

# WORLD TRADE ORGANIZATION

RESTRICTED

**WT/REG3/M/4**

3 June 1997

(97-2329)

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**Committee on Regional Trade Agreements  
Tenth Session**

**EXAMINATION OF THE ENLARGEMENT OF THE EUROPEAN COMMUNITIES:  
ACCESSION OF AUSTRIA, FINLAND AND SWEDEN**

Note on the Meeting of 28 April 1997

Chairman: H.E. Mr. John Weekes (Canada)

1. The agenda contained in WTO/AIR/574 was adopted.
2. The Committee on Regional Trade Agreements continued the examination of the Treaty of Accession of Austria, Finland and Sweden to the European Communities (EC Enlargement) under agenda item B.I of its Tenth Session. The meeting covered the following topics:
  - A. General Remarks
  - B. Services Aspects of EC Enlargement
    - Specific Commitments
    - MFN Exemptions
    - Other Questions
  - C. Goods Aspects of EC Enlargement
3. The Chairman recalled that summary records of previous Committee meetings devoted to the examination of EC Enlargement were contained in documents WT/REG3/M/1, WT/REG3/M/2 and WT/REG3/M/3. Document WT/REG3/2/Add.1, which contained questions and replies relating to the services aspects of the Agreement, had been distributed recently and would serve as a basis for discussion of the services aspects of the EC Enlargement.
  - A. **General Remarks**
4. The representative of Japan welcomed the recent documentation and information that had been made available, but emphasized the importance of this being done in a timely manner. Regarding the certification of commitments, his delegation considered that final certifications should be made in the Council for Trade in Services but that the commitments could be examined in this Committee. In addition, his delegation considered that not only the Enlargement of the EC but also the EC itself should be examined in the future, and in that context it invited the EC delegation to provide information on services using the Standard Format.

**B. Services Aspects of EC Enlargement**

5. The representative of the European Communities said the Committee would have to come to an assessment as to whether the overall level of liberalization, or the overall level of barriers to trade in services, had been changed, compared to the level of liberalization that had been offered by the EC-12 and the three acceding countries, individually. It was important that the Committee view the examination of the EC Enlargement from the perspective of GATS Article V:4, and that it assess whether the EC had decreased the level of liberalization, overall. Her delegation had provided as promptly as possible replies to questions submitted in writing, and the examination process was more or less on schedule. Questions of a very general or vague nature did not receive elaborate answers, but specific questions were addressed. In the general part of the answers, the responses aimed to indicate what the EC had done with its level of liberalization, as a result of the Enlargement. In this regard, it should be noted that, because of the way in which the EC's internal market, or single market, functioned, the Enlargement from 12 to 15 members had to be seen as an increase from 12 to 15 markets where a service supplier of a third party could now establish, and from there on, freely circulate or re-establish in another member of the EC. That, in itself, was a substantial improvement of the level of liberalization. It was even more so because the three acceding countries, Sweden, Finland and Austria, were very dynamic markets in services. Many services suppliers from third parties were established there. From that market, they could then freely circulate or re-establish, enjoying EC conditions. Often this took place in important sectors, such as financial services, in which they could have the benefits of the single license for banking or the single license for insurance companies. The sheer fact of expanding or enlarging entailed greater potential for services suppliers, not only in terms of access to the EC, which already had a very high level of liberalization individually and overall, but also in terms of EC treatment which the company would benefit from once established.

**- Specific Commitments**

6. Turning to country-specific questions, the representative of the European Communities said the responses were grouped according to each schedule of commitments. One question concerned the fact that the EC had deleted data processing from Austria's Schedule of Commitments. Since providing the written reply, she had learned that this was not the exact service activity that the EC had deleted; rather, it was mobile and satellite services, which was, for the EC, a basic telecommunications activity. If her delegation had maintained that commitment, it would have made Austria the only country within the EC to have a commitment on what the EC classified as basic telecommunications. The EC had deleted it because it would possibly have to be included at the conclusion of the negotiations on basic telecommunications. At the time, the aim was that the level of liberalization of the 15 Member States be coherent. The EC subsequently had re-introduced that commitment in the commitments on basic telecommunications. This was an example to demonstrate how the EC's internal market worked. Although the commitment made by Austria had not been very substantial, Austria had committed not to have restrictions on consumption abroad; that would have meant that, if the EC made such a commitment for one Member State, given the way in which the internal market worked, all other Member States would have had to abide by it. The EC was not in a position to maintain that commitment, at that time, in the absence of others having made commitments on basic telecommunications. With the deal on basic telecommunications, the EC had re-introduced it for all the 15 Member States. It was a re-shifting of the commitment, but the commitment had not been taken away at all.

7. The representative of the European Communities then said she had a reverse example, namely the commitment that Austria had made on space transportation. Again, this had been a commitment that Austria had made, and Austria was the only Member State that had made that commitment. It was a commitment which had said that there were no limitations to the consumption abroad of space transportation. The Committee could assess whether that represented an economic interest for anybody within the Austrian market. Her delegation was by no means saying that it was not a commitment; but because of the way in which the market functioned internally, there could be a disturbing effect if one member of the 15 made a commitment which did not reflect EC policy. Overall, it had seemed best to

take that commitment away. Her delegation admitted that this could arguably be considered as deliberalization. If any third party considered itself affected, its concerns would be given attention.

8. The representative of the European Communities then noted that her delegation had received questions on why Austria had taken away a commercial presence requirement under a number of services sectors from the commitments under Mode 4. The EC had taken that away for scheduling purposes and coherence. It was basically not necessary to say that a service could be supplied through movement of persons and at the same time to require commercial presence, since movement of persons was linked to commercial presence, and the conditions were already stated in the horizontal section. For the sake of coherence and to avoid different ways of scheduling which could lead to a conflicting interpretation between Austria and the 14 other Member States, the EC had taken that reference away. That did not seem to affect the substance of the level of liberalization. Austria did not have a condition in its Schedule saying that rented aircraft must meet certain nationality conditions; that was a condition resulting from EC legislation which the other Member States had had. For some reason, Austria had viewed this mainly as a licensing condition and had not written this in its Schedule, but the market access condition for the rental of aircraft had not been restricted and third countries could still come in and establish such a company and fulfil the conditions. Austria's following the coherence of the 14 other Member States did not in any way affect the specific commitments made or the level of liberalization offered before and afterwards.

9. The representative of the United States said her delegation was trying very carefully to analyze how the changes in the commitments affected commercial interests. In the introductory remarks, the EC delegate had noted that responses had been provided only to questions that were very specific; it would be interesting to know what kind of questions had been received that had not been answered. Perhaps, as had been done in previous examinations, the questions could be circulated to all Members, so that everyone could have an idea of what was being asked.

10. The representative of Japan said that, as the EC delegation had asserted, the dynamic liberalization in Europe had potential to improve the global market. Regarding Austria's regulations on space transportation, the reply to the question stated that the commitments by Austria on space transportation had been deleted because of a lack of equivalent concessions in that sector by other WTO Members. This explanation did not seem appropriate, given the legal nature of the commitment. Also, concerning commitments made by Austria on the rental of aircraft (question 9), Mode 3 had been changed. The answer indicated that the aircraft must be owned either by natural persons meeting specific nationality criteria or by juridical persons meeting specific criteria on ownership of capital and control, including the nationality of directors; those statements seemed to contradict each other, since the previous Schedule of Austria had not put any Mode 3 restriction on the rental of aircraft, including no restrictions on foreign capital. His delegation was of the view that there needed to be some compensatory adjustment, according to Article V:5 and Article XXI of the GATS.

11. The representative of Switzerland said he wished to react to the comment by the EC representative concerning the trade effects of specific commitments and exemptions. He noted that his delegation did agree with the reply given to question 2, concerning exemptions that applied to the three new members. In fact, the only new exemption applied to Austria for road-land transport, and it would provisionally last only another year. He indicated that Switzerland would withdraw its general reservation to GATS Article V concerning the issue raised under question 2. At the same time, the replies provided by the EC seemed to require further clarification or in-depth consideration. Either the EC could hold bilateral consultations, or his delegation would submit further questions in writing so as to obtain clarifications. Regarding question 6, space transport, what he had said earlier on the scope of GATS Article V:4 was relevant in this respect. He also endorsed the comments made by the delegate of Japan.

12. The representative of Canada said that the questions and replies document went beyond the general assertion made at previous meetings that the Enlargement did not result in any change in the level of commitments. In fact, the information now before the Committee did suggest a series of changes, though some were more minor than others. He concurred with comments made by the two previous speakers, in

that the answers relating to space transport and aircraft services would need to be elaborated. For instance, in the last sentence of question 9, it was asserted that there were no changes in the degree of access, but only an additional requirement to comply with certain rules of origin; it seemed this was a well-known element by which additional restrictions could be introduced, in the context of a customs union or any preferential arrangement. So, some clarification of that statement would be welcome. Some general comments from the EC as to what its intention was with respect to GATS Article XXI would also be appreciated, because it seemed clear from the document that changes had been made to the Schedule and that therefore there would need to be further consultations, in respect of the modification of that Schedule, pursuant to Article XXI.

13. The representative of the European Communities reiterated that the examination should centre on the Article V:4 question of whether EC Enlargement had raised the overall level of barriers. With the accessions, changes had been made for reasons of coherence or scheduling for the internal market. Presumably there would be net deliberalization with respect to Austria, due to the space transportation regulations noted. For aircraft rental, the conditions of access for a company that wanted to establish in Sweden or in one of the other Member States were the same as those for Austria. Her delegation would provide clarification as to whether that requirement was an Article VI condition or a market access condition. The examination might show a need for Article XXI "Modification of Schedules" compensation, as Members might be affected by the deletion of the commitment regarding consumption abroad of space transportation from Austria's Schedule.

14. With reference to specific commitments of Finland, the representative of the European Communities referred to a written question posed by the Japanese delegation concerning a long list of changes in scheduling, which the EC was said to have made with regard to Mode 4; she said she was unable to find any such changes in the Schedule and suggested that there might have been confusion due to abbreviations or translating. She then turned to question 11, regarding legal services, and explained that the change in scheduling had been made for corrective purposes because a condition that had been classified in terms of Mode 1 was better classified in terms of Mode 3. The written response had tried to clarify that, in order to supply services in Finland on a cross-border basis, there were no limitations except for the condition of Bar membership, which required Finnish citizenship and residency in Finland. That condition, in itself, was contradictory, given the definition of cross-border supply under the GATS, since it meant there was no movement of persons. For example, a lawyer in the United States could not physically have residency in Finland, and therefore the condition had been incorrectly scheduled. Regarding security services, Finland had made a very limited commitment, with respect to only one part of Central Product Classification (CPC). With respect to exhibition management services, that commitment was fully retained but had been scheduled under another classification number, found on page 53 of the EC-15 Schedule.

15. The representative of the European Communities said that one of the questions with respect to Sweden's specific commitments had concerned the way in which the EC had scheduled its commitments on financial services, in Mode 4. Sweden had followed the Understanding on Financial Services. The other 14 Member States had done it in the horizontal section, and Sweden was willing to follow that same level of commitment. The language "unbound, except as indicated in the horizontal section" was related to these scheduling mechanics. A comparison of the level of commitments that followed from the horizontal section with those from the Understanding on Financial Services revealed that, in fact, there were now better commitments on movement of persons from Sweden. There had also been a suggestion that the EC had changed entertainment services in Mode 4, but there did not actually appear to be such a change. Regarding photographic services, under Mode 1 Sweden had no limitations. The EC-12, as well as Finland and Austria, had also specified with respect to Mode 1 that the only activity of photographic services that could actually be done on a cross-border basis was aerial photography. Sweden had followed that logic of scheduling, given, again, the limited definition of cross-border services. The EC delegation would argue that it was not a substantial limitation to say that there would be fewer cross-border photographic services from outside Sweden coming into Sweden, as the only relevant activity that was feasible on a cross-border basis was aerial photography, which was fully maintained. It was merely an alignment according to the logic used in the scheduling by the 14 other Member States.

16. The representative of Japan requested clarification as to the reply to question 15, which seemed to conflict with the Consolidated Schedule with respect to the financial services sector (page 69, paragraph 4), which said: "except for Sweden, in which case commitments are made according to the Understanding".

17. The representative of the European Communities said that the Japanese delegate was correct in his assertion; the problem was that her delegation had not deleted that reference yet. Commitments according to the horizontal section applied now to all 15 Member States; those for Sweden were no longer according to the Understanding. The headnote would be corrected in due course.

- **MFN Exemptions**

18. The representative of the European Communities referred to a question submitted with respect to an MFN exemption that the EC-12 had taken for direct non-life insurance. This concerned an agreement the EC-12 had had with Switzerland involving recognition of each other's prudential measures and a single license. Because of the way in which the internal market worked, Swiss companies established in one of the three acceding countries would also benefit from that bilateral agreement, with Switzerland granting that same treatment to the three acceding countries. Her delegation did not view this as a new MFN exemption. The exemption had applied to the EC-12, and, as a result of the way in which the internal market worked, was now applicable to the 15 markets. The conditions of access needed to be understood because the MFN exemption taken with Switzerland was not a market access condition, in the sense of Article XVI. Therefore, for example, a Japanese company or a Canadian one could still establish a direct non-life insurance company in Finland, Austria or Sweden, with the same access conditions as before - this was not at all changing their access conditions. What was different was the treatment that Switzerland gave to these three members and vice versa. Thus, even if the EC extended the MFN exemption to the three Member States *vis-à-vis* Switzerland, the level of liberalization was not at all modified for third countries' services suppliers. To the contrary, it seemed that because of GATS Article V:6, these companies would also benefit from EC treatment once they were in a country of the economic integration agreement, with all the regulations that went with it. So, it was not a new MFN exemption, but rather only the extension of an MFN exemption from EC-12 to EC-15. The commitments on market access conditions for third countries had not changed at all in terms of establishment of direct non-life insurance companies.

19. The representative of the United States said there had been discussion about the specific commitments, in terms of whether the level of liberalization had changed and in terms of the procedural mechanisms for modifying the schedules (which in some ways was very similar to what was done on the goods side when tariff bindings were modified). But MFN exemptions were another matter altogether. Using GATS terms, the EC delegation referred to liberalization overall, and also within a sector. In the process of joining the EC, the three new Member States had each taken a number of new MFN exemptions. While the comments on the insurance sector were appreciated, it was difficult to view the change as not being a new exemption but rather just an extension, when the exemption had not been taken by those three Member States in the Uruguay Round. By her delegation's count, it appeared that Austria had taken 10 new MFN exemptions, Finland 9, and Sweden 8. That did not appear to be liberalizing. Her delegation was also particularly interested in which mechanisms the EC intended to use to modify the list to incorporate those new MFN exemptions, in view of the fact that they were not negotiable in the same way that specific commitments were. She indicated that her delegation had a list of new MFN exemptions which could be discussed elsewhere.

20. The representative of Japan said his delegation supported the comments made by the United States representative. Regarding the MFN exemptions on non-life insurance with respect to Switzerland, the explanation by the EC delegation seemed to indicate that this MFN exemption was added; but according to the commitment by Sweden, the supply of direct insurance was allowed under certain conditions. Adding MFN exemptions for this sector could mean the withdrawal of the commitment by Sweden. Could the EC delegation clarify or confirm this point?

21. The representative of the European Communities said she could only respond to the comment by the Japanese delegate regarding direct non-life insurance, on which Sweden had made a commitment. All of the EC Member States had made a commitment on that activity. Again, there was a distinction between the commitments that had been made and fully maintained and the MFN exemption that had been taken for the recognition of the prudential regulations. That one was a very specific MFN exemption, which had been taken for a border-line case of prudential regulations and which possibly fell under GATS Article VII. That needed to be considered on its own merits, in addition to the general argument that this was an extension of an existing MFN exemption as opposed to a new MFN exemption. Her delegation would likely maintain this logic for the other MFN exemptions that the United States delegation had reportedly identified with respect to the new members. Since the United States representative offered to share that information in more detail, her delegation would look at exactly what was at stake. Regarding what the representative of the United States had said with respect to MFN exemptions not being negotiable in the same way commitments were, she would contend that MFN exemptions were the other side of commitments. A Member took commitments to a certain level, and then it took MFN exemptions where it had not taken commitments. There was no explicit provision preventing Members from taking into account these problems in an enlargement process. The only criterion to look at was the EC's overall level of liberalization, which would have to be measured. Exemptions from MFN were on the other side of liberalization. So, the Committee should look at the overall level of liberalization that resulted from the EC's commitments, which would be the plus and the minus, within that exercise. Part of this would be to look at the plus or the minus resulting from MFN exemptions. While the United States delegation had mentioned a number of changes in MFN exemptions from Austria, Finland and Sweden, the EC had also deleted one MFN exemption; so, there again, there was an exercise of plus and minus. After this exercise examining the overall level of liberalization, measured, on the one hand, in terms of net commitments and, on the other, in terms of net MFN exemptions, there needed to be an assessment of who had been affected. That assessment could be done on a bilateral basis, if delegations preferred.

- **Other Questions**

22. The representative of India said he had a procedural question regarding what had been noted with respect to the specific commitments of Austria on aircraft. It seemed there had been a statement that the question of the modification of schedules would be addressed only if a Member was affected. Had the EC or Austria provided a 90-day advance notice of the decision to modify this Schedule, as required under GATS Article V:5?

23. The representative of Japan said his delegation supported the point mentioned by the representative of India. Regarding question 7, the EC delegation had said the deletion of the space transport sector was a minor matter. Although the deletion was justified, his delegation was raising as a matter of principle the fact that if a Member committed itself under GATS, there was a legal obligation. Regarding question 9, concerning the rental of aircraft in the Austrian Schedule, the EC delegation had said there had been no change but had also stated that there had been additional rules of origin requirements; it was difficult to agree with that explanation. Also, while the EC delegation said the Committee should judge whether overall there had been a raising of barriers, according to GATS Article V:4, the Committee should look at effects "within the respective sectors or sub-sectors", not overall effects. The question was whether parties raised barriers in a given sector or not.

24. The representative of Korea recalled the Chairman's clarification in the previous session regarding the verification of the Consolidated EC-15 Schedule. It was up to the Committee on Specific Commitments to do that, and the CRTA was responsible for reviewing the Consolidated Schedule in light of GATS Article V. He wished to reserve his delegation's right to come back to the specific commitments when it came to the verification of these specific points. With respect to the current status of the Schedule, he asked if the EC-12 commitments plus the individual three commitments were currently valid, or whether the Consolidated Schedule of the EC-15 was valid. If the EC-12 plus the individual three countries' Schedules were not valid, when would the Consolidated Schedule enter into force? In this regard, he asked whether the EC had gone through the procedure provided in GATS Article V:5, concerning modification

or withdrawal procedures. He took note of the statement in the answer to question 1, which stated that the mere accession or Enlargement itself would improve the overall level of liberalization with respect to other countries. His delegation wished to deliberate further on this statement because it did not always seem to be the case, due to the unique nature of the services commitments in the WTO system; perhaps that statement was only valid because of the conditions which prevailed in the case of the EC Enlargement. His delegation supported the interventions by the representatives of India and Japan, regarding space transport; although Korea as a nation did not have much interest in that specific sector, his delegation did not find the EC explanation to be convincing.

25. The representative of the United States said with respect to the MFN exemptions that the numbers she had provided were newly calculated, and her delegation had accounted for the changes in the country coverage (i.e. particular exemptions simply applied a little differently to certain countries). The Committee was mixing two distinct processes. One process was the role of the Committee in examining whether the Enlargement was liberalizing overall and on a sectoral basis. Another process was that of looking to see that the GATS was followed with respect to the modification of schedules and the compensation of injured parties; in this regard, she trusted that the EC would take the necessary steps in the near future.

26. The representative of Australia said he understood the EC delegation to have said that at least part of the reason for the MFN exemption in direct non-life insurance was for prudential reasons. That would seem to mean that countries were allowed to take measures for prudential reasons. He queried: why change the original commitment if there was no need to? Regarding the point made about the reply to question 9, he said his delegation, too, would be interested to see precisely what the rules of origin were. The reply must have been carefully drafted, as it focused on whether there was any extra barrier to the conditions of establishment of a third country; however, it was also possible that these rules of origin, which concerned the aircraft rather than the supplier, could conceivably have an effect on the overall level of liberalization involved.

27. The representative of Japan supported what the Australian delegate had just said. Also, with respect to the previous comment concerning direct non-life insurance and the MFN exemptions, he said he was not persuaded by the EC explanation, at least regarding the EC-Switzerland Agreement. Under Mode 1, the EC had scheduled this direct insurance sector and had also listed its MFN exemptions. He was of the view that this could not be allowed. If the EC listed MFN exemptions in its Schedule in that Mode, this should be written as "unbound". There had been guidelines for GATS scheduling (document MTN/GNS/W/164). He hoped the Committee would continue to discuss this specific issue.

28. The representative of the European Communities said she agreed with points made by the Australian representative. First, with respect to the condition in Austria's Schedule for the supply of rented aircraft, the fact that the aircraft itself had to comply with certain rules of origin had not affected establishment; however, as the representative of Australia had rightly suggested, conceivably this could have an effect on supply. Her delegation would take a closer look to determine how the condition might affect the ability of a services supplier to supply aircraft rentals. It was not the condition on the establishment condition itself that had been changed. Her delegation would look over the legislation and see how, in practice, this requirement could possibly affect the supply of this service. She requested the opportunity to return to the explanation from the perspective that the Australian delegate had presented. The same applied to the issue of direct non-life insurance. She had said "prudential" because at the time that her delegation had taken the MFN exemption for the bilateral agreement it had with Switzerland, it had questioned whether doing so was necessary. It was a border-line case between prudential measures or recognition of each other's standards, which were not purely prudential in the narrow interpretation of prudential regulations. The area of prudential regulations covered many areas but was not a blank cheque; her delegation thought the case went beyond prudential regulations and was a recognition of each other's standards. Arguably, it was at that time already an Article VII issue, as well. Her delegation would look at it carefully, but she now wished to indicate, in response to the comment by the Japanese representative, that the conditions of establishment for direct non-life insurance had not been changed. The level of commitment that the EC-12 had made was a commitment on establishment for that activity, despite the EC's MFN exemption. The agreement with Switzerland facilitated the access of direct non-life insurance services, because the parties had a mechanism to recognize each other's standards. That made access easier, but not the conditions of establishment. Her delegation would look at that agreement to see exactly where the MFN exemption was needed for the 12; the same rationale would then apply for the three acceding countries.

29. The representative of the European Communities continued, saying she did not agree with the representative of Japan that the EC had changed the conditions of market access in the Schedule. The commitments made by Austria, Finland and Sweden were fully preserved and incorporated into the Schedule. But again, those were two issues that should be examined more closely. The representative of Korea had raised two questions, which were questions of process. One of them related to the role of this Committee, as it contended there were issues that fell under the competence of the Committee on Specific Commitments. As she had said during the last meeting, her delegation viewed the role of the Committee on Specific Commitments as being to provide technical verification of a schedule. Her delegation did not yet have a final schedule. That related to another question which the Korean delegation, and indirectly, the Indian delegation, had posed. Her delegation had a proposed Consolidated Schedule. As long as that one was not definite, it was the Schedules of the 12 and the individual acceding countries that remained the valid, legally binding commitments. The EC had proposed its Consolidated Schedule because the delegation realized that there was an assessment to be made with respect to the level of liberalization overall and within the different sectors. After that assessment, her delegation would submit a final schedule and list of MFN exemptions to the Council on Trade in Services, indicating how this exercise was carried out and whether in the Enlargement process the EC had fully complied with its rights and obligations. This would then be examined by the Committee on Specific Commitments to determine its technical accuracy. Today, the Japanese representative had highlighted an example of this process, noting that the EC had changed the commitments by Sweden. Because of this, the language currently in the general headnote would be altered in the final product. Then that would be verified for its technical scheduling accuracy. But for the evaluation in terms of GATS Article V:5, it was true that, with new territory, there were many fundamental questions that needed to be considered. The Committee would have more economic integration agreements to examine, and it was setting a number of important precedents regarding legal interpretations. This related to the question from the representative of India as to why the EC had not notified and given 90 days' notice. The evaluation of the modification should be made before the 90-day process began to run. Once there was an assessment, then the time constraints of the 90-day notice would start and the EC delegation would have to decide whether to resort to Article XXI. That was when a conclusion would need to be made on whether the overall level of liberalization had been modified as a result of the Enlargement.



30. The Chairman said that the Committee needed to bear in mind the process for carrying out its mandate from the Council on Trade in Services to examine the consistency of the Treaty of Accession with GATS Article V. When the Committee finished its examination, it would send a report back to the Council. Before then, it appeared that at least one delegation (i.e. the United States) intended to submit further written questions. It would also be interesting for the Committee to have a specific listing of the additional MFN exemptions identified by the United States.

31. The representative of the European Communities said her delegation would supply more information on the specific commitments envisioned and on the individual MFN exemptions, plus answers to additional questions raised during the course of the day's examination.

32. The Chairman said the Committee had not yet completed the question-and-answer process. There had been some interesting and important issues raised during the discussion, which reflected the fact that this was the first time there had been a WTO examination of a customs union that included services aspects. There had been some interesting questions about the relationship between GATS Article V and Article XXI which warranted reflection. The discussion had been useful in setting out some of the issues to be considered. It seemed another session was needed for treating the services aspects of the Agreement.

33. The representative of Australia said that the proposals for the amalgamated Schedules were clearly proposals which would not replace the respective Schedules and Lists until after the completion of the examination process. If the previous Schedules were still in force, it would seem that the measures described in those Schedules also were still in force and that, conversely, any changes to measures that might result in changes to the Schedules had not occurred.

34. The representative of the European Communities confirmed the Australian representative's assertion.

### **C. Goods Aspects of EC Enlargement**

35. The Chairman turned the Committee's attention to the goods side of its work, noting that consultations had been held on the matter of general incidence calculations. Without necessarily having substantive problems with the methodology used in calculating the general incidence, some delegations had asked for more time to reflect on the issue.

36. The representative of the United States suggested having a Chairman's note to set out the Committee's understanding of the correct way to calculate the general incidence, according to the Understanding on the Interpretation of Article XXIV of GATT 1994. The note could specify the kind of information that the Secretariat required from countries to calculate general incidence, so as to provide an agreed-upon approach for generically calculating the general incidence, and it could indicate any special exceptions for EC Enlargement.

37. The representative of Japan said his delegation had questions regarding the automatic extension of anti-dumping measures. Having read the summary records in document WT/REG/3/M/1, he wondered whether the anti-dumping measures which had been extended to the three new countries were still in force. The EC had said the extension of measures could be justified on both legal and practical grounds. Maybe the Parties were saying that, in order to achieve substantially the same duties and to avoid circumvention, the measures were justified legally on practical grounds. His delegation could not agree on that point.

38. The representative of the European Communities said the suggestion by the United States delegation for deciding the general incidence methodology seemed a sensible way forward. A note from the Chairman could promote an understanding of the overall approach, as well as of the particular circumstances of the latest EC Enlargement, in terms of the timing and coincidence with the conclusion of

the Uruguay Round, etc. It seemed that the question now before the Committee was how quickly it could proceed with the work.

39. The Chairman said that the Secretariat could help with the Chairman's note which would set out the information required to make the general incidence determination and which would spell out the special circumstances of EC Enlargement. There was still the question of whether the Committee wanted to have a discussion on that note before the Secretariat would prepare the general incidence calculations. The Committee could have informal consultations to see whether delegations were sufficiently comfortable with that note to proceed with the general incidence calculations, so that they would be ready for the June meeting.

40. The representative of the United States suggested that the Chairman's note make use of an informal note drafted by the Secretariat last autumn as a basis for the general scheme, and then elaborate on how the Committee might deal with the EC Enlargement case.

41. The representative of the European Communities said this was a sensible way forward, as there was no point in re-inventing material which already existed and which seemed suitable.

42. The representative of Switzerland said that, concerning the goods aspects of Enlargement, his delegation had written to the EC a letter dated 1 September 1996, which had been accompanied by some tables with precise and complete figures. To date, the Swiss delegation had received no reaction to this communication. His Government had not completed negotiations with the EC in the area of goods, under Article XXIV:6. In view of the fact that no mutually satisfactory solution had been reached, Switzerland would urge the EC to respond to the invitation to propose compensation at a level corresponding to the losses incurred as a result of the EC Enlargement, regarding which Switzerland had provided complete and detailed figures. Since the process provided for in Article XXIV:6 had not yet been completed, Switzerland was not at this stage in a position to reach a conclusion as to the EC Enlargement's full compatibility with all the relevant provisions of Article XXIV.

43. The representative of Australia said that for some time his delegation had been discussing with the EC delegation the question of how to reflect the distinction between multilateral commitments on domestic support and export subsidies, under Part IV of the Schedule, and concessions under Part I of the EC's Schedule. Australian concerns were well known to the EC, and it seemed an acceptable solution would be reached regarding the issue. It was in that context that he wished to hear from the EC delegation responses to two questions on the finalization of the Schedule. First, how would the EC propose to reflect changes to its Schedule, as a result of Article XXIV:6 negotiations, which had not been completed at the time the EC had tabled its revised EC-15 Schedule in March 1996. Would this be done through a rectification of its Schedule? Second, his delegation would appreciate any information from the EC on when all of the Article XXIV:6 negotiations would be finalized, and on when the Committee could expect to see a final EC-15 Schedule.

44. The representative of the European Communities said the day's questions were ones that the EC delegation would try to answer in a straightforward way in a single written form.

45. The Chairman said the Committee had arrived at a point in the examination where it was close to finishing with respect to the goods aspects, and where it had a little more to do with respect to the services aspects. If delegations would submit any further questions by 9 May, and answers then supplied by 30 May, the Secretariat would be able to distribute the document by 6 June. In this way, the Committee might aim to finish the formal examination of EC Enlargement at its next Session.

46. The Committee took note of the comments made.