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1 ARTICLE II OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE 1994

1.1 Text of Article II

Article II

Schedules of Concessions

1. (*a*) Each contracting party shall accord to the commerce of the other contracting parties treatment no less favourable than that provided for in the appropriate Part of the appropriate Schedule annexed to this Agreement.

(*b*) The products described in Part I of the Schedule relating to any contracting party, which are the products of territories of other contracting parties, shall, on their importation into the territory to which the Schedule relates, and subject to the terms, conditions or qualifications set forth in that Schedule, be exempt from ordinary customs duties in excess of those set forth and provided therein. Such products shall also be exempt from all other duties or charges of any kind imposed on or in connection with the importation in excess of those imposed on the date of this Agreement or those directly and mandatorily required to be imposed thereafter by legislation in force in the importing territory on that date.

(*c*) The products described in Part II of the Schedule relating to any contracting party which are the products of territories entitled under Article I to receive preferential treatment upon importation into the territory to which the Schedule relates shall, on their importation into such territory, and subject to the terms, conditions or qualifications set forth in that Schedule, be exempt from ordinary customs duties in excess of those set forth and provided for in Part II of that Schedule. Such products shall also be exempt from all other duties or charges of any kind imposed on or in connection with importation in excess of those imposed on the date of this Agreement or those directly or mandatorily required to be imposed thereafter by legislation in force in the importing territory on that date. Nothing in this Article shall prevent any contracting party from maintaining its requirements existing on the date of this Agreement as to the eligibility of goods for entry at preferential rates of duty.

2. Nothing in this Article shall prevent any contracting party from imposing at any time on the importation of any product:

(*a*) a charge equivalent to an internal tax imposed consistently with the provisions of paragraph 2 of Article III* in respect of the like domestic product or in respect of an article from which the imported product has been manufactured or produced in whole or in part;

(*b*) any anti-dumping or countervailing duty applied consistently with the provisions of Article VI;*

(*c*) fees or other charges commensurate with the cost of services rendered.

3. No contracting party shall alter its method of determining dutiable value or of converting currencies so as to impair the value of any of the concessions provided for in the appropriate Schedule annexed to this Agreement.

4. If any contracting party establishes, maintains or authorizes, formally or in effect, a monopoly of the importation of any product described in the appropriate Schedule annexed to this Agreement, such monopoly shall not, except as provided for in that Schedule or as otherwise agreed between the parties which initially negotiated the concession, operate so as to afford protection on the average in excess of the amount of protection provided for in that Schedule. The provisions of this paragraph shall not limit the use by contracting parties of any form of assistance to domestic producers permitted by other provisions of this Agreement.*

5. If any contracting party considers that a product is not receiving from another contracting party the treatment which the first contracting party believes to have been contemplated by a concession provided for in the appropriate Schedule annexed to this Agreement, it shall bring the matter directly to the attention of the other contracting party. If

the latter agrees that the treatment contemplated was that claimed by the first contracting party, but declares that such treatment cannot be accorded because a court or other proper authority has ruled to the effect that the product involved cannot be classified under the tariff laws of such contracting party so as to permit the treatment contemplated in this Agreement, the two contracting parties, together with any other contracting parties substantially interested, shall enter promptly into further negotiations with a view to a compensatory adjustment of the matter.

6. (*a*) The specific duties and charges included in the Schedules relating to contracting parties members of the International Monetary Fund, and margins of preference in specific duties and charges maintained by such contracting parties, are expressed in the appropriate currency at the par value accepted or provisionally recognized by the Fund at the date of this Agreement. Accordingly, in case this par value is reduced consistently with the Articles of Agreement of the International Monetary Fund by more than twenty per centum, such specific duties and charges and margins of preference may be adjusted to take account of such reduction; *provided* that the CONTRACTING PARTIES (*i.e.*, the contracting parties acting jointly as provided for in Article XXV) concur that such adjustments will not impair the value of the concessions provided for in the appropriate Schedule or elsewhere in this Agreement, due account being taken of all factors which may influence the need for, or urgency of, such adjustments.

(*b*) Similar provisions shall apply to any contracting party not a member of the Fund, as from the date on which such contracting party becomes a member of the Fund or enters into a special exchange agreement in pursuance of Article XV.

7. The Schedules annexed to this Agreement are hereby made an integral part of Part I of this Agreement.

1.2 Text of note *ad* Article II

Ad Article II

Paragraph 2 (a)

The cross-reference, in paragraph 2 (*a*) of Article II, to paragraph 2 of Article III shall only apply after Article III has been modified by the entry into force of the amendment provided for in the Protocol Modifying Part II and Article XXVI of the General Agreement on Tariffs and Trade, dated September 14, 1948.[1]

(*footnote original*) [1] This Protocol entered into force on 14 December 1948.

Paragraph 2 (b)

See the note relating to paragraph 1 of Article I.

Paragraph 4

Except where otherwise specifically agreed between the contracting parties which initially negotiated the concession, the provisions of this paragraph will be applied in the light of the provisions of Article 31 of the Havana Charter.

1.3 Understanding on Interpretation of Article II:1(b) of the GATT 1994

Members hereby agree as follows:

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

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

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

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

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

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

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

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

1.4 Marrakesh Protocol to the GATT 1994

Members,

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

Hereby *agree* as follows:

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

2. The tariff reductions agreed upon by each Member shall be implemented in five equal rate reductions, except as may be otherwise specified in a Member's Schedule. The first such reduction shall be made effective on the date of entry into force of the WTO Agreement, each successive reduction shall be made effective on 1 January of each of the following years, and the final rate shall become effective no later than the date four years after the date of entry

into force of the WTO Agreement, except as may be otherwise specified in that Member's Schedule. Unless otherwise specified in its Schedule, a Member that accepts the WTO Agreement after its entry into force shall, on the date that Agreement enters into force for it, make effective all rate reductions that have already taken place together with the reductions which it would under the preceding sentence have been obligated to make effective on 1 January of the year following, and shall make effective all remaining rate reductions on the schedule specified in the previous sentence. The reduced rate should in each stage be rounded off to the first decimal. For agricultural products, as defined in Article 2 of the Agreement on Agriculture, the staging of reductions shall be implemented as specified in the relevant parts of the schedules.

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

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

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

(b) For the purpose of the reference in paragraph 6(a) of Article II of GATT 1994 to the date of that Agreement, the applicable date in respect of a schedule of concessions annexed to this Protocol shall be the date of this Protocol.

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

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

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

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

1.5 Text of the Procedures for Modification and Rectification of Schedules of Tariff Concessions (1980 Procedures)[1]

Recalling that the CONTRACTING PARTIES established on 19 November 1968 a procedure for the certification of changes to Schedules annexed to the General Agreement.[2]

Considering the importance of keeping the authentic texts of Schedules annexed to the General Agreement up to date and of ensuring that they tally with the texts of corresponding items in national customs tariffs;

Considering that, in consequence, changes in the authentic texts of Schedules which record rectifications of a purely formal character or modifications resulting from action taken under Article II, Article XVIII, Article XXIV, Article XXVII and Article XXVIII shall be certified without delay;

The CONTRACTING PARTIES decide that:

1. Changes in the authentic texts of Schedules annexed to the General Agreement which reflect modifications resulting from action under Article II, Article XVIII, Article XXIV, Article XXVII or Article XXVIII shall be certified by means of Certifications. A draft of such change shall be communicated to the Director-General within three months after the action has been completed.

2. Changes in the authentic texts of Schedules shall be made when amendments or rearrangements which do not alter the scope of a concession are introduced in national customs tariffs in respect of bound items. Such changes and other rectifications of a purely formal character shall be made by means of Certifications. A draft of such changes shall be communicated to the Director-General where possible within three months but not later than six months after the amendment or rearrangement has been introduced in the national customs tariff or in the case of other rectifications, as soon as circumstances permit.

3. The draft containing the changes described in paragraphs 1 and 2 shall be communicated by the Director-General to all the contracting parties and shall become a Certification provided that no objection has been raised by a contracting party within three months on the ground that, in the case of changes described in paragraph 1, the draft does not correctly reflect the modifications or, in the case of changes described in paragraph 2, the proposed rectification is not within the terms of that paragraph.

4. Whenever practicable Certifications shall record the date of entry into force of each modification and the effective date of each rectification.

5. The procedure of Certification under this Decision may be applied for the establishment of consolidated Schedules or of new Schedules under paragraph 5(*c*) of Article XXVI, wherein all changes are modifications or rectifications referred to in paragraphs 1 or 2.

6. This Decision supersedes the Decision of 19 November 1968.

1.6 Schedules of Concessions

1.6.1 Schedules annexed to GATT 1994

1. Each WTO Member has a Schedule of Concessions[3], sometimes referred to as a "Goods Schedule", which is either annexed to the Marrakesh Protocol to the General Agreement on Tariffs

[1] Decision of 26 March 1980, GATT document L/4962.
[2] *(footnote original)* GATT BISD 16S/16.
[3] Paragraph 1 of the Marrakesh Protocol to the GATT 1994 provides: "The schedule annexed to this Protocol relating to a Member shall become a Schedule to GATT 1994 relating to that Member on the day on which the WTO Agreement enters into force for that Member." This usage followed the convention in earlier GATT 1947 tariff protocols under which a "schedule" of proposed concessions became a legally-binding "Schedule" upon its entry into force.

and Trade 1994 (GATT 1994) or to a Protocol of Accession.[4] There are two cases of groups of Members sharing a common schedule: 1) the European Union and its member States; and 2) Switzerland and Liechtenstein. There are currently 136 Goods Schedules for the 164 WTO Members[5].

2. The Schedules of most original WTO Members were annexed to the Marrakesh Protocol of 15 April 1994, which was attached to the GATT 1994 contained in Annex 1 of the Marrakesh Agreement Establishing the World Trade Organization (WTO Agreement).[6] However, pursuant to the Ministerial Decision on Measures in Favour of Least-Developed Countries annexed to the Marrakesh Final Act, LDC original Members were accorded an additional one-year period from 15 April 1994 to submit their Goods and Services Schedules. Accordingly, following approval by the WTO General Council[7], the Goods Schedules of specific LDCs members[8] were annexed to the Marrakesh Protocol[9] through a *procés-verbal* done at Geneva on 21 December 1995.[10]

3. The Uruguay Round Schedules of some Members incorporate by reference concessions pre-dating the Uruguay Round or indicate that the new concessions are "without prejudice" to their GATT Schedules. As a result, many of these concessions remain valid under the WTO.[11] Under the General Agreement on Tariffs and Trade 1947 (GATT 1947), the tariff concessions of each contracting party were reflected in successive schedules attached to tariff protocols at the end of each negotiating round. Although the WTO has changed the practice of giving legal effect to changes in the Schedules through protocols, and as a result of different types of procedures, practically all Members have a Schedule of Concessions that is contained in more than one legal instrument. As a result, a concession on a particular product can be subject to multiple successive legal instruments, so it may be necessary to review multiple ones in order to determine the current scope of that concession. The WTO Secretariat maintains that a Consolidated Tariff Schedule (CTS) Database which keeps track of the current concessions for each WTO Member (see below). In addition, many of the more recent Schedules include a column entitled "earlier legal instruments" which facilitates tracing the relevant legal instruments.

1.6.2 Authentic language of Schedules of Concessions

4. Paragraph 8 of the Marrakesh Protocol to the GATT 1994 provides that Schedules of concessions "are authentic in the English, French or Spanish language as specified in each Schedule". The authentic language of a Schedule is typically indicated as a subtitle for each Part and Section. A 1993 note by the Secretariat describing the preparation of the Uruguay Round Schedules indicated that "Schedules may be submitted in any of the official GATT languages" and that "[i]n accordance with past practice, the Schedules will not be translated".[12] There are currently 93 Schedules in English, 24 in French and 19 in Spanish. There is one case of a Member whose Uruguay Round Schedule was authentic in the French language, but it was subsequently replaced by an HS96 Schedule in Spanish.[13] Another Member has a Schedule of concessions which is authentic in English and has been modified on different occasions, and a separate Schedule in French[14], which has not been modified.

[4] See also Article XI of the WTO Agreement.
[5] https://goods-schedules.wto.org/
[6] See paragraph 1 of the Marrakesh Protocol to the GATT 1994.
[7] WT/L/70.
[8] Angola, Botswana, Burkina Faso, Burundi, Central African Republic, Chad, Djibouti, the Gambia, Guinea, Guinea-Bissau, Haiti, Lesotho, Malawi, Maldives, Mozambique, Rwanda, Sierra Leone, Solomon Islands, Togo, and Zaire (currently the Democratic Republic of Congo).
[9] See paragraph 1 of the Marrakesh Protocol to the GATT 1994.
[10] WT/Let/79.
[11] On the situation of pre-Uruguay Round schedules, see GATT documents TAR/W/7 and TAR/W/85.
[12] GATT document MTN.GNG/MA/W/25.
[13] Brazil. See Uruguay Round Schedule and document WT/Let/468.
[14] Canada submitted for verification during the Uruguay Round a French version of its Schedule, with the intention to incorporate it into a Supplementary Marrakesh Protocol which did not come into being. It was subsequently certified in WT/Let/536.

1.6.3 Parts of a Schedule of Concessions

5. The format of the Uruguay Round Schedules was described in a 1993 note by the GATT Secretariat.[15] All WTO Schedules of Concessions have at least four parts.

6. Part I, which is provided for in Article II:1(b) of the GATT 1994 and is entitled "Most-Favoured Nation Tariff", embodies the MFN tariff concessions in the form of bound duties (i.e. the maximum levels for the ordinary customs duties that the Member commits not to exceed on specific products). This Part is subdivided in Section I for "agricultural products", as defined in Annex 1 of the Agreement on Agriculture, and Section II for the "other products", also referred to as the "non-agricultural products".

i. Part I, Section I – Agricultural products: As a result of the Uruguay Round modalities on agricultural trade negotiations, original Members of the WTO and Members that have acceded to the WTO have typically bound all of their tariffs on agricultural products. This Section is subdivided in Section I-A with bound tariffs, and Section I-B for the "tariff quotas", colloquially referred to as tariff-rate quotas or "TRQs". There are currently 40 Schedules of concessions with minimum and current access TRQs under Part I, Section I-B.

ii. Part I, Section II – other products: There are many cases where Members have retained "unbound" duties for non-agricultural products. While 62 Schedules of concessions have full binding coverage (i.e. the Members have a bound duty for every non-agricultural product), there are 73 Members which retain "unbound" duties (i.e. products on which the Member does not have a bound duty or legal maximum it can impose). The share of unbound tariff lines varies widely and ranges from a handful of tariff lines for some Members, to situations where Members lack bindings on 99% of their non-agricultural products, i.e. they have bound duties for less than 1% of those tariff lines.[16] Although unbound duties are not typically reflected in the Uruguay Round Schedules, more recent modifications to the Schedules have provided increased transparency by flagging them with a "U" under the column "final bound rate of duty".[17] A handful of Members have incorporated bound tariff rate quotas for non-agricultural products.[18]

7. Part II of the Schedules is provided for in Article II:1(c) of the GATT 1994 and is entitled "preferential tariff". These historical preferences were progressively eliminated in the earlier GATT trade rounds. In the WTO, this section remains "nil" for all but one Member.[19]

8. During the Uruguay Round, the scope of the Schedules of Concessions was expanded to include two additional parts. Part III, which is referred to in paragraph 6 of the Marrakesh Protocol to the GATT 1994, embodies concessions on non-tariff measures. Part IV is referred to in Articles 1, 3, 6, 7, and 9 of the Agreement on Agriculture, and embodies commitments in respect of domestic support and export subsidies for agricultural products. In the context of WTO Accessions, Goods Schedules are referred to as "Schedules of concessions *and commitments*", to take account of these commitments limiting subsidization on agricultural products.

9. Finally, the Schedules of concessions of three new acceding Members have incorporated a "Part V" entitled "export duties".[20]

10. For an explanation of the relationship with the Agreement on Agriculture, see below.

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[15] GATT document MTN.GNG/MA/W/25.

[16] Summary information can be found in the annual publication by the ITC, WTO and UNCTAD entitled "World Tariff Profiles", section on non-agricultural products. See https://www.wto.org/english/res_e/reser_e/tariff_profiles_e.htm.

[17] "NC" for Schedules in French and Spanish. See for example the ITA Expansion Schedule of the Philippines in WT/Let/1267.

[18] See, *inter alia*, the European Union and Japan.

[19] See the Schedule of Cuba.

[20] Afghanistan, Russian Federation, and Kazakhstan.

1.6.4 Changes to Uruguay Round Schedules

11. Although it is common to refer to "the" Schedule of a Member, tariff and other concessions can be contained in several legal instruments that, together, set out that Member's obligations. Goods Schedules have been changed on more than five hundred occasions as a result of different types of procedures. Some of these changes resulted from special procedures that were established by the Trade Negotiations Committee for verification and finalization of Uruguay Round Schedules, including, for example, the inclusion of "improvements" to the Uruguay Round concessions.[21]

12. The substantive negotiations on market access for trade in goods were concluded on 15 December 1993, and participants to these negotiations were requested to submit their "final Schedule" no later than 15 February 1994 so that a verification process could take place and the schedules could be annexed to the Marrakesh Protocol.[22] However, many Schedules were not submitted on time, and eighteen least-developed participants were given an additional year to finalize their Schedules. The Marrakesh Protocol to the GATT 1994 was done on 15 April 1994 and annexed to the GATT 1994 all of the Schedules that had been verified up to that point.

13. A number of changes and additions to the Uruguay Round Schedules were submitted after the Marrakesh Protocol had been signed and before the WTO Agreement had entered into force on 1 January 1995. Given the time pressure to finalize the procedures as quickly as possible, the Preparatory Committee for the World Trade Organization agreed on 22 July 1994 that, for rectifications of schedules attached to the WTO Agreement and for the establishment of additional concessions under the 1980 Procedures, the time-limit for approval during the period up to the entry into force of the WTO Agreement should be thirty days instead of three months.[23] In practice, different procedures were followed to give legal effect to the proposed changes depending on whether they entailed the rectification of errors or constituted more substantive changes.

14. Twenty-eight submissions sought to rectify technical errors in the annexed to the Marrakesh Protocol and were circulated under the G/RS document series. The changes that were not objected to by other Members were given legal effect through a series of *Procès-Verbaux* of rectification.[24]

15. Twelve documents entitled "additional concessions" were circulated under the G/SP and G/MA/SP document series with the intention of annexing them to a Supplementary Protocol to the Marrakesh Protocol.[25] In practice, these documents included not only additional concessions, but also information on other duties and charges ("ODCs") and revised schedules, some of which were not circulated under a document symbol. Many of these were multilaterally approved or verified but, for reasons unrelated to their substance, the Supplementary Protocol did not come into being.

16. From 1986 to 1995, contracting parties to the GATT carried out negotiations for the purpose of transposing pre-Uruguay Round Schedules into the Harmonized System ("HS")[26] pursuant to Article XXVIII of the GATT 1947 and special procedures relating to HS transposition.[27] In most cases, as HS schedules were finalized, they were annexed to successive tariff protocols.[28] The Geneva

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[21] Statement by the Chairman of the TNC during an informal meeting of Heads of Delegation of 20 January 1994, GATT document MTN.TNC/W/131. During an informal meeting of Heads of Delegation of 22 February 1994, the Chairman recalled that the TNC had "agreed that subsequent changes could only be improvements and not be such as to alter adversely the balance of concessions exchanged". GATT document MTN.TNC/W/133, p. 2.

[22] Meeting of the Negotiating Group on Market Access of 15 December 1993, Statement by the Chairman, GATT document MTN.GNG.MA/10, para. 2. See also statement by the Chairman of the TNC during its meeting of 20 January 1994, MTN.TNC/W/131, p. 2.

[23] Meeting of the Preparatory Committee for the World Trade Organization of 22 July 1994, GATT document PC/M/4, paras. 48-49.

[24] See GATT documents Let/1951, Let/1953, and Let/1954, as well as WTO documents WT/Let/8, WT/Let/16, WT/Let/22, and WT/Let/23.

[25] "SP" referred to the proposed Supplementary Protocol.

[26] A list of documentation submitted by delegations in the context of Harmonized System Article XXVIII negotiations and the certification of HS pre-UR schedules was circulated in GATT doc. TAR/W/67/Rev.15 dated 18 October 1994.

[27] Decision adopted by the GATT Council on 12 July 1983 on "GATT Concessions under the Harmonized Commodity Description and Coding System" (document L/5470/Rev.1; BISD 30S/17).

[28] A list of the earlier Protocols and the schedules annexed to each one was circulated in GATT doc. TAR/W/74/Rev.12 dated 14 October 1994.

(1994) Protocol[29] was one of these tariff protocols, and the timing of its conclusion coincided with the preparation of Members' Uruguay Round Schedules. Under the terms of paragraph 3 of the Geneva (1994) Protocol, contracting parties were permitted to annex their schedules of tariff concessions in HS nomenclature and accept the Protocol, by signature or otherwise, by 31 December 1994. Six contracting parties (Brazil, Costa Rica, India, Mexico, Türkiye[30] and the Bolivarian Republic of Venezuela[31]) annexed their schedules to the Geneva (1994) Protocol between July and December 1994. The last of these schedules was not submitted until 29 December 1994 and, consequently, the Protocol was not prepared with annexes for signature prior to the end of the period for acceptance two days later.[32] In that time, none of the six contracting parties was able to accept the Protocol with full powers and, consequently, the Protocol did not enter into force.

17. On 10 November 2005, the Council for Trade in Goods discussed the problem arising from approved but uncertified commitments which had resulted from the lack of entry into force of the Geneva (1994) Protocol and the proposed Supplementary Protocol to the Marrakesh Protocol. The Council for Trade in Goods agreed that these uncertified commitments should be brought into force by means of certifications issued by the Director-General, which would state that the modifications would enter into force from the date on which they were annexed to the Geneva (1994) Protocol or, in the case of the proposed Supplementary Protocol to the Marrakesh Protocol, the date on which they were deemed approved or verified. Additionally, each certification would also explicitly state that it was without prejudice to any modifications or rectifications to tariff concession made effective subsequent to that date.[33] All of them were certified.[34]

1.6.5 Practice under the 1980 Procedures

18. Since the WTO Agreement entered into force, the overwhelming majority of the rectifications and modifications of Schedules have been given legal effect through a Decision by the GATT 1947 Council entitled "Procedures for Modification and Rectification of Schedules of Tariff Concessions", which was adopted on 26 March 1980 (the "1980 Procedures").[35] The preamble of the 1980 Procedures recognizes the importance of keeping the authentic texts of Schedules up to date and of ensuring that they are aligned with the texts of corresponding items in national customs tariffs.

19. As agreed by the Committee on Market Access, the Secretariat provides periodic updates on the situation of Schedules of Concessions, and provides information for each Member which includes its pre-Uruguay Round Schedule, if any; whether the Member's Schedule is annexed to the Marrakesh Protocol or to a Protocol of Accession; information concerning transposition of Schedules into the Harmonized System and its subsequent amendments; unilateral liberalization; and incorporation of results of renegotiations under Articles XXIV:6 and XXVIII of the GATT 1994. These have been circulated as annual reports by the Secretariat[36] and can be consulted in the Goods Schedules e-Library.[37]

20. In terms of the types of changes that have been introduced in the Schedules, a report by the Secretariat on the Current Situation Schedules,[38] explains that modifications made pursuant to the 1980 Procedures have been undertaken for a wide range of issues, including, *inter alia*, (i) rectifications of a technical nature that do not affect the scope of the concessions; (ii) concessions made in the context of the Ministerial Declaration on Trade in Information Technology Products

[29] GATT doc. L/7463, distributed on 24 May 1994 (BISD 41S/3).
[30] Formerly "Turkey".
[31] GATT docs. L/7463/Add.1, Add. 5, Add. 2, Add. 3, Add. 6, and Add. 4, respectively.
[32] A certified true copy of the volume containing the Geneva (1994) Protocol and the annexed Schedule was transmitted to all GATT contracting parties in GATT doc. Let/1982 on 5 December 1995.
[33] See G/C/M/82, section D.
[34] See certifications in WT/Let/514 (Türkiye), WT/Let/515 (Brazil), WT/Let/516 (Venezuela), WT/Let/517 (India), WT/Let/518 (Mexico), WT/Let/519 (Costa Rica), WT/Let/521 (Gabon), WT/Let/522 (Uganda), WT/Let/523 (Tanzania), WT/Let/524 (Bangladesh), WT/Let/525 (Senegal), WT/Let/526 (Côte d'Ivoire), WT/Let/527 (Cameroon), WT/Let/528 (Australia), WT/Let/529 (European Communities), WT/Let/530 (Pakistan), WT/Let/531 (Belize), WT/Let/532 (Cyprus), WT/Let/533 (Malta), WT/Let/534 (Sri Lanka), WT/Let/535 (Uruguay), WT/Let/536 (Canada), and WT/Let/541 (Indonesia). For a full list in table format, see Job(05)/167/Add.1.
[35] BISD 27S/25.
[36] G/MA/63, and G/MA/W/23 and revisions.
[37] https://goods-schedules.wto.org/
[38] "Situation of Schedules of WTO Members", G/MA/W/23 and revisions.

(ITA)[39]; (iii) revisions and additions to the product coverage of the Decision on Trade in Pharmaceutical Products (Pharma)[40]; (iv) bilateral sectorial negotiations (e.g. distilled spirits); (v) modifications pursuant to Annex 5 of the Agreement on Agriculture; (vi) concessions made in the context of the Declaration on the Expansion of Trade in Information Technology Products (ITA Expansion)[41]; and (vii) autonomous improvements in concessions. Based on the 2015 Nairobi Ministerial Decision on Export Competition[42], Members with export subsidy reduction commitments in Part IV of their Schedules have also made use of the 1980 Procedures in order to eliminate export subsidies on agricultural products.

1.6.6 HS Transpositions

21. Schedules of concessions need to be periodically updated in order to align the tariff concessions with the tariff nomenclature used in practice by Members, as it would otherwise be difficult to monitor compliance with the legal commitments embodied therein. According to a Secretariat Note on the status of Schedules, some 110 WTO Members (counting the EU-27 as one) are contracting parties to the Convention on the Harmonized Commodity Description and Coding System (HS), and practically all the remaining Members apply the HS nomenclature.[43] The HS Convention, which is periodically updated to take account of technological developments and changes in the patterns of trade, requires its contracting parties to ensure that customs tariffs and statistical nomenclature are in conformity with the HS nomenclature. Once a Member updates its applied national nomenclature, it becomes necessary to "transpose" the concessions in their WTO Schedule to reflect these changes.

22. The transposition procedures can be traced back to the entry into force of the HS Convention on 1 January 1988. Before its entry into force, GATT contracting parties that were also a party to the HS Convention were required to transpose their Schedules into this new nomenclature. The GATT Committee on Tariff Concessions adopted special procedures to this effect[44], and a number of schedules were progressively transposed, certified, and annexed to Protocols.[45] Given the technical complexity involved in some of these changes, some Members decided to renegotiate their schedules in connection with the implementation of the HS.

23. Thus far, the HS Committee of the World Customs Organization (WCO) has agreed to amendments to the HS Convention that have entered into force on 1 January 1992 (HS92), 1 January 1996 (HS96), 1 January 2002 (HS2002), 1 January 2007 (HS2007), 1 January 2012 (HS2012),1 January 2017 (HS2017), and 1 January 2022 (HS2022). The GATT 1947 and the WTO have adopted procedures for the transposition of Schedules for each of these amendments to the HS:

> First Amendment to the HS (HS92): With a view to keeping the authentic texts of GATT schedules up to date and in conformity with the national customs tariff, the GATT Committee on Tariff Concessions adopted in 1991 simplified procedures to implement the HS92 and any future changes relating to the HS.[46] Eleven GATT contracting parties followed these procedures and submitted the required documentation, with only one of them still pending.[47]
>
> Second Amendment to the HS (HS96): Members made use of the 1991 procedures to introduce modifications to the schedules resulting from the introduction of HS96. A total of 49 Members submitted the required HS96 documentation, out of which: 29 were full loose-leaf schedules, 19 reflected only the HS96 changes, and one included information on a preliminary basis. However, a large number of Members did not follow these procedures. Noting that 64 developing Members had not followed the 1991 procedures to introduce the modifications resulting from the introduction of HS96, in 2010, the General Council adopted special

[39] WT/MIN(96)/16.
[40] GATT document L/7430 and addenda. Reviews to the product coverage have been agreed by the participants and circulated in G/MA/W/10 (1st review), G/MA/W/18 (2nd review), G/MA/W/85 (3rd review) and G/MA/W/102 (4th review).
[41] WT/L/956 and WT/MIN(15)/26.
[42] WT/MIN(15)/45 and WT/L/980.
[43] G/MA/W/23 and revisions.
[44] Decision of 12 July 1983, GATT BISD 30S/17.
[45] See TAR/W/67/Rev.15 and TAR/W/74/Rev.12.
[46] Decision of 8 October 1991, Annex to L/6905, GATT BISD 39S/300.
[47] See G/MA/W/23 and revisions.

procedures.[48] Under these procedures, the Secretariat was instructed to conduct the technical work for the transposition of the 64 Schedules in question, using the Consolidated Tariff Schedule database (CTS) as a working tool. The files were subject to multilateral review in dedicated sessions of the Committee on Market Access. A report by the WTO Secretariat observes that practically all Schedules have been updated into HS96.[49]

Third Amendment to the HS (HS2002): On 18 July 2001, the General Council agreed on procedures for the introduction of HS2002 changes into the schedules of concessions which followed the same Member-driven approach of the HS96 procedures.[50] Although the HS2002 had been implemented by practically all WTO Members, only 35 of them had submitted the documentation required by these procedures. With a view to further facilitating and simplifying the introduction of HS2002 changes in the schedules of concessions of all Members, on 15 February 2005, the General Council adopted a revised set of procedures that instructed the Secretariat transpose the schedules of all developing country Members using the Consolidated Tariff Schedule (CTS) database as a working tool.[51] At one point, and although the Secretariat had concluded the technical work on most of the Schedules, procedures remained inconclusive for a high number of files due to the lack of approval or comments by the Member concerned. On 14 December 2010, and with a view to addressing this situation, the General Council adopted a decision further amending the procedures.[52] A report by the WTO Secretariat[53] observes that modifications to 116 Schedules have been approved at the multilateral reviews and circulated pursuant to the 1980 procedures for rectification and modification of schedules[54], but one procedure has not been certified due to ongoing domestic procedures by the concerned Member.

Fourth Amendment to the HS (HS2007): on 15 December 2006, the General Council adopted procedures for the introduction of HS2007 changes into schedules of concessions[55], which were based on the modified procedures that were progressively adopted for HS2002. A report by the WTO Secretariat[56] observes that 112 Schedules have been approved in multilateral review and certified pursuant to the 1980 procedures for rectification and modification of schedules[57].

Fifth Amendment to the HS (HS2012): on 30 November 2011, the General Council adopted a procedure for the introduction of HS2012 changes into schedules of concessions[58], which is very similar to the HS2007 procedures. A report by the WTO Secretariat[59] observes that 103 Schedules have been approved in multilateral review and certified pursuant to the 1980 procedures for rectification and modification of schedules[60].

Sixth Amendment to the HS (HS2017): on 7 December 2016, the General Council adopted a procedure for the introduction of HS2017 changes into schedules of concessions[61], which is very similar to the HS2012 procedures. A report by the WTO Secretariat[62] observes that 64 Schedules have been approved in multilateral review and certified pursuant to the 1980 procedures for rectification and modification of schedules.[63]

Seventh Amendment to the HS (HS2022): on 23 November 2021, the General Council adopted a procedure for the introduction of HS2022 changes into schedules of concessions[64], which is

[48] Decision of 27 May 2009 (WT/L/756), Procedures Leading to the Verification and Certification of HS96 Changes Relating to the Schedules of 64 Members.
[49] G/MA/W/23 and revisions.
[50] WT/L/407.
[51] Decision of 15 February 2005, WT/L/605.
[52] Decision of 14 December 2010 (WT/L/807), Amendment to the Procedures Leading to the Certification of HS2002 Changes.
[53] G/MA/W/23 and revisions.
[54] See JOB/MA/42/Rev.26.
[55] WT/L/673.
[56] G/MA/W/23 and revisions.
[57] For more information, see document JOB/MA/104/Rev.30.
[58] WT/L/831.
[59] G/MA/W/23 and revisions.
[60] See document JOB/MA/129/Rev.16.
[61] WT/L/995.
[62] G/MA/W/23 and revisions.
[63] See document JOB/MA/143/Rev.7.
[64] WT/L/1123.

very similar to the HS2017 procedures. The transposition of Schedules to HS2022 has not yet started.

24. For information on the HS related waivers, see the section on waivers below. For information on renegotiations in this context, see Analytical Index, Article XXVIII of the GATT 1994.

1.6.7 Consolidated Loose-Leaf Schedules and tariff databases

1.6.7.1 Consolidated Loose-Leaf Schedules

25. At its meeting on 22 November 1995, the Committee on Market Access agreed in principle to a process leading to the establishment of legally-binding consolidated loose-leaf schedules replacing prior schedules.[65] On 29 November 1996, the Council for Trade in Goods adopted a Decision on the Establishment of Consolidated Loose-Leaf Schedules on Goods, concerning the status of the new loose-leaf schedules, the information to be included, and the process for establishing them as legally binding instruments:

> "The consolidated loose-leaf schedules on goods as described in the Annex to this Decision shall be binding instruments, replacing all previous schedules for all purposes relating to a Member's rights and obligations under the WTO, except with respect to historical Initial Negotiating Rights (INRs). The schedules therefore shall contain all necessary information in order to reflect the exact situation in respect of each tariff concession and commitment.
>
> …
>
> With respect to modifications and rectifications of loose-leaf schedules, the Procedures for Modification and Rectification of Schedules of Tariff Concessions shall apply. A request for the correction of minor clerical errors that have occurred in the transposition of existing schedules into loose-leaf schedules through these Procedures may be submitted at any time."[66]

1.6.7.2 Consolidated Tariff Schedule (CTS) Data Base

26. Since Members did not follow through with this Loose-Leaf Schedule Decision, and in light of technological developments, in 1998, the Committee on Market Access approved a project to establish a Consolidated Tariff Schedules (CTS) Database. The CTS seeks to consolidate in a single database all the relevant tariff concessions and other commitments in Members' Schedules. Although some of this information was available electronically, it was not available in a standardized database format. Through the CTS Database project, the Secretariat was tasked to prepare draft files of consolidated tariff concessions for each developing country Member and LDC Member. Developed country Members were requested to prepare their own files using the electronic format that had been developed by the Secretariat. The database was established as a working tool, so it was not meant to have implications as to the legal status of the information contained therein.[67]

27. At its meeting on 28 July 2000, the Committee on Market Access adopted a format for including agricultural commitments into the CTS database on the understanding that the database has no legal basis and that the data contained therein would be available to all delegations at the same time.[68] On 11 October 2010, the Committee adopted a revised version of the formats to be used in the CTS database for all Members' tariff commitments, as well as specific commitments in agriculture, pursuant to introduction of the HS 2002 changes in Members' Schedules.[69]

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[65] G/MA/M/4, para. 1.2 (including Chairman's responses to various questions about substance and process for the consolidated schedules; see Chairman's proposal at G/MA/TAR/W/4/Rev.2). See also the *GATT Analytical Index* at pp. 105-106 regarding earlier attempts to establish a comprehensive set of consolidated Schedules.

[66] G/L/138, paras. 1 and 13 (Adoption: G/C/W/98/Rev.1, para. 9.1.).

[67] G/MA/63.

[68] G/MA/M/25, para. 1.

[69] G/MA/244.

28. Members have progressively relied more on the CTS to undertake different tasks. The transposition procedures for HS2002, HS2007, HS2012, and HS2017 have provided that the CTS database would be used as the starting point of the technical work.[70]

1.6.7.3 Integrated Data Base (IDB)

29. The Integrated Data Base (IDB) was established pursuant to a decision by the GATT 1947 Council on 10 November 1987, as a database of imports, tariffs and quantitative restrictions, at the tariff line level.[71] At its meeting on 24 June 1997, the Committee on Market Access agreed to have the IDB restructured from a mainframe system to a personal computer (PC)-based product[72], and, on 16 July 1997, the General Council adopted the Decision on the Supply of Information to the Integrated Data Base for Personal Computers, mandating that Members supply this information annually.[73] On 2 December 1997, the Committee on Market Access adopted decisions concerning the deadlines for IDB submissions, and access to the IDB.[74] In 2002, the Secretariat began work on linking the applied tariff data in the IDB to the bound tariff data in the CTS data. A document approved by the Committee on 19 March 2004 discusses the technical and procedural issues.[75]

30. The Committee on Market Access periodically issues updates on the status of submissions to the IDB[76] and has discussed ways to facilitate compliance with IDB notification requirements.[77] On 13 July 2009, the Committee on Market Access adopted a "Framework to enhance IDB notification compliance", which authorizes the Secretariat to obtain information from other sources, including through (a) direct contact with the appropriate national agencies or ministries for the collection of outstanding data, (b) national governmental websites, (c) data available in relevant regional inter-governmental agencies or regional integration agreements' secretariats, and (d) data obtained from other international organisations.[78]

31. At its meeting of 28 May 2019, the Committee on Market Access adopted a new Decision on the "Modalities and Operation of the Integrated Database (IDB)"[79], which consolidated all the previous procedures and replaced the relevant Decisions.[80]

1.6.7.4 Dissemination and access to CTS Database, IDB and other tariff data

32. On 12 June 2002, the Committee on Market Access adopted a dissemination policy, granting full access to the CTS Database and the IDB for Members, acceding countries or territories that have provided IDB submissions, the Secretariat, and certain intergovernmental organizations.[81] On 13 July 2009, the Committee adopted a new dissemination policy according Internet access to unrestricted data from the IDB and CTS database freely to the public, through a user-defined identification and password system.[82] On 28 October 2013, the Secretariat released an information note that summarizes the notification requirements for the IDB.[83] On 28 May 2019, the Committee on Market Access adopted a revised dissemination policy which is contained in Annex 4 of the 2019 IDB Decision.[84]

33. Since July 2009, the WTO website has provided a Tariff Download Facility at http://tariffdata.wto.org, which allows for downloads of unrestricted approved data from the CTS and the IDB into spreadsheet formats for further use with other PC software. Data for several Members and for several years can be downloaded in one operation. The Tariff Download Facility contains

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[70] WT/L/605; WT/L/673, WT/L/831, and WT/L/995.
[71] BISD 34S/66.
[72] G/MA/M/10, para. 4; G/MA/IDB/1/Rev. 1.
[73] WT/L/225 (discussed at G/MA/M/10, para. 4).
[74] G/MA/IDB/Rev.1/Add.1 (adoption at G/MA/M/12, para. 3).
[75] G/MA/156.
[76] G/MA/IDB/2 and revisions.
[77] See, e.g., G/MA/IDB/W/12; G/MA/M/27.
[78] G/MA/239.
[79] G/MA/367.
[80] Paragraph 26 of the 2019 IDB Decision (G/MA/367) provides that it replaces the Decisions of the Committee on Market Access of 13 July 2009 (G/MA/238) and 13 July 2009 (G/MA/239).
[81] G/MA/115 and addenda; see also 1999 document on dissemination of IDB at G/MA/IDB/3.
[82] G/MA/238 and addenda.
[83] G/MA/288.
[84] G/MA/367.

comprehensive information on MFN applied and bound tariffs at the HS subheading (six-digit) level, for all WTO Members. It also provides data on non-MFN applied tariff regimes granted by a country to its export partners when such data are available. This information is sourced from submissions made to the IDB for applied tariffs and imports, and from the CTS Database for the bound duties of all WTO Members.

34. Another dissemination platform to access data in the IDB and CTS is the Tariff Analysis Online (TAO).[85] This facility allows users to query the databases by user-defined tariff and trade criteria, and offers a number of analytical and summary reports including tariff line level data. Since 2006, the WTO, the International Trade Commission (ITC), and the United Nations Conference on Trade and Development (UNCTAD) have released an annual publication entitled "World Tariff Profiles", which is largely based on IDB and CTS data.[86]

1.7 Article II:1(a): "treatment no less favourable than that provided for in the appropriate Part of the appropriate Schedule"

1.7.1 "Treatment": Schedule concessions other than duties on importation

1.7.1.1 Non-tariff concessions

35. The standard format for Schedules to the GATT 1994 provides for concessions on non-tariff measures, which may be scheduled in Part III of the Schedule. Eight Members included concessions in Part III of their Uruguay Round Schedules, listing tariff item numbers and describing the non-tariff concessions.[87] A 2010 Secretariat Technical Note on the Accession Process notes that the Schedules of China, Saudi Arabia, Chinese Taipei, Viet Nam, and Ukraine include concessions in Part III of their Schedules.[88]

1.7.1.2 Export duties and taxes

36. Part I, Section II of Australia's Uruguay Round Schedule I includes commitments not to impose export duties in respect of a number of metals, ores, and minerals.

37. A number of acceding Members have agreed to commitments other than scheduled concessions which govern their use of export charges and taxes, in protocols of accession or in accession working party reports.[89] More recently, the Goods Schedules of three new acceding Members incorporated concessions on export duties in a new "Part V" of their Schedules.[90]

1.8 Article II:1(b)

1.8.1 "all other duties or charges of any kind"

38. WTO Schedules of Concessions reflect whether a Member has a right to levy "other duties and charges" (ODCs) in the sense of the Article II:1(b) of the GATT 1994, second sentence, which represents a change with respect to GATT practice. Paragraph 3 of the Understanding on Article II:1(b) provides that "Other duties or charges shall be recorded in respect of all tariff bindings". Paragraph 1 of the Understanding on Article II:1(b) clarifies further that "the nature and level of any 'other duties or charges' shall be recorded in the Schedules of concessions annexed to GATT 1994 against the tariff item to which they apply".

39. Sixty Members have included ODCs in their Schedule of Concessions. The share of tariff lines subject to these ODCs varies considerably across Members, but, generally, they have a higher incidence on agricultural products than on non-agricultural products. While some Members have bound ODCs for a handful of tariff lines, 21 Members have included them for more than 90% of their

[85] Available in http://tao.wto.org.
[86] Available in https://www.wto.org/english/res_e/reser_e/tariff_profiles_e.htm.
[87] Belize, Cameroon, El Salvador, Egypt, Indonesia, Malta, Senegal and Trinidad & Tobago.
[88] WT/ACC/10/Rev.4, p. 17.
[89] Protocols of accession: China. Accession working party reports: Bulgaria, Croatia, Estonia, Georgia, Latvia, Nepal, Saudi Arabia, Ukraine, Tonga, Viet Nam. WT/ACC/10/Rev.4/Add.1, pp. 98-100.
[90] Afghanistan, Russian Federation, and Kazakhstan.

bound tariff lines. The large majority of these are *in ad valorem* form, but 15 Members have ODCs in non-*ad valorem* form. They also diverge considerably in terms of their average level for each Member, ranging from 0.1% in one case to up to 250% in another.[91]

1.8.2 The "date of this Agreement" (Articles II:1(b), II:1(c), II:6(a) of the GATT 1994)

40. Articles II:1(b) and II:1(c) provide that WTO Members shall not impose other duties and charges "in excess of those imposed on the date of this Agreement". While subparagraph (b) refers to ODCs that are applied on an MFN basis, subparagraph (c) refers to other duties and charges that are imposed in the context of preferential arrangements. Article II:6(a) provides that specific duties and charges in the Schedules had to be set "in the appropriate currency at the par value accepted or provisionally recognized by the Fund at the date of this Agreement". Under the so-called "gold standard", which was administered by the International Monetary Fund until the system disappeared in 1973, the standard unit of a currency was a fixed quantity of gold and exchange rates were fixed on that basis. Since the concession could significantly change depending on the date, it was necessary to define it.

41. In the GATT 1947, the "date of this Agreement" was originally established as 30 October 1947 by Article XXVI:1, and that date applied to the concessions made in the round of tariff negotiations held in 1947. The various tariff protocols to the GATT 1947 provided that:

> "[i]n each case in which paragraph 1(b) and (c) of Article II of the General Agreement refers to the date of that Agreement, the applicable date in respect of each product which is the subject of a concession provided for in a schedule of tariff concessions annexed to this Protocol shall be the date of this Protocol, but without prejudice to any obligations in effect on that date."

Thus, in the GATT 1947, each concession would have its own "date of this Agreement" for the purpose of the binding on "other duties and charges" under Article II:1(b) or the adjustment of specific duties under Article II:6, and a series of concessions by the same contracting party on the same product could have a series of different and coexisting such "dates of this Agreement".

42. In the WTO, the Understanding on Interpretation of Article II:1(b) of the GATT 1994 provides that:

> "1. …the nature and level of any 'other duties or charges' shall be recorded in the Schedules of concessions annexed to GATT 1994 against the tariff item to which they apply. …
>
> 2. The date as of which "other duties or charges" are bound, for the purposes of Article II, shall be 15 April 1994. "Other duties or charges" shall therefore be recorded in the Schedules at the levels applying on this date. At each subsequent renegotiation of a concession or negotiation of a new concession the applicable date for the tariff item in question shall become the date of the incorporation of the new concession in the appropriate Schedule. However, the date of the instrument by which a concession on any particular tariff item was first incorporated into GATT 1947 or GATT 1994 shall also continue to be recorded in column 6 of the Loose-Leaf Schedules.
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> …
>
> 8. The decision in paragraph 2 regarding the date applicable to each concession for the purposes of paragraph 1(b) of Article II of GATT 1994 supersedes the decision regarding the applicable date taken on 26 March 1980 (BISD 27S/24)."

43. Paragraph 5(a) of the Marrakesh Protocol provides that, without prejudice to Article 4.2 of the Agreement on Agriculture, "for the purpose of the reference in paragraphs 1(b) and 1(c) of GATT 1994 to the date of this Agreement, the applicable date in respect of each product which is

[91] For detailed information on this issue, see World Tariff Profiles (2011), table on Summary Statistics on Other Duties and Charges (ODCs) in the Schedule of Concessions.

the subject of a concession provided for in a schedule of concessions annexed to this Protocol shall be the date of this Protocol." The date of the Marrakesh Protocol was 15 April 1994.

44. The standard provisions in WTO accession protocols provide that: "For the purpose of the reference in paragraph 6(a) of Article II of the GATT 1994 to the date of that Agreement, the applicable date in respect of the Schedules of Concessions and Commitments annexed to this Protocol shall be the date of entry into force of this Protocol."[92] GATT accession protocols also included a standard reference to an applicable date in respect of Article II:1(b) and (c), but WTO accession protocols do not.

1.9 Exceptions and derogations from Article II

1.9.1 Waivers

45. To assist Members in aligning their Schedules of Concessions with the tariff nomenclature that is applied in practice by their customs administration, which periodically changes as a result amendments the HS Convention and may involve renegotiations under Article XXVIII, WTO Members have granted a series of waivers that suspend the application of the provisions of Article II of the GATT 1994 for periods up to one year and to the extent necessary to implement domestically those changes. A series of collective waivers have been approved to take account of the introduction of HS96[93], HS2002[94], HS2007[95], HS2012[96], and HS2017.[97] At one point, the General Council granted individual waivers for the Introduction of the HS and HS96.[98] The WTO Secretariat maintains an annual report with detailed information on the HS waivers[99], as well as separate reports with all the approved waivers.[100]

46. For two WTO Members, the General Council has waived, subject to certain conditions, obligations relating to the reduction of bound duties embodied in Schedules of Concessions annexed to Protocols of Accession (i.e. to delay the implementation of concessions). The first one was Albania, through the General Council Decision of 26 May 2005 (WT/L/610), and the second was Cabo Verde, through the General Council Decision of 28 July 2009 (WT/L/768).

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[92] WT/ACC/10/Rev.4/Add.1, p. 4.

[93] See WT/L/124 and WT/L/124/Corr.1; WT/L/173, WT/L/216, WT/L/243, WT/L/268, WT/L/281, WT/L/303, WT/L/338, WT/L/351, WT/L/379, and WT/L/400.

[94] See WT/L/469, WT/L/477, WT/L/511, WT/L/562, WT/L/598, WT/L/638, WT/L/674, WT/L/712, WT/L/744, WT/L/786, WT/L/808, WT/L/832, WT/L/873, WT/L/900, WT/L/945, WT/L/967, WT/L/996, WT/L/1026, WT/L/1048 and WT/L/1082.

[95] See WT/L/675, WT/L/675/Add.1, WT/L/675/Add.2, WT/L/675/Add.3 and WT/L/675/Add.4, WT/L/713, WT/L/745, WT/L/787, WT/L/787/Add.1, WT/L/787/Add.2, WT/L/809, WT/L/833, WT/L/874, WT/L/901, WT/L/946, WT/L/968, WT/L/997, WT/L/1027, WT/L/1049 and WT/L/1083.

[96] See WT/L/834, WT/L/875, WT/L/875/Add.1, WT/L/902, WT/L/947, WT/L/969, WT/L/998, WT/L/998/Add.1, WT/L/1028, WT/L/1050 and WT/L/1084.

[97] See WT/L/999, WT/L/999/Add.1, WT/L/999/Add.2, WT/L/999/Add.3, WT/L/999/Add.4, WT/L/999/Add.5, WT/L/999/Add.6, WT/L/999/Add.7, WT/L/999/Add.8, WT/L/1029, WT/L/1029/Add.1, WT/L/1029/Add.2, WT/L/1029/Add.3, WT/L/1051, WT/L/1051/Add.1 and WT/L/1085.

[98] See WT/L/80, WT/L/81, WT/L/82, WT/L/83, WT/L/84, WT/L/85, WT/L/86, WT/L/87, WT/L/102, WT/L/103, WT/L/114, WT/L/115, WT/L/117, WT/L/118, WT/L/119, WT/L/120, WT/L/121, WT/L/122, WT/L/123, WT/L/131, WT/L/164, WT/L/165, WT/L/166, WT/L/167, WT/L/168, WT/L/169, WT/L/170, WT/L/171, WT/L/172, WT/L/209, WT/L/212, WT/L/213, WT/L/224, WT/L/239, WT/L/240, WT/L/241, WT/L/242, WT/L/264, WT/L/265, WT/L/266, WT/L/267, WT/L/277, WT/L/278, WT/L/279, WT/L/280, WT/L/299, WT/L/300, WT/L/301, WT/L/302, WT/L/334, WT/L/335, WT/L/336, WT/L/337, WT/L/350, WT/L/352, WT/L/353, WT/L/376, WT/L/377, WT/L/378, WT/L/397, WT/L/398, WT/L/399, WT/L/426, WT/L/427, WT/L/428, WT/L/467, WT/L/470, WT/L/468, WT/L/492, and WT/L/493.

[99] G/MA/W/23 and revisions.

[100] The full list of all waivers approved by the General Council between 1995 and 2015 can be found in WT/GC/W/718. Subsequent waivers can be found in annual lists prepared by the Secretariat, including WT/GC/W/729 (2016 waivers) and WT/GC/W/740 (2017 waivers).

1.10 Relationship with other WTO agreements

1.10.1 Agreement on Agriculture

47. As a result of the Uruguay Round modalities for agricultural negotiations[101], each Member's Schedule typically includes bound duties for all its agricultural products in Section I-A of Part I of their Schedules. As a result of the Uruguay Round modalities on agricultural trade negotiations, all original WTO Members and acceding WTO Members have typically bound all of their tariffs on agricultural products. There are currently 40 Schedules of Concessions with minimum and current access tariff-rate quotas under Part I, Section I-B entitled "tariff quotas".[102]

48. Article 5.1 of the Agreement on Agriculture allows Members having converted into tariffs the measures referred to in Article 4.2 of the Agreement on Agriculture to apply a "Special Safeguard" on the products which have been designated with the symbol "SSG" in their Schedule of concessions. Annex 5 of the Agreement on Agriculture allowed some Members to designate products having been designated for Special treatment with respect to Article 4.2 (i.e. to postpone the tariffication), which had to be designated with the symbol "ST-Annex 5" in Section I-B of Part I of their Schedules.[103] Finally, the Agreement on Agriculture also led to the creation of a new Part IV of the Schedules, embodying the commitments limiting subsidization of agricultural products.

49. For an explanation of the different Parts and Sections of the Schedules, see above.

1.10.2 Agreement on Balance of Payments

50. Paragraph 2 of the Understanding on the Balance-of-Payments Provisions of the GATT 1994 provides an exception from Article II:1(b) for "price-based measures taken for balance-of-payments purposes":

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

1.10.3 Other agreements

51. Article II:2 of the GATT 1994 provides that:

> "2. Nothing in this Article shall prevent any contracting party from imposing at any time on the importation of any product:
>
> (a) a charge equivalent to an internal tax imposed consistently with the provisions of paragraph 2 of Article III* in respect of the like domestic product or in respect of an article from which the imported product has been manufactured or produced in whole or in part;
>
> (b) any anti-dumping or countervailing duty applied consistently with the provisions of Article VI;*
>
> (c) fees or other charges commensurate with the cost of services rendered"

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[101] MTN.GNG/MA/W/24.

[102] Counting the European Union and its member States as one. Two Members (Brazil and the United States of America) have scheduled their agricultural tariff quota commitments under Part I, Section I-A.

[103] See Agreement on Agriculture-Annex 5 for additional details.

52. Therefore, Schedules of Concessions have a relationship with the Agreement on Antidumping, Agreement on Subsidies and Countervailing Measures, and the Agreement on Trade Facilitation, which regulate those measures.

1.11 Tariff Initiatives among WTO Members

1.11.1 Agreement on Pharmaceuticals

53. On 25 March 1994, and in the context of the Uruguay Round, a group of 12 GATT contracting parties[104] submitted a document entitled "Trade in Pharmaceutical Products"[105], colloquially referred to as the "Pharma Agreement", stating that participating government representatives had agreed to:

> "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:
>
> a) items classified (or classifiable) in Harmonized System Chapter 30;
>
> b) items classified (or classifiable) in HS headings 2936, 2937, 2939, and 2941, with the exception of dihydrostreptomycin and salts, esters, and hydrates thereof;
>
> c) pharmaceutical active ingredients as designated in Annex I and that bear an "international non-proprietary name," (INN) from the World Health Organization;
>
> d) 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;
>
> c) 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;
>
> e) 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."

54. The four annexes to the Agreement on Pharmaceuticals set out the product coverage making use not only HS codes, but also chemical descriptions, International Non-proprietary Names (INNs), and registry numbers (RN) of the Chemical Abstracts Service (CAS). These annexes were not annexed to the communication but rather "deposited with the GATT Secretariat".[106] On 3 August 1994, participants to the Agreement on Pharmaceuticals submitted an addendum with

[104] Australia, Austria, Canada, Czech Republic, European Communities, Finland, Japan, Norway, Slovak Republic, Sweden, Switzerland, and the United States. On 30 June 1994, the delegation of Australia submitted a document indicating that Australia "did not agree to being included in the list of countries which 'came to the conclusions' set out in that document". See GATT document L/7430/Add.3.
[105] GATT document L/7430.
[106] GATT document L/7430, para. 4.

the record of a discussion and introducing corrections to the annexes.[107] These annexes were embodied in the participants' Uruguay Rounds Schedules.

55. A 2010 report by the Secretariat indicates that 12 acceding Members[108] have "full coverage" of the Agreement on Pharmaceuticals in their Schedules of concessions, while three[109] additional acceding Members have "significant coverage", which is defined as more than 75% but less than full coverage.[110] It should however be noted that this does not mean that they are participants to the Agreement on Pharmaceuticals.

56. The Agreement on Pharmaceuticals provides further that representatives of the participants would meet under the auspices of the WTO Council for Trade in Goods at least once every three years in order to review the product coverage "with a view to including, by consensus, additional pharmaceutical products for tariff elimination".[111] The first review of the Agreement on Pharmaceuticals took place between 1995 and 1996 and concluded with revised annexes including additional products and "revised HS classification rulings issued by the World Customs Organisation and technical corrections (e.g. misspellings of product descriptions)".[112] A second review took place in 1998, and the results were notified through a communication dated 10 November 1998.[113] A third review was launched in 2000, and the results were notified through a communication dated 12 March 2007.[114] A fourth review was launched in 2009, and the results were notified through a communication dated 30 July 2010.[115] In all cases, the Annexes have not been circulated as part of the communication, but rather, deposited with the WTO Secretariat. Following these reviews, participants were required to notify to the WTO Secretariat the appropriate changes to be made to their Schedules of Concessions. In practice, these modifications were introduced in the authentic text of the Schedules through the 1980 Procedures (see above). A periodic report by the Secretariat on the current situation of schedules keeps track of these modifications.[116]

1.11.2 Other sectoral initiatives

57. A Secretariat Note of 24 January 2005, "Sector Specific Discussions and Negotiations on Goods in the GATT and WTO" provides information on sectoral negotiations since the Kennedy Round of 1964-67, summarizes the main elements identified in some sectoral negotiations, and lists the product coverage of plurilateral sectoral initiatives concluded during the Uruguay Round.[117] A Secretariat Technical Note on Accessions summarized participation by acceding Members in sectoral initiatives.[118]

1.11.3 Ministerial Declaration on Trade in Information Technology Products

58. In December 1996, the Singapore Ministerial Conference adopted the Ministerial Declaration on Trade in Information Technology Products ("Information Technology Agreement", or ITA).[119] The Declaration, initially agreed by 29 Members (including the 15 EC member States) and States or separate customs territories in the process of WTO accession, called on its participants to:

> "[B]ind 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:

[107] GATT document L/7430/Add.4.
[108] Albania, Armenia, Croatia, Estonia, Jordan, Kyrgyz Republic, Lithuania, Moldova, Oman, Saudi Arabia, Chinese Taipei, and Viet Nam.
[109] The former Yugoslav Republic of Macedonia, Latvia, and Panama.
[110] WT/ACC/10/Rev.4, Table 4, p. 24.
[111] GATT document L/7430, para. 3.
[112] G/MA/W/10.
[113] G/MA/W/18.
[114] G/MA/W/85.
[115] G/MA/W/102.
[116] See G/MA/W/23 and revisions.
[117] TN/MA/S/13.
[118] WT/ACC/10/Rev.4, p. 24.
[119] WT/MIN(96)/16.

> '(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."[120]

59. The Annex to the Ministerial Declaration sets out modalities and product coverage for this initiative. Paragraph 1 of the Annex states that "each participant shall incorporate the measures described in paragraph 2 of the [ITA] 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." The Annex stated that the agreement would only be if participants representing a critical mass threshold (90 percent) of world trade in information technology products had agreed to participate. Two appendixes defined the product coverage by listing HS headings to be covered (Attachment A), and products to be covered by wherever they were classified in the HS (Attachment B).

60. The 90 percent target was met in early 1997, and the first staged reduction in tariffs took place on 1 July 1997. As described in the panel report on *EC – IT Products,* "in accordance with paragraph 2 of the ITA Annex and the *Decision of 26 March 1980 on Procedures for Modification and* Rectification *of Schedules of Tariff Concessions* (the "1980 Procedures"), each ITA participant submitted a proposed modification to its own WTO Schedule for review by all WTO Members. Each participant's schedule was certified following a three-month review period for that particular schedule.[121]

61. As of 10 October 2018, the ITA had 53 participants (covering 82 Members and States or separate customs territories in the process of acceding to the WTO) representing approximately 97 per cent of world trade in information technology products covered by the agreement.[122]

62. On 26 March 1997, the Participants established the Committee of Participants on the Expansion of Trade in Information Technology Products (the "ITA Committee") in order to monitor the provisions of paragraphs 3, 5, 6 and 7 of the Annex to the Declaration.[123] At its meeting of 30 October 1997, the ITA Committee adopted rules of procedure which are similar to those of other WTO bodies.[124]

– *Non-Tariff Measures Work Programme*

63. In November 2000, the ITA Committee agreed on a work programme on Non-Tariff Measures to identify those measures which adversely affect the expansion of trade in ITA products and to explore how the undue trade-distorting effects of such non-tariff measures could be reduced or eliminated.[125] As part of the work programme, the ITA Committee agreed to conduct a survey on the types of conformity assessment procedures on electromagnetic compatibility (EMC) and electromagnetic interference (EMI) used by ITA Participants, which eventually led to the adoption of the "EMC/EMI Guidelines".[126] The EMC/EMI Guidelines were revised in 2005[127] with a view to making conformity assessment procedures more consistent, transparent, and simple. For a list of the types

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[120] WT/MIN(96)/16, para. 2.
[121] Panel Report, *EC – IT Products*, para. 7.18 (extensive document references in original).
[122] See G/IT/1/Rev.58 and revisions.
[123] G/L/160, para. 3. The Committee's rules of procedure provide for observer status in the Committee to WTO Members which are not parties, and governments that are observers to the Council for Trade in Goods. Furthermore, requests for observer status by international intergovernmental organizations would be considered on a case-by-case basis.
[124] G/IT/M/2, para. 1.5. The text of the Rules of Procedure can be found in G/IT/3.
[125] G/IT/19.
[126] G/IT/22.
[127] G/IT/25. Such Guidelines have no legal status nor do they have any implications for participants' rights and obligations under the WTO.

of procedures used by each ITA participant see the G/IT/W/17/Rev document series. On 7 May 2015, the ITA Committee held a workshop on non-tariff barriers affecting trade in IT products.[128]

– *Divergences in the classification of Attachment B products*

64. Paragraph 5 of the Annex to the ITA Declaration provides that 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". The ITA Committee worked for many years on narrowing down the classification divergences in relation to the 55 items "in" or "for" Attachment B. On 7 August 2013, the ITA Committee agreed on the HS96 classification of 18 Attachment B items.[129] On 17 May 2016, it endorsed the HS2007 classification of 15 additional Attachment B items.[130] As part of these Decisions, ITA Participants were required to reflect the agreed classifications in their respective WTO Schedule of concessions, as appropriate, following the 1980 Procedures.[131] The ITA Committee continues its work with a view to achieving, where possible, a common classification in the existing HS nomenclature for the 22 remaining Attachment B items.[132]

– *Review of the product coverage*

65. Paragraph 3 of the Annex to the ITA Declaration called for its participants to meet periodically "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". The review of product coverage was a standing item on the agenda of the ITA Committee until March 2000, when it was removed as there was less discussion.[133] At the request of some delegations, the Committee re-included the issue as an agenda item of the meeting of 15 May 2012, so that delegations could report on their bilateral and plurilateral consultations on this issue (see *infra*).[134]

1.11.1 Ministerial Declaration on the Expansion of Trade in Information Technology Products

66. On 16 December 2015, at 10th Ministerial Conference in Nairobi, the Ministers of 24 WTO Members endorsed the Declaration on the Expansion of Trade in Information Technology Products (the "ITA Expansion Declaration")[135], which had been agreed on 28 July 2015.[136] The ITA Expansion Declaration requires its participants to:

> "bind and eliminate customs duties and other duties and charges of any kind, within the meaning of Article II:1(b) of the GATT 1994, with respect to:
>
> (a) all products classified with Harmonized System ("HS") 2007 sub-headings listed in Attachment A to this Declaration; and
>
> (b) all products specified in Attachment B to this Declaration, whether or not they are included in Attachment A"[137].

67. The tariff elimination shall be applied in three-year staging (four equal annual reductions of customs duties), beginning in 2016 and concluding in 2019 ("standard staging"), unless otherwise

[128] The main issues raised at the workshop were: transparency, standards for recognition of test results, e-labelling, and energy efficiency. A factual report on the workshop by the Chairman is contained in document G/IT/28.
[129] G/IT/27.
[130] G/IT/29.
[131] BISD 27S/25.
[132] See document G/IT/W/40 with its supplements and addenda.
[133] The review of product coverage was included as an agenda item under "Other Business" with a standard statement by the Chairman.
[134] G/IT/M/55.
[135] WT/MIN(15)/25.
[136] WT/L/956.
[137] WT/L/956, para. 1.

agreed by participants. It was recognized that extended staging of tariff reductions may be necessary in limited circumstances.[138]

68. Paragraph 8 of the ITA Expansion Declaration sets out the modalities for scheduling tariff concessions. In order to implement its binding and elimination of customs duties and other duties and charges of any kind on products listed in the Attachments to the Declaration, each participant was requested to modify its Schedule of Concessions as follows: (a) in the case of products classified with HS 2007 subheadings listed in Attachment A, it shall create**,** where appropriate, sub-divisions in its Schedule of Concessions at the national tariff line level; and (b) in the case of the products specified in Attachment B, it shall attach an annex to its Schedule of Concessions including all products in Attachment B, which is to specify the detailed tariff classification for those products at either the national tariff line level or the HS 6-digit level". ITA Expansion participants' draft schedules[139] had been approved on a consensus basis and represented approximately 90 per cent of world trade in the products covered by the Declaration.[140] The first staged reduction in tariffs took place on 1 July 2016.

69. Each ITA Expansion participant shall incorporate the tariff elimination commitments for each product covered by the Declaration into its WTO Schedule of Concessions, in accordance with the Decision of 26 March 1980 on Procedures for Modification and Rectification of Schedules of Tariff Concessions.[141]

70. As of 2 March 2018, the ITA Expansion Declaration had 26 participants (representing 55 members) accounting for approximately 90 per cent of world trade in the products covered. All the participants to the ITA Expansion are also participants to the 1996 ITA Declaration.

71. ITA Expansion participants meet regularly as an informal group to review the implementation of the Declaration and discuss any other matter as they may deem appropriate. The chairperson of the informal group generally reports on the status of the ITA Expansion Declaration to the ITA Committee under agenda item "review of product coverage".

72. The ITA Expansion covers 201 products. Its participants agreed to meet periodically, and at least one year prior to regular amendments to the Harmonized System nomenclature by the World Customs Organisation, and no later than January 2018, to review the product coverage specified in the Attachments to the Declaration and consider whether "in the light of technological developments, experience in applying the tariff concessions, or changes to the HS nomenclature", the Attachments should be updated to incorporate additional products. The first meeting of the ITA Expansion group to discuss the review of product coverage was informally held on 29 January 2018.

73. Paragraph 10 of the ITA Expansion Declaration states that participants agreed to intensify consultations concerning non-tariff barriers in the information technology sector and to support the possible development of an upgraded work programme on non-tariff barriers.

Current as of: September 2022

[138] WT/L/956, para. 2.
[139] G/MA/W/117 and its addenda and revisions.
[140] WT/MIN(15)/25, paras. 2-3.
[141] BISD 27S/25.