

# WORLD TRADE ORGANIZATION

RESTRICTED

**WT/REG3/1**

13 March 1995

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## WORKING PARTY ON THE ENLARGEMENT OF THE EUROPEAN COMMUNITIES

### Accession of Austria, Finland and Sweden

Chairman: To be designated

#### Terms of Reference<sup>1</sup>

"To examine, in light of the relevant provisions of the GATT 1994, the accession of Austria, Finland and Sweden to the European Communities and to submit a report to the Council for Trade in Goods".

#### Membership

The Working Party will be open to all Members of the WTO and other signatories of the Final Act that are contracting parties to the GATT 1947 and are eligible to become original Members of the WTO indicating their wish to serve on it.

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<sup>1</sup>These terms of reference were adopted in the meeting of the Council for Trade in Goods held on 20 February 1995, along with the attached understanding read out by the Chairman at that meeting.

ATTACHMENTUnderstanding read out by the Chairman of the Council for Trade in Goods - 20 February 1995

I should first recall that the early consideration by the General Council of the possibility of setting up an Article XXIV Working Party on the Enlargement of the European Communities was proposed by the latter in light of the special circumstances prevailing at the time. This initiative arose from the fact that the Council for Trade in Goods was not yet operational. At the General Council meeting of 31 January 1995, the Chairman proposed that he hold consultations with a view to ascertaining the appropriate terms of reference for the corresponding Article XXIV working party. [I can now report on the result] [He has informed me] of those consultations. Before I propose the draft terms of reference for adoption I intend to give you my understanding of how the terms of reference will be applied.

According to the Understanding on the Interpretation of Article XXIV of the GATT 1994 "all notifications under paragraph 7(a) of Article XXIV shall be examined by a working party in the light of the relevant provisions of the GATT 1994 and of paragraph 1 of this Understanding". Paragraph 1 of the Understanding confirms that agreements leading to a customs union must satisfy, *inter alia*, the provisions of paragraphs 5, 6, 7 and 8 of Article XXIV. Similarly, the entire Schedules of concessions and commitments attached to the Marrakesh Protocol will be examined by the Working Party.

According to paragraph 5(a) of Article XXIV, the duties and other regulations of commerce affecting trade with WTO Members not participating in the customs union "shall not on the whole be higher or more restrictive than the general incidence of the duties and regulations of commerce" applicable prior to the formation of the union. This implies that a working party established to examine a notification under paragraph 7(a) of Article XXIV has the mandate to examine the incidence and restrictiveness of all duties and regulations of commerce, in particular those governed by the provisions of the Agreements contained in Annex 1A of the WTO Agreement.

However, it should be kept in mind that the purpose of an examination in the light of paragraph 5(a) of Article XXIV would not be to determine whether each individual duty or regulation existing or introduced on the occasion of the formation of a customs union is consistent with all provisions of the WTO Agreement; it would be to ascertain whether on the whole the general incidence of the duties and other regulations of commerce has increased or become more restrictive. Accordingly, although the Working Party would conduct its examination in light of the relevant provisions of the Agreements contained in Annex 1A of the WTO Agreement, the conclusions of the Report of the Working Party would be confined to reporting on consistency with the provisions of Article XXIV.

On the occasion of the formation of a customs union a measure might be taken whose legal status under the WTO Agreement is not directly related to or does not depend on the consistency of the formation of the customs union with Article XXIV as such. The examination of incidence and restrictiveness of such a measure by a working party established under Article XXIV would not prevent any WTO Member from raising the question of the consistency of that measure in another WTO body competent to examine that issue, nor does the present arrangement prejudice the rights and obligations of any WTO Member under the WTO agreements.

Therefore, I propose the following terms of reference for the Working Party: "to examine, in light of the relevant provisions of the GATT 1994, the accession of Austria, Finland and Sweden to the European Communities and to submit a report to the Council for Trade in Goods".

I understand that it is expected that the Working Party should coordinate its working schedule with that of any other working party that may be established to examine the enlargement according to the relevant procedures of the WTO Agreement.