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Trade Policy Review
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TRADE POLICY REVIEW

NIGERIA

Minutes of Meeting

Addendum

Answers to Written Questions

The following communication was received on 23 June 1998 from the delegation of Nigeria responding to advance written questions submitted by the delegations of the United States, Canada, Australia and the European Union to the Trade Policy Review Body for the review of Nigeria.

REPLIES TO WRITTEN QUESTIONS

Question 1: INVESTMENT:

Would like to know content of the negative list on sectors allowed for Foreign Investment.

Answer: The Nigerian Investment Promotion Commission Decree No. 16 of 1995 allows up to 100% foreign ownership in all sectors of the economy. Laws which are inconsistent with this provision especially in the petroleum, minerals, energy and communications sectors are being reviewed. See paragraphs 9, 26-28 of the Nigerian Report.

Question 2: BILATERAL AGREEMENT

According to the Secretariat Report, Nigeria has bilateral trade agreement in force with a number of countries but details are not available. Would like to know more information on the agreements in particular their nature, product coverage, and whether they entail any preferences.

Answer: Nigeria's Bilateral Trade Agreements carry no preferential treatments. The areas of coverage include activities like trade facilitation, establishment of Joint Commissions to monitor trading activities between the two countries as well as providing trade and investment information.

Question 3: ANTI-DUMPING

It is noted from the Secretariat Report that Nigeria has incorporated all the previous anti-dumping duties on certain products into the custom duty on these products and have applied them on an - MFN basis. We would like to know the reasons behind such incorporation and in this connection whether such duties are still regarded as anti-dumping duties or just import tariff for protection of domestic industries. If it is the former we would welcome further information as to how Nigeria discharges its relevant WTO obligations regarding investigations into dumping, injury and their causal relation.

Answer: Nigeria's tariff structure was generally reviewed and harmonized in 1987. There was no expressed purpose to incorporate anti-dumping duties into the custom duty. As a matter of fact, the new customs and tariff rates which were introduced in 1995 covering the year 2001 reduce the tariff range by 50%, from 0-300% to 0-150%. As of now, Nigeria does not have the institutional and regulatory capacity to investigate anti-dumping issues. Plans are however, underway to institute an Investigating Authority that will handle cases of dumping in the system.

Question 4: ANTI-DUMPING

We note that the custom (dumped and subsidised goods) Act 1958 permits the imposition of a special duty on any goods that are deemed to be dumped in Nigeria or subsidised by any government or authority outside Nigeria. Nigeria has however, not notified any anti-dumping legislation to the WTO. Would Nigeria consider notifying the WTO of its legislation covering anti-dumping at what time.

Answer: In addition to the answer to question 3, the Anti-Dumping legislation under consideration will be notified to the WTO as soon as it is promulgated.

Question 5: IMPORT PROHIBITIONS

We note that Nigeria has removed certain items from its import prohibition list since 1991 while at the same time added several other items to the list. It is noted from the Secretariat Report that prohibitions continue to distort trade patterns and stimulate smuggling activities, whilst depriving the Government of tariff revenue in the light of the problems revealed, has Nigeria considered reviewing such prohibitions for protecting domestic industries. Will Nigeria explore other options such as tariffication?

Answer: Since the last review of 1991, the Import Prohibition List has been significantly reduced. Items such as rice, textiles, furniture, beer, stout and mineral waters, live or frozen poultry, sparkling wines and champagne, hurricane lamps, fabrics and articles prefabricated buildings, have all been removed from the Prohibition List. The trend is therefore very progressive.

Question 6: GOVERNMENT PROCUREMENT

We note that all Federal Government Ministries and parastatals should buy locally produced goods, where available at the right quality and quantity to meet local needs rather than importable substitutes. In this connection, we would like to know more details on the implementation of this policy.

Answer: Government has no expressed policy that local goods should be bought in preference to imported ones. In any case, given the current drive towards commercialisation and privatisation, public sector procurement would become an increasingly reduced proportion of total expenditure.

Question 7: Moreover, we are interested to know whether Nigeria has any plan to increase transparency in its government procurement procedures and access to its government procurement sector for foreign suppliers.

Question 8: We understand that Nigeria is not a signatory to the Plurilateral Agreement on Government Procurement. We are interested to know whether Nigeria has any plan to join this Agreement.

Answer to Questions 7 and 8: Nigeria is steadily implementing its obligations under the WTO and will endeavour to maintain consistency in its procurement policies and programmes in furtherance of its commitment to trade liberalisation and openness.

Question 9: INTELLECTUAL PROPERTY

Nigeria being a developing country member, should implement the TRIPS Agreement by 1 January 2000. Would like to know its plans for bringing its current legislation into conformity with the TRIPS Agreement in particular, in the areas of geographical indications, layout - designs of IC and undisclosed information.

Answer: Nigeria is on the threshold of revising its domestic legislation on TRIPS with a view to realigning it with WTO provisions.

Question 10: SERVICES

Nigeria maintains some legislation that restricts foreign participation in the sector, with a view to increasing the participation of domestically ownership in international trade. Would like to know if there are any plans for further liberalisation on top of the current commitments under GATS, under the country's comprehensive maritime policy.

Answer: Foreign participation is allowed subject to the UNCTAD 40-40 - 20 formula. Furthermore, in the inconclusive Maritime Transport Negotiations due to resume in the year 2000, Nigeria made an improved offer on all the three pillars, and that offer has not been withdrawn. Meanwhile, Nigeria's National Shipping Policy is under review, and the ultimate objective is increased liberalisation in the context of globalisation. Further commitments will be based on a balanced outcome of the negotiations.

Would like to know Nigeria's specific plan to improve the supply of telecommunications services and increase foreign participation in the sector.

Answer: The Nigerian Telecommunications Limited (NITEL) is the major public sector parastatal providing communication services. Since the last review of 1991, government has permitted private sector investment, both local and foreign in the communications sector. As a result, there are now about 40 private companies providing communication services especially in Lagos where subscribers can now get telephone lines within 48 hours.

Question 11: IMPORT LIBERALISATION

What steps are being taken by the Nigerian Government to eliminate all existing items on the Import Prohibition List.

Answer: Nigeria has drastically reduced the items on the Import Prohibition List since the last review and a programme is being considered by Government to phase out the remaining items.

Question 12: FRAUDULENT LETTERS

Australia currently has only limited commercial interests in Nigeria, while there are commercial opportunities that could be developed there is reluctance on behalf of Australian companies to engage with the Nigerian public or private sector because of the continued proliferation of fraud letters emanating from Nigeria. As a result of the fraud letters, Australian companies lack confidence in doing business with Nigeria. We would appreciate advice of what measures Nigeria has taken to stamp out this illegal practice?

Answer: To deal with the issue of fraud letters, the Government of Nigeria has established the Special Investigation Panel on Trade Malpractices under the Trade Malpractice (Miscellaneous Offences) Decree No. 67 of 1992. The Law provides that all foreign companies must seek and obtain status reports on Nigerian companies from the Federal Ministry of Commerce & Tourism before entering into any business relationships with such companies; and any business proposal/letter received by any foreign company with only post office box number, telephone or fax numbers but without business local address should not be honoured; all foreign companies are to request for immediate verification on any urgent business proposal at the Federal Ministry of Commerce & Tourism, Abuja, before advancing any fee - payment; and, all foreign companies must ensure that all letters of credit, cheque, bank drafts or such other documents intended for payment are confirmed by their bankers before shipment of goods are made.

In the task of educating foreign governments and business communities about the aforementioned guidelines, our Missions abroad have had to organise lectures, seminars, and press conferences with the Organised Private Sector (OPS) in their countries of accreditation. They have also held discussions with relevant arms of their host governments. Furthermore, paid advertisements are regularly placed in major local and international Newspapers and Magazines in order to further expose these activities. A National Business Directory compiled by the Corporate Affairs Commission will immensely complement the above stated measures in guiding investors as well as importers and exporters against this malpractice. Consequently, a sharp decline in the number of trade complaints against Nigerians has been recorded in recent times.

Question 13: MINING

We understand that the Nigerian Government is looking at mining law reform as a means of encouraging foreign investment. Currently, the Government receives revenue through a complicated arrangement of VAT income tax, capital gains tax and company tax worth approximately 30% in addition to royalties and ownership arrangements. The Nigerian Minerals Act of 1946 vests Minerals ownership in the Federal Government. It would be appreciated if Nigeria would confirm when a review of the mining law will take place and if it is intended to address issues such as simplification of mining taxation and conditions for paying compensation to land owners.

Answer: Government has begun review of the relevant sections of the Minerals Act (cap 226 LFN 1990) in order to encourage foreign investment in the solid minerals sector under the auspices of the Ministry of Solid Mineral Resources. It is important to note that the Value Added Tax (VAT) is a simplified tax on consumption not production. Also, the capital gains tax has been abolished with effect from 1 January 1998. So there is ample opportunity for foreign investment as the playing field is being levelled. As regards compensation to land owners, the already existing land use Decree of 1978 provides the procedures for compensation.

Question 14: PRIVATISATION OF NITEL AND NEPA

A key promise in the Nigerian budget was that in line with earlier business recommendation the Government would in 1998 privatise NITEL, the telecommunications authority, and reorganise NEPA, the electric power authority, for privatisation. It would be appreciated if Nigeria would advise under what conditions foreign investors would be able to participate in the privatisation of these organisations.

Answer: To implement this initiative, and in the light of the importance Government attached to this undertaking, a National Committee on Privatisation is being established under the Chairmanship of the Head of State. With regard to the conditions under which foreign investors would be able to participate, this regulation contained in the Nigerian Investment are being worked out by a team of experts on privatisation set up to advise the Committee.

Question 15: OIL AND GAS

Australia has for some time received representations about environmental concerns associated with Nigeria's oil and gas production. Can Nigeria advise if it has considered whether compliance with internationally accepted environmental wastage and emission control methods and standards would improve the efficiency of its oil and gas production?

Answer: The flaring of gas in the oil producing areas has adverse consequences for the environment. In the past, government had concentrated on penalising oil companies that flared gas. Emphasis has however, shifted from penalties to provision of incentives for the investment in the gas sub-sector. These incentives include duty and VAT free import of machinery and equipment, tax holidays, tax deductible interest on loans for gas projects, investment capital allowances and tax free dividends for a period of five years. In response to these incentives for example, Chevron and SASOL have jointly undertaken investment on gas to liquids products plants for 2000 bpd.

Question 16: SAFEGUARDS

Australia has expressed concerns in the Committee on Safeguards in respect of Nigeria's claims for a waiver from its Article 12.17 obligations. Australia does not accept Nigeria's argument that any trade restrictive measure taken before entry into force of the WTO but now in breach of its WTO obligations can be claimed to be a pre-existing measure under Article 10. How does Nigeria plan to address the concerns put to it by Australia at the last Safeguards Committee meeting concerning coverage of its import prohibitions on Wheat, flour, sorghum, millet, gypsum and kaolin.

Answer: As already stated elsewhere under paragraph D above, the import prohibition list is under active review.

Question 17: BALANCE-OF-PAYMENTS RESTRICTIONS

The consultations with Nigeria held by the Balance-of-Payments Committee in April 1998 ended with no agreement as to Nigeria's coverage under GATT Article XVIII (Balance-of-Payments). The effect of this is that Nigeria is in breach of its WTO obligations as long as it maintains import restrictions on certain poultry items and eggs, beer and stout, barley and malt, and mineral and similar waters. WT/BOP/N/32 refers. What action has Nigeria taken to bring its measures into WTO conformity?

Answer: All of the items mentioned have been removed from the Import Prohibition List.

Question 18: TARIFF STRUCTURE

What is the reason why the highest levels of duty are levied on consumer goods? Does not such high level of duties negatively affect people's purchasing power and consequently preventing Nigeria's economy from becoming more active?

Answer: The overall objective of Nigeria's tariff structure 1995-2001, is to stimulate competition and efficiency by reducing tariff on consumer goods items relative to tariffs on raw materials and intermediate goods. Consequently and in order to provide for the necessary adjustment, while tariff on raw materials are relatively low at the beginning of the schedule. They have been progressively increased over the period vis-à-vis consumer goods. The purpose is to allow time for the necessary adjustment by business enterprises. The observed high tariffs are targeted on luxury consumer items.

Question 19: IMPORT PROHIBITION

The Secretariat report stated that import prohibition stimulate smuggling activities and depriving Government of tariff revenue. Does the Nigerian Government have any policy to improve this situation.

Answer: Nigeria has continued to reduce items on the import prohibition list. It is noted however, that the problems associated with Port operations have contributed more to smuggling than import prohibitions. In realisation of this fact, Government has already started a reform of the Customs and Port operations (for details see Government Report (i) paragraph 21-25).

Question 20: IMPORT PROHIBITION

Please, explain the reason why the import prohibitions of Kaolin notified in 1994 is not mentioned in the Report.

Answer: The situation as notified in 1994 has not changed.

Question 21: TAX EXEMPTION

Provide a detailed explanation of subsidies and tax exemptions that are available for other exports as mentioned in the Report. For what products are these subsidies and exemptions available?

Answer: The incentives which include Duty DrawBack Scheme, Export Expansion Grant, Manufacture-In-Bond schemes are designed to stimulate non-oil export but are not product specific.

Question 22: IMPORT RIGHTS

The Report states that a limited number of public companies enjoy exclusive import rights. Is there any reason why such public companies are given the privilege. Does the Nigerian Government have a plan to implement any specific competition policy to ensure market efficiency.

Answer: The reference here is made to importation of refined petroleum products by the Nigerian National Petroleum Corporation (NNPC). It is important to state categorically that importation of fuel into Nigeria is only an emergency measure during fuel crisis occasioned by breakdown in the nation's refineries. Nigeria with its four refineries has the capacity to supply all of its petroleum requirements with surplus for export.

Question 23: NIGERIAN PORTS

The Report states that Nigerian Ports are placed at a disadvantageous position vis-à-vis those in other countries in the region and formal imports are discouraged because of multiple fees and unnecessarily high rates. Does the Nigerian Government have any plan to improve this situation.

Answer: Refer to answer to question number 19.

Question 24: TARIFF BINDINGS

The Secretariat report stated that only 6.5% of all tariff lines were bound. What is the reason whereby the rest of tariff lines were not bound during the Round? Does the Nigerian Government have any plan for binding the rest of the tariff lines?

Answer: During the Uruguay Round, developing countries had the latitude to bind tariffs consistent with their level of development. Further binding of the remaining tariff lines will be considered during the next negotiations.

Question 25: MFN

By what rules and procedures have the previous anti-dumping duties been incorporated into customs duty applied on an MFN basis? How are they different from Safeguard measures.

Answer: Refer to answer on question 3 from Hong Kong.

Question 26: ANTI-DUMPING AGREEMENT

The Secretariat Report states that the 1958 legislation has been under review since 1991. Could Nigeria provide information about the current status of the review.

Question 27: Article 18.5 of Anti-dumping Agreement provides that the WTO member shall inform the Committee of any change in its law and regulation relevant to the Agreement. When will the registration on anti-dumping and countervailing duty be notified to WTO. Is the registration consistent with WTO rules?

Answer to questions 26 and 27:

The review exercise is at an advanced stage and would be duly notified as soon as the new Law is promulgated. Every efforts is being made to ensure that these legislation is consistent with WTO rules. In this regard necessary technical assistance is being arranged with the WTO Secretariat.

Question 28: IMPORT PROHIBITION

Import Prohibition for the purpose of protecting domestic industries cannot be justified under the WTO Agreement. What is the view of the Nigerian Government on the consistency of such prohibitions with the WTO Agreement?

Answer: The Government of Nigeria fully recognises its responsibilities under the relevant WTO Agreements. Presently, there is a programme which is being studied by Government to comprehensively address the issue of all items on the import prohibition list as soon as possible. The final outcome of this programme would be fully notified to the WTO.

Question 29: IMPORT PROHIBITION FOR DOMESTIC PRODUCTS

Import Prohibition for the purpose of protecting domestic industries cannot be justified under the WTO Agreement. What is the view of the Nigerian Government on the consistency of such prohibition with the WTO Agreement.

Answer. Refer to answer to question 11.

Question 30: IMPORT PROHIBITION LIST

In which case the importation of products on the import prohibition list may be allowed as part of foreign direct investment contracts. Which products have been allowed to be imported so far?

Answer: This issue essentially concerns the welfare for expatriate staff of contracting companies. The items involved are beverages, food items, furniture, etc. These items have already been removed from the import prohibition and no special approval is required any longer for their importation.

Question 31: SPECIAL LICENCE

In what case does the Head of State grant licences for import prohibition goods. What products have been allowed to be imported so far.

Answer: Refer to answer 30 above.

Question 32: SECOND-HAND CLOTHING

What is the reason and justification under the WTO Agreement for the import prohibition of second-hand clothing? What is the reason for the fact that second-hand clothing constitutes one of Benin's main import for re-export to Nigeria despite the import prohibition.

Answer: The import prohibition on second-hand clothing in Nigeria is justified under Article XX (b) of GATT 1994. There is no formal trade between Nigeria and Benin Republic in second-hand clothing. All claims of re-export of second-hand clothing by Benin Republic and others are illegal.

Question 33: IMPORTATION OF MEAT

What is the reason and justification under WTO Agreement for import ban on all types of meat?

Answer: Nigeria no longer maintains import prohibition on meat and meat products.

Question 34: BOP RESTRICTIONS

The Committee on Balance-of-Payments Restrictions concluded in 1996 that Nigeria's import prohibitions could not be justified for BOP reason. Please, provide the reason why these prohibitions cannot be eliminated immediately despite the conclusion of the BOP Committee. What is the view of the Nigerian Government on the Consistency of maintaining such prohibition with WTO Agreement?

Answer: Refer to answer to question 28.

Question 35: PROCUREMENT OF LOCALLY PRODUCED GOODS

According to the explanation of your government quoted in paragraph 83 of the Report, all Federal Ministries and parastatals should buy locally produced goods while there has been no regulation giving preference to domestic suppliers over foreign suppliers. In view of the future development of trade and investment in your country as well as enhancing transparency of its government procurement procedures, would it be appropriate to adopt the open tendering procedure in principle and, if necessary to specify and make public such elements as items procuring entities and the thresholds subject to the "Buy-Nigerian Policy"?

Answer: Refer to answer to question 6.

Question 36: GPA

In the course of the future review mentioned above, would it be possible for your government to participate in the on-going review work as an observer and the subsequent negotiation in the future on the GPA under the WTO, given the fact that your country, if not a signatory eventually, joined the negotiating group with its offer for making the GPA under the GATT (effective since 1981).

Answer: Nigeria is presently in the process of implementing the Uruguay Round, Agreements and the GPA is one of the areas under consideration.

Question 37: INCENTIVES

The following programmes: that firms purchasing locally manufactured plant, machinery and equipment for their own use would be entitled to 15% investment tax credit on such assets; that a tax credit of 20% is granted to industries attaining minimum levels of local raw materials sourcing and utilisation; that certain export incentives are conditional on local content may constitute prohibited subsidies under Articles 3.2 of SCM Agreement. Did they exist before 1995? What is the view of the Nigerian Government on the consistency of these programme.

Answer: The incentives have been in existence before 1995. Government is now conducting an analysis of these incentives with a view to making them WTO consistent where applicable.

Question 38: TRADE RELATED INVESTMENT

Please provide detailed information about all trade related investment measures Nigeria maintains at present (including local content requirement by incentive under the industrial policy etc). Nigeria has

to eliminate those trade related investment measures until 2000. Please, provide the schedule to eliminate.

Question 39: According to paragraph 8-87 of the Report, the Government of Nigeria seems to have some incentive schemes under its Industrial Policy. What is the view of the Nigerian Government on the consistency of these measures with the obligations under the TRIMS Agreement?

Answer: Answers to be provided in due course for Questions 38 and 39.

Question 40: PRE-SHIPMENT INSPECTION

The Report states that Nigeria's Pre-shipment Inspection system is described as expensive and inefficient by representatives of Nigeria's private sector and it is not clear whether quantity control has actually improved following the appointment of private inspection firms. Does the Nigerian Government have any plan to improve the system.

Answer: The Nigerian Government has plans to improve the system. Once ASYCUDA and Advanced Cargo Information systems are in place, pre-shipment inspection will be phase out.

Question 41: EXPORT PROHIBITION

Nigeria's export prohibitions in order to encourage local processing or ensure self sufficiency in the home market cannot be justified under the WTO Agreement. What is Nigerian Government's view on the consistency of these prohibition with the WTO Agreement?

Answer: Items on export prohibition list are constantly under review. Since the last trade policy review, items such as cassava, maize, yam and beans have been removed from the list. The remaining items will be removed as soon as possible.

Question 42: CASSAVA PRODUCTION

The Report states in paragraph 106 that the lift of the export ban on cassava tuber led to an increase in cassava production. Will the Nigerian Government have any plan to lift the export ban on other agricultural products so that the same positive effect on agricultural production as cassava tuber case could be expected?

Answer: Yes. Refer to answer to question 41.

Question 43: IMPORT PROHIBITION

When will the import prohibition on sorghum, millet and wheat flour be eliminated?

Answer: Refer to answer to question 28.

Question 44: VOLUME OF IMPORT

What is the estimate of informally imported volume of these products.

Answer: It is very difficult to estimate the volume of transactions on these items.

Question 45: TEXTILE AND CLOTHING PRODUCTS

Why has not Nigeria carried out its programme for the integration of the textile and clothing products into GATT. Articles 26-28.

Answer: Nigeria is presently in the process of implementing the Uruguay Round Agreements and the Agreement on textiles and clothing, are some of areas under consideration.

Question 46: INFORMAL IMPORTS OF TEXTILE

Does the Nigerian Government have any plan to cope with informal imports of textile?

Answer: The on-going customs reforms are expected to address the problem of enforcement in the informal sector.

Question 47: LEGISLATION

Nigeria should move expeditiously to begin to develop the legislation necessary to give the WTO agreements it nominally acceded to on 1 January 1995 the force of law. Such a public and concrete ratification of WTO policies would greatly enhance the attractiveness of Nigeria as an investment destination. Nigeria should also notify to the relevant Committees its current legislation and seek their assistance in identifying areas where new legislation is necessary to bring Nigeria into conformity with the WTO.

Answer: Nigeria is already taking appropriate steps in this direction.

Question 48: TARIFFS

Nigeria's current system of applied tariff rates, variable tariff rebates, special tariffs, and general surcharges, described in Chapter III, section (ii), is unpredictable and untransparent, and places an unnecessary burden on trade. The customs tariff should be unified to a single tariff rate for each line item. Nigeria should announce a schedule to bring its highest tariff rates down to commercially viable levels that provide protection and revenue without encouraging customs fraud and smuggling. To the extent that these tariffs are intended to encourage domestic output, it is worth asking whether Nigeria should be diverting domestic resources to the production of goods that require a tariff of over half their value to be competitive.

The extremely high level of "informal" imports generated by the current system enter Nigeria essentially unregulated and untaxed. High, economically unjustifiable, tariff rates are also a hindrance to domestic economic expansion and investment. Selective tariff exemptions are variable and un-transparent, and cannot counteract the depressive impact of such prohibitive tariffs.

Nigeria should expand the scope of its WTO bound tariffs, to help regularize customs charges and to give businesses a much better sense of what to expect.

Answer: It should be pointed out that only the variable tariff rebate element of the Nigerian tariff structure is subject to change on annual basis. This rebate was introduced to address the problems of exchange rate variation in 1995 otherwise noted. Further consideration on binding will be taken in the context of future negotiations.

Question 49: QUOTAS, BANS AND LICENSING RESTRICTIONS

- Few, if any, of the current multiplicity of such barriers can be justified under WTO provisions. These barriers, on both imports and exports, are not temporary measures in any reasonable sense of the term.
- Most of them are not applied in a manner consistent with WTO emergency relief requirements, i.e., that they be temporary and digressive, and that they be applied in the least restrictive manner possible.
- Nigeria should announce a schedule for their removal, then stick to it, allowing tariffs to regulate trade and to introduce a measure of competition into the market.
- Future use of WTO measures for emergency protection should be based on domestic legislation and regulations fully consistent with WTO provisions.

- Nigeria has indicated that it has placed import prohibitions on millet , sorghum, wheat flour, and gypsum for safeguard reasons even though it lacks WTO-consistent legislation on safeguard measures (Chapter III, paragraph 50-51 of the Secretariat's report).
- When will Nigeria enact such legislation? Could Nigeria explain the need for these prohibitions for safeguard reasons since substantial quantities of these products have been entering the country through informal channels? Has Nigeria placed import restrictions on other products for safeguard reasons?
- Nigeria has characterized import prohibitions on products such as maize, corn and vegetable oils and import licensing requirements on a number of restricted products as balance of payments measures (Section III.(2), para 52-60). These restrictions were never justified for balance of payments reasons and are even less justified now that Nigeria has had years to make the requisite structural changes.
- When is Nigeria going to eliminate these prohibitions and restrictions?
- The Secretariat's report (Chapter III, para 8) states that importers do not need to be registered to import goods but that companies must be registered by the Corporate Affairs Commission.
- Does this mean that individuals or groups who are not companies can import goods without restriction so long as the appropriate documentation is presented to the banks, customs, etc?
- We understand (Chapter III, para 59) that all items under import prohibition require a permit by the Head of State on the recommendation of the Tariff Review Board before they can be imported.
- Could Nigeria explain what criteria the Tariff Review Board uses to determine product eligibility?

Answer: Nigeria has made advances in the aforementioned areas and would appreciate technical assistance and cooperation to hasten the pace of reform.

Question 50: CUSTOMS VALUATION AND PRE-SHIPMENT INSPECTION

The use of differential exchange rates to value "official" and private sector imports is a clear violation of GATT Article VII and the Agreement on Customs Valuation, since both methods cannot be considered to meet the requirement of first use of "transaction value". The use of reference prices for customs valuation is also absolutely prohibited by GATT Article VII and the Agreement. Nigeria should move immediately to correct these practices. The pre-shipment inspection system causes unnecessary delays in trade and is inconsistent with the Agreement on Preshipment Inspection, Article 2, paragraphs 5, 6, and 14.-The *ad valorem* fee charged for PSI is not consistent with Article VIII of the GATT, and should be altered to reflect the actual cost of conducting the inspections. Since these inspections are mandatory, the Government of Nigeria has an obligation to ensure that they are consistent with its WTO Obligations.

- Nigeria's exemption of some countries from PSI while requiring it of others raises MFN issues. Nigeria should move expeditiously to eliminate its PSI requirements or apply them equally to all WTO members.
- How does Nigeria decide what countries can be exempted from preshipment inspection requirements?
- Are any of the customs requirements fulfilled by PSI firms related to import certification requirements associated with standards or sanitary issues?

- What is the basis for the use of different PSI companies (Table III.1) to inspect the goods of different countries? If goods are inspected in the port of export and receive a clean report of findings are they still subject to reinspection by the inspection company and/or Customs upon arrival in port in Nigeria?

Answer: The Preshipment Inspection has been reinstated pending the completion of ASYCUDA scanning equipment. The operation is large and one company cannot cover the whole world. There is counter inspection by customs on arrival.

Question 51: Chapter III, paragraph 15 indicates that Nigeria's PSI firms rejected 50% of the submissions of Modified Form M by importers. Could Nigeria explain the reasons for this high rate of rejection? Are there any other charges for PSI other than the 1% *ad valorem* charge noted? What customs charges face imports and exports not required to undergo PSI?

Answer: The rejection is based on not meeting standard requirements for importation. Virtually all imports are subject to PSI where they were not inspected, they would be subject to destination inspection on arrival.

Question 52: We note that Nigeria has delayed implementation of the Customs Valuation Agreement (Chapter III, para 22). What steps is Nigeria taking to move application of the Agreement and to prepare itself to implement it fully at the end of the transitional period?

- We are pleased that Nigeria is attempting to improve efficiency and transparency of its customs procedures by computerizing them and by transferring responsibility for import duty collection from the Customs service to banks (Chapter III, para 25 and 28).
- We wonder, however, why importers are still unable to clear their consignments in less than 48 hours and why there is no rapid clearance procedure for perishable goods. Why has the computerization not led to more rapid clearance of consignments?
- Could Nigeria explain what the "annually determined rebate of 25%" is in reference to (Chapter III, para 3)? Is it a rebate of customs duties? Are all imported goods other than the products listed in footnotes 17 and 18 accorded a 25 percent rebate of customs duties? When is the rebate made and who or what agency makes it?

Answer: A Valuation Implementation Committee has been in place and a Draft Valuation Code produced by this Committee has been approved by the World Customs Organisation (WCO) for onward transmission to the WTO. The Ports and Customs Reforms are still in progress. Equally the computerisation programme is not yet completed. All perishables are subject to pre-release by the Customs. The variable rebate is in respect of raw materials which were adversely affected by exchange rate variations and does not apply to anything else. The rebate was introduced in 1995 and the agency responsible is the Federal Ministry of Finance based on approval by the Federal Executive Council.

Question 53: EXPORTS AND OTHER SUBSIDIES

Nigeria's tax and other incentives for the domestic use of locally manufactured plant, machinery and equipment, and raw materials, as well as export incentives conditioned on local content, would appear to be prohibited subsidies within the meaning of Article 3 of the SCM agreement. We urge Nigeria to review these measures along with others brought to its attention in the WTO Subsidies Committee with a view to eliminating them. If, as indicated in Section III, para 111 of the Secretariat's report, Nigeria believes these measures to be covered by Article 27.2 of the Agreement, we would appreciate a statement by Nigeria stating clearly its intent to eliminate such measures as provided for in that section. Please indicate the date by which Nigeria intends to eliminate the prohibited subsidies referred to in paragraphs 86, 87, 110, and 111.

Answer: The matter is before the Committee on Subsidies and Countervailing Measures and Nigeria will cooperate fully with the Committee.

Question 54: PETROLEUM

Nigeria is the world's seventh largest oil exporter and oil accounts for 95%. All oil production in Nigeria takes place through joint ventures between foreign oil companies and the Nigerian National Petroleum Company (NNPC). Under the joint venture agreements, the foreign partners turn over 60 percent of their production to the NNPC. The NNPC then markets this oil to international traders. The process by which the NNPC's oil is sold to traders lacks transparency. There are allegations of fraud and misuse of funds. A World Bank audit in 1997 found a discrepancy of 15% between NNPC's production share and the volume of contracts reported through official channels. Given the importance of oil exports to Nigeria's foreign trade, and Nigeria's global importance as an oil exporter, we urge Nigeria to increase the transparency of NNPC oil sales. This could be accomplished by opening the details of NNPC sales to public scrutiny or by soliciting tenders for NNPC export contracts through an open bidding process.

Answer: Government has recognised some of these problems and has appointed two foreign companies to act as oil inspection agents. In addition, the Directorate of Petroleum Resources (DPR) has been strengthened for better surveillance.

Question 55: SERVICES

The Secretariat's report indicates that the regulatory framework of the Nigerian services sector, characterized by dominance of the public over the private sector, has not been conducive to growth. Recognizing the vital role of services in building the infrastructure that Nigeria requires to become better integrated into the global economy, could Nigeria provide information on the following: current market access restrictions in the services sector that are likely candidates for eventual liberalization, such as foreign ownership restriction, economic needs tests, quantitative limitations on the number of foreign service suppliers in the market, and residency requirements; unilateral services liberalization or deregulation that has taken place since the conclusion of the Uruguay Round (1993), such as removing quantitative restrictions on the number of licensed services providers or removing discriminatory requirements (often nationally-based) to qualify for a required license; changes in laws and regulations required to implement market opening and national treatment commitments made as a part of the WTO Agreement on Financial Services? (Note: WTO members agreed to ratify the agreement by 29 January 1999 and have it enter into force on 1 March 1999. End note).

In telecommunications, the privatization of NITEL is reportedly not going to occur in 1998. Instead, the government will attempt to establish a second national carrier.

Will the second national carrier be restricted to competition in long-distance and international services or will they also be allowed to compete in domestic services? What is the level of competition that is going to be allowed? Will NITEL still possess a quasi-monopoly over the telecommunications market? Chapter IV, para 159 of the Secretariat's report reads that "(private companies) must no longer use NITEL's Intelsat facilities for international connections". Does this prohibit the use of NITEL's facilities for interconnection?

Answer: The information required would be provided at a later date.

Question 56: INTELLECTUAL PROPERTY RIGHTS

Nigeria is party to most international agreements on intellectual property rights. Yet, as the Secretariat's report notes (Chapter III, para 161), enforcement of existing laws remains weak, particularly in the patent and trademark areas. Most companies do not bother to secure trademark or patent protection because it is generally considered ineffective.

- Nigeria is generally considered to be the largest market in Africa for pirated goods from third countries and production and sales of pirated tapes, videos, computer software, and books remain widespread in Nigeria.
- In view of these problems, please outline in detail Nigeria's plans to make its intellectual property regime consistent with the requirements of the TRIPS agreement by 1 January 2000 deadline.

Answer: Nigeria is now reviewing its laws on intellectual property rights to make it WTO consistent.

Question 57: INVESTMENT

While government funds may be useful in supplementing private investments, the Secretariat's report outlines rather clearly the economic costs associated with excessive Government direct involvement in what should be commercial investments.

- Provision of trade distorting investment subsidies is not only inconsistent with WTO obligations, but has undeniably resulted in the creation of uneconomic and unprofitable investments that continue to drain public funds and private purchasing power.
- In order, however, to attract large-scale private sector interest in rescuing the economy from these liabilities, Nigeria must address the underlying policies that have contributed to their lack of profitability.
- Price controls on, for example, refined oil products, electricity, and telecommunications should be phased out and replaced by the application of a vigorous competition policy.
- Establishment of well-defined, stable, government institutions and of a strong, independent judicial system would also go a long way towards boosting investor confidence.

Answer: The observations are noted.

Question 58: BILATERAL AND REGIONAL AGREEMENTS

Please describe the provisions and the status of the bilateral agreements listed in Chapter II, paragraph 49. Do any of them provide for tariff or other trade preferences? Which of their provisions remain unimplemented? What is Nigeria doing to implement its trade and investment liberalization commitments as a member of ECOWAS? Does Nigeria still intend to implement the tariff reductions called for? What progress has Nigeria made in meeting the objectives to the revised Treaty of 1993, e.g., the establishment of a common market?

Answer: Please refer to answer to question number 2.

Nigeria has committed itself fully to ECOWAS but other member-states are lacking behind in their commitments.

Question 59: IMPLEMENTATION OF WTO AGREEMENTS ON TECHNICAL BARRIERS TO TRADE AND SANITARY AND PHYTOSANITARY MEASURES

Has Nigeria enacted any standards or legislation or regulations dealing with standards and sanitary issues since 1 January 1995? If so, have these been published in advance for comment? Have these technical requirements been notified to the WTO? If no, why not?

Please explain how the import ban on meat meets the criteria in the WTO SPS agreement concerning risk assessment and sound science? What steps is Nigeria taking to address the BSE issues scientifically, as required by the Agreement?

Answer: Answers to be provided later

Question 60: LABOUR

Question 61: BOP IMPORT RESTRICTIONS

The EC is concerned by Nigeria's maintenance of import restriction by reference to GATT Article XVIII, despite the fact that it no longer has coverage under this provision. For the past years, it has been clear that the Nigerian balance of payments situation does not justify the continued recourse to GATT Article XVIII. Nigeria is therefore under an obligation to eliminate import restrictions under Article XVIII:B(11).

Nigeria has had a significant period of time to eliminate these import restrictions. The Balance of Payments Committee has suspended consultations four times in a two-year period, to allow for Nigeria to bring its measures into conformity with WTO rules. The long duration of continued application by Nigeria gives rise to the more concern.

The EC give a high priority to the correct application of the WTO balance of payments provision, so as to ensure that this special provision may be used by Members that face a balance of payments crisis requiring temporary measures, and by those Members only.

The full respect of GATT Articles XII and XVIII and the UR Understanding is of great importance, and in recent years many Members have indeed moved to disinvocation of GATT Article XVIII, as their balance of payments position improved. The EC urges Nigeria to follow and eliminate remaining import restrictions without further delay so as to bring this element of its trade policy into conformity with WTO rules. The EC would appreciate an explanation from Nigeria as to its intentions to do this.

Answer: Please refer to answer to question 28.

Question 62: PUBLIC PROCUREMENT

Given the high level of state intervention in the Nigerian economy, public procurement represents a large, if currently unquantifiable area of trade and economic activity. The lack of transparent procurement rules and practices in Nigeria is a source of concern, as the WTO Report underlines. The EU has two questions. First, does Nigeria agree that the establishment of an open and transparent procurement regime is an essential element of institutional and economic reform, enabling optimum use of public funds?

Second, would Nigeria provide Members with information on how its public procurement regime operates, including the legal/regulatory basis for that regime, information on the principal procurement agencies and value of goods procure in recent periods, and information on the extent and conditions for foreign firms to participate in procurement in Nigeria.

Answer: Refer to answer to question 6.

Question 63: IMPORT LANDING CHARGE

The WTO notes that whereas Nigeria has abolished excise duties for domestic goods, it retains a system of import landing charges for imported products, which was originally designed to mirror the domestic excise duty. Is it Nigeria's intention to remove the import landing charge in order to remove this differential treatment?.

Answer. A suitable adjustment is being worked out.

Question 64: SIMPLIFICATION OF TRADE PROCEDURES

The WTO's report notes in several areas the negative trade consequences of inefficient and untransparent import and export procedures, excessive documentation and bureaucratic requirements for traders, and problems associated with customs clearance and port management, which collectively impede and create additional expenses for both importers and exporters, and encourage smuggling. Nigeria itself has recognised that unnecessary costs represent about 45% of the cost of getting customs clearance (p.35 of the Report, para 29). Against that background, could Nigeria please provide further details of planned reforms to trade procedures (only the planned use of the ASYCUDA electronic clearance system by customs is mentioned)? Does Nigeria agree that the WTO work programme on trade facilitation can usefully bring guidance and multilateral co-ordination over this field that can be helpful to Nigeria as it moves towards simplified trade procedures?

Answer: Yes. Nigeria is fully implementing the KYOTO Convention.

Question 65: EXPORT CHARGES

The WTO report notes that one effect of Nigeria's PSI scheme for recording export values seems to have in fact impeded the country's export performance. Has Nigeria any plans to change the scheme to reduce the burden on exporters?

Answer: Refer to answer to question 40.

Question 66: CUSTOMS VALUATION

Can Nigeria indicate what steps it is taking to ensure that it can comply with all the requirements of the WTO Valuation Agreement - and in particular the use of transaction value - once the transitional period for implementation of the Agreement expires?

Answer: Refer to answer to question 50.

Question 67: INTELLECTUAL PROPERTY RIGHTS

Lack of adequate protection of IPR is an important concern for EC companies and a perceived disincentive for trade and investment in Nigeria. We therefore attach importance to enhanced IPR protection, and would ask Nigeria to provide details on the additional legal, enforcement and other steps it will take, and the timetables thereof, in order to ensure full compatibility with the TRIPS Agreement within the given deadlines for compliance.

Answer: Refer to answer to question 56.

Question 68: REGIONAL INTEGRATION

The EC supports the broad objectives of the ECOWAS arrangement in which Nigeria participates. Improvement and liberalisation of regional trade appears to be an essential factor in developing Nigeria's trade and economic strength. In this respect we would request Nigeria to provide information on whether the phased tariff under ECOWAS is proceeding according to schedule; and, how existing technical regulations applied to goods by different ECOWAS members, will be addressed under ECOWAS.

Answer: Refer to answer to question 58.

Question 69: FUTURE LIBERALISATION

The WTO report highlights in many areas of its report the contrast between the economic and trade performance of those goods or service sectors that have been privatised, opened to overseas investment or otherwise liberalised, and those which either remain under state control or which are subject to extensive trade protection measures. In the light of that, does Nigeria share the view of the

EU that further, comprehensive liberalisation under WTO, with the effect of reducing further the degree of state intervention in the private sector, and the degree of protection or control over both export and import trade, will be a necessary element in support of Nigeria's longer term Vision 2010 Reforms?.

Answer: The progressive liberalisation of the Nigerian economy as well as the enhancement of increased private sector participation in all economic activities have been fully enshrined in the Vision 2010 programme.
