

## **Attachments**

### **[Plurilateral Agreements in General]**

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### Multilateral Agreements and Plurilateral Agreements on Trade-related Issues

Multilateral agreements	Plurilateral agreements			
	Country-based plurilateral agreements	Issue-based plurilateral agreements		
WTO rule: Yes			WTO rule: No	
WTO Annex 1, 2 & 3 to GATT 1994	GATT Article XXIV GATS Article V  RTAs/FTAs	Annex 4 Agreements on:  - Government Procurement - Trade in Civil Aircraft	Financial Service Agreement, Basic Telecommunications Agreement, ITA, ACTA, etc.  In the future, plurilateral agreements may be concluded in the areas of services, electronic commerce, standards and conformance (TBT), country of origin, etc.	In the future, plurilateral agreements may be concluded in the areas of competition, investment, etc. ( In the area of investment, TRIM is already in place)

\* Issue-based plurilateral agreements between three or more countries are considered here with a view to their contribution to rulemaking and liberalization in the field of international trade.

Comparison of Trade-related Multilateral and Plurilateral Agreements

	WTO (Multilateral)	Plurilateral agreements						
		RTAs/FTAs (Country-based plurilateral agreements)	Issue-based plurilateral agreements*					WTO Rule: No
			WTO Rule: Yes					
			Annex 4 agreements	Service-sector agreements (Financial Services Agreement / Basic Telecommunications Agreement)	Tariff reduction / elimination agreement (ITA)	ACTA	Others	
Participants (countries/regions)	157	Two or more	Two or more	Critical mass Current membership: Financial Services Agreement (70) / Basic Telecommunications Agreement (69)	Critical mass (ITA): Approx. 90% of world trade (Currently, ITA covers 97% of world trade or 73 countries.)	37 (10 + EU 27)	Two or more	Two or more
Basic rules	Annex 1 to Agreement Establishing WTO (WTO Agreement)	GATT Article XXIV (Substantially all trade) GATS Article V (Substantial sectoral coverage)	Annex 4 to WTO Agreement	Protocols to GATS concerning financial services / basic telecommunications services	GATT	TRIPS	?	
Establishment of a new agreement		Participants	Consensus of all WTO members No voting provision	Protocols to GATS concerning financial services / basic telecommunications services (by consensus of all WTO members) >> Participants' schedules of commitments and lists of exemptions from GATS Article II (MFN treatment) amended and attached	Ministerial declaration by participating countries >> Participants' schedules of concessions amended	Participants	? (Separate consideration for each negotiation area)	Participants
Amendments to existing agreements	Consensus of all WTO members No voting provision	Participants	Participants	Modification of schedules under GATS Article XXI	Participants (in terms of each participant amending its schedule of concessions)	Participants	Participants	Participants
Obligations under WTO rules	YES	NO	YES	YES (subsequent to amendments to schedules of commitments)	YES (subsequent to amendments to schedules of concessions)	NO	? (Depends on content of agreement)	NO
Application of benefits on MFN basis	YES (in principle)	NO	NO (for Agreement on Trade in Civil Aircraft and Agreement on Government Procurement) * YES is possible for future agreements.	YES	YES	YES TRIPs has no provision for MFN exceptions.	YES in principle? (L/4905) Depends on relevant WTO provisions and content of agreement	NO
Others	Doha Round launched in 2001 and ongoing on basis of consensus of all WTO members	In principle, no selectivity for negotiation areas * Service-sector agreements possible under GATS Article V (505 agreements reported to date)	Only two agreements are in force now. (Agreement on Trade in Civil Aircraft and Agreement on Government Procurement)	Regarded as a precedent-setting plurilateral agreement on trade in services	Regarded as precedent-setting plurilateral agreements for tariff reduction and elimination	Standalone agreement supplementary to TRIPs Agreement	Negotiation areas may be selected * Must be WTO-consistent, in principle (Separate consideration for each negotiation area)	Plurilateral agreements on trade and competition, etc. fall into this category
Establishment	1995	?	1995	1997	1997	2011	?	?

\* For the purpose of the paper, issue-based plurilateral agreements signed by three or more countries are considered from the aspect of contribution to rulemaking and liberalization in the field of international trade.

**GATT/WTO and Changes in the Treatment of Plurilateral Agreements**

	1947 -	1979 - Introduction of Tokyo Round Codes	1995 - Establishment of WTO	Incorporation of Future Plurilateral Agreements
GATT	GATT 1947 Participation of all members	GATT 1947 Participation of all members	GATT 1994 Participation of all members	
Codes		Agreement on Subsidies and Countervailing Measures, Anti- dumping Agreement, TBT Agreement, Agreement on Import Licensing Procedures, Customs Valuation Agreement, Agreement on Trade in Civil Aircraft, Agreement on Government Procurement, International Dairy Agreement, International Bovine Meat Agreement >> Non-MFN based agreements Participation of some members	Agreement on Subsidies and Countervailing Measures, Anti- dumping Agreement, TBT Agreement, Agreement on Import Licensing Procedures, and Customs Valuation Agreement were turned into Annex 1a agreements under the WTO (participated by all members). >> Participation of all members	
WTO Annex 1A agreements on trade in goods			Participation of all members	?? Introduction of schedules of concessions approach? Amendments by critical mass plus MFN-based distribution of benefits?
WTO Annex 4 agreements			Agreement on Trade in Civil Aircraft, Agreement on Government Procurement, International Dairy Agreement International Bovine Meat Agreement (Only first two agreements are effective today). >> Non-MFN-based agreements Participation of some members	?? Easing procedural requirements for establishing new agreements? (e.g., Critical mass + MFN-based distribution of benefits)
WTO Annex 1B agreements on trade in services			Participation of all members Introduction of schedules of commitments approach	Additional sectoral agreements by same approach as those used for Financial Services Agreement and Basic Telecommunication Agreement? (Amendments to schedules of commitments)
WTO Annex 1C agreements on trade- related aspects of intellectual property rights			Participation of all members	?? Introduction of schedule of concessions/commitments approach? Amendments by critical mass plus MFN-based distribution of benefits?

**Communiqué by Quad Industries**  
**(April 16, 1996)**

# INDUSTRY RECOMMENDATIONS FOR AN INFORMATION TECHNOLOGY AGREEMENT

AS AGREED TO BY

EUROBIT, ITAC, ITI AND JEIDA

## BACKGROUND

In January of 1995, the information technology industry associations of the U.S., Europe and Japan (ITI, EUROBIT and JEIDA) agreed to a set of industry recommendations to the G-7 Meeting in Brussels on the Global Information Infrastructure (GII). One of their key recommendations was to eliminate tariffs in the information technology sector through the adoption of an Information Technology Agreement (ITA). Rapid conclusion of the ITA's objective of eliminating information technology tariffs should be pursued in the broader context of other GII issue areas resulting in the removal of all existing barriers and obstacles to open trade. The specific recommendation stated, "To achieve market access necessary to build the GI, all tariffs affecting information technology and telecommunications technology products and components, including semiconductors, must be eliminated." Since that statement, Canada's IT industry association (ITAC) has also lent its support to this principle.

ITI, EUROBIT, JEIDA and ITAC have since supported an initiative called the Information Technology Agreement that would eliminate all tariffs on information technology and telecommunications products no later than January 1, 2000. Products covered under this Agreement include:

- \* Computer Hardware (including all computer peripherals and multimedia/multifunctional products)
- \* Semiconductors, Integrated Circuits and other electronic components (including, for example, transistors, crystals and resistors)
- \* Semiconductor Manufacturing Equipment
- \* Computer and Telecommunications Software
- \* Telecommunications Equipment
- \* Parts and accessories of the above

The realization of an ITA would make the Global Information Society as widely accessible as possible through the elimination of the remaining customs tariffs on a range of IT products. Elimination of tariffs on IT equipment will make these products and services available to a wider segment of the world's population by significantly lowering costs. This will enable more businesses and people to experience the productivity gains made possible through technology and create a more competitive world market.

This agreement only addresses the elimination of all information technology tariffs on a most-favored-nation basis and does not seek to include agreements on any non-tariff or non-IT product issues.

At the November 1995 Transatlantic Business Dialogue in Seville, over 120 American and European corporate leaders advocated the conclusion of an ITA by December 1996. A month later in Madrid, the EU and US governments agreed to a New Transatlantic Agenda Plan that also endorsed an ITA.

#### Critical Success Factors:

In order to have a successful ITA negotiation, a number of critical success factors have to be included in the agreement. These include:

- \* Tariff elimination on the products identified above in one or two stages by no later than January 1, 2000.
- \* Acceptable rules of interpretation which make clear the negotiator's intent that the ITA's scope extends to future generations of information technology products.
- \* Administrative Tools (for example, a policy process for making anticipatory ITA product coverage determinations, as well as an on-going review mechanism) within the WTO that would ensure the integrity of the agreement for ITA products coverage purposes.
- \* Quad countries conclude an ITA by no later than the December 1996 Singapore WTO Summit. In order to achieve a speedy realization of the GII, as many countries as possible should join the ITA at the Singapore Ministerial Meeting.

#### Classification:

In light of rapid development of technologies in the IT domain, it has to be ensured that present and future product generations will be covered by the ITA, with special reference to multimedia products (for which care must be taken for determining the list of multimedia products and corresponding definitions) and that the ITA conclusions are not undermined by customs authorities' decisions in areas such as classification and rules of origin.

The ITA addresses these classification issues. For example, a basic principle for addressing computers stipulates that the ITA will cover any computer whether or not it also has the capability to receive and process telephony signals, television signals or other analogue or digitally process audio or video signals. For example, any computer is covered whether or not it also is capable of displaying full motion video, as is any computer incorporating or consisting of video conferencing apparatus.

On the other hand, a television receiver or audio reproduction system today is not covered by the ITA. Such devices are not today, for example, freely reprogrammable by the user.

#### Conclusion:

We strongly advocate that the Quad partners agree to conclude an ITA as described above at their April meeting in Kobe, Japan and set a process for completing negotiations before the Singapore WTO Summit. We also hope that the G-7 Summit in July gives momentum to an ITA through discussions. With an agreement in principle between Quad members, it is our expectation that nations from other regions are more likely to sign on to an ITA WTO accord at the Singapore Summit.

Geneva, 16 April 1996

EUROBIT

ITAC

IFI

JEIDA



**Trilateral Agreement between  
Japan, the United States, and the EU in Seattle  
(September 28, 1996)**

## UNDERSTANDING ON SEMICONDUCTORS AND ITA BETWEEN THE EUROPEAN COMMISSION, JAPAN AND THE UNITED STATES

1. The EU, Japan and the United States affirm their commitment to work together urgently to conclude the ITA by the time of the Singapore Conference. They will vigorously and immediately pursue an intensive work program on all relevant issues with the goal of reaching agreement among themselves well in advance of Singapore so as to ensure that broad participation from additional countries can be developed by Singapore. The EU, Japan and the United States will review progress periodically, with the first assessment taking place by November 7.
2. European semiconductor company representatives may, as in the past, participate in the various subcommittees established to facilitate user/supplier cooperation activities, including the subcommittees on automotive, telecommunications, and emerging applications. EECA representatives may play a supporting role in these subcommittees on the same basis as SIA and EIAJ. EU companies will pay a reasonable share of the costs associated with the operation of these subcommittees.
3. In view of the above, the first meeting of the Semiconductor Council will not take place before March 1997 and the first government consultations called for under the Vancouver accords will not be held until after the first meeting of the Semiconductor Council.
4. Immediately upon the successful conclusion of an ITA, which includes inter alia a commitment to the expeditious elimination of tariffs on a broad range of IT products including at least telecommunications equipment, computer hardware and software, and semiconductors, EU industry will become a permanent member of the Semiconductor Council and the EU and its industry will have the right to participate in all industry and government-to-government activities specified in the Vancouver accords, including the government consultations. The negotiations on the ITA will focus on the products identified in the draft product landscape paper produced in the QUAD discussions and on any other papers put forward by potential parties to the ITA.

**Agreement on Pharmaceutical Products  
(Record of Discussion)**

**GENERAL AGREEMENT  
ON TARIFFS AND TRADE**

RESTRICTED  
**L/7430**  
25 March 1994  
Limited Distribution

(94-0547)

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Original: English

**TRADE IN PHARMACEUTICAL PRODUCTS**

The following communication concerning trade in pharmaceutical products has been received from the delegations listed below:

**RECORD OF DISCUSSION**

In the course of the Uruguay Round negotiations, representatives of the following governments discussed the treatment of pharmaceutical products and came to the following conclusions:

Australia  
Austria  
Canada  
Czech Republic  
European Communities  
Finland  
Japan  
Norway  
Slovak Republic  
Sweden  
Switzerland  
United States

Each government will eliminate customs duties on pharmaceutical products, as defined below, recognizing the objective of tariff elimination should not be frustrated by trade restrictive or trade distorting measures. Other governments are encouraged to do the same.

1. With respect to pharmaceutical products (as defined below), they will eliminate customs duties and all other duties and charges, as defined within the meaning of Article II.1 (b) of the General Agreement on Tariffs and Trade (1994), on **ALL** items in the following categories:

(i) items classified (or classifiable) in Harmonized System Chapter 30;

(ii) items classified (or classifiable) in HS headings 2936, 2937, 2939, and 2941, with the exception of dihydrostreptomycin and salts, esters, and hydrates thereof;

- (iii)\*pharmaceutical active ingredients as designated in Annex I and that bear an "international non-proprietary name," (INN) from the World Health Organization;
- (iv)salts, esters, and hydrates of pharmaceutical products which are described by the combination of an INN active ingredient contained in Annex I with a prefix or suffix as designated in Annex II to this record, as long as such salt, ester, or hydrate is classified in the same HS 6-digit heading as the INN active ingredient;
- (v)salts, esters, and hydrates of INN active ingredients that are separately contained in Annex III to this record and that are not classified in the same HS 6-digit heading as the INN active ingredient;
- (vi)additional products used for the production and manufacture of finished pharmaceuticals as designated in Annex IV to this record.

In addition, to ensure transparency, each government will incorporate these measures into that government's schedule to the General Agreement on Tariffs and Trade (1994), and, in addition, at either its national tariff line level or the Harmonized System 6-digit level in either its national tariff or any other published versions of the tariff schedule, whichever is ordinarily used by importers and exporters.

Each government will fully implement the duty elimination on the date of entry into force of the World Trade Organization (WTO) agreement, for that government.

In incorporating the results described above, duty elimination can be achieved either by creating sub-headings at the national tariff line level, or attaching an Annex to the national tariff listing all products concerned or by a combination of the above methods, whereby duty-free treatment is provided for at national tariff line level for certain products.

In cases where it is not possible to designate an entire national tariff line for duty-free treatment, **EACH GOVERNMENT** will list the pharmaceutical products covered in an Annex to its national tariff, with a full concordance to the products listed in Annexes I, III, and IV at either the national tariff line level or the Harmonized System 6-digit level. Where some or all of the products are incorporated in such an Annex, each government will include appropriate footnotes (or other means of cross-referencing at the national tariff line level or the Harmonized System 6-digit level) either in the national tariff or in any other published version of the national tariff to indicate that bound duty-free treatment is provided for the products listed in the Annex.

2. In implementing these measures, each government's national customs authorities may require importers to provide one or more of the following types of information to certify that the imported chemical is included in this record:

- (i)Harmonized System 6-digit heading of the chemical;
- (ii)Chemical Description;
- (iii)International Non-proprietary Name (INN);
- (iv)Chemical Abstracts Service (CAS) Registry Number (RN);

(v)Prefix or suffix of the salt/ester/hydrate (if applicable).

3. Representatives of the governments listed above will meet under the auspices of the Council for Trade in Goods of the WTO -- normally at least once every three years -- to review the product coverage with a view to including, by consensus, additional pharmaceutical products for tariff elimination. They agreed to encourage autonomous elimination of duties prior to agreement to eliminate duties on a permanent and reciprocal basis, in accordance with their national procedures.

4. The positive list of products covered by these annexes has been deposited with the GATT Secretariat.

\*Paracetamol, ibuprofen, dihydrostreptomycin, monosodium glutamate, and levomenthol have been excluded from the coverage of this record of discussion.

**Ministerial Declaration  
on Trade in Information Technology Products**

**MINISTERIAL CONFERENCE  
Singapore, 9-13 December 1996**

**MINISTERIAL DECLARATION ON TRADE IN  
INFORMATION TECHNOLOGY PRODUCTS**

SINGAPORE, 13 DECEMBER 1996

*Ministers,*

*Representing* the following Members of the World Trade Organization ("WTO"), and States or separate customs territories in the process of acceding to the WTO, which have agreed in Singapore on the expansion of world trade in information technology products and which account for well over 80 per cent of world trade in these products ("parties"):

Australia	Norway
Canada	Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu
European Communities	Singapore
Hong Kong	Switzerland <sup>1</sup>
Iceland	Turkey
Indonesia	United States
Japan	
Korea	

*Considering* the key role of trade in information technology products in the development of information industries and in the dynamic expansion of the world economy,

*Recognizing* the goals of raising standards of living and expanding the production of and trade in goods;

*Desiring* to achieve maximum freedom of world trade in information technology products;

*Desiring* to encourage the continued technological development of the information technology industry on a world-wide basis;

*Mindful* of the positive contribution information technology makes to global economic growth and welfare;

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<sup>1</sup>On behalf of the customs union Switzerland and Liechtenstein.



*Having agreed* to put into effect the results of these negotiations which involve concessions additional to those included in the Schedules attached to the Marrakesh Protocol to the General Agreement on Tariffs and Trade 1994, and

*Recognizing* that the results of these negotiations also involve some concessions offered in negotiations leading to the establishment of Schedules annexed to the Marrakesh Protocol,

Declare as follows:

1. Each party's trade regime should evolve in a manner that enhances market access opportunities for information technology products.
2. Pursuant to the modalities set forth in the Annex to this Declaration, each party shall bind and eliminate customs duties and other duties and charges of any kind, within the meaning of Article II:1(b) of the General Agreement on Tariffs and Trade 1994, with respect to the following:
  - (a) all products classified (or classifiable) with Harmonized System (1996) ("HS") headings listed in Attachment A to the Annex to this Declaration; and
  - (b) all products specified in Attachment B to the Annex to this Declaration, whether or not they are included in Attachment A;

through equal rate reductions of customs duties beginning in 1997 and concluding in 2000, recognizing that extended staging of reductions and, before implementation, expansion of product coverage may be necessary in limited circumstances.

3. Ministers express satisfaction about the large product coverage outlined in the Attachments to the Annex to this Declaration. They instruct their respective officials to make good faith efforts to finalize plurilateral technical discussions in Geneva on the basis of these modalities, and instruct these officials to complete this work by 31 January 1997, so as to ensure the implementation of this Declaration by the largest number of participants.

4. Ministers invite the Ministers of other Members of the WTO, and States or separate customs territories in the process of acceding to the WTO, to provide similar instructions to their respective officials, so that they may participate in the technical discussions referred to in paragraph 3 above and participate fully in the expansion of world trade in information technology products.

Annex: Modalities and Product Coverage

Attachment A: list of HS headings

Attachment B: list of products

ANNEX

Modalities and Product Coverage

Any Member of the World Trade Organization, or State or separate customs territory in the process of acceding to the WTO, may participate in the expansion of world trade in information technology products in accordance with the following modalities:

1. Each participant shall incorporate the measures described in paragraph 2 of the Declaration into its schedule to the General Agreement on Tariffs and Trade 1994, and, in addition, at either its own tariff line level or the Harmonized System (1996) ("HS") 6-digit level in either its official tariff or any other published versions of the tariff schedule, whichever is ordinarily used by importers and exporters. Each participant that is not a Member of the WTO shall implement these measures on an autonomous basis, pending completion of its WTO accession, and shall incorporate these measures into its WTO market access schedule for goods.

2. To this end, as early as possible and no later than 1 March 1997 each participant shall provide all other participants a document containing (a) the details concerning how the appropriate duty treatment will be provided in its WTO schedule of concessions, and (b) a list of the detailed HS headings involved for products specified in Attachment B. These documents will be reviewed and approved on a consensus basis and this review process shall be completed no later than 1 April 1997. As soon as this review process has been completed for any such document, that document shall be submitted as a modification to the Schedule of the participant concerned, in accordance with the Decision of 26 March 1980 on Procedures for Modification and Rectification of Schedules of Tariff Concessions (BISD 27S/25).

- (a) The concessions to be proposed by each participant as modifications to its Schedule shall bind and eliminate all customs duties and other duties and charges of any kind on information technology products as follows:
  - (i) elimination of such customs duties shall take place through rate reductions in equal steps, except as may be otherwise agreed by the participants. Unless otherwise agreed by the participants, each participant shall bind all tariffs on items listed in the Attachments no later than 1 July 1997, and shall make the first such rate reduction effective no later than 1 July 1997, the second such rate reduction no later than 1 January 1998, and the third such rate reduction no later than 1 January 1999, and the elimination of customs duties shall be completed effective no later than 1 January 2000. The participants agree to encourage autonomous elimination of customs duties prior to these dates. The reduced rate should in each stage be rounded off to the first decimal; and
  - (ii) elimination of such other duties and charges of any kind, within the meaning of Article II:1(b) of the General Agreement, shall be completed by 1 July 1997, except as may be otherwise specified in the participant's document provided to other participants for review.
- (b) The modifications to its Schedule to be proposed by a participant in order to implement its binding and elimination of customs duties on information technology products shall achieve this result:
  - (i) in the case of the HS headings listed in Attachment A, by creating, where appropriate, sub-divisions in its Schedule at the national tariff line level; and

- (ii) in the case of the products specified in Attachment B, by attaching an annex to its Schedule including all products in Attachment B, which is to specify the detailed HS headings for those products at either the national tariff line level or the HS 6-digit level.

Each participant shall promptly modify its national tariff schedule to reflect the modifications it has proposed, as soon as they have entered into effect.

3. Participants shall meet periodically under the auspices of the Council on Trade in Goods to review the product coverage specified in the Attachments, with a view to agreeing, by consensus, whether in the light of technological developments, experience in applying the tariff concessions, or changes to the HS nomenclature, the Attachments should be modified to incorporate additional products, and to consult on non-tariff barriers to trade in information technology products. Such consultations shall be without prejudice to rights and obligations under the WTO Agreement.

4. Participants shall meet as soon as practicable and in any case no later than 1 April 1997 to review the state of acceptances received and to assess the conclusions to be drawn therefrom. Participants will implement the actions foreseen in the Declaration provided that participants representing approximately 90 per cent of world trade<sup>2</sup> in information technology products have by then notified their acceptance, and provided that the staging has been agreed to the participants' satisfaction. In assessing whether to implement actions foreseen in the Declaration, if the percentage of world trade represented by participants falls somewhat short of 90 per cent of world trade in information technology products, participants may take into account the extent of the participation of States or separate customs territories representing for them the substantial bulk of their own trade in such products. At this meeting the participants will establish whether these criteria have been met.

5. Participants shall meet as often as necessary and no later than 30 September 1997 to consider any divergence among them in classifying information technology products, beginning with the products specified in Attachment B. Participants agree on the common objective of achieving, where appropriate, a common classification for these products within existing HS nomenclature, giving consideration to interpretations and rulings of the Customs Co-operation Council (also known as the World Customs Organization or "WCO"). In any instance in which a divergence in classification remains, participants will consider whether a joint suggestion could be made to the WCO with regard to updating existing HS nomenclature or resolving divergence in interpretation of the HS nomenclature.

6. The participants understand that Article XXIII of the General Agreement will address nullification or impairment of benefits accruing directly or indirectly to a WTO Member participant through the implementation of this Declaration as a result of the application by another WTO Member participant of any measure, whether or not that measure conflicts with the provisions of the General Agreement.

7. Each participant shall afford sympathetic consideration to any request for consultation from any other participant concerning the undertakings set out above. Such consultations shall be without prejudice to rights and obligations under the WTO Agreement.

8. Participants acting under the auspices of the Council for Trade in Goods shall inform other Members of the WTO and States or separate customs territories in the process of acceding to the WTO of these modalities and initiate consultations with a view to facilitate their participation in the expansion of trade in information technology products on the basis of the Declaration.

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<sup>2</sup>This percentage shall be calculated by the WTO Secretariat on the basis of the most recent data available at the time of the meeting.

9. As used in these modalities, the term "participant" shall mean those Members of the WTO, or States or separate customs territories in the process of acceding to the WTO, that provide the document described in paragraph 2 no later than 1 March 1997.

10. This Annex shall be open for acceptance by all Members of the WTO and any State or any separate customs territory in the process of acceding to the WTO. Acceptances shall be notified in writing to the Director-General who shall communicate them to all participants.

There are two attachments to the Annex.

Attachment A lists the HS headings or parts thereof to be covered.

Attachment B lists specific products to be covered by an ITA wherever they are classified in the HS .

Attachment A, Section 1

HS96		HS description
3818		<b>Chemical elements doped for use in electronics, in form of discs, wafers or similar forms; chemical compounds doped for use in electronics</b>
8469	11	<b>Word processing machines</b>
8470		<b>Calculating machines and pocket-size data recording, reproducing and displaying machines with a calculating function; accounting machines, postage franking machines, ticket-issuing machines and similar machines, incorporating a calculating devices; cash registers:</b>
8470	10	Electronic calculators capable of operating without an external source of electric power and pocket size data recording, reproducing and displaying machines with calculating functions
8470	21	Other electronic calculating machines incorporating a printing device
8470	29	Other
8470	30	Other calculating machines
8470	40	Accounting machines
8470	50	Cash registers
8470	90	Other
8471		<b>Automatic data processing machines and units thereof; magnetic or optical readers, machines for transcribing data onto data media in coded form and machines for processing such data, not elsewhere specified or included:</b>
8471	10	Analogue or hybrid automatic data processing machines
8471	30	Portable digital automatic data processing machines, weighing no more than 10 kg, consisting of at least a central processing unit, a keyboard and a display
8471	41	Other digital automatic data processing machines comprising in the same housing at least a central processing unit and an input and output unit, whether or not combined
8471	49	Other digital automatic data processing machines presented in the form of systems
8471	50	Digital processing units other than those of subheading 8471 41 and 8471 49, whether or not in the same housing one or two of the following types of units : storage units, input units, output units
8471	60	Input or output units, whether or not containing storage units in the same housing

	8471	70	Storage units, including central storage units, optical disk storage units, hard disk drives and magnetic tape storage units
	8471	80	Other units of automatic data processing machines
	8471	90	Other
<b>ex</b>	<b>8472</b>	<b>90</b>	<b>Automatic teller machines</b>
	8473	21	Parts and accessories of the machines of heading No 8470 of the electronic calculating machines of subheading 8470 10, 8470 21 and 8470 29
	8473	29	Parts and accessories of the machines of heading No 8470 other than the electronic calculating machines of subheading 8470 10, 8470 21 and 8470 29
	8473	30	Parts and accessories of the machines of heading No 8471
	8473	50	Parts and accessories equally suitable for use with machines of two or more of the headings Nos. 8469 to 8472
<b>ex</b>	<b>8504</b>	<b>40</b>	<b>Static converters for automatic data processing machines and units thereof, and telecommunication apparatus</b>
<b>ex</b>	<b>8504</b>	<b>50</b>	<b>Other inductors for power supplies for automatic data processing machines and units thereof, and telecommunication apparatus</b>
	8517		Electrical apparatus for line telephony or line telegraphy, including line telephone sets with cordless handsets and telecommunication apparatus for carrier-current line systems or for digital line systems; videophones:
	8517	11	Line telephone sets with cordless handsets
	8517	19	Other telephone sets and videophones
	8517	21	Facsimile machines
	8517	22	Teleprinters
	8517	30	Telephonic or telegraphic switching apparatus
	8517	50	Other apparatus, for carrier-current line systems or for digital line systems
	8517	80	Other apparatus including entry-phone systems
	8517	90	Parts of apparatus of heading 8517
<b>ex</b>	<b>8518</b>	<b>10</b>	<b>Microphones having a frequency range of 300 Hz to 3,4 KHz with a diameter of not exceeding 10 mm and a height not exceeding 3 mm, for telecommunication use</b>
<b>ex</b>	<b>8518</b>	<b>30</b>	<b>Line telephone handsets</b>
<b>ex</b>	<b>8518</b>	<b>29</b>	<b>Loudspeakers, without housing, having a frequency range of 300 Hz to 3,4 KHz with a diameter of not exceeding 50 mm, for telecommunication use</b>
	8520	20	Telephone answering machines
	8523	11	Magnetic tapes of a width not exceeding 4 mm
	8523	12	Magnetic tapes of a width exceeding 4 mm but not exceeding 6,5 mm
	8523	13	Magnetic tapes of a width exceeding 6,5 mm

	8523	20	Magnetic discs
	8523	90	Other
	8524	31	Discs for laser reading systems for reproducing phenomena other than sound or image
ex	8524	39	Other : - for reproducing representations of instructions, data, sound, and image, recorded in a machine readable binary form, and capable of being manipulated or providing interactivity to a user, by means of an automatic data processing machine
	8524	40	Magnetic tapes for reproducing phenomena other than sound or image
	8524	91	Media for reproducing phenomena other than sound or image
ex	8424	99	Other : - for reproducing representations of instructions, data, sound, and image, recorded in a machine readable binary form, and capable of being manipulated or providing interactivity to a user, by means of an automatic data processing machine
ex	8525	10	Transmission apparatus other than apparatus for radio-broadcasting or television
	8525	20	Transmission apparatus incorporating reception apparatus
ex	8525	40	Digital still image video cameras
ex	8527	90	Portable receivers for calling, alerting or paging
ex	8529	10	Aerials or antennae of a kind used with apparatus for radio-telephony and radio-telegraphy
ex	8529	90	Parts of: transmission apparatus other than apparatus for radio-broadcasting or television transmission apparatus incorporating reception apparatus digital still image video cameras, portable receivers for calling, alerting or paging
	8531	20	Indicator panels incorporating liquid crystal devices (LCD) or light emitting diodes (LED)
ex	8531	90	Parts of apparatus of subheading 8531 20
	8532		Electrical capacitors, fixed, variable or adjustable (pre-set):
	8532	10	Fixed capacitors designed for use in 50/60 Hz circuits and having a reactive power handling capacity of not less than 0,5 kvar (power capacitors)
	8532	21	Tantalum fixed capacitors
	8532	22	Aluminium electrolytic fixed capacitors
	8532	23	Ceramic dielectric, single layer fixed capacitors
	8532	24	Ceramic dielectric, multilayer fixed capacitors
	8532	25	Dielectric fixed capacitors of paper or plastics
	8532	29	Other fixed capacitors
	8532	30	Variable or adjustable (pre-set) capacitors

	8532	90	Parts
	<b>8533</b>		<b>Electrical resistors (including rheostats and potentiometers), other than heating resistors:</b>
	8533	10	Fixed carbon resistors, composition or film types
	8533	21	Other fixed resistors for a power handling capacity not exceeding 20 W
	8533	29	Other fixed resistors for a power handling capacity of 20 W or more
	8533	31	Wirewound variable resistors, including rheostats and potentiometers, for a power handling capacity not exceeding 20 W
	8533	39	Wirewound variable resistors, including rheostats and potentiometers, for a power handling capacity of 20 W or more
	8533	40	Other variable resistors, including rheostats and potentiometers
	8533	90	Parts
	<b>8534</b>		<b>Printed circuits</b>
ex	8536	50	Electronic AC switches consisting of optically coupled input and output circuits (Insulated thyristor AC switches)
ex	8536	50	Electronic switches, including temperature protected electronic switches, consisting of a transistor and a logic chip (chip-on-chip technology) for a voltage not exceeding 1000 volts
ex	8536	50	Electromechanical snap-action switches for a current not exceeding 11 amps
ex	8536	69	Plugs and sockets for co-axial cables and printed circuits
ex	8536	90	Connection and contact elements for wires and cables
	8541		Diodes, transistors and similar semiconductor devices; photosensitive semiconductor devices, including photovoltaic cells whether or not assembled in modules or made up into panels; light-emitting diodes; mounted piezo-electric crystals:
	8541	10	Diodes, other than photosensitive or light-emitting diodes
	8541	21	Transistors, other than photosensitive transistors, with a dissipation rate of less than 1 W
	8541	29	Transistors, other than photosensitive transistors, with a dissipation rate of 1 W or more
	8541	30	Thyristors, diacs and triacs, other than photosensitive devices
	8541	40	Photosensitive semiconductor devices, including photovoltaic cells whether or not assembled in modules or made up into panels; light emitting diodes
	8541	50	Other semiconductor devices
	8541	60	Mounted piezo-electric crystals
	8541	90	Parts



	<b>8542</b>		<b>Electronic integrated circuits and microassemblies</b>
	8542	12	Cards incorporating an electronic integrated circuit ('smart' cards)
	8542	13	Metal oxide semiconductors (MOS technology)
	8542	14	Circuits obtained by bipolar technology
	8542	19	Other monolithic digital integrated circuits, including circuits obtained by a combination of bipolar and MOS technologies (BIMOS technology)
	8542	30	Other monolithic integrated circuits
	8542	40	Hybrid integrated circuits
	8542	50	Electronic microassemblies
	8542	90	Part
	<b>8543</b>	<b>81</b>	<b>Proximity cards and tags</b>
ex	8543	89	Electrical machines with translation or dictionary functions
ex	8544	41	Other electric conductors, for a voltage not exceeding 80 V, fitted with connectors, of a kind used for telecommunications
ex	8544	49	Other electric conductors, for a voltage not exceeding 80 V, not fitted with connectors, of a kind used for telecommunications
ex	8544	51	Other electric conductors, for a voltage exceeding 80 V but not exceeding 1000 V, fitted with connectors, of a kind used for telecommunications
	8544	70	Optical fibre cables
	9009	11	Electrostatic photocopying apparatus, operating by reproducing the original image directly onto the copy (direct process)]
	9009	21	Other photocopying apparatus, incorporating an optical system
	9009	90	Parts and accessories
	9026		Instruments and apparatus for measuring or checking the flow, level, pressure or other variables of liquids or gases (for example, flow meters, level gauges, manometers, heat meters), excluding instruments and apparatus of heading No 9014, 9015, 9028 or 9032:
	9026	10	Instruments for measuring or checking the flow or level of liquids
	9026	20	Instruments and apparatus for measuring or checking pressure
	9026	80	Other instruments and apparatus for measuring or checking of heading 9026
	9026	90	Parts and accessories of instruments and apparatus of heading 9026
	9027	20	Chromatographs and electrophoresis instruments
	9027	30	Spectrometers, spectrophotometers and spectrographs using optical radiations (UV, visible, IR)

	9027	50	Other instruments and apparatus using optical radiations (UV, visible, IR) of heading No 9027
	9027	80	Other instruments and apparatus of heading No 9027 (other than those of heading No 9027 10)
ex	9027	90	Parts and accessories of products of heading 9027, other than for gas or smoke analysis apparatus and microtomes
	9030	40	Instruments and apparatus for measuring and checking, specially designed for telecommunications (for example, cross-talk meters, gain measuring instruments, distortion factor meters, psophometers)

## Attachment A, Section 2

Semiconductor manufacturing and testing equipment and parts thereof

	HS Code	Description	Comments
ex	7017 10	Quartz reactor tubes and holders designed for insertion into diffusion and oxidation furnaces for production of semiconductor wafers	For Attachment B
ex	8419 89	Chemical vapor deposition apparatus for semiconductor production	For Attachment B
ex	8419 90	Parts of chemical vapor deposition apparatus for semiconductor production	For Attachment B
ex	8421 19	Spin dryers for semiconductor wafer processing	
ex	8421 91	Parts of spin dryers for semiconductor wafer processing	
ex	8424 89	Deflash machines for cleaning and removing contaminants from the metal leads of semiconductor packages prior to the electroplating process	
ex	8424 89	Spraying appliances for etching, stripping or cleaning semiconductor wafers	
ex	8424 90	Parts of spraying appliances for etching, stripping or cleaning semiconductor wafers	
ex	8456 10	Machines for working any material by removal of material, by laser or other light or photo beam in the production of semiconductor wafers	
ex	8456 91	Apparatus for stripping or cleaning semiconductor wafers	For Attachment B
	8456 91	Machines for dry-etching patterns on semiconductor materials	
ex	8456 99	Focused ion beam milling machines to produce or repair masks and reticles for patterns on semiconductor devices	
ex	8456 99	Lasercutters for cutting contacting tracks in semiconductor production by laser beam	For Attachment B
ex	8464 10	Machines for sawing monocrystal semiconductor boules into slices, or wafers into chips	For Attachment B
ex	8464 20	Grinding, polishing and lapping machines for processing of semiconductor wafers	
ex	8464 90	Dicing machines for scribing or scoring semiconductor wafers	

ex	8466 91	Parts for machines for sawing monocrystal semiconductor boules into slices, or wafers into chips	For Attachment B
ex	8466 91	Parts of dicing machines for scribing or scoring semiconductor wafers	For Attachment B
ex	8466 91	Parts of grinding, polishing and lapping machines for processing of semiconductor wafers	
ex	8466 93	Parts of focused ion beam milling machines to produce or repair masks and reticles for patterns on semiconductor devices	
ex	8466 93	Parts of lasercutters for cutting contacting tracks in semiconductor production by laser beam	For Attachment B
ex	8466 93	Parts of machines for working any material by removal of material, by laser or other light or photo beam in the production of semiconductor wafers	
ex	8456 93	Parts of apparatus for stripping or cleaning semiconductor wafers	For Attachment B
ex	8466 93	Parts of machines for dry-etching patterns on semiconductor materials	
ex	8477 10	Encapsulation equipment for assembly of semiconductors	For Attachment B
ex	8477 90	Parts of encapsulation equipment	For Attachment B
ex	8479 50	Automated machines for transport, handling and storage of semiconductor wafers, wafer cassettes, wafer boxes and other material for semiconductor devices	For Attachment B
ex	8479 89	Apparatus for growing or pulling monocrystal semiconductor boules	
ex	8479 89	Apparatus for physical deposition by sputtering on semiconductor wafers	For Attachment B
ex	8479 89	Apparatus for wet etching, developing, stripping or cleaning semiconductor wafers and flat panel displays	For Attachment B
ex	8479 89	Die attach apparatus, tape automated bonders, and wire bonders for assembly of semiconductors	For Attachment B
ex	8479 89	Encapsulation equipment for assembly of semiconductors	For Attachment B
ex	8479 89	Epitaxial deposition machines for	

		semiconductor wafers	
ex	8479 89	Machines for bending, folding and straightening semiconductor leads	For Attachment B
ex	8479 89	Physical deposition apparatus for for semiconductor production	For Attachment B
ex	8479 89	Spinners for coating photographic emulsions on semiconductor wafers	For Attachment B
ex	8479 90	Part of apparatus for physical deposition by sputtering on semiconductor wafers	For Attachment B
ex	8479 90	Parts for die attach apparatus, tape automated bonders, and wire bonders for assembly of semiconductors	For Attachment B
ex	8479 90	Parts for spinners for coating photographic emulsions on semiconductor wafers	For Attachment B
ex	8479 90	Parts of apparatus for growing or pulling monocrystal semiconductor boules	
ex	8479 90	Parts of apparatus for wet etching, developing, stripping or cleaning semiconductor wafers and flat panel displays	For Attachment B
ex	8479 90	Parts of automated machines for transport, handling and storage of semiconductor wafers, wafer cassettes, wafer boxes and other material for semiconductor devices	For Attachment B
ex	8479 90	Parts of encapsulation equipment for assembly of semiconductors	For Attachment B
ex	8479 90	Parts of epitaxial deposition machines for semiconductor wafers	
ex	8479 90	Parts of machines for bending, folding and straightening semiconductor leads	For Attachment B
ex	8479 90	Parts of physical deposition apparatus for for semiconductor production	For Attachment B
ex	8480 71	Injection and compression moulds for the manufacture of semiconductor devices	
ex	8514 10	Resistance heated furnaces and ovens for the manufacture of semiconductor devices on semiconductor wafers	
ex	8514 20	Inductance or dielectric furnaces and ovens for the manufacture of semiconductor devices on semiconductors wafers	
ex	8514 30	Apparatus for rapid heating of semiconductor wafers	For Attachment

			B
ex	8514 30	Parts of resistance heated furnaces and ovens for the manufacture of semiconductor devices on semiconductor wafers	
ex	8514 90	Parts of apparatus for rapid heating of wafers	For Attachment B
ex	8514 90	Parts of furnaces and ovens of Headings No 8514 10 to No 8514 30	
ex	8536 90	Wafer probers	For Attachment B
	8543 11	Ion implanters for doping semiconductor materials	
ex	8543 30	Apparatus for wet etching, developing, stripping or cleaning semiconductor wafers and flat panel displays	For Attachment B
ex	8543 90	Parts of apparatus for wet etching, developing, stripping or cleaning semiconductor wafers and flat panel displays	For Attachment B
ex	8543 90	Parts of ion implanters for doping semiconductor materials	
	9010 41 to 9010 49	Apparatus for projection, drawing or plating circuit patterns on sensitized semiconductor materials and flat panel displays	
ex	9010 90	Parts and accessories of the apparatus of Headings No 9010 41 to 9010 49	
ex	9011 10	Optical stereoscopic microscopes fitted with equipment specifically designed for the handling and transport of semiconductor wafers or reticles	For Attachment B
ex	9011 20	Photomicrographic microscopes fitted with equipment specifically designed for the handling and transport of semiconductor wafers or reticles	For Attachment B
ex	9011 90	Parts and accessories of optical stereoscopic microscopes fitted with equipment specifically designed for the handling and transport of semiconductor wafers or reticles	For Attachment B
ex	9011 90	Parts and accessories of photomicrographic microscopes fitted with equipment specifically designed for the handling and transport of semiconductor wafers or reticles	For Attachment B
ex	9012 10	Electron beam microscopes fitted with equipment specifically designed for the handling and transport of semiconductor wafers or reticles	For Attachment B
ex	9012 90	Parts and accessories of electron beam microscopes fitted with equipment specifically	For Attachment

		designed for the handling and transport of semiconductor wafers or reticles	B
ex	9017 20	Pattern generating apparatus of a kind used for producing masks or reticles from photoresist coated substrates	For Attachment B
ex	9017 90	Parts and accessories for pattern generating apparatus of a kind used for producing masks or reticles from photoresist coated substrates	For Attachment B
ex	9017 90	Parts of such pattern generating apparatus	For Attachment B
	9030 82	Instruments and apparatus for measuring or checking semiconductor wafers or devices	
ex	9030 90	Parts and accessories of instruments and apparatus for measuring or checking semiconductor wafers or devices	
ex	9030 90	Parts of instruments and appliances for measuring or checking semiconductor wafers or devices	
	9031 41	Optical instruments and appliances for inspecting semiconductor wafers or devices or for inspecting masks, photomasks or reticles used in manufacturing semiconductor devices	
ex	9031 49	Optical instruments and appliances for measuring surface particulate contamination on semiconductor wafers	
ex	9031 90	Parts and accessories of optical instruments and appliances for inspecting semiconductor wafers or devices or for inspecting masks, photomasks or reticles used in manufacturing semiconductor devices	
ex	9031 90	Parts and accessories of optical instruments and appliances for measuring surface particulate contamination on semiconductor wafers	

## Attachment B

Positive list of specific products to be covered by this agreement wherever they are classified in the HS.

Where parts are specified, they are to be covered in accordance with HS Notes 2(b) to Section XVI and Chapter 90, respectively.

**Computers:** automatic data processing machines capable of 1) storing the processing program or programs and at least the data immediately necessary for the execution of the program; 2) being freely programmed in accordance with the requirements of the user; 3) performing arithmetical computations specified by the user; and 4) executing, without human intervention, a processing program which requires them to modify their execution, by logical decision during the processing run.

The agreement covers such automatic data processing machines whether or not they are able to receive and process with the assistance of central processing unit telephony signals, television signals, or other analogue or digitally processed audio or video signals. Machines performing a specific function other than data processing, or incorporating or working in conjunction with an automatic data processing machine, and not otherwise specified under Attachment A or B, are not covered by this agreement.

**Electric amplifiers** when used as repeaters in line telephony products falling within this agreement, and parts thereof

**Flat panel displays** (including LCD, Electro Luminescence, Plasma and other technologies) for products falling within this agreement, and parts thereof.

**Network equipment:** Local Area Network (LAN) and Wide Area Network (WAN) apparatus, including those products dedicated for use solely or principally to permit the interconnection of automatic data processing machines and units thereof for a network that is used primarily for the sharing of resources such as central processor units, data storage devices and input or output units - including adapters, hubs, in-line repeaters, converters, concentrators, bridges and routers, and printed circuit assemblies for physical incorporation into automatic data processing machines and units thereof.

**Monitors :** display units of automatic data processing machines with a cathode ray tube with a dot screen pitch smaller than 0,4 mm not capable of receiving and processing television signals or other analogue or digitally processed audio or video signals without assistance of a central processing unit of a computer as defined in this agreement.

The agreement does not, therefore, cover televisions, including high definition televisions.<sup>3</sup>

**Optical disc storage units,** for automatic data processing machines (including CD drives and DVD-drives), whether or not having the capability of writing/recording as well as reading, whether or not in their own housings.

**Paging alert devices,** and parts thereof .

**Plotters** whether input or output units of HS heading No 8471 or drawing or drafting machines of HS heading No 9017.

**Printed Circuit Assemblies** for products falling within this agreement, including such assemblies for external connections such as cards that conform to the PCMCIA standard.

Such printed circuit assemblies consist of one or more printed circuits of heading 8534 with one or more active elements assembled thereon, with or without passive elements "Active elements" means diodes, transistors, and

<sup>3</sup> Participants will conduct a review of this product description in January 1999 under the consultation provisions of paragraph 3 of the Declaration



similar semiconductor devices, whether or not photosensitive, of heading 8541, and integrated circuits and micro assemblies of heading 8542.

**Projection type flat panel display units** used with automatic data processing machines which can display digital information generated by the central processing unit.

**Proprietary format storage devices** including media therefor for automatic data processing machines, with or without removable media and whether magnetic, optical or other technology, including Bernoulli Box, Syquest, or Zipdrive cartridge storage units.

**Multimedia upgrade kits** for automatic data processing machines, and units thereof, put up for retail sale, consisting of, at least, speakers and/or microphones as well as a printed circuit assembly that enables the ADP machines and units thereof to process audio signals (sound cards).

**Set top boxes which have a communication function:** a microprocessor-based device incorporating a modem for gaining access to the Internet, and having a function of interactive information exchange

**Statements by Japan, the United States, the European Union  
at the WTO Ministerial Meeting in Singapore**

Statement by Minister of International Trade and Industry, Japan on the ITA

13 December 1996

1 Ideas of an ITA (Information Technology Agreement), an agreement for elimination of tariffs in the information technology products by the year 2000, were launched through the initiative of industries concerned of the Quad countries. Since the Quadrilateral Trade Ministers Meeting held in Seattle in September 1995, substantive negotiations have been undertaken intensively among the governments of the Quad and other countries and regions

The ITA negotiations have been the greatest tariff negotiations since the Uruguay Round. I am truly pleased to note that an agreement has been reached during the WTO Singapore Ministerial Conference on the basic framework of the ITA.

2 Access to natural resources and energy has always been indispensable factors which constitute the fundamental structure of a modern society. In recent years, with the development of the information society, access to the information technology products has become equally important.

The ITA is an approach that focuses on market access for goods in the information technology sector. Its significance is extremely large, along with the basic telecommunication whose negotiations focus on services in the same sector

3 With the agreement reached at the SMC on the ITA, tariffs will be eliminated in markets accounting for more than 80% of world trade in IT products. Further growth can be expected in the information technology sector in the future. The elimination of tariffs will bring major benefits not only to Japan but to many countries

The effects of the ITA will not be limited to its direct effect on trade in the information technology sector, but is also expected to invite the indirect effect of technology improvement in various areas in the medium and long term, brought through the freer flow of IT products throughout the world as the result of tariff elimination

4 Japan is resolved to fully implement this agreement. And I hope that many more countries will join in this agreement

(Reference) Contents of the ITA

At the WTO Singapore Ministerial Conference the following agreement was concluded;

(1) Participating countries and regions

Japan, the US, EU, Canada, Hong Kong, the Republic of Korea, Indonesia, Chinese Taipei, Australia, Norway, Singapore, Switzerland, Turkey and Iceland  
(participants may change)

(2) Product Coverage

A total of approximately 200 items are covered by the ITA including semi-conductors, computers, computer software, telecommunication-related products, semi-conductor manufacturing equipments etc

(3) Schedule of tariff elimination

In principle, tariffs will be reduced in four stages from July 1997, and all tariffs will have been eliminated by January 2001.

(4) Timetable between now and the implementation of the ITA

Details of implementation will be decided hereafter at a technical meeting to be held in January 1997.

EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF THE UNITED STATES  
TRADE REPRESENTATIVE  
WASHINGTON, D.C. 20508

December 13, 1996

Contact: Jay Ziegler  
(202) 395-3230

UNITED STATES PRAISES SWEEPING INFORMATION  
TECHNOLOGY AGREEMENT, WTO PROCESS

**Singapore** -- Acting United States Trade Representative Charlene Barshefsky today announced a sweeping Information Technology Agreement (ITA) to eliminate tariffs on global information technology products -- semiconductors, telecommunications equipment, computers and computer equipment and software products.

The agreement was formally endorsed today by 28 countries representing about 85% of global trade. The information technology (IT) sector represents a trillion dollars in global production. Trade flows based upon the 1995 volume of \$500 billion represents the baseline for "critical mass" in IT product coverage. For the agreement to take effect, participating countries must constitute at least 90% of global IT trade. In addition to countries formally endorsing the agreement today, commitments were also received from a number of other nations. Malaysia, Philippines, and four other countries declared their intent to join the agreement. Together these six countries comprise about 6% of global IT trade.

In addition to the United States, the 28 countries signing the agreement are Australia, Canada, Taiwan, European Union, Hong Kong, Iceland, Indonesia, Japan, Korea, Norway, Singapore, Switzerland and Turkey.

Countries participating in this agreement will eliminate tariffs on information technology products by the year 2000 on a wide range of technology products, recognizing that limited exceptions may be required. Technical details on staging -- the pace at which product tariffs are reduced from current levels to zero by the year 2000 -- will be worked out in Geneva. The Geneva discussions begin in January 1997 and culminate with an April 1, 1997 review of country-specific schedules of commitments and the percent of world trade covered.

The agreement will become effective on July 1, 1997 at which point countries will begin to see immediate benefits; it is anticipated that in some product areas such as semiconductors that staging would be accelerated dramatically, well in advance of the year 2000.

President Clinton called from the White House on Friday morning to congratulate Ambassador

Barshefsky on the Information Technology Agreement. She outlined the benefits of the agreement for increased world trade including the new economic opportunities for American business expansion and job creation that are likely to occur as a result of the agreement. Currently, the IT industry in the U.S. employs 1.8 million Americans with 1995 exports running at over \$90 billion in IT goods. She praised the President's personal efforts on behalf of the ITA, noting the decisive boost the ITA received when the APEC leaders endorsed the initiative at the recent APEC meeting in Manila.

Trade ministers have agreed that their technical experts will address detailed product staging issues immediately at the WTO in the weeks ahead -- the conventional procedure in tariff reduction agreements.

With regard to other issues in the Singapore Ministerial Declaration, Ambassador Barshefsky noted that some important progress was made with regard to a number of U.S. objectives:

**Procurement.** The study on procurement is intended to be the first step toward an agreement on transparency practices in government procurement which should serve to reduce the influence of corruption. This initiative will -- as we continue to push it -- help create an environment where businesses can expect a fair shake in competing for contracts with foreign governments.

**Labor Rights.** Since the Eisenhower Administration, the United States has sought a framework from which to pursue its objectives on core labor standards in the context of global trade. By core labor standards the United States' means the right of assembly, prohibition on child labor, non-discrimination in employment and prohibition on forced labor. This negotiation was extraordinarily difficult and the convergence of views achieved is no small accomplishment. It establishes a balanced framework for how this issue should be dealt with in the future. The effort made at Singapore will help ensure collaborative efforts between the WTO and the ILO.

**Basic Telecom.** Good progress was also made this week on advancing the negotiations on basic telecom. Following a meeting co-chaired on Monday by Ambassador Barshefsky and FCC Chairman Reed Hundt a number of countries announced that in January they will present new or improved offers. The United States is hopeful, as a result of this week, it will be able to conclude these talks successfully in February by getting high quality offers from a critical mass of countries.

**Agriculture.** One of the key issues in the Conference was to review implementation of Uruguay Round commitments and enforcement of obligations. This is of particular importance to U.S. agriculture. Today's Ministerial Declaration guarantees that negotiations to continue the reform process in a number of areas, including agriculture, will remain consistent with the timetable agreed to in Marrakesh.

During her remarks, Ambassador Barshefsky highlighted that the groundwork for the 1999 negotiations will go forward in 1997 and outlined its importance to American agriculture.

She noted that U.S. agriculture still faces serious impediments around the world. Import barriers,

state trading enterprises, export subsidies and unjustifiable sanitary and phytosanitary regulations still hamper U.S. agriculture exports. The outcome of this Ministerial offers us the opportunity to attack these problems head-on.

Ambassador Barshefsky also praised the private sector and Congressional delegations for their participation in the WTO process.

**Investment.** On this subject the United States is satisfied that the WTO work program on investment will not endanger the OECD investment negotiations in Paris, which are scheduled to conclude in May 1997. The purpose of the OECD negotiations is to obtain a high-standard multilateral investment agreement that will protect U.S. investors abroad.

**Competition.** The United States' position on this issue ensures that work on competition will not threaten our laws which protect the principles of fair pricing and fair competition. We should not undo work within the WTO on anti-dumping issues that has barely begun. The work plan must focus on the problems of cartels and other private anti-competitive behavior which can impede U.S. exporters' access to foreign markets.

**Textiles.** Nothing in the declaration will have an impact on our existing trade policies with regard to textiles.

## Information Technology Agreement

### Statement by the EU Commission

The European Commission, negotiating on behalf of all 15 EU countries, believes this will be major spur to economic growth, as well as contributing to the success of the Singapore Ministerial as a whole. Sir Leon Brittan, EU Commissioner for Trade Policy, welcomed the breakthrough:

"The EU Council of Ministers has given its clear endorsement to the results of the negotiations between the EU and the US, and has instructed the Commission to press ahead and encourage as many other countries as possible to pledge their support for an ITA. Once there is a deal it will be the biggest trade step taken since the end of the Uruguay Round. It will be good for the IT industry, and will act as a catalyst for industrial growth. As such it will be good for the whole world economy. It will also provide the most high-profile success of this Conference and be a powerful step towards enforcing the multilateral trading system."

The Commission has calculated that the EU-US agreement meets 98% of the EU's original negotiating objectives in terms of volume of trade.

#### Conditionality

The Agreement is conditional on the lion's share of world trade in IT products being covered. If by March 15 1997, enough countries have signed the deal to cover approximately 90% of world trade, the deal will go ahead in its current form. If this percentage falls somewhat short of 90%, participants may take into account the extent of the participation of countries representing for them the substantial bulk of their own trade in such products.

#### The products covered

The ITA will cover the following products:

Capacitors: these energy-storing devices used in computers are worth several hundred million US dollars in European exports every year.

Photocopiers: digital photocopiers, which represent the main share of new production, will be included, while non-digital ones will be excluded.

Fibre optic cables will be included, but the optic fibres that are needed for the manufacturing of such cables will be excluded.

Computer monitors: computer screens are covered, but televisions are not. Computer screens - defined as having a "dot screen pitch" of less than 0.4mm and therefore



viewed close up by computer users - are included. Those with wider dot screen pitch, notably household TV sets, are excluded

Telecommunications equipment is included

Graphic display tubes are excluded

Computer software: all computer software is included. Software carrying sound recordings will be excluded, as will software carrying films

Semi-conductors and other key electrical components are included

Timing of tariff cuts

Tariffs cuts will take place in four stages up till January 1 2000 at the latest, beginning in July 1997, subject to agreed exceptions. The EU is anxious for tariffs cuts to take place as soon as possible, and would happily phase them all out by 1 January 1998. Both the EU and the US will seek, by March 15 1997, to agree the exact 'staging' by which further acceleration of tariffs cuts could take place in specific IT products

Non-IT products

The Agreement in fact goes beyond IT products by including a significant agreement on spirits. The United States has agreed to eliminate tariffs on brown distilled spirits by the year 2000, and to eliminate tariffs on white spirits and liqueurs over five years. The US and EU will urge other countries to follow suit. This is of major importance for European exporters of cognac, whisky, vodka, gin and other drinks. Removal of tariffs merely between the EU and the US would give the EU a duty gain of US \$ 35 million.

Non-Tariff Barriers

The Agreement will go some way towards removing existing non-tariff barriers and to preventing new ones from being erected. It includes provisions to prevent existing non-tariff obstacles from "nullifying or impairing" the agreement, while it confirms that WTO rules will restrict the use of new impediments being set up.

Amount of trade covered

EU trade in IT goods totals well over US \$ 100 billion a year. EU trade with the US in the same categories totals about US \$ 30 billion a year. During bilateral discussions, the US agreed to include a very substantial portion (around 70%) of the trade volume that it has earlier sought to exclude. This, together with the EU's support for the other products in the Agreement, means that the EU has achieved about 98% of its initial objectives in terms of trade coverage.

#### Countries to be covered ITA

The Agreement remains wholly conditional on enough countries signing up by March 15. The EU has persistently urged WTO members to back an ITA deal during discussions with them in Singapore. Judging from the countries that have already expressed support for an ITA, the EU is already confident that by March 15 the 90% target is likely to be achieved.

**ACTA**

## **Anti-Counterfeiting Trade Agreement**

*The Parties to this Agreement,*

*Noting* that effective enforcement of intellectual property rights is critical to sustaining economic growth across all industries and globally;

*Noting* further that the proliferation of counterfeit and pirated goods, as well as of services that distribute infringing material, undermines legitimate trade and sustainable development of the world economy, causes significant financial losses for right holders and for legitimate businesses, and, in some cases, provides a source of revenue for organized crime and otherwise poses risks to the public;

*Desiring* to combat such proliferation through enhanced international cooperation and more effective international enforcement;

*Intending* to provide effective and appropriate means, complementing the TRIPS Agreement, for the enforcement of intellectual property rights, taking into account differences in their respective legal systems and practices;

*Desiring* to ensure that measures and procedures to enforce intellectual property rights do not themselves become barriers to legitimate trade;

*Desiring* to address the problem of infringement of intellectual property rights, including infringement taking place in the digital environment, in particular with respect to copyright or related rights, in a manner that balances the rights and interests of the relevant right holders, service providers, and users;

*Desiring* to promote cooperation between service providers and right holders to address relevant infringements in the digital environment;

*Desiring* that this Agreement operates in a manner mutually supportive of international enforcement work and cooperation conducted within relevant international organizations;

*Recognizing* the principles set forth in the *Doha Declaration on the TRIPS Agreement and Public Health*, adopted on 14 November 2001, at the Fourth WTO Ministerial Conference;

*Hereby agree* as follows:

**CHAPTER I**  
**INITIAL PROVISIONS AND GENERAL DEFINITIONS**

**Section 1: Initial Provisions**

ARTICLE 1: RELATION TO OTHER AGREEMENTS

Nothing in this Agreement shall derogate from any obligation of a Party with respect to any other Party under existing agreements, including the TRIPS Agreement.

ARTICLE 2: NATURE AND SCOPE OF OBLIGATIONS

1. Each Party shall give effect to the provisions of this Agreement. A Party may implement in its law more extensive enforcement of intellectual property rights than is required by this Agreement, provided that such enforcement does not contravene the provisions of this Agreement. Each Party shall be free to determine the appropriate method of implementing the provisions of this Agreement within its own legal system and practice.

2. Nothing in this Agreement creates any obligation with respect to the distribution of resources as between enforcement of intellectual property rights and enforcement of law in general.

3. The objectives and principles set forth in Part I of the TRIPS Agreement, in particular in Articles 7 and 8, shall apply, *mutatis mutandis*, to this Agreement.

ARTICLE 3: RELATION TO STANDARDS CONCERNING THE AVAILABILITY AND SCOPE OF INTELLECTUAL PROPERTY RIGHTS

1. This Agreement shall be without prejudice to provisions in a Party's law governing the availability, acquisition, scope, and maintenance of intellectual property rights.

2. This Agreement does not create any obligation on a Party to apply measures where a right in intellectual property is not protected under its laws and regulations.

ARTICLE 4: PRIVACY AND DISCLOSURE OF INFORMATION

1. Nothing in this Agreement shall require a Party to disclose:
  - (a) information, the disclosure of which would be contrary to its law, including laws protecting privacy rights, or international agreements to

which it is party;

- (b) confidential information, the disclosure of which would impede law enforcement or otherwise be contrary to the public interest; or
- (c) confidential information, the disclosure of which would prejudice the legitimate commercial interests of particular enterprises, public or private.

2. When a Party provides written information pursuant to the provisions of this Agreement, the Party receiving the information shall, subject to its law and practice, refrain from disclosing or using the information for a purpose other than that for which the information was provided, except with the prior consent of the Party providing the information.

## Section 2: General Definitions

### ARTICLE 5: GENERAL DEFINITIONS

For the purposes of this Agreement, unless otherwise specified:

- (a) **ACTA** means the *Anti-Counterfeiting Trade Agreement*;
- (b) **Committee** means the ACTA Committee established under Chapter V (Institutional Arrangements);
- (c) **competent authorities** includes the appropriate judicial, administrative, or law enforcement authorities under a Party's law;
- (d) **counterfeit trademark goods** means any goods, including packaging, bearing without authorization a trademark which is identical to the trademark validly registered in respect of such goods, or which cannot be distinguished in its essential aspects from such a trademark, and which thereby infringes the rights of the owner of the trademark in question under the law of the country in which the procedures set forth in Chapter II (Legal Framework for Enforcement of Intellectual Property Rights) are invoked;
- (e) **country** is to be understood to have the same meaning as that set forth in the Explanatory Notes to the WTO Agreement;
- (f) **customs transit** means the customs procedure under which goods are transported under customs control from one customs office to another;
- (g) **days** means calendar days;
- (h) **intellectual property** refers to all categories of intellectual property that

are the subject of Sections 1 through 7 of Part II of the TRIPS Agreement;

- (i) **in-transit goods** means goods under **customs transit** or **transshipment**;
- (j) **person** means a natural person or a legal person;
- (k) **pirated copyright goods** means any goods which are copies made without the consent of the right holder or person duly authorized by the right holder in the country of production and which are made directly or indirectly from an article where the making of that copy would have constituted an infringement of a copyright or a related right under the law of the country in which the procedures set forth in Chapter II (Legal Framework for Enforcement of Intellectual Property Rights) are invoked;
- (l) **right holder** includes a federation or an association having the legal standing to assert rights in intellectual property;
- (m) **territory**, for the purposes of Section 3 (Border Measures) of Chapter II (Legal Framework for Enforcement of Intellectual Property Rights), means the customs territory and all free zones<sup>1</sup> of a Party;
- (n) **transshipment** means the customs procedure under which goods are transferred under customs control from the importing means of transport to the exporting means of transport within the area of one customs office which is the office of both importation and exportation;
- (o) **TRIPS Agreement** means the *Agreement on Trade-Related Aspects of Intellectual Property Rights*, contained in Annex 1C to the WTO Agreement;
- (p) **WTO** means the World Trade Organization; and
- (q) **WTO Agreement** means the *Marrakesh Agreement Establishing the World Trade Organization*, done on 15 April 1994.

## CHAPTER II LEGAL FRAMEWORK FOR ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

### Section 1: General Obligations

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<sup>1</sup> For greater certainty, the Parties acknowledge that **free zone** means a part of the territory of a Party where any goods introduced are generally regarded, insofar as import duties and taxes are concerned, as being outside the customs territory.



## ARTICLE 6: GENERAL OBLIGATIONS WITH RESPECT TO ENFORCEMENT

1. Each Party shall ensure that enforcement procedures are available under its law so as to permit effective action against any act of infringement of intellectual property rights covered by this Agreement, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements. These procedures shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.
2. Procedures adopted, maintained, or applied to implement the provisions of this Chapter shall be fair and equitable, and shall provide for the rights of all participants subject to such procedures to be appropriately protected. These procedures shall not be unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays.
3. In implementing the provisions of this Chapter, each Party shall take into account the need for proportionality between the seriousness of the infringement, the interests of third parties, and the applicable measures, remedies and penalties.
4. No provision of this Chapter shall be construed to require a Party to make its officials subject to liability for acts undertaken in the performance of their official duties.

### **Section 2: Civil Enforcement<sup>2</sup>**

## ARTICLE 7: AVAILABILITY OF CIVIL PROCEDURES

1. Each Party shall make available to right holders civil judicial procedures concerning the enforcement of any intellectual property right as specified in this Section.
2. To the extent that any civil remedy can be ordered as a result of administrative procedures on the merits of a case, each Party shall provide that such procedures shall conform to principles equivalent in substance to those set forth in this Section.

## ARTICLE 8: INJUNCTIONS

1. Each Party shall provide that, in civil judicial proceedings concerning the enforcement of intellectual property rights, its judicial authorities have the authority to issue an order against a party to desist from an infringement, and *inter alia*, an order to that party or, where appropriate, to a third party over whom the relevant judicial authority exercises jurisdiction, to prevent goods that involve the infringement of an intellectual property right from entering into the channels of commerce.

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<sup>2</sup> A Party may exclude patents and protection of undisclosed information from the scope of this Section.

2. Notwithstanding the other provisions of this Section, a Party may limit the remedies available against use by governments, or by third parties authorized by a government, without the authorization of the right holder, to the payment of remuneration, provided that the Party complies with the provisions of Part II of the TRIPS Agreement specifically addressing such use. In other cases, the remedies under this Section shall apply or, where these remedies are inconsistent with a Party's law, declaratory judgments and adequate compensation shall be available.

#### ARTICLE 9: DAMAGES

1. Each Party shall provide that, in civil judicial proceedings concerning the enforcement of intellectual property rights, its judicial authorities have the authority to order the infringer who, knowingly or with reasonable grounds to know, engaged in infringing activity to pay the right holder damages adequate to compensate for the injury the right holder has suffered as a result of the infringement. In determining the amount of damages for infringement of intellectual property rights, a Party's judicial authorities shall have the authority to consider, *inter alia*, any legitimate measure of value the right holder submits, which may include lost profits, the value of the infringed goods or services measured by the market price, or the suggested retail price.

2. At least in cases of copyright or related rights infringement and trademark counterfeiting, each Party shall provide that, in civil judicial proceedings, its judicial authorities have the authority to order the infringer to pay the right holder the infringer's profits that are attributable to the infringement. A Party may presume those profits to be the amount of damages referred to in paragraph 1.

3. At least with respect to infringement of copyright or related rights protecting works, phonograms, and performances, and in cases of trademark counterfeiting, each Party shall also establish or maintain a system that provides for one or more of the following:

- (a) pre-established damages; or
- (b) presumptions<sup>3</sup> for determining the amount of damages sufficient to compensate the right holder for the harm caused by the infringement; or
- (c) at least for copyright, additional damages.

4. Where a Party provides the remedy referred to in subparagraph 3(a) or the

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<sup>3</sup> The presumptions referred to in subparagraph 3(b) may include a presumption that the amount of damages is: (i) the quantity of the goods infringing the right holder's intellectual property right in question and actually assigned to third persons, multiplied by the amount of profit per unit of goods which would have been sold by the right holder if there had not been the act of infringement; or (ii) a reasonable royalty; or (iii) a lump sum on the basis of elements such as at least the amount of royalties or fees which would have been due if the infringer had requested authorization to use the intellectual property right in question.

presumptions referred to in subparagraph 3(b), it shall ensure that either its judicial authorities or the right holder has the right to choose such a remedy or presumptions as an alternative to the remedies referred to in paragraphs 1 and 2.

5. Each Party shall provide that its judicial authorities, where appropriate, have the authority to order, at the conclusion of civil judicial proceedings concerning infringement of at least copyright or related rights, or trademarks, that the prevailing party be awarded payment by the losing party of court costs or fees and appropriate attorney's fees, or any other expenses as provided for under that Party's law.

#### ARTICLE 10: OTHER REMEDIES

1. At least with respect to pirated copyright goods and counterfeit trademark goods, each Party shall provide that, in civil judicial proceedings, at the right holder's request, its judicial authorities have the authority to order that such infringing goods be destroyed, except in exceptional circumstances, without compensation of any sort.

2. Each Party shall further provide that its judicial authorities have the authority to order that materials and implements, the predominant use of which has been in the manufacture or creation of such infringing goods, be, without undue delay and without compensation of any sort, destroyed or disposed of outside the channels of commerce in such a manner as to minimize the risks of further infringements.

3. A Party may provide for the remedies described in this Article to be carried out at the infringer's expense.

#### ARTICLE 11: INFORMATION RELATED TO INFRINGEMENT

Without prejudice to its law governing privilege, the protection of confidentiality of information sources, or the processing of personal data, each Party shall provide that, in civil judicial proceedings concerning the enforcement of intellectual property rights, its judicial authorities have the authority, upon a justified request of the right holder, to order the infringer or, in the alternative, the alleged infringer, to provide to the right holder or to the judicial authorities, at least for the purpose of collecting evidence, relevant information as provided for in its applicable laws and regulations that the infringer or alleged infringer possesses or controls. Such information may include information regarding any person involved in any aspect of the infringement or alleged infringement and regarding the means of production or the channels of distribution of the infringing or allegedly infringing goods or services, including the identification of third persons alleged to be involved in the production and distribution of such goods or services and of their channels of distribution.

#### ARTICLE 12: PROVISIONAL MEASURES

1. Each Party shall provide that its judicial authorities have the authority to order

prompt and effective provisional measures:

- (a) against a party or, where appropriate, a third party over whom the relevant judicial authority exercises jurisdiction, to prevent an infringement of any intellectual property right from occurring, and in particular, to prevent goods that involve the infringement of an intellectual property right from entering into the channels of commerce;
- (b) to preserve relevant evidence in regard to the alleged infringement.

2. Each Party shall provide that its judicial authorities have the authority to adopt provisional measures *inaudita altera parte* where appropriate, in particular where any delay is likely to cause irreparable harm to the right holder, or where there is a demonstrable risk of evidence being destroyed. In proceedings conducted *inaudita altera parte*, each Party shall provide its judicial authorities with the authority to act expeditiously on requests for provisional measures and to make a decision without undue delay.

3. At least in cases of copyright or related rights infringement and trademark counterfeiting, each Party shall provide that, in civil judicial proceedings, its judicial authorities have the authority to order the seizure or other taking into custody of suspect goods, and of materials and implements relevant to the act of infringement, and, at least for trademark counterfeiting, documentary evidence, either originals or copies thereof, relevant to the infringement.

4. Each Party shall provide that its authorities have the authority to require the applicant, with respect to provisional measures, to provide any reasonably available evidence in order to satisfy themselves with a sufficient degree of certainty that the applicant's right is being infringed or that such infringement is imminent, and to order the applicant to provide a security or equivalent assurance sufficient to protect the defendant and to prevent abuse. Such security or equivalent assurance shall not unreasonably deter recourse to procedures for such provisional measures.

5. Where the provisional measures are revoked or where they lapse due to any act or omission by the applicant, or where it is subsequently found that there has been no infringement of an intellectual property right, the judicial authorities shall have the authority to order the applicant, upon request of the defendant, to provide the defendant appropriate compensation for any injury caused by these measures.

### **Section 3: Border Measures**<sup>4, 5</sup>

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<sup>4</sup> Where a Party has dismantled substantially all controls over movement of goods across its border with another Party with which it forms part of a customs union, it shall not be required to apply the provisions of this Section at that border.

<sup>5</sup> It is understood that there shall be no obligation to apply the procedures set forth in this Section to goods put on the market in another country by or with the consent of the right holder.

#### ARTICLE 13: SCOPE OF THE BORDER MEASURES<sup>6</sup>

In providing, as appropriate, and consistent with its domestic system of intellectual property rights protection and without prejudice to the requirements of the TRIPS Agreement, for effective border enforcement of intellectual property rights, a Party should do so in a manner that does not discriminate unjustifiably between intellectual property rights and that avoids the creation of barriers to legitimate trade.

#### ARTICLE 14: SMALL CONSIGNMENTS AND PERSONAL LUGGAGE

1. Each Party shall include in the application of this Section goods of a commercial nature sent in small consignments.
2. A Party may exclude from the application of this Section small quantities of goods of a non-commercial nature contained in travellers' personal luggage.

#### ARTICLE 15: PROVISION OF INFORMATION FROM THE RIGHT HOLDER

Each Party shall permit its competent authorities to request a right holder to supply relevant information to assist the competent authorities in taking the border measures referred to in this Section. A Party may also allow a right holder to supply relevant information to its competent authorities.

#### ARTICLE 16: BORDER MEASURES

1. Each Party shall adopt or maintain procedures with respect to import and export shipments under which:
  - (a) its customs authorities may act upon their own initiative to suspend the release of suspect goods; and
  - (b) where appropriate, a right holder may request its competent authorities to suspend the release of suspect goods.
2. A Party may adopt or maintain procedures with respect to suspect in-transit goods or in other situations where the goods are under customs control under which:
  - (a) its customs authorities may act upon their own initiative to suspend the release of, or to detain, suspect goods; and

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<sup>6</sup> The Parties agree that patents and protection of undisclosed information do not fall within the scope of this Section.

- (b) where appropriate, a right holder may request its competent authorities to suspend the release of, or to detain, suspect goods.

#### Article 17: APPLICATION BY THE RIGHT HOLDER

1. Each Party shall provide that its competent authorities require a right holder that requests the procedures described in subparagraphs 1(b) and 2(b) of Article 16 (Border Measures) to provide adequate evidence to satisfy the competent authorities that, under the law of the Party providing the procedures, there is *prima facie* an infringement of the right holder's intellectual property right, and to supply sufficient information that may reasonably be expected to be within the right holder's knowledge to make the suspect goods reasonably recognizable by the competent authorities. The requirement to provide sufficient information shall not unreasonably deter recourse to the procedures described in subparagraphs 1(b) and 2(b) of Article 16 (Border Measures).

2. Each Party shall provide for applications to suspend the release of, or to detain, any suspect goods<sup>7</sup> under customs control in its territory. A Party may provide for such applications to apply to multiple shipments. A Party may provide that, at the request of the right holder, the application to suspend the release of, or to detain, suspect goods may apply to selected points of entry and exit under customs control.

3. Each Party shall ensure that its competent authorities inform the applicant within a reasonable period whether they have accepted the application. Where its competent authorities have accepted the application, they shall also inform the applicant of the period of validity of the application.

4. A Party may provide that, where the applicant has abused the procedures described in subparagraphs 1(b) and 2(b) of Article 16 (Border Measures), or where there is due cause, its competent authorities have the authority to deny, suspend, or void an application.

#### ARTICLE 18: SECURITY OR EQUIVALENT ASSURANCE

Each Party shall provide that its competent authorities have the authority to require a right holder that requests the procedures described in subparagraphs 1(b) and 2(b) of Article 16 (Border Measures) to provide a reasonable security or equivalent assurance sufficient to protect the defendant and the competent authorities and to prevent abuse. Each Party shall provide that such security or equivalent assurance shall not unreasonably deter recourse to these procedures. A Party may provide that such security may be in the form of a bond conditioned to hold the defendant harmless from any loss or damage resulting from any suspension of the release of, or detention of, the

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<sup>7</sup> The requirement to provide for such applications is subject to the obligations to provide procedures referred to in subparagraphs 1(b) and 2(b) of Article 16 (Border Measures).

goods in the event the competent authorities determine that the goods are not infringing. A Party may, only in exceptional circumstances or pursuant to a judicial order, permit the defendant to obtain possession of suspect goods by posting a bond or other security.

#### ARTICLE 19: DETERMINATION AS TO INFRINGEMENT

Each Party shall adopt or maintain procedures by which its competent authorities may determine, within a reasonable period after the initiation of the procedures described in Article 16 (Border Measures), whether the suspect goods infringe an intellectual property right.

#### ARTICLE 20: REMEDIES

1. Each Party shall provide that its competent authorities have the authority to order the destruction of goods following a determination referred to in Article 19 (Determination as to Infringement) that the goods are infringing. In cases where such goods are not destroyed, each Party shall ensure that, except in exceptional circumstances, such goods are disposed of outside the channels of commerce in such a manner as to avoid any harm to the right holder.

2. In regard to counterfeit trademark goods, the simple removal of the trademark unlawfully affixed shall not be sufficient, other than in exceptional cases, to permit release of the goods into the channels of commerce.

3. A Party may provide that its competent authorities have the authority to impose administrative penalties following a determination referred to in Article 19 (Determination as to Infringement) that the goods are infringing.

#### ARTICLE 21: FEES

Each Party shall provide that any application fee, storage fee, or destruction fee to be assessed by its competent authorities in connection with the procedures described in this Section shall not be used to unreasonably deter recourse to these procedures.

#### ARTICLE 22: DISCLOSURE OF INFORMATION

Without prejudice to a Party's laws pertaining to the privacy or confidentiality of information:

- (a) a Party may authorize its competent authorities to provide a right holder with information about specific shipments of goods, including the description and quantity of the goods, to assist in the detection of infringing goods;

- (b) a Party may authorize its competent authorities to provide a right holder with information about goods, including, but not limited to, the description and quantity of the goods, the name and address of the consignor, importer, exporter, or consignee, and, if known, the country of origin of the goods, and the name and address of the manufacturer of the goods, to assist in the determination referred to in Article 19 (Determination as to Infringement);
- (c) unless a Party has provided its competent authorities with the authority described in subparagraph (b), at least in cases of imported goods, where its competent authorities have seized suspect goods or, in the alternative, made a determination referred to in Article 19 (Determination as to Infringement) that the goods are infringing, the Party shall authorize its competent authorities to provide a right holder, within thirty days<sup>8</sup> of the seizure or determination, with information about such goods, including, but not limited to, the description and quantity of the goods, the name and address of the consignor, importer, exporter, or consignee, and, if known, the country of origin of the goods, and the name and address of the manufacturer of the goods.

#### **Section 4: Criminal Enforcement**

##### ARTICLE 23: CRIMINAL OFFENCES

1. Each Party shall provide for criminal procedures and penalties to be applied at least in cases of wilful trademark counterfeiting or copyright or related rights piracy on a commercial scale.<sup>9</sup> For the purposes of this Section, acts carried out on a commercial scale include at least those carried out as commercial activities for direct or indirect economic or commercial advantage.

2. Each Party shall provide for criminal procedures and penalties to be applied in cases of wilful importation<sup>10</sup> and domestic use, in the course of trade and on a commercial scale, of labels or packaging.<sup>11</sup>

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<sup>8</sup> For the purposes of this Article, **days** means business days.

<sup>9</sup> Each Party shall treat wilful importation or exportation of counterfeit trademark goods or pirated copyright goods on a commercial scale as unlawful activities subject to criminal penalties under this Article. A Party may comply with its obligation relating to importation and exportation of counterfeit trademark goods or pirated copyright goods by providing for distribution, sale or offer for sale of such goods on a commercial scale as unlawful activities subject to criminal penalties.

<sup>10</sup> A Party may comply with its obligation relating to importation of labels or packaging through its measures concerning distribution.

<sup>11</sup> A Party may comply with its obligations under this paragraph by providing for criminal procedures and penalties to be applied to attempts to commit a trademark offence.



- (a) to which a mark has been applied without authorization which is identical to, or cannot be distinguished from, a trademark registered in its territory; and
- (b) which are intended to be used in the course of trade on goods or in relation to services which are identical to goods or services for which such trademark is registered.

3. A Party may provide criminal procedures and penalties in appropriate cases for the unauthorized copying of cinematographic works from a performance in a motion picture exhibition facility generally open to the public.

4. With respect to the offences specified in this Article for which a Party provides criminal procedures and penalties, that Party shall ensure that criminal liability for aiding and abetting is available under its law.

5. Each Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability, which may be criminal, of legal persons for the offences specified in this Article for which the Party provides criminal procedures and penalties. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the criminal offences.

#### ARTICLE 24: PENALTIES

For offences specified in paragraphs 1, 2, and 4 of Article 23 (Criminal Offences), each Party shall provide penalties that include imprisonment as well as monetary fines<sup>12</sup> sufficiently high to provide a deterrent to future acts of infringement, consistently with the level of penalties applied for crimes of a corresponding gravity.

#### ARTICLE 25: SEIZURE, FORFEITURE, AND DESTRUCTION

1. With respect to the offences specified in paragraphs 1, 2, 3, and 4 of Article 23 (Criminal Offences) for which a Party provides criminal procedures and penalties, that Party shall provide that its competent authorities have the authority to order the seizure of suspected counterfeit trademark goods or pirated copyright goods, any related materials and implements used in the commission of the alleged offence, documentary evidence relevant to the alleged offence, and the assets derived from, or obtained directly or indirectly through, the alleged infringing activity.

2. Where a Party requires the identification of items subject to seizure as a prerequisite for issuing an order referred to in paragraph 1, that Party shall not require the items to be described in greater detail than necessary to identify them for the

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<sup>12</sup> It is understood that there is no obligation for a Party to provide for the possibility of imprisonment and monetary fines to be imposed in parallel.

purpose of seizure.

3. With respect to the offences specified in paragraphs 1, 2, 3, and 4 of Article 23 (Criminal Offences) for which a Party provides criminal procedures and penalties, that Party shall provide that its competent authorities have the authority to order the forfeiture or destruction of all counterfeit trademark goods or pirated copyright goods. In cases where counterfeit trademark goods and pirated copyright goods are not destroyed, the competent authorities shall ensure that, except in exceptional circumstances, such goods shall be disposed of outside the channels of commerce in such a manner as to avoid causing any harm to the right holder. Each Party shall ensure that the forfeiture or destruction of such goods shall occur without compensation of any sort to the infringer.

4. With respect to the offences specified in paragraphs 1, 2, 3, and 4 of Article 23 (Criminal Offences) for which a Party provides criminal procedures and penalties, that Party shall provide that its competent authorities have the authority to order the forfeiture or destruction of materials and implements predominantly used in the creation of counterfeit trademark goods or pirated copyright goods and, at least for serious offences, of the assets derived from, or obtained directly or indirectly through, the infringing activity. Each Party shall ensure that the forfeiture or destruction of such materials, implements, or assets shall occur without compensation of any sort to the infringer.

5. With respect to the offences specified in paragraphs 1, 2, 3, and 4 of Article 23 (Criminal Offences) for which a Party provides criminal procedures and penalties, that Party may provide that its judicial authorities have the authority to order:

- (a) the seizure of assets the value of which corresponds to that of the assets derived from, or obtained directly or indirectly through, the allegedly infringing activity; and
- (b) the forfeiture of assets the value of which corresponds to that of the assets derived from, or obtained directly or indirectly through, the infringing activity.

#### ARTICLE 26: *EX OFFICIO* CRIMINAL ENFORCEMENT

Each Party shall provide that, in appropriate cases, its competent authorities may act upon their own initiative to initiate investigation or legal action with respect to the criminal offences specified in paragraphs 1, 2, 3, and 4 of Article 23 (Criminal Offences) for which that Party provides criminal procedures and penalties.

### **Section 5: Enforcement of Intellectual Property Rights in the Digital Environment**

#### ARTICLE 27: ENFORCEMENT IN THE DIGITAL ENVIRONMENT

1. Each Party shall ensure that enforcement procedures, to the extent set forth in Sections 2 (Civil Enforcement) and 4 (Criminal Enforcement), are available under its law so as to permit effective action against an act of infringement of intellectual property rights which takes place in the digital environment, including expeditious remedies to prevent infringement and remedies which constitute a deterrent to further infringements.

2. Further to paragraph 1, each Party's enforcement procedures shall apply to infringement of copyright or related rights over digital networks, which may include the unlawful use of means of widespread distribution for infringing purposes. These procedures shall be implemented in a manner that avoids the creation of barriers to legitimate activity, including electronic commerce, and, consistent with that Party's law, preserves fundamental principles such as freedom of expression, fair process, and privacy.<sup>13</sup>

3. Each Party shall endeavour to promote cooperative efforts within the business community to effectively address trademark and copyright or related rights infringement while preserving legitimate competition and, consistent with that Party's law, preserving fundamental principles such as freedom of expression, fair process, and privacy.

4. A Party may provide, in accordance with its laws and regulations, its competent authorities with the authority to order an online service provider to disclose expeditiously to a right holder information sufficient to identify a subscriber whose account was allegedly used for infringement, where that right holder has filed a legally sufficient claim of trademark or copyright or related rights infringement, and where such information is being sought for the purpose of protecting or enforcing those rights. These procedures shall be implemented in a manner that avoids the creation of barriers to legitimate activity, including electronic commerce, and, consistent with that Party's law, preserves fundamental principles such as freedom of expression, fair process, and privacy.

5. Each Party shall provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures<sup>14</sup> that are used by authors, performers or producers of phonograms in connection with the exercise of their rights in,

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<sup>13</sup> For instance, without prejudice to a Party's law, adopting or maintaining a regime providing for limitations on the liability of, or on the remedies available against, online service providers while preserving the legitimate interests of right holder.

<sup>14</sup> For the purposes of this Article, **technological measures** means any technology, device, or component that, in the normal course of its operation, is designed to prevent or restrict acts, in respect of works, performances, or phonograms, which are not authorized by authors, performers or producers of phonograms, as provided for by a Party's law. Without prejudice to the scope of copyright or related rights contained in a Party's law, technological measures shall be deemed effective where the use of protected works, performances, or phonograms is controlled by authors, performers or producers of phonograms through the application of a relevant access control or protection process, such as encryption or scrambling, or a copy control mechanism, which achieves the objective of protection.

and that restrict acts in respect of, their works, performances, and phonograms, which are not authorized by the authors, the performers or the producers of phonograms concerned or permitted by law.

6. In order to provide the adequate legal protection and effective legal remedies referred to in paragraph 5, each Party shall provide protection at least against:

- (a) to the extent provided by its law:
  - (i) the unauthorized circumvention of an effective technological measure carried out knowingly or with reasonable grounds to know; and
  - (ii) the offering to the public by marketing of a device or product, including computer programs, or a service, as a means of circumventing an effective technological measure; and
- (b) the manufacture, importation, or distribution of a device or product, including computer programs, or provision of a service that:
  - (i) is primarily designed or produced for the purpose of circumventing an effective technological measure; or
  - (ii) has only a limited commercially significant purpose other than circumventing an effective technological measure.<sup>15</sup>

7. To protect electronic rights management information,<sup>16</sup> each Party shall provide adequate legal protection and effective legal remedies against any person knowingly performing without authority any of the following acts knowing, or with respect to civil remedies, having reasonable grounds to know, that it will induce, enable, facilitate, or conceal an infringement of any copyright or related rights:

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<sup>15</sup> In implementing paragraphs 5 and 6, no Party shall be obligated to require that the design of, or the design and selection of parts and components for, a consumer electronics, telecommunications, or computing product provide for a response to any particular technological measure, so long as the product does not otherwise contravene its measures implementing these paragraphs.

<sup>16</sup> For the purposes of this Article, **rights management information** means:

- (a) information that identifies the work, the performance, or the phonogram; the author of the work, the performer of the performance, or the producer of the phonogram; or the owner of any right in the work, performance, or phonogram;
- (b) information about the terms and conditions of use of the work, performance, or phonogram; or
- (c) any numbers or codes that represent the information described in (a) and (b) above;

when any of these items of information is attached to a copy of a work, performance, or phonogram, or appears in connection with the communication or making available of a work, performance, or phonogram to the public.

- (a) to remove or alter any electronic rights management information;
- (b) to distribute, import for distribution, broadcast, communicate, or make available to the public copies of works, performances, or phonograms, knowing that electronic rights management information has been removed or altered without authority.

8. In providing adequate legal protection and effective legal remedies pursuant to the provisions of paragraphs 5 and 7, a Party may adopt or maintain appropriate limitations or exceptions to measures implementing the provisions of paragraphs 5, 6, and 7. The obligations set forth in paragraphs 5, 6, and 7 are without prejudice to the rights, limitations, exceptions, or defences to copyright or related rights infringement under a Party's law.

### **CHAPTER III ENFORCEMENT PRACTICES**

#### **ARTICLE 28: ENFORCEMENT EXPERTISE, INFORMATION, AND DOMESTIC COORDINATION**

1. Each Party shall encourage the development of specialized expertise within its competent authorities responsible for the enforcement of intellectual property rights.
2. Each Party shall promote the collection and analysis of statistical data and other relevant information concerning intellectual property rights infringements as well as the collection of information on best practices to prevent and combat infringements.
3. Each Party shall, as appropriate, promote internal coordination among, and facilitate joint actions by, its competent authorities responsible for the enforcement of intellectual property rights.
4. Each Party shall endeavour to promote, where appropriate, the establishment and maintenance of formal or informal mechanisms, such as advisory groups, whereby its competent authorities may receive the views of right holders and other relevant stakeholders.

#### **ARTICLE 29: MANAGEMENT OF RISK AT BORDER**

1. In order to enhance the effectiveness of border enforcement of intellectual property rights, the competent authorities of a Party may:
  - (a) consult with the relevant stakeholders, and the competent authorities of other Parties responsible for the enforcement of intellectual property rights to identify and address significant risks, and promote actions to mitigate those risks; and

- (b) share information with the competent authorities of other Parties on border enforcement of intellectual property rights, including relevant information to better identify and target for inspection shipments suspected of containing infringing goods.

2. Where a Party seizes imported goods infringing an intellectual property right, its competent authorities may provide the Party of export with information necessary for identification of the parties and goods involved in the exportation of the seized goods. The competent authorities of the Party of export may take action against those parties and future shipments in accordance with that Party's law.

#### ARTICLE 30: TRANSPARENCY

To promote transparency in the administration of its intellectual property rights enforcement system, each Party shall take appropriate measures, pursuant to its law and policies, to publish or otherwise make available to the public information on:

- (a) procedures available under its law for enforcing intellectual property rights, its competent authorities responsible for such enforcement, and contact points available for assistance;
- (b) relevant laws, regulations, final judicial decisions, and administrative rulings of general application pertaining to the enforcement of intellectual property rights; and
- (c) its efforts to ensure an effective system of enforcement and protection of intellectual property rights.

#### ARTICLE 31: PUBLIC AWARENESS

Each Party shall, as appropriate, promote the adoption of measures to enhance public awareness of the importance of respecting intellectual property rights and the detrimental effects of intellectual property rights infringement.

#### ARTICLE 32: ENVIRONMENTAL CONSIDERATIONS IN DESTRUCTION OF INFRINGING GOODS

The destruction of goods infringing intellectual property rights shall be done consistently with the laws and regulations on environmental matters of the Party in which the destruction takes place.

### **CHAPTER IV INTERNATIONAL COOPERATION**

#### ARTICLE 33: INTERNATIONAL COOPERATION

1. Each Party recognizes that international cooperation is vital to realizing effective protection of intellectual property rights and that it should be encouraged regardless of the origin of the goods infringing intellectual property rights, or the location or nationality of the right holder.
2. In order to combat intellectual property rights infringement, in particular trademark counterfeiting and copyright or related rights piracy, the Parties shall promote cooperation, where appropriate, among their competent authorities responsible for the enforcement of intellectual property rights. Such cooperation may include law enforcement cooperation with respect to criminal enforcement and border measures covered by this Agreement.
3. Cooperation under this Chapter shall be conducted consistent with relevant international agreements, and subject to the laws, policies, resource allocation, and law enforcement priorities of each Party.

#### ARTICLE 34: INFORMATION SHARING

Without prejudice to the provisions of Article 29 (Management of Risk at Border), each Party shall endeavour to exchange with other Parties:

- (a) information the Party collects under the provisions of Chapter III (Enforcement Practices), including statistical data and information on best practices;
- (b) information on its legislative and regulatory measures related to the protection and enforcement of intellectual property rights; and
- (c) other information as appropriate and mutually agreed.

#### ARTICLE 35: CAPACITY BUILDING AND TECHNICAL ASSISTANCE

1. Each Party shall endeavour to provide, upon request and on mutually agreed terms and conditions, assistance in capacity building and technical assistance in improving the enforcement of intellectual property rights to other Parties to this Agreement and, where appropriate, to prospective Parties. The capacity building and technical assistance may cover such areas as:

- (a) enhancement of public awareness on intellectual property rights;
- (b) development and implementation of national legislation related to the enforcement of intellectual property rights;

- (c) training of officials on the enforcement of intellectual property rights; and
  - (d) coordinated operations conducted at the regional and multilateral levels.
2. Each Party shall endeavour to work closely with other Parties and, where appropriate, non-Parties to this Agreement for the purpose of implementing the provisions of paragraph 1.
3. A Party may undertake the activities described in this Article in conjunction with relevant private sector or international organizations. Each Party shall strive to avoid unnecessary duplication between the activities described in this Article and other international cooperation activities.

## CHAPTER V INSTITUTIONAL ARRANGEMENTS

### ARTICLE 36: THE ACTA COMMITTEE

1. The Parties hereby establish the ACTA Committee. Each Party shall be represented on the Committee.
2. The Committee shall:
- (a) review the implementation and operation of this Agreement;
  - (b) consider matters concerning the development of this Agreement;
  - (c) consider any proposed amendments to this Agreement in accordance with Article 42 (Amendments);
  - (d) decide, in accordance with paragraph 2 of Article 43 (Accession), upon the terms of accession to this Agreement of any Member of the WTO; and
  - (e) consider any other matter that may affect the implementation and operation of this Agreement.
3. The Committee may decide to:
- (a) establish *ad hoc* committees or working groups to assist the Committee in carrying out its responsibilities under paragraph 2, or to assist a prospective Party upon its request in acceding to this Agreement in accordance with Article 43 (Accession);
  - (b) seek the advice of non-governmental persons or groups;



- (c) make recommendations regarding the implementation and operation of this Agreement, including by endorsing best practice guidelines related thereto;
- (d) share information and best practices with third parties on reducing intellectual property rights infringements, including techniques for identifying and monitoring piracy and counterfeiting; and
- (e) take other actions in the exercise of its functions.

4. All decisions of the Committee shall be taken by consensus, except as the Committee may otherwise decide by consensus. The Committee shall be deemed to have acted by consensus on a matter submitted for its consideration, if no Party present at the meeting when the decision is taken formally objects to the proposed decision. English shall be the working language of the Committee and the documents supporting its work shall be in the English language.

5. The Committee shall adopt its rules and procedures within a reasonable period after the entry into force of this Agreement, and shall invite those Signatories not Parties to this Agreement to participate in the Committee's deliberations on those rules and procedures. The rules and procedures:

- (a) shall address such matters as chairing and hosting meetings, and the performance of organizational duties relevant to this Agreement and its operation; and
- (b) may also address such matters as granting observer status, and any other matter the Committee decides necessary for its proper operation.

6. The Committee may amend the rules and procedures.

7. Notwithstanding the provisions of paragraph 4, during the first five years following the entry into force of this Agreement, the Committee's decisions to adopt or amend the rules and procedures shall be taken by consensus of the Parties and those Signatories not Parties to this Agreement.

8. After the period specified in paragraph 7, the Committee may adopt or amend the rules and procedures upon the consensus of the Parties to this Agreement.

9. Notwithstanding the provisions of paragraph 8, the Committee may decide that the adoption or amendment of a particular rule or procedure requires the consensus of the Parties and those Signatories not Parties to this Agreement.

10. The Committee shall convene at least once every year unless the Committee decides otherwise. The first meeting of the Committee shall be held within a reasonable period after the entry into force of this Agreement.

11. For greater certainty, the Committee shall not oversee or supervise domestic or international enforcement or criminal investigations of specific intellectual property cases.

12. The Committee shall strive to avoid unnecessary duplication between its activities and other international efforts regarding the enforcement of intellectual property rights.

#### ARTICLE 37: CONTACT POINTS

1. Each Party shall designate a contact point to facilitate communications between the Parties on any matter covered by this Agreement.

2. On the request of another Party, a Party's contact point shall identify an appropriate office or official to whom the requesting Party's inquiry may be addressed, and assist, as necessary, in facilitating communications between the office or official concerned and the requesting Party.

#### ARTICLE 38: CONSULTATIONS

1. A Party may request in writing consultations with another Party with respect to any matter affecting the implementation of this Agreement. The requested Party shall accord sympathetic consideration to such a request, provide a response, and afford adequate opportunity to consult.

2. The consultations, including particular positions taken by consulting Parties, shall be kept confidential and be without prejudice to the rights or positions of either Party in any other proceeding, including a proceeding under the auspices of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* contained in Annex 2 to the WTO Agreement.

3. The consulting Parties may, by mutual consent, notify the Committee of the result of their consultations under this Article.

### **CHAPTER VI FINAL PROVISIONS**

#### ARTICLE 39: SIGNATURE

This Agreement shall remain open for signature by participants in its

negotiation,<sup>17</sup> and by any other WTO Members the participants may agree to by consensus, from 1 May 2011 until 1 May 2013.

#### ARTICLE 40: ENTRY INTO FORCE

1. This Agreement shall enter into force thirty days after the date of deposit of the sixth instrument of ratification, acceptance, or approval as between those Signatories that have deposited their respective instruments of ratification, acceptance, or approval.

2. This Agreement shall enter into force for each Signatory that deposits its instrument of ratification, acceptance, or approval after the deposit of the sixth instrument of ratification, acceptance, or approval, thirty days after the date of deposit by such Signatory of its instrument of ratification, acceptance, or approval.

#### ARTICLE 41: WITHDRAWAL

A Party may withdraw from this Agreement by means of a written notification to the Depository. The withdrawal shall take effect 180 days after the Depository receives the notification.

#### ARTICLE 42: AMENDMENTS

1. A Party may propose amendments to this Agreement to the Committee. The Committee shall decide whether to present a proposed amendment to the Parties for ratification, acceptance, or approval.

2. Any amendment shall enter into force ninety days after the date that all the Parties have deposited their respective instruments of ratification, acceptance, or approval with the Depository.

#### ARTICLE 43: ACCESSION

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<sup>17</sup> Australia, the Republic of Austria, the Kingdom of Belgium, the Republic of Bulgaria, Canada, the Republic of Cyprus, the Czech Republic, the Kingdom of Denmark, the Republic of Estonia, the European Union, the Republic of Finland, the French Republic, the Federal Republic of Germany, the Hellenic Republic, the Republic of Hungary, Ireland, the Italian Republic, Japan, the Republic of Korea, the Republic of Latvia, the Republic of Lithuania, the Grand Duchy of Luxembourg, the Republic of Malta, the United Mexican States, the Kingdom of Morocco, the Kingdom of the Netherlands, New Zealand, the Republic of Poland, the Portuguese Republic, Romania, the Republic of Singapore, the Slovak Republic, the Republic of Slovenia, the Kingdom of Spain, the Kingdom of Sweden, the Swiss Confederation, the United Kingdom of Great Britain and Northern Ireland, and the United States of America.

1. After the expiration of the period provided in Article 39 (Signature), any Member of the WTO may apply to accede to this Agreement.
2. The Committee shall decide upon the terms of accession for each applicant.
3. This Agreement shall enter into force for the applicant thirty days after the date of deposit of its instrument of accession based upon the terms of accession referred to in paragraph 2.

#### ARTICLE 44: TEXTS OF THE AGREEMENT

This Agreement shall be signed in a single original in the English, French, and Spanish languages, each version being equally authentic.

#### ARTICLE 45: DEPOSITARY

The Government of Japan shall be the Depositary of this Agreement.

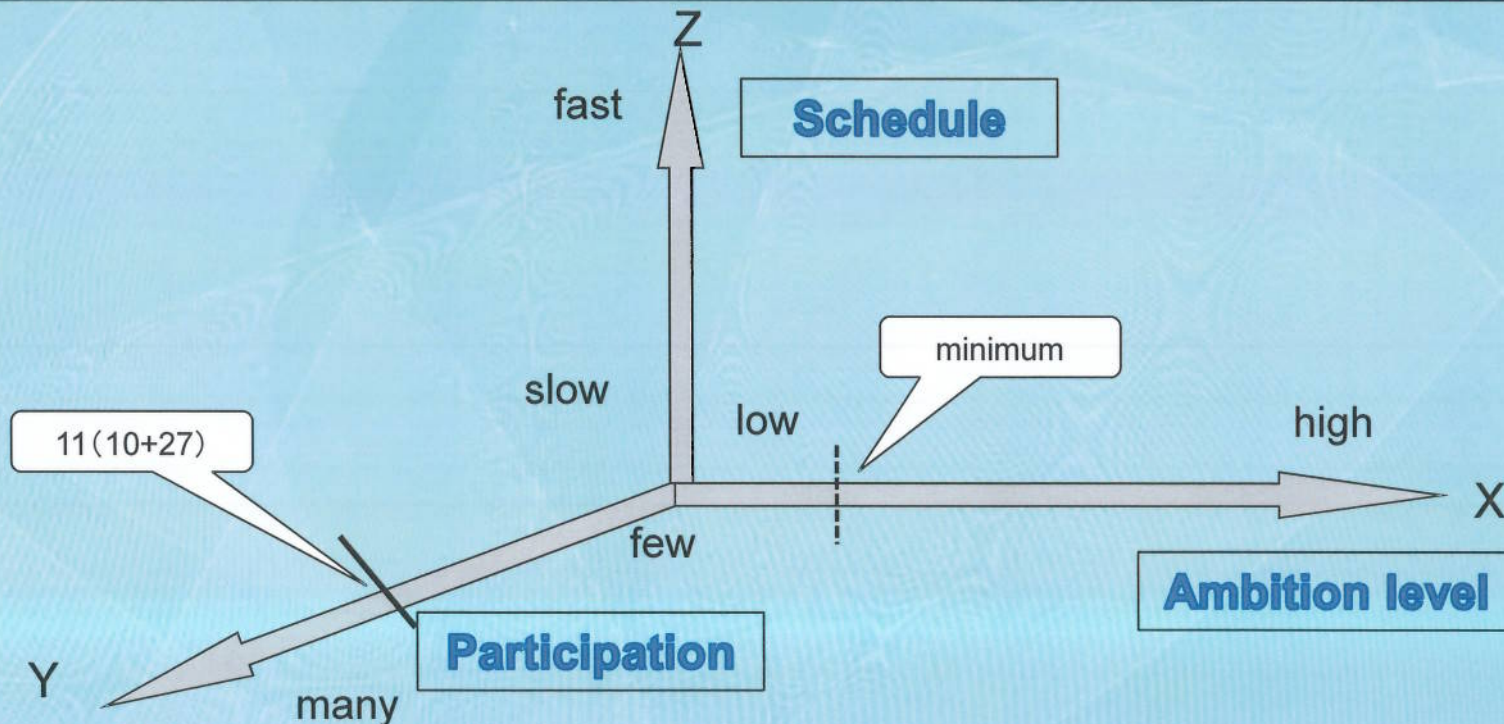
## **Three Yardsticks**

# Basic Parameters for ACTA

- 'Ambition Level', 'Number of participants' and 'Schedule for Conclusion' should be considered as essential parameters to achieve ACTA.

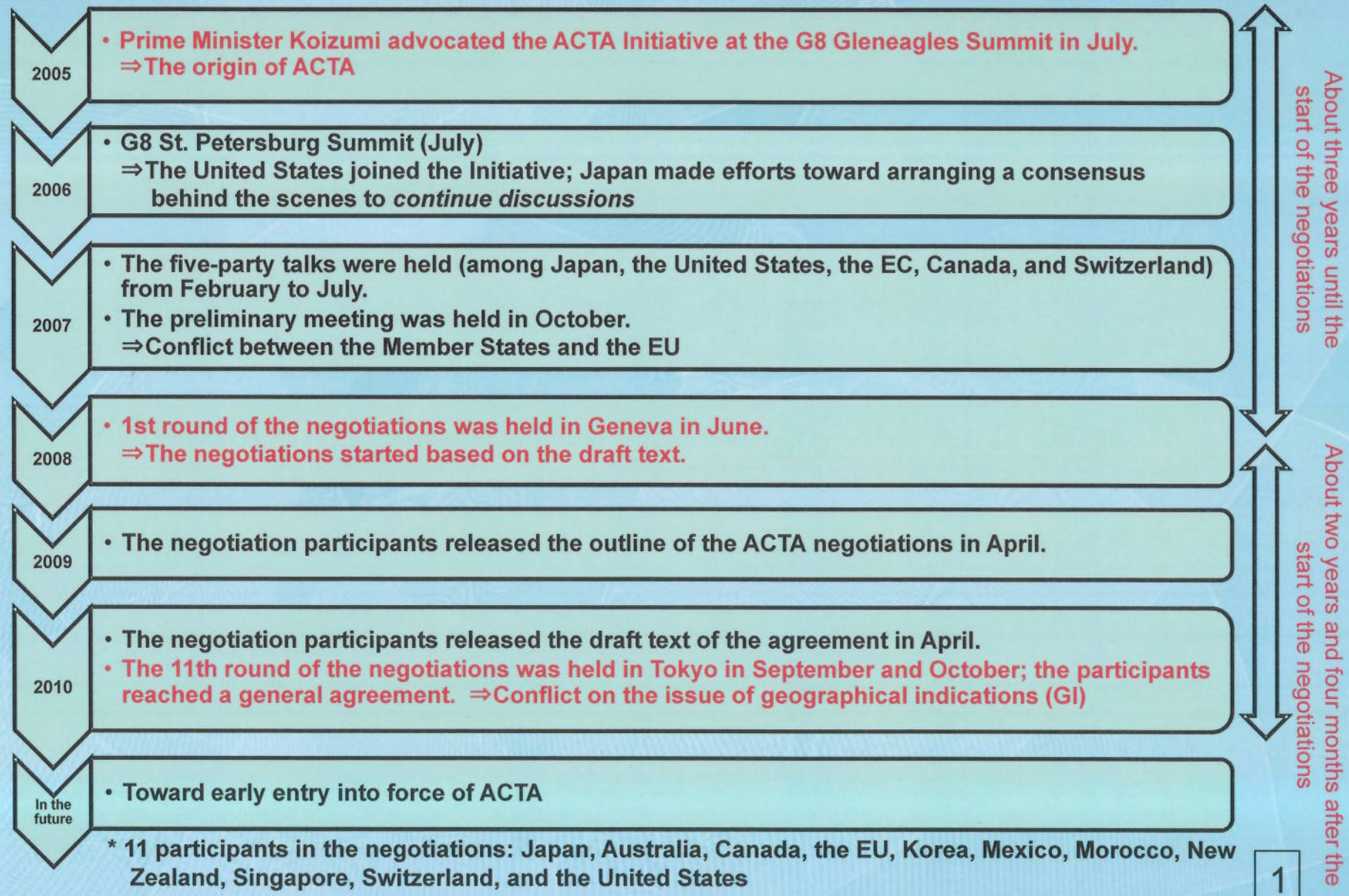
Members should maximize:

$$F = \alpha X \times \beta Y \times \gamma Z$$



**Presentation Material**  
**for Union des Fabricants (UNIFAB)**

# History and Developments of ACTA





# Why Was ACTA Needed?

- Substantial needs

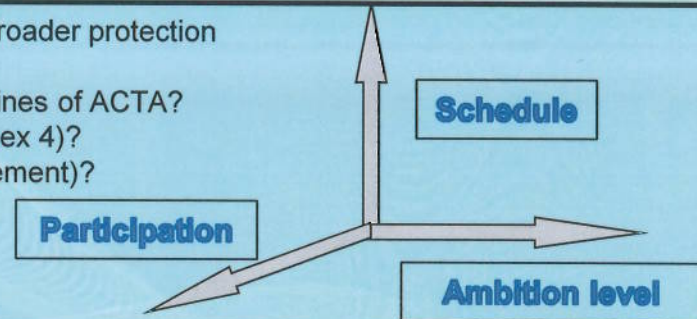
- Legal needs

- ① Coverage of the Doha Round negotiations  
⇒ Failed to meet the substantial needs
- ② Restriction for WTO plurilateral trade agreements  
⇒ The unanimity requirement for WTO agreements (Annex 4)  
ITA as a precedent ⇒ bindings under the schedules of concessions
- ③ Legal nature of the TRIPS Agreement  
⇒ TRIPS Agreement as the minimum standards (Article 1)

# Way Ahead

## (1) Re-setting of the three parameters

- Ambition level ⇒ Expanding the coverage from anti-counterfeiting/piracy to broader protection of intellectual property?  
Deepening (strengthening the obligations under) the disciplines of ACTA?  
Making ACTA into a WTO plurilateral trade agreement (Annex 4)?  
Making ACTA multilateral (as if *deepening* the TRIPS Agreement)?
- Participants ⇒ Expanding the membership (including Asian countries).  
Also including China and Russia?
- Time schedule ⇒ ??



## (2) Bicycle theory

- Trade Rules will fall unless we maintain the momentum of discussion.
- We should also proceed with the negotiations on the TRIPS Agreement.

## (3) Necessity of international collaboration and capacity-building

## (4) FTA and ACTA

- Making ACTA into de facto international standards

## (5) Making ACTA a model for forming international rules within the WTO framework

**Toward the Reform of the WTO and  
the Early Conclusion of the Doha Round  
(Proposal)**

December 7, 2011

## **Toward the Reform of the WTO and the Early Conclusion of the Doha Round (Proposal)**

### **Background**

Rulemaking for the multilateral trade system embodied by the World Trade Organization (WTO) is adrift as the Doha Round continues to drag on without making much headway. After 18 years since the conclusion of the Uruguay Round in 1993 and 10 years since the launch of the Doha Round, the goal for the new round is nowhere in sight.

Its conclusion by the end of this year is hopeless, and with the U.S. presidential election upcoming, it is difficult to expect notable progress next year.

The WTO has been playing an appreciable role as a judicial system. However, as a forum for global trade rulemaking and liberalization, it is in serious confusion.

WTO members continue to posture that the conclusion of the round is necessary. At the same time, however, the race to conclude free trade agreements (FTAs) has accelerated, and protectionist measures have been introduced successively.

The negotiations in the Doha Round, which were close to agreement in the summer of 2008 after tireless efforts, again ran into deadlock and no road leading to the conclusion is in sight at the moment.

### **Causes for the stagnation of the Doha Round and the paralysis of the WTO as a forum for rulemaking and liberalization**

Factors causing the stagnation of the Doha Round and the paralysis of the WTO as a forum for rulemaking and liberalization can be classified into the following: historical and political; economic; and institutional unique to the WTO.

As historical and political factors, the following historical background of the Doha Round can be cited:

- Increase in the number of members (153 members);
- After-effect of the Uruguay Round (widespread dissatisfaction on the part of developing members over their forced acceptance of a wide range of WTO rules by a single undertaking);

- Absence of leading players in the round (the coordination mechanism under the Quad framework—the U.S., EU, Japan, and Canada—has collapsed, and the U.S., a major driving force in the previous round, is not forthcoming this time around);
- Definition of the Doha Round (as a “development round”); and
- Deficiencies in negotiating procedures (non-text-based negotiations, deletion of the Singapore issues from the negotiation agenda, frequent use of non-text-based ministerial discussions as a consensus-building approach, etc.)

Political factors include:

- North-South confrontation;
- U.S.-China confrontation; and
- Loss of homogeneity among WTO members

Meanwhile, economic factors include:

- Stagnation in advanced economies and rise of developing economies;
- Diversification of interests;
- Absence of a “common language”;
- Rise of protectionism triggered by the global economic crisis;
- Divergence from the areas of interest to business communities (the failure of the WTO to address new issues and the slow progress of the Doha Round have been causing their interest in the new round to wane); and
- Intensified FTA and regional trade agreements (RTA) competition (which is not only a cause but also a consequence of the stalemate of the Doha Round)

All of these factors have compounded to make it difficult for the Doha Round to move forward.

Meanwhile, institutional factors unique to the WTO have been causing delays in the Doha Round process and posing obstacles to rulemaking and liberalization at the WTO.

(i) Decision-making by consensus (153 vetoes) and single undertaking

First of all, we must take a look at the consensus rule of decision-making and the single undertaking approach. Decision-making by consensus is a tradition deeply rooted in the General Agreement on Tariffs and Trade (GATT) and the WTO. However, as the number of WTO members has increased significantly over the years as well as the diversity among them, it has become extremely difficult to make any decision by consensus.

The term “single undertaking” can be interpreted in two ways. First, it means the consensus building procedure in which nothing is agreed to until everything is agreed. Second, it refers to the comprehensiveness of the agreements introduced as a result of the Uruguay Round. Both of them have been adopted as principles for the Doha Round of negotiations.

The current framework of single undertaking calls for 153 diverse members to reach agreement in all of the eight designated areas of negotiations, and such agreement—once reached—is to bind all WTO members. However, after 10 years of negotiations, we must say that this framework is hardly functioning.

(ii) Strong dispute settlement mechanism

The establishment of a dispute settlement mechanism can be cited as one of the major achievements of the Uruguay Round. The presence of this mechanism, together with the Agreement on Safeguards reached in the same round, have given teeth to the multilateral trading rules embodied by the WTO. At the same time, however, the presence of the powerful dispute settlement mechanism has the effect of making WTO members cautious about rulemaking and liberalization.

(iii) Uniform rights and obligations

All WTO members must obey the uniform rules in principle, and voluntary subscription to a range of rules, which was allowed at the time of the Tokyo Round Codes, has been abolished with some exceptions. New rules such as the General Agreement on Trade in Services (GATS) and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) have been introduced, to which all signatories are obliged to subscribe.

(iv) Problem of developing members

Although special and differential treatments (S&D) have been accorded to developing members in each WTO agreement, such treatments have various problems in their nature and substance. Meanwhile, there exists no specific definition of “developing member” and any discussion in this regard has been made based on respective members’ self-assertion.

As a result, while the least developed members are having difficulty fulfilling WTO obligations, certain major countries are enjoying the privileges as developing members. For instance, they are subject to modalities for developing countries in the non-agricultural market access (NAMA) negotiations.

(v) Status of the WTO secretariat

The WTO is a member-driven organization, and no clear status is given to the director-general and the secretariat of the WTO

(vi) Collaboration with business communities

The WTO is an organization tasked with establishing global trade rules and realizing global trade liberalization. However, there exists no solid system to support global trade rules and liberalization on the part of business communities, whose members are the very players in international business activity.

(vii) Political support

Whereas the International Monetary Fund (IMF) and the World Bank hold a meeting of finance ministers and central bank governors or the equivalent every year, the WTO holds a ministerial meeting only once every two years. The foundation for political support for the WTO within each member country remains weak. No senior officials meetings or equivalent meetings exist in the WTO either.

### **WTO and risk posed by the unfinished Doha Round**

The Doha Round is adrift.

An early conclusion of the round has critical implications for both the world and Japan.

For the world, it means boosting GDP by \$170-280 billion, a great contribution to the growth of the global economy, according to estimates by the Peterson Institute for International Economics made in June 2010.

For Japan, the conclusion of the Doha Round means: 1) roughly a 50% cut in tariffs imposed by other countries on exports from Japan, and 2) boosting GDP by about \$18.6 billion, according to the estimates by the Peterson Institute for International Economics in June 2010. This would bring huge benefits to Japan, which is significantly behind in the FTA race (with only 18% of its trade covered by FTAs at the moment). These advantages should be widely shared.

Failure to conclude the Doha Round means forging all of these advantages, and we must be aware that the following risks may result:

(i) Risk of rising protectionism

In the global financial crisis after the collapse of Lehman Brothers, the existence of WTO rules and self-control by countries were considered to have prevented a rise in protectionism. However, the continuing economic stagnation in advanced countries and the European financial crisis have cast dark clouds on the future of the global economy. Governments around the world are faced with strong pressure to protect their domestic industries and, one and after, protectionist measures are being introduced. In such a situation, a failure in the Doha Round is highly likely to accelerate protectionist moves. (A joint report by the WTO and

IDE-JETRO on an analysis of value added in Asia based on data from the input-output tables warns of the very clear risk posed by protectionism, noting that more and more products are actually “made in the world” with the production process extending across national boundaries).

(ii) Risk of rising regionalism and FTAs

FTA competition is already accelerating with the number of FTAs notified to the WTO reaching 505 (as of November 15, 2011). A failure of the Doha Round is sure to accelerate this move further.

(iii) Risk to the WTO's judicial function

The discord between the judicial and legislative functions of the WTO will definitely grow (some WTO panel rulings have already been found to be problematic). However, the greatest risk is the possibility that WTO members refuse to comply with panel rulings.

Up until now, WTO members have generally complied with WTO rules and panel/Appellate Body rulings adopted by the Dispute Settlement Body. This, however, could change if the Doha Round fails and the credibility of the WTO is severely undermined.

Indeed, who can assure that the failure of the Doha Round will not affect the WTO system?

### **Direction of WTO reform**

In order to address these risks, the following actions should be taken:

1. Immediate Actions

(i) Confirming commitments to prevent protectionism (“stand-still” and “roll-back” obligations)

It is reassuring that these commitments have been reaffirmed at the recent G20 and APEC summit meetings.

In the forthcoming WTO ministerial meeting later this month (December), it is important to assure further these commitments and create a monitoring mechanism (such as institutionalizing the monitoring and reporting of protectionist measures as a permanent system)

(ii) Delivering as many outcomes as possible.

(iii) Finalizing the work program for the next year and beyond.

2. Medium Term Actions

The future development of the Doha Round is unpredictable.



- 1) What is crucially important in the WTO negotiations is to develop a medium- to long-term strategic approach and analyze the situation from that perspective, going beyond bargaining tactics.

It is necessary to reconstruct global governance not only for the financial system but also for the entire trading system.

- 2) It is necessary to have a viewpoint of seeking drastic reform of the WTO and the Doha Round.

The fact that no conclusion has been reached after 10 years of negotiations (18 years since the conclusion of the Uruguay Round) indicates that the WTO and the Doha Round have fundamental problems.

In the financial and monetary sphere, reform of the international monetary system has begun following the global financial crisis triggered by the collapse of Lehman Brothers. Players in Geneva, however, appear to be secluded from the rest of the world, away from the rough seas of the economy. They are not at all prepared for the second wave of the storm that could hit as early as next year.

Today, the world of business is running in dog years while things in Geneva continue to operate at a traditional pace in the international trade regime, creating an immense gap in the sense of time.

The proliferation of FTAs and the rise of plurilateral initiatives (e.g. ACTA) are consequences of the WTO stalemate.

It is due time to review thoroughly what should be done to change the WTO and the Doha Round.

Even if the round concludes miraculously in a short period of time, the current situation would not allow us to have any prospect or hope for the subsequent successful operation of the WTO or its frameworks for rulemaking and liberalization. If things remain unchanged, the credibility of the WTO is bound to be undermined.

- 3) Constructing a framework for consideration

What should be done in the medium term, then?

It is necessary to analyze and consider the present situation and problems of the WTO and the Doha Round seriously and objectively, setting aside each country's position in negotiations.

We must first create a framework for this and initiate actions.

In order to set the stage for sensible discussions away from the negotiation table, a third-party panel—be it a WTO wise men's group, WTO reform council, or else—should be established, and this must be done immediately. (It is definitely necessary for Japan to participate in this framework.)

#### 4) Matters to be considered

In light of the above-mentioned problems facing the Doha Round and the WTO, the panel should consider and put forward proposals concerning, inter alia, the following matters:

- (i) Shifting to an issue-by-issue approach to negotiations (including separating certain issues from the Doha Round process)

We must recognize that the single-undertaking approach is no longer viable as a decision-making mechanism of the WTO, which now has 153 members.

- (ii) Desirable approach to decision-making

Decision-making by consensus should be maintained as a basic rule of the WTO. However, the notion of “variable geometry” should be introduced in proceeding with rulemaking and liberalization in the WTO. For this purpose, the decision-making mechanism of the WTO must be reformed.

(See the Warwick Commission Report regarding the idea of introducing “critical mass” decision-making under certain conditions. It is also necessary to consider linking this with certain core group discussions.)

- (iii) Utilization of plurilateral agreements (involving changes to the decision-making process for plurilateral agreements)

- (iv) Adoption of the schedules of concessions/commitments in more areas

Schedules of concessions and commitments, which have been used in the areas of tariff reductions/eliminations under the GATT and liberalization under the GATS, should be adopted in other areas as a way to enable the introduction of additional commitments.

- (v) Addressing problems of developing countries

An outcome consistent with the nature of the Doha Round, billed as a “development” round, must be achieved. Tangible progress must be made toward realizing the LDC package.

- (vi) Differentiation of the rights and obligations

Differentiation among WTO member economies must be based on appropriate criteria.

It is necessary to provide a clear and adequate definition of a “developing” “economy. Special and differential treatments should be reviewed and enhanced.

- (vii) Valuing and improving day-to-day operations of the WTO

The role of soft law should be highly valued.

Standing committees of the WTO should play more active roles, and their problem-solving function should be strengthened.

Surveillance under the Trade Policy Review Mechanism (TPRM) must be enhanced.

(viii) Ensuring the transparency of FTAs and regional trade agreements (RTAs) and bringing them into consistency with WTO rules

(ix) Strengthening the linkage with business communities

The WTO should seek to strengthen its linkage with business communities, for instance, by establishing WTO versions of the Business and Industry Advisory Committee (BIAC) in OECD and the APEC Business Advisory Council (ABAC).

(x) Strengthening political commitment to the WTO

One possible way to achieve this end is to establish a “WTO Summit Conference” and hold its meetings subject to adequate preparation (see the Sutherland Report issued in May 2011 regarding the lack of political will).

(xi) Another proposal deserving careful consideration is clarifying the status of the WTO secretariat and enhancing the functions thereof (see Supachai's Report in 2004). As the guardians of the WTO, the director-general and the secretariat should play more active roles in coordinating differences among member economies.

(xii) Utilization of economic analysis findings to educate the world

The report by the WTO and IDE-JETRO should be utilized to promote the “made in the world” initiative and other similar efforts.

### **Inter-institutional competition, division of labor, and complementation**

To the extent where the WTO remains at a standstill, FTAs continue to proliferate, including those between advanced economies and inter-regional FTAs.

This should not be taken negatively given the present situation of the WTO. However, FTAs must be WTO-consistent. (Some FTAs under the Enabling Clause are problematic in terms of their consistency with the WTO.)

The establishment of the Anti-Counterfeiting Trade Agreement (ACTA) will definitely give momentum to liberalization and rulemaking on an issue-by-issue basis under a plurilateral framework.

Going forward, it is important to allow greater flexibility in the use of plurilateral tools to enhance their use.

From the perspective of global governance, it is necessary to stimulate the WTO through inter-institutional competition at multilateral, bilateral, and plurilateral levels so as to contribute to the creation of a new multilateral order.

### **Establishment of an advisory panel of business leaders**

In order to build support for the progress of the Doha Round and for the WTO itself, it is crucial to obtain support not only from member governments but also from business communities.

Perspectives for business and global supply chain development are lacking in the WTO.

Disgusted with its “narrowness” and “slowness,” business communities have lost interest in the WTO and are instead focusing their attention on FTAs at the moment.

This means that the WTO and the multilateral trading system are on the verge of crisis.

What is important is to let business communities have a perspective that the WTO is the vehicle through which they should seek to promote further liberalization and create trade rules that are in consonance with the reality of international business in the 21st century.

From this point of view, it is recommended that the WTO establish an advisory panel of business leaders comparable to the ABAC for the APEC and the BIAC for the OECD.

### **Strengthening political commitment to the WTO**

Political involvement in the WTO has been extremely weak, particularly, in comparison with the degree of political involvement shown in addressing problems in the financial sector.

In order to break the Doha Round impasse and fight back the rising wave of protectionism, it is crucial to mobilize political involvement and support at the top level.

Thus, the proposal made in the Sutherland Report in 2004 to hold a WTO Summit meeting is strongly supported. (Although the report calls for holding a WTO Summit meeting every five years, the frequency of the summit meeting requires further consideration.)