, copies of which were provided to members of the Working Party. Those laws established the National Banking Commission. Every bank that complied with the conditions set down by the Banking Commission was free to obtain a licence to operate in Panama. There were three (3) classes of banking licence: (i) a General Licence, which permitted the holder of the licence to offer a wide range of banking services, both within or outside Panama. Holders of such a licence were required to have a minimum of US\$1,000,000 paid-in capital. Holders of General Licences were required to pay an annual tax of US\$25,000; (ii) an International Licence which permitted the holder to conduct foreign transactions from Panama. The holder of such a licence was required to have US\$500,000 in National Bonds, free of encumbrances. Holders of an International Licence were required to pay an annual tax of US\$15,000 and (iii) a Representation Licence which permitted a foreign bank to establish local representative offices.

89. Concerning insurance, the representative of Panama said that any insurance or reinsurance company could operate in Panama under the same conditions as national companies. The law regulating the provision of insurance was Law 55 of 1984. All insurance companies were required to have a minimum paid-in capital, to maintain a guarantee deposit, and to be authorized and operate under supervision of the Insurance Commissioner of the Ministry of Commerce and Industry. Law No. 56 of 1985 regulated reinsurance. Reinsurance companies were required to have a minimum paid-in or assigned capital, in each case, of not less than B 250,000. Licences were issued by the National Reinsurance Commission. The Insurance Commissioner supervised the activities of reinsurance companies. Insurance brokers were regulated by Law No. 55 of 1984. That law provided that in order to obtain a licence as an insurance broker, applicants must be resident Panamanian citizens. In order to obtain a licence legal persons were required to: (a) present a Certificate of the Public Registry, verifying its registration in the Mercantile Section of the Registry, and the name of the agent of the corporation; (b) provide a Copy of the Articles of Incorporation, including the name of the Directors, domicile and authorized capital; (c) provide a document certifying that the agent of the corporation is a licensed insurance broker, who has been practising habitually and permanently for the last two years; (d) maintain the required deposit; (e) hold a certificate from the shareholders of the corporation, signed by the Secretary or Treasurer. The shareholders must be licensed insurance brokers.

90. The representative of Panama said that financial enterprises were regulated by Law No. 20 of November 1986, and were natural or legal persons, other than banks, insurance companies, cooperatives, mutual companies and savings and loans associations, engaged in making loans for personal or family purposes. Legal or natural persons must have a minimum paid-in capital of B 150,000. Interest allowed was fixed by Resolution of Ministry of Commerce and Industries between 1.5 per cent and 2.0 per cent per month depending on fluctuations in London Interbank Offering Rate. Financial enterprises were required to pay an annual tax equal to 2.5 per cent of their paid-in capital as of 31 December of each year, with a maximum tax of B 12,500.

91. Concerning securities, the representative of Panama said that the National Securities Commission (NSC) was created by Cabinet Decree No. 247 of 16 July 1970. The NSC regulated the public offering of securities and mutual funds, and the activities of brokers, dealers and exchanges. Two types of securities are available: Initial Public Offerings with the National Securities Commission and the Panama Stock Exchange; and securities issued on a foreign market seeking listing on the Panama Stock Exchange.

92. In relation to tourism services, the representative of Panama stated that there were no restrictions for foreign investment in hotels in Panama. Activities of travel agencies were considered retail trade and accordingly such services could only be provided by Panamanians.

93. In relation to construction, the representative of Panama said that construction activities could be undertaken by foreign persons provided that those persons had a licensed professional (engineer or architect) in charge of the works.

94. In relation to maritime transport, the representative of Panama stated that in 1993, the Panamanian Merchant Marine had a total fleet of 12,500 vessels, equivalent to 77.1 million of Gross Registered Tons, that transported freight amounting to 157,980,301 long tons. Around 12,000 vessels navigated the Panama canal annually. Panama had 16 ports, some of them operating under concessions given to private enterprises (Almirante, Puerto Armuelles). Commercial ports were: Balboa, Cristobal, Coco Solo and Las Minas Bay. The two most important ports were Cristobal and Balboa: in 1991, Cristobal moved a total freight of 398,331 metric tonnes and Balboa, 945,103 metric tonnes (more than 75 per cent of these, were containers freight). In relation to land transport, the representative of Panama stated that any foreign person could participate in land freight transportation. Land transportation of passengers could only be provided by Panamanian nationals.

95. In relation to air transport, the representative of Panama stated that there were no restrictions for the establishment of enterprises engaged in maintenance or repair of aircraft, and that several foreign air transport companies were engaged in the provision of services in Panama.

96. The representative of Panama stated that the National Political Constitution provided that only Panamanians could engage in retail trade. Retail trade was defined as selling to consumers, representing or acting as agent for manufacturing or trading companies or any other activity defined as retail trade. In general, the provision of services, was considered wholesale trade.

97. In relation to professional services, the representative of Panama explained that in some cases professional services could only be provided by Panamanian providers, or foreigners meeting residency requirements. The provision of legal services were regulated by Law No. 9 of 18 April 1984. The Supreme Court of Justice could only grant licences to practise the profession of attorney to Panamanian nationals with a professional qualification in law, issued by the University of Panama or Universidad Santa Maria La Antigua, or any other recognised university.

98. In relation to accountancy services, the representative of Panama said that the Technical Board of Accountants could grant special permits to practice to foreign accountants only if the applicant was a citizen of a country that accords the same rights to Panamanians, or if the individual was an internal auditor in a resident foreign company or institution or international body that required the applicant to execute functions related to their organization. In addition, a special permit to practice could be granted when there were no national professionals available, or if the applicant was married to a Panamanian citizen, or had resided in Panama for more than ten years. Only natural persons with a Certified Public Accountant's Licence were permitted to establish corporations to provide services to the profession, and the legal person thus constituted must satisfy certain additional conditions.

99. The representative of Panama stated that engineers or architects were required to hold a licence. Qualified Panamanian citizens and qualified foreign citizens of good character married to a Panamanian or with Panamanian children and entitled to permanent residence in Panama were eligible to obtain a licence. In addition citizens of countries which permitted Panamanians to exercise such professions were entitled to obtain a licence. Such foreign professionals could only be employed if there were no Panamanian professionals available to provide those services. If the foreigner was employed for more than 12 months, the employing entity was required to employ a Panamanian professional to be trained in order to take the place of the foreigner when the contract is over. Permits to employ foreign experts for less than 12 months were not renewable.

100. The schedule of Panama's concessions and commitments on services is reproduced in Part II of the Annex to the Protocol of Accession of Panama.

Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS)

101. When reviewing Panama's legislation on intellectual and industry property, some members noted that this legislation was dispersed in several legal instruments. This situation was contrary to international standards concerning transparency and publication of legal texts. They invited the representative of Panama to clarify a number of questions relevant to the consistency of Panama's legislation with the TRIPS Agreement. The representative of Panama said that the legislation had been updated, harmonized and adapted to international provisions in order to simplify procedures and give inventors, owners of trade marks and authors security. He added that Panama had a long history of legislative protection of intellectual property rights, dating from 1916. The representative of Panama provided members of the Working Party with a comprehensive description of intellectual property laws, including the agencies responsible for implementation and a full list of all relevant treaties to which

it was a signatory in document WT/ACC/PAN/5. The representative of Panama stated that Copyright is included in Law No. 1 of 16 August 1916, Administrative Code of the Republic of Panama in Book V, Title IV, Literary and Artistic Property. This was the first copyright law of the Republic. Law No. 15 of 8 August 1994 was the new Copyright Law. Law No. 15 included specific regulation of audiovisual work, computer programs, architectural work, press articles, moral rights, patrimonial rights, several kind of contracts, mandatory licensing (which would not affect or condition the protection of works in any way, as provided for in Article 5(2) of the Bern Convention), regulation of related rights, etc. The representative of Panama stated that in the recently enacted legislation on the protection of industrial property, Panama had comprehensively adapted its domestic legislation to the Agreement on TRIPS. The views expressed by the representative of Panama concerning various intellectual property rights are summarized hereunder.

102. The representative of Panama stated that industrial property was regulated by the Administrative Code and Executive Decree No. 1 of 3 March 1939 (Articles 2005-2035), Executive Decree No. 1 of 3 March 1939 and the General Inter-American Convention on Trademarks and Commercial Protection. His Government had recognized the obsolescence of that legislation, and a draft law has been approved by the Cabinet and had been submitted to Legislative Assembly for approval. A copy of that draft law was made available to members of the Working Party. He added that by Law No. 41 of 13 July 1995, Panama had acceded to the Paris Convention for the Protection of Industrial Property.

103. Concerning trademarks and trade names, the representative of Panama stated that they could be registered regardless of whether the owners were Panamanian nationals or foreigners. Registration was valid for ten years but could be renewed in ten year intervals indefinitely. Applications for registration could be filed by the owner or an attorney. All required documents were required to be in Spanish or translated by a public translator. Goods or services pertaining to different classes could not be included in same application. Separate applications for each separate class of mark were required. Marks covering services are registered as service marks. In the case of infringement administrative, civil and penal remedies applied. There were procedures for the annulment of registered marks and concession procedures. Registration requests were published for the information of third parties.

104. With reference to patents the representative of Panama said that patents were granted to inventors, whether nationals or foreigners, by letters of patent (*patente de invención*) issued pursuant to the Administrative Code, Articles 1987-2004. They were valid for a term of 20 years. In the case of registration of an existing foreign patent, no Panamanian patent could be granted for a term exceeding 15 years, and in no event could the term of registration extend beyond the duration of the original

patent. Extension or renewal could only be granted when the original patent was not for a full term, and provided it was considered to be justified. Applications for registration could be filed by the owner or an attorney. All required documents were required to be in Spanish or translated by a public translator. In the case of infringement the criminal sanctions were applicable pursuant to the Penal Code.

105. In response to questions and comments from some members of the Working Party indicating what they considered to be inadequacies in Panama's intellectual property régime, the representative of Panama stated that a new draft law making Panama's intellectual property régime fully consistent with the Agreement on Trade Related Aspects of Intellectual Property Rights was ready to be presented to the National Assembly for its approval. It was a comprehensive code regulating patents, utility models, trademarks, industrial designs, registration and cancellation procedures, notifications, and allocating administrative resources to carry those provisions into effect. The law had been drafted with the help of international specialists including staff of the World Intellectual Property Organization.

106. Following examination of the text of the draft law, some members asked that alterations be made to remedy certain deficiencies in the fields of copyright; in particular, rental rights, and protection for electronic databases, patents; integrated circuits; trademarks; trade secrets and enforcement of intellectual property laws in the Colón Free Zone. Members also requested clarification of the remedies available under the new law in the case of infringement. The representative of Panama replied that changes had been made to the draft law to take account of the concerns of members. He provided a detailed summary of the new draft law, including an index of its provisions in document WT/ACC/PAN/9. He also provided detailed information on the remedies available to enforce intellectual property rights in Panama, in documents WT/ACC/PAN/5 and 8.

107. In relation to enforcement of copyrights, the representative of Panama stated that summary civil actions based on Title XII, Chapter I of Law No. 15 would be available to the owners of copyrights. Following a Court order to suspend the illegal activity provisional measures could be obtained without prejudice to any rights to compensation for material damage. The right holder could also request an interlocutory order of seizure of the income derived from the illegal activity; seizure of the goods illegally produced and the equipment used to produce them; and an order compelling the defendant to suspend the infringing activity. Administrative procedures and remedies were the province of the Directorate General of Copyright, and were available for non-criminal violations of Law No. 15. In such a case the Directorate General of Copyright would suspend any further dissemination or reproduction of the infringing works. Criminal sanctions were established by Law No. 15 of 1994 (Title XII,

Chapter II, Infringement and Sanctions). Imprisonment could range from 30 days to 4 years. Additional pecuniary sanctions could be awarded by the Court.

108. In relation to enforcement of industrial property rights, the representative of Panama stated that civil and administrative remedies similar to those described above in relation to copyrights were available. Administrative remedies were obtained from the General Directorate for Industrial Property. Following an administrative order, registered marks could be expunged. Criminal remedies similar to those described above in relation to copyright were also available.

109. The representative of Panama stated that the draft law on industrial property, aforementioned, became law of the Republic (Law No. 35 of 10 May 1996), making its internal legislation fully compatible with TRIPS provisions and eliminating all existing discriminatory provisions.

110. Following the examination of the information described above concerning Panama's intellectual property régime, some members stated that Panama should implement the Agreement on Trade Related Aspects of Intellectual Property Rights as of its accession to the WTO.

111. The representative of Panama stated that Panama would fully apply all the provisions of the Agreement on Trade Related Aspects of Intellectual Property Rights by the date of its accession to the WTO, without recourse to any transitional period. The Working Party took note of this commitment.

Agreement on Trade Related Investment Measures (TRIMs)

112. In response to questions raised by members of the Working Party, the representative of Panama said that Panama does not maintain and in the future would not introduce any measure inconsistent with the TRIMs Agreement. The Working Party took note of this commitment.

Transparency

Notifications

113. The representative of Panama said that upon entry into force of the Protocol of Accession, Panama would submit notifications of legislation pursuant to the implementation of the following provisions of Multilateral Trade Agreements for which the date specified in those provisions is earlier than the date of entry into force of the Protocol of Accession, and any other notifications required for the following Agreements: Agreement on Sanitary and Phytosanitary Measures; Agreement on Import

Licensing Procedures; Agreement on Technical Barriers to Trade; and the Understanding on the Interpretation of Article XVII of the GATT 1994. The notifications for the Agreement on Implementation of Article VII of the GATT 1994 would be submitted by 1 January 1997. Any regulations subsequently enacted by Panama which gave effect to the laws enacted to implement the above mentioned Agreements would also conform to the requirements of those Agreements. Draft notifications for the Agreements on Agriculture and Subsidies and Countervailing Measures had been examined by the Working Party and those notifications would be submitted to the WTO Secretariat at the time of Panama's accession. The Working Party took note of these commitments.

114. The representative of Panama also stated that his Government would notify the WTO Secretariat annually of the implementation of the phased commitments with definitive dates for compliance referred to in paragraphs 35, 53, 63 and 68 of this Report and would identify any delays in implementation together with the reasons therefore. The Working Party took note of this commitment.

Publication

115. The representative of Panama said that laws are published in the official publication organ, which is currently the Official Gazette. No law enters into force without previous publication in the Official Gazette. He also stated that Panama would secure transparency on all publication requirements and comply with the provisions of Article X of GATT 1994. The Working Party took note of these commitments.

Conclusions

116. The Working Party took note of the explanations and statements of Panama concerning its foreign trade régime, as reflected in this report. The Working Party took note of the commitments given by Panama in relation to certain specific matters, which are reproduced in paragraphs 10, 16, 22, 23, 26, 34, 35, 36, 41, 42, 47, 51, 63, 68, 71, 77, 80, 83, 86, 111, 112, 113, 114 and 115 of this report. The Working Party took note that these commitments had been incorporated in paragraph 2 of the Protocol of Accession of Panama to the WTO.

117. Having carried out the examination of the foreign trade régime of Panama and in the light of the explanations, commitments and concessions made by the representative of Panama, the Working Party reached the conclusion that Panama should be invited to accede to the Agreement Establishing the WTO under the provisions of Article XII. For this purpose, the Working Party has prepared the

draft Decision and Protocol of Accession reproduced in the Appendix to this report, and takes note of Panama's Schedule of Specific Commitments on Services (document WT/SPEC/24) and its Schedule of Concessions and Commitments on Goods (document WT/SPEC/33/Rev.2/Add.1) that are annexed to the Protocol. It is proposed that these texts be adopted by the General Council when it adopts the report. When the Decision is adopted, the Protocol of Accession would be open for acceptance by Panama which would become a Member thirty days after it accepts the said Protocol. The Working Party agreed, therefore, that it had completed its work concerning the negotiations for the accession of Panama to the Agreement Establishing the WTO.

APPENDIX

ACCESSION OF THE REPUBLIC OF PANAMA

Draft Decision

The General Council,

Having regard to the results of the negotiations directed towards the establishment of the terms of accession of the Republic of Panama to the Marrakesh Agreement Establishing the World Trade Organization and having prepared a Protocol for the Accession of the Republic of Panama,

Decides, in accordance with Article XII of the Marrakesh Agreement Establishing the World Trade Organization, that the Republic of Panama may accede to the Marrakesh Agreement Establishing the World Trade Organization on the terms set out in the said Protocol.

**PROTOCOL OF ACCESSION OF THE REPUBLIC OF PANAMA
TO THE MARRAKESH AGREEMENT ESTABLISHING
THE WORLD TRADE ORGANIZATION
DRAFT**

The World Trade Organization (hereinafter referred to as the "WTO"), pursuant to the approval of the General Council of the WTO accorded under Article XII of the Marrakesh Agreement Establishing the World Trade Organization (hereinafter referred to as "WTO Agreement"), and the Republic of Panama (hereinafter referred to as "Panama"),

Taking note of the Report of the Working Party on the Accession of Panama to the WTO in document WT/ACC/PAN/... (hereinafter referred to as the "Working Party Report"),

Having regard to the results of the negotiations on the accession of Panama to the WTO,

Agree as follows:

Part I - General

1. Upon entry into force of this Protocol, Panama accedes to the WTO Agreement pursuant to Article XII of that Agreement and thereby becomes a Member of the WTO.
2. The WTO Agreement to which Panama accedes shall be the WTO Agreement as rectified, amended or otherwise modified by such legal instruments as may have entered into force before the date of entry into force of this Protocol. This Protocol, including the commitments referred to in paragraph 116 of the Working Party Report which are hereby incorporated into this Protocol, shall be an integral part of the WTO Agreement.
3. Except as otherwise provided for in the paragraphs referred to in paragraph 116 of the Working Party Report, those obligations in the Multilateral Trade Agreements annexed to the WTO Agreement that are to be implemented over a period of time starting with the entry into force of that Agreement shall be implemented by Panama as if it had accepted that Agreement on the date of its entry into force.

4. Panama may maintain a measure inconsistent with paragraph 1 of Article II of the GATS provided that such a measure is recorded in the List of Article II Exemptions annexed to this Protocol and meets the conditions of the annex to the GATS on Article II Exemptions.

Part II - Schedules

5. The Schedules annexed to this Protocol shall become the Schedule of Concessions and Commitments annexed to the General Agreement on Tariffs and Trade 1994 (hereinafter referred to as the "GATT 1994") and the Schedule of Specific Commitments annexed to the General Agreement on Trade in Services (hereinafter referred to as "GATS") relating to Panama. The staging of the concessions and commitments listed in the Schedules shall be implemented as specified in the relevant parts of the respective Schedules.

6. For the purpose of the reference in paragraph 6(a) of Article II of the GATT 1994 to the date of that Agreement, the applicable date in respect of the Schedules of Concessions and Commitments annexed to this Protocol shall be the date of entry into force of this Protocol.

Part III - Final Provisions

7. This Protocol shall be open for acceptance, by signature or otherwise, by Panama until 30 June 1997.

8. This Protocol shall enter into force on the thirtieth day following the day of its acceptance.

9. This Protocol shall be deposited with the Director-General of the WTO. The Director-General of the WTO shall promptly furnish a certified copy of this Protocol and a notification of acceptance thereto pursuant to paragraph 7 to each Member of the WTO and to Panama.

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

Done at Geneva this ... day of ... one thousand nine hundred and ninety-six, in a single copy in the English, French and Spanish languages each text being authentic, except that a Schedule annexed hereto may specify that it is authentic in only one or more of these languages.

ANNEX

SCHEDULE CXLI - REPUBLIC OF PANAMA

Part I - Goods

[Circulated as WT/SPEC/33/Rev.2/Add.1]

Part II - Services

[Circulated as WT/SPEC/24]

ANNEX 1
TO THE REPORT OF THE WORKING PARTY ON THE ACCESSION OF PANAMA

Price Controls

<u>Heading</u>	<u>Description</u>
	1. <u>Food</u>
1006.20.00	Husked (brown) rice
1006.30.00	Semi-milled or wholly-milled rice, whether or not polished or glazed
1006.40.00	Broken rice
1701.99.90	Sugar, national (all varieties)
0402.91.91	Evaporated, of a fat content, by weight, not exceeding 1.5% [Evaporated milk]
0402.91.92	Evaporated, of a fat content, by weight, exceeding 1.5% [Evaporated milk]
0402.99.91	Evaporated, of a fat content, by weight, not exceeding 1.5% [Evaporated milk]
0402.99.92	Evaporated, of a fat content, by weight, exceeding 1.5% [Evaporated milk]
0401	Milk and cream, not concentrated nor containing added sugar or other sweetening matter [Pasteurized milk]
0402.10	In powder, granules or other solid forms, of a fat content, by weight, not exceeding 1.5% [Powdered milk]
0402.21	Not containing added sugar or other sweetening matter [in powder]
0402.29	Other [in powder]
1901.10.10	Modified milk [Infant formula]
1501.00.10	Lard and pig fat [Lard, national]
2501.00.30	Table or kitchen salt [Refined salt, national]
1604.20.10	Homogenized preparations for infant use [Children's food (all brands)]
1901.10	Preparations for infant use, put up for retail sale [Children's food (all brands)]
2104.20	Homogenized composite food preparations [Children's food (all brands)]
2106.10.10	Dietetic milk substitute preparations, for child use [Children's food (all brands)]
2190.90.90	Other (Composite non-alcoholic preparations with a basis of extracts of syrups for the preparation of beverages) [Children's food (all brands)]
1901.10	Preparations for infant use, put up for retail sale [Cereals for babies]
0407.00.20	For human consumption, [Eggs, grade A]
1507	Soya-bean oil and its fractions, whether or not refined, but not chemically modified [Edible vegetable oils]
1508	Ground-nut oil and its fractions, whether or not refined, but not chemically modified [Edible vegetable oils]

<u>Heading</u>	<u>Description</u>
1509	Olive oil and its fractions, whether or not refined, but not chemically modified [Edible vegetable oils]
1510	Other oils and their fractions, obtained solely from olives, whether or not refined, but not chemically modified, including blends of these oils or fractions with oils or fractions of heading 15.09 [Edible vegetable oils]
	1. <u>Food</u> (cont'd)
1511	Palm oil and its fractions, whether or not refined, but not chemically modified [Edible vegetable oils]
1512	Sunflower-seed, safflower or cotton-seed oil and fractions thereof, whether or not refined, but not chemically modified [Edible vegetable oils]
1513	Coconut (copra) palm kernel or babassu oil and fractions thereof, whether or not refined, but not chemically modified [Edible vegetable oils]
1514	Rape, colza or mustard oil and fractions thereof, whether or not refined, but not chemically modified [Edible vegetable oils]
1515	Fixed vegetable fats and oils (including jojoba oil) and their fractions, whether or not refined, but not chemically modified [Edible vegetable oils]
2301.20.00	Flours, meals and pellets, of fish or of crustaceans, molluscs or other aquatic invertebrates [Fish meal (used in the preparation of feed for poultry, pigs and cattle)]
	2. <u>Articles for household use</u>
3402.20.20	Preparations put up for retail sale [Detergents, national (except special)]
3402.90	Other [Detergents, national (except special)]
3401.11	For toilet use (including medicated products) [Toilet soap]
3401.20.20	For bathroom or toilet use, including added bacteriostatic substances [Toilet soap]
	3. <u>Other</u>
4820.20.10	Exercise books, broad line, double line, calligraphy, ruled in squares and drawing books [Stapled exercise books, national (except plastified)]
4820.20.90	Other, including notebooks [Stapled exercise books, national (except plastified)]
4901.99.00	Other [School texts, national and imported (except listed novels)]
3004	Medicaments (excluding goods of headings Nos. 30.02, 30.05 or 30.06) consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses or in forms or packings for retail sale [Medicinal products]
2711	Petroleum gases and other gaseous hydrocarbons [Liquefied gas (25 pound tax)]*
6203.42	Of cotton [Official school uniforms]
6203.43	Of synthetic fibres [Official school uniforms]
6203.49	Of other textile materials [Official school uniforms]
6204	Women's or girls' suits, ensembles, jackets, blazers, dresses, skirts, divided skirts, trousers, bib and brace overalls, breeches and shorts (other than swimwear) [Official school uniforms]

<u>Heading</u>	<u>Description</u>
6205.30.21	For children's school uniforms [Official school uniforms]
6205.90.21	For children's school uniforms [Official school uniforms]
6206.30.20	For school uniforms (of cotton/up to size 16). Women's or girls' blouses, shirts and shirt-blouses) [Official school uniforms]
	3. <u>Other</u> (cont'd)
6206.40.20	For school uniforms (of man-made fibres/(up to size 16), women's or girls' blouses shirts and shirt-blouses) [Official school uniforms]
6206.90.20	For school uniforms (of textile materials/(up to size 16), women's or girls' blouses, shirts and shirt-blouses) [Official school uniform]

*A freight differential (transport cost) is applied, depending on the region in which the 25-pound liquefied gas tank is sold.