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IMPLICATIONS OF THE AGREEMENT ESTABLISHING THE WORLD TRADE ORGANIZATION (WTO) FOR THE LEBANESE ECONOMY: ISSUES RELATED TO THE NEGOTIATIONS TO ACCEDE TO THE WTO

FINAL REPORT
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INTRODUCTION

The Government of Lebanon has adopted the decision to accede to the WTO, and a formal letter was send by the end of December 1994 requesting accession to the organization. The accession process to the WTO constitutes a complex undertaken, and the acceding countries will have to be prepared in both substantive and logistical terms to face an unprecedented sensitive process of negotiations, where their economic system and foreign trade regimen will be thoroughly reviewed, and probably challenged, by participating WTO members. Furthermore, the acceding country has to be prepared to respond to demands that can be placed to offer substantial concessions, in terms of market access for both goods and services and with respect to other related policy measures, which may in some cases conflict with national development and trade objectives. Over the years, the accession to the GATT (1947) became a more complex and difficult process for newly acceding countries. With the establishment of the WTO the accession negotiations will be even more complex as a results of the more stringent and detailed rules and disciplines established in the WTO Agreements on Trade in Goods, and because of the expanded scope of new rules related to trade in services (GATS), and to the protection and enforcement of intellectual property rights.

The present report presents a preliminary assessment of the implications of the Agreement Establishing the World Trade Organization (WTO) for Lebanon. An attempt has been made to evaluate its implications, both in terms of the requirements for the implementation of the different agreements in Lebanon, as well as their implications during the negotiations to accede to the WTO. The first Chapter analyzes the implications of the Multilateral Agreements on Trade in Good. The second Chapter deals with the General Agreement on Trade in Services (GATS). The last Chapter evaluates the implications and the policy options for Lebanon that derive from the Agreement on Trade-Related Aspects of Intellectual Property Rights.

The material for this report was gathered from secondary sources and through interviews with relevant public officials during a mission to Beirut from the 3 to the 26 of April 1995. During the mission the consultant participated in the "Seminar on Implications of the Uruguay Round for the Lebanese Economy" (Beirut 5-7 April), and elaborated a draft project document for technical assistance to support the Government of Lebanon in the negotiating process to accede to the WTO.

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CHAPTER I
MULTILATERAL AGREEMENTS ON TRADE IN GOODS

Introduction

Annex 1 of the Agreement Establishing the WTO comprises all the Multilateral Agreements and Understandings that establish norms and disciplines related to trade in goods. This Agreement includes the General Agreement on Tariffs and Trade (GATT 1994); the Understandings concerning the interpretation of certain articles of the GATT; the Agreements on the Tokyo Round Codes, and other Agreements on issues not previously addressed at the multilateral level, as the Agreements on Trade-Related Investment Measures, Rules of Origin, Preshipment Inspection, and on Safeguards. Furthermore the Marrakesh Protocol, which includes all the tariff concessions of the participating parties during the Uruguay Round, forms an integral part of the Agreement.

This chapter of the report presents a preliminary evaluation of the implications of those norms and disciplines for Lebanon. An attempt has been made to evaluate the implications both in terms of the legislative changes that would be required for the implementation of the different agreements in the country, as well as the implications of those agreements during the negotiations to accede to the WTO.

1.1 GENERAL AGREEMENT ON TARIFFS AND TRADE (GATT 1994)

The GATT 1994 consists of the provisions of the GATT 1947, excluding the protocols of provisional application; all the Decisions of the Contracting Parties to GATT 1947; the protocols of accession of all Member Countries; and the decisions on waivers granted under article XXV of GATT still in force on the first of January 1995. In this section some of the more relevant issues for Lebanon's accession process to the WTO, and in the implementation of the GATT's provisions in the country, are discussed.

A) IMPORT TARIFFS AND OTHER CHARGES

The taxation of imports in Lebanon is characterized by its complexity. There are 30 different ad-valorem tariff rates ranging from 0 to 75 per-cent, in addition to some specific rates (seven), and a multitude of duties, taxes and other levies are employed, each with its own structure and pattern of

exclusions and exemptions.[1] With respect to tariffs and other charges on imports, Lebanon once it accedes to the WTO, will have to comply, inter-alia, with the obligations deriving from Articles I and III of the GATT 1994, that is it will have to grant MFN and National Treatment to imports from all WTO Member Countries.

Lebanon should immediately and unconditionally grant any advantage, favour privilege or immunity its grants to any country to all Member Countries of WTO.[2] Furthermore, imported goods should be subjected to the same taxes and other internal charges, and to the same regulations, as those applying to domestic products. No internal tax or charge can be apply in a manner contrary to the MFN principle.

Currently there are some measures in effect in Lebanon that contradicts those basic obligations. Taxes on alcoholic beverages and industrial alcohol, on non-alcoholic beverages and water, and on acetone discriminate against imports. Domestic products are charged with a lower tax rate than imported goods.[3] Moreover, some taxes, salt tax and the tax on oilseed grains, only apply to imports. With respect to the salt tax there is a discriminatory rate between salt originating in countries that have signed facilitating Agreements with Lebanon and the products originating in other countries.[4]

The Lebanese State Council of Ministers has recently approved a tariff reform program. The program envisages the following measures: (i) a new tariff structure with nine tariff rates and the ad valorem conversion of all specific rates, (ii) the repeal of Laws governing the application of supplementary taxes and duties on imports both of those directly or not directly under the control of Customs, and the consolidation of all additional duties, charges and taxes in the proposed tariff, including principal excise duties levied on locally produced and imported goods, (iii) the elimination of all quantitative restrictions and of exemptions, except those applying to imports of the armed forces

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[1]/ Refer to, Lebanon: Taxation of Imports and its Reform; IMF, Fiscal Affairs Department, April 1995.

[2]/ Other than those granted by virtue of preferential trade agreements.

[3]/ These are specific rates. Domestic products are charged with a tax that is between one fourth and one half of the tax applied to imports.

[4]/ The excemption from the MFN Clause provided for Integration Agreements (Article XXIV and the Enabling Clause) does not apply to internal charges.

and those covered by international agreements.[5] Once the proposed reform is put into effect the existing contradictions with the GATT obligations will be resolved. Nevertheless, the convenience of incorporating excise taxes into the tariff should be further analyzed.[6]

In Lebanon stamps duties are imposed on a wide range of transactions and documents. In relation to trade, stamp duties are collected among others, on certificates of origin, shipment documents, copies of legalized bills of landing and, letters of credit. According to Article VIII of the GATT 1994, all fees and charges imposed in connection with importation and exportation shall be limited in amount to the approximate cost of services rendered; must not represent an indirect protection to domestic products and must not represent a taxation of imports for fiscal purposes [7]. Stamp duties affecting trade in Lebanon currently varies between 20,000 LP (US $12.5) for a certificate of origin, and 5,000 LP (US $3.1) for shipment documents. Therefore they do no hinder trade, and fall within a range that can be considered approximate to the cost of the service rendered.

B) SCHEDULE OF TARIFF CONCESSIONS

During the accession negotiations Lebanon will be required to adopt specific compromises with respect to tariff concessions. WTO Member Countries will present requests to Lebanon to adopt commitments with respect to the tariff level it applies to imports of particular interest to them. Lebanon will be engaged in bilateral negotiations, a request/offer process, in this respect; and whatever the outcome of this process is it will be multilateralized by virtue of the MFN Clause.[8] The commitments that Lebanon will adopt will be in terms of tariff bindings. That is, in terms of a tariff

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[5]/ See IMF report April 1995, op.cit

[6]/ The situation could evolved in to one in which only domestically produced goods will be subjected to excise taxes. Even though the proposed tariff could incorporate the amount of the excise tax, in legal terms it is a different charge. Formally domestic production will be subjected to a Less favorable treatement.

[7] The port tax (3.5 percent on the CIF value) and the stamps tax on imports (0.30 percent on the CIF value), could be challenged under this article. They are expected to be repealed in the context of the Tariff Reform.

[8]/ Negotiations will be conducted with the mayor non-preferential trading partners with respect to particular Tariff Items. See Aricle XXVIII of the GATT 1994. In the case of Lebanon negotiations might be conducted principally with the European Union. Therefore, the evolution of a Lebanese-EU Trade Agreement, under the New European Mediterranean Policy will bear upon the accession negotiations, and could be a determining factor in accelerating or delaying the process.

ceiling that the country will be obliged to respect in the future. This tariff ceiling, bound level, can be higher than the tariffs effectively applied in the country.

According to Article II of the GATT Lebanon could not accord, in the future, less favourable treatment than that provided in its Schedule of Concessions to imports from other WTO Members. The Schedule approved to Lebanon during the negotiations will be annexed to the GATT and made an integral part of that Agreement.

The proposed tariff reform in Lebanon that aims to establish seven tariffs levels in the country ranging from 2 to 35 percent ad valorem rates, with a high concentration of tariff items in the 10 per cent rate, provides for a sound negotiating base.[9] The timing for enacting the tariff reform should be carefully evaluated by the Lebanese authorities in the light of the negotiating process to accede to the WTO. An early enactment of the reform, and the consequent unilateral liberalization effort undertaken, might not gain recognition from negotiating parties.[10] In adopting tariff commitments Lebanon should consider leaving itself an adequate margin for manoeuvre for the multilateral trade negotiations that might be launched in the future. The tariff level bound should be somewhat higher than that autonomously decided to be effectively applied in the country. During the negotiating process Lebanon should decide either to bound all the tariff items, that is the tariff universe, at certain level; or to proceed with an item by item approximation.[11] The implications of these two options, for the country and for the negotiating process, should be analyzed by the Lebanese Government.

The schedules of tariff concessions of other countries of the region are summarized in Table N° I.

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[9]/ Currently tariffs are collected in Lebanon applying the custom dollar which is half the current market exchange rate. The proposed reform will eliminate the custom dollar, and tariffs will be calculated on the bases of the free market exchange. Tariffs will be reduced by half but it is expected that custom revenue will be not affected by such a measure. Information about the proposed new tariff structure was provided by the Customs Authorities.

[10]/ This was the case during the Uruguay Round. Unilateral liberalization efforts undertaken by developing countries did not recieved due recognition by other trading partners during the negotiations.

[11]/ In the Uruguay Round negotiations for example most Latin American countries opted for binding the tariff universe at levels that range from 25 to 45 per cent. Other developing countries adopted commitments with respect to specific tariff items which were included in their Schedules of Concessions.

TABLE N°1
SCHEDULES OF TARIFF CONCESSIONS
ARAB COUNTRIES: URUGUAY ROUND
(MOST-FAVOURED-NATION TARIFF)

COUNTRY	N°TARIFF ITEMS	BOUND LEVELS
BHARAIN (LIST XCVIII)	85 tariff items, and whole chapters HS from 54 to 97 a/	35%
EGYPT (LIST LXIII)	2,010	2% - 160%
KUWAIT (LIST CXIV)	universe c/	100% + 15% stamp duty.
MOROCCO (LIST LXXXI)	universe d/	40% + 15% additional tax
TUNISIA (LIST LXXXIII) e/	1,458	27% - 60%

a/ not including agricultural products, tariff items at six digit level.
b/ high concentration at 30, 40 and 60% bound level, tariff items six digit level.
c/ except for crude oil, petroleum and petro chemical products.
d/ except agricultural products, and those tariff items included in the List LXXXI, Morocco, 19 February 1987.
e/ Tunisia has bound tariffs at 27, 32, 38, 43 and 60%. 780 tariff, items correspond to textiles and clothing (chapters 50 to 62 HS) which have been bound at 60% level.

In the case that Lebanon decides to maintain other duties and charges, other than general internal taxes, that affects imports of bound tariffs items, that charges should be recorded in its Schedule of Concessions that will be annexed to the GATT 1994.[12] Any other duty and charges on imports that is not registered in the Schedule could not be maintained by Lebanon in the future for the bound tariff items.

When deciding, during the negotiations, on the level at which tariffs will be bound Lebanon should take into consideration two basic issues: (i) in the future the country will not be able to impose higher tariffs than those bound for the different items. Any modification of the bound tariff can only be done after negotiations, through the established procedures, with interested trading partners,[13] and, (ii) the recourse to Article XVIII:B, which allows for a country to take measures, including raising tariffs above the bound level, to cope with Balance of Payments difficulties has been strongly curtailed by the Understanding reached during the Uruguay Round in this respect.[14]

[12]/ For example the salt, the oilseed taxes the port tax or the stamp duty on imports. See Understanding on the Interpretation of Article II:1(b) of the General Agreement on Tariffs and Trade 1994.

[13]/ See Aricle XXVIII of the GATT, and Undertanding on the Interpretation of Article XXVIII of the General Agreement on Tarif and Trade 1994.

[14]/ See: Understanding on the Balance-of-payments Provisions of the General Agreement on Tarifs and Trade 1994.

C) TARIFF CLASSIFICATION

At present Lebanon uses the CCCN nomenclature for tariff classification, and it is a member of the Customs Co-operation Council (CCC). The international Convention on the Harmonized Commodity Description and Coding System, established under the auspices of the CCC entered into force on 1 January 1988. The Convention requires each party to conform its custom tariff and statistical nomenclature to the Harmonized System (HS). The GATT 1994 requires the use of the HS for the Schedule of Tariff concessions and for all the trade information to be provided to the Secretariat by each contracting party.[15]

The Lebanese Customs Council has received Parliamentary authorization to convert to the HS. A Review Committee has been set up in the Supreme Council of Customs to replace the current CCCN nomenclature by the HS. Lebanon is committed to introduce the HS by January 1996 incorporating the more recent modifications to the HS.[16] Therefore, if the time table is maintained the country should be ready, in this respect, for the accession negotiations.[17]

D) TRANSPARENCY

Once that Lebanon becomes a member of the WTO it will be obliged to publish promptly all laws, regulations, and administrative rulings of general application pertaining to trade in goods[18]. As a general norm all laws are published in the Official Gazette in Lebanon. Nevertheless there is some delay in its publications, and lower level norms and administrative rulings an not easily available

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[15]/See Decision on "GATT Concessions Under the Harmonized Commodity Description and Coding System", approved by the Council on July 12, 1983.

[16]/ Interview with Customs authorities.

[17]/ There might be some dificulties in providing the trade data in the Harmonized System as requested in the guidelines for the elaboration of the Country Memorandum to be submitted to the Working Party on Lebanon's accession. As reported by the IMF mission there is a "severe shortage of data relating to international trade and duty collections". IMF, Fiscal Affairs Department Report, April 1995, op,cit. Priority should be given to upgrade and prepare needed information on time series of the value of imports and exports. This data will be required during the accession negotiations.

[18] See Article X of the GATT 1994. Measures pertaining to the classification or the valuation of products, rates of duty, taxes and other carges, requirements, restrictions or prohibitions on imports or exports, exchange restrictions, or measures affecting the sale, distribution, transportation insurance, wharehousing, inspection, exhibition, processing, mixing or other use of imported goods, should be published.

to any interested party. This is an issue that should be addressed by the authorities. No measure affecting trade could be enforced in Lebanon, in the future, before such measure has been officially published. Furthermore, Lebanon will be required to establish judicial, arbitral or administrative tribunals or procedures that provide for a prompt review and correction of administrative actions related to custom matters. This issue should be addressed in the context of the current process of modernization of Lebanese Customs and related legislation.

One of the results of the Uruguay Round has been the strengthening of the notifications requirements in the WTO[19]. Lebanon will be subject to a permanent monitoring of its trade regimen and of the fulfilment of its obligations under the Agreement.

E) QUANTITATIVE RESTRICTIONS AND IMPORT PROHIBITIONS

The application of quantitative restrictions, and prohibitions, on imports and exports by a Member country of the WTO are limited, and regulated, by the provisions of Articles XI and XIII of the GATT. According to these articles Lebanon should not institute or maintain any of these measures -quantitative restrictions made effective through quotas, import or export licences or by any other means- after becoming a Member of the WTO[20]; and if such a measure is instituted, in accordance with the different provisions of the GATT that allow for such measures, they shall be applied in a non-discriminatory manner. The tariff reform program approved by the Lebanese State Council of Ministers envisages the elimination of all quantitative restrictions still in effect in the country. Once that this reform is implemented any contradiction with the country's future obligations in the WTO will be resolved.

Currently Lebanon does not have any product subjected to import quotas. Nevertheless, it maintains a complex system of import and export licences, and some import prohibitions, that might be in contradiction with Article XI of the GATT. With respect to import licences, those used to restrict imports for "economic reasons" could be challenged under Article XI.[21] The Table II presents the

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[19] See: Decision on Notification Procedures.

[20]/ Some exceptions to this provision are granted by Article XI (2).

[21]/ According to information provided by the Ministry of Industries some import licences of industrial products are used to grant protection to domestic producers by limiting imports. This is the case, among some others, of the following products: electrical wire, telecommunications wire, cooper wire, pajamas and nightgowns, silk treat and cement.

products subjected to export licences in Lebanon.

TABLE II
PRODUCTS SUBJECTED TO EXPORT
LICENCES IN LEBANON

Product	Date Instituted	Licence Granted by
Wheat and by products	1977	Ministry of Economy and Trade
Olive oil	1977	Ministry of Economy and Trade
Concrete	1981	Ministry of Economy and Trade
Butane gas a/	1975	Ministry of Economy and Trade
Hydrocarbons a/	1981	Ministry of Economy and Trade
Bottles for liquid gas	1964	Ministry of Economy and Trade
Silk worms and eggs	1977	Ministry of Industry and Petroleum
Unprocessed leather	1989	Ministry of Industry and Petroleum
Tar	1973	Ministry of Industry and Petroleum
Unprocessed silk, all forms, and silk thread	1977	Ministry of Industry and Petroleum
Paper and Cardboard SCRAP	1981	Ministry of Industry and Petroleum
Potato seeds	1973	Ministry of Agriculture
Eggs	1967	Ministry of Agriculture
Pine seeds	1970	Ministry of Agriculture

a/ Licence required also for transit. Reexport licence required for petroleum and all by product, except to Syria, Jordan, Saudi Arabia and from the Tripoli Refinery

With respect to import prohibitions, most of those currently in effect in Lebanon are of the type authorized by the general exceptions and the security exceptions provided by Articles XX and XXI of the GATT[22]. Nevertheless, those import prohibitions that affect some agricultural and agro-industrial products will have to be brought into conformity with the provisions of the Agreement on Agriculture. This issue is discussed in the respective section of this report. Furthermore an issue that could be highly sensitive during the negotiations to accede to the WTO are those import prohibitions deriving from the boycott to Israel. Imports of products from Israel and from companies that have commercial deals with Israel are prohibited in Lebanon. This prohibitions enter into contradiction with the basic obligation the country will have to adopt, with respect to all WTO Member Countries, when becoming a member of that organization. During the negotiations this issue could be highly sensitive because, among other issues, the U.S.A government "is committed to eliminating the Arab boycott to

[22]/ The importation of the following products is prohibited in Lebanon: (i) narcotics, (ii) arms and military equiptment, (iii) those necessary to protect public morals, (iv) those necessary to protect public health, and (v) cars with more than 8 years from making. Trucks and buses with more than 5 years from making will be probably prohibited in the near future.

Israel, both with respect to Israel directly and to companies doing business with Israel. In this connection, in approving the accession to the WTO the U.S.A will insist that countries bring their practices into conformity with their obligations"[23] The U.S. Trade Representative (USTR) has been instructed by Law to "vigorously oppose the admission into the WTO of any country which, through its laws, regulations, official policies, or governmental practices, fosters, imposes, complies with, furthers, or supports any boycott.."[24] This issue that relates to the overall process of the accession negotiations should receive priority attention by the concerned Lebanese authorities. The decisions on the accession of a new Member to the WTO is adopted by the Ministerial Conference by a two-thirds majority of the Members of the WTO. Therefore, no country has the possibility to veto the accession of a new Member [25]. Nevertheless, strong opposition by a major trading partner could complicate and significantly delay the accession process.

In this connection, the provisions of Article XIII of the WTO Agreement, regarding the non-application of the Multilateral Trade Agreements between particular Members of the WTO are particularly relevant.[26] Equally the provisions of the GATT related to the non-application of the Agreement between particular contracting parties contained in Article XXXV of the GATT. According to this Article, this Agreement, or alternatively Article II of the Agreement, does not apply between any contracting party and any other contracting party if, inter-alia, at the time a country becomes a Member of the WTO, it does not consent to such application.[27] Lebanon could invoke the non-application of the Agreement with respect to Israel when acceding to the WTO. Morocco since June 1987, and Tunisia since July 1990 have invoked Article XXXV with respect to Israel. Egypt did not apply any of the GATT provisions with respect to Israel from May 1970 until January 1980 when the invocation of Article XXXV was withdrawn.[28]

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[23]/ Message from the President of the United States transmiting the Uruguay Round Agreements, Texts of Agreements, Implementing Bill, Statement of Administrative Action and Required Supporting Statements; House Document 103-306, 101.103 Congress October 1994, pp 682.

[24]/ Seccion 133, Implementing Bill, House Document op.cit pp 73.

[25] Article XII of the WTO Agreement.

[26]/ The WTO Agreement and the Multilateral Trade Agreements shall not apply between particular Members if one of them, at the time either becomes a Member of the WTO, does not consent to such application. The Member not consenting to the application must notify of its decision to the Ministerial Conference before the approval of the agreement on the terms of accession.

[27]/ See Article XXV 1(b) of the GATT 1994.

[28]/ Refer to: Guide to GATT Law and Practice, GATT, Geneva 1994, pp. 958-959.

F) STATE TRADING ENTERPRISES AND GOVERNMENT PROCUREMENT

Article XVII of the GATT 1994 provides for obligations on Members in respect to the activities of State Trading enterprises. The obligations concern "governmental and non-governmental enterprises, including marketing boards, which have been granted exclusive or special rights or privileges, including statutory or constitutional powers, in the exercise of which they influence through their purchases or sales the level or direction of imports and exports".[29] Lebanon, when acceding to the WTO will not adopt any obligation with respect to government purchases as such. Purchases of goods for governmental purposes and not with a view to commercial resale, directly or indirectly, are excluded from the provisions of the GATT.[30]

With respect to state trading enterprises Lebanon should guarantee that the activities of such enterprises will be governed solely by commercial considerations, and that they will not discriminate against any WTO Member. Furthermore, Lebanon will be required to notify to the Council of Trade in Goods of the WTO all the state trading enterprises within its territory, and on their activities.

Imports by the Lebanese Government and of State Companies and institutions represents approximately 6 per cent of all imports.[31] Around half of these imports are for governmental use and not for commercial resale. The only state trading enterprise, according to the above mentioned definition that has been identified in Lebanon, in this preliminary evaluation, is the Tobacco Monopoly (the Régie). This enterprise, currently a mixed company, has monopoly rights to import and export tobacco and tobacco products. It controls approximately 3 per cent of all Lebanese imports. This monopoly was instituted to regulate trade and to subsidize domestic tobacco producers.

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[29]/ Understanding on the Interpretation of Article XVII of the GATT 1994, paragraph 1.

[30]/ See Article III.8.(a) of the GATT. Government Procurement is regulated by the Agreement on Government Procurement, which is one of the Plurilateral Trade Agreements open to the voluntary acceptance of all Member Countries of the WTO. Any preference granted to Lebanese products in government procurement could not be challenged by Lebanese trading partners. Lebanese products had a 10 per-cent price preference for government purchases. The Law expired on 1995. A new Law is under consideration raising the preference for domestic products to 15 per cent. Information provided by the Ministry of Industries.

[31]/ Data for the first trimester 1995. The principal imports are done by: Tobacco Monopoly (2.78% of total imports), Committee for Development and Reconstruction (1.43%), Weath and Sugar Officee (1.94%), Ministry of Posts and Telecommunications (0.84%), Electricity of Liban (0.48%), Telecommunications Agency ((0.28%) and Ministry of Industry and Petroleum (0.23%). Governmental imports of petroleum products is basically to supply the electricity generation plants.

The activities of the Wheat and Sugar Office should be further analyzed in the light of Article XVII of the GATT 1994.[32]

G) PREFERENTIAL TRADE AGREEMENTS

Lebanon has signed a number of bilateral preferential trades agreements with other Arab countries, and is a Member of the Arab League. Furthermore, it is a party to bilateral trade agreements with some Eastern European countries, and have signed an agreement on economic, financial and technical cooperation with Italy, negotiated a similar one with Turkey, and maintains a cooperation agreement with the European Community.[33] Table III presents the trade agreements with Arab and Eastern European countries currently in effect to which Lebanon is a party. The agreements with the Arab countries provides for tariff exemptions on a number of agricultural and industrial products, as well as partial tariff preferences, varying from 25 to 65 of the national tariff, for a list of additional products. The agreements with the Eastern European countries provides basically for compensatory trade and establish the conditions, currency and institution in charge of payments.[34] The legal standing of the different agreements should be reviewed.[35]

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[32]/ A regimen of exclusive import licences for wheat seems to be in effect in Lebanon. During the mission it was not possible to further analize this issue. As they relate to agricultural products these activities should be equally evaluated in the light of the Agreement on Agriculture.

[33]/ Lebanese-Italian Agreement of Economic, Financial and Technical Cooperation, August 20, 1992; Cooperation Agreement between the European Community and the Lebanese Republic, Official Journal EC L267 of 27/9/1978.

[34]/ Investors Guide 1994: Lebanon; Etudes et Consultations Economiques S.A.R.L, Beirut, 1994.

[35]/ During the mission it was not possible to review the texts, and the current situation of the different agreements. For example the Agreement with Saudi Arabia is renewable every year. As reported in the Memorandum on Foreign Trade Regime presented by Saudi Arabia to the Accession Working Party, GATT, L/7489, July 5, 1994.

TABLE III
LEBANON: TRADE AGREEMENTS

SIGNED WITH	DATE
Arab Countries:	
JORDAN	October 5, 1992 a/
TUNISIA	April 28, 1972
ALGERIA	April 20, 1967
SAUDI ARABIA	November, 1971
SUDAN	April 26, 1969
SYRIA	September 17, 1993 b/
IRAQ	April 9, 1967
QATAR	April 24, 1968
KUWAIT	June 22, 1972
MOROCCO	March 10, 1972
EGYPT	February 13, 1992 c/
Eastern European Countries d/	
POLAND	October 5, 1961
ROMANIA	January 5, 1956
BULGARIA	September 15, 1956
PEOPLES REP. OF CHINA	December 21, 1955

a/ Originally an Agreement was signed on August 27, 1952. This was ratified on 25 March 1963.
b/ Replaced the Agreement of March 5, 1953.
c/ Replaced the 1965 protocol.
d/ Lebanon had Agreement with the Czechoslovakia Socialist Republic (1963), Democratic Republic of Germany (1961), and with the Soviet Union (1970).

Preferential trade is highly significant for Lebanese exports. More than half of Lebanese exports (53.8% of total during 1993), were destinated to countries of the Middle East with whom Lebanon has preferential trade agreements. Contrary, only 8.3% of total imports were from those Middle east countries. In the Middle East Syria and Saudi Arabia are the major trading partners of Lebanon, accounting for 25% of total exports, and 6.5 of total imports of the country according to 1993 data. Alternative data sources show an even higher dependence of Lebanon on preferential trade with other Arab countries. Lebanese exports to the European Union, its mayor industrialized trading partner, receive preferential custom treatment both by virtue of the GSP, and of the bilateral agreements signed with Lebanon[36]. Lebanese industrial exports benefit, because of the bilateral

[36] Two agreements with Lebanon have been notified by the European Community to the GATT; the First one which entered into force on Jan 1, 1975 (Working Party Report Adopted on Feb. 3, 1975- L/4131, 225/43), the second one entered into force on Jul 1, 1977 (Working Party Report Adopted on May 17, 1978 - L/4663, 255/142.

agreement, from a 55% tariff deduction. More than 58% of Lebanese industrial exports to the EU, subject to custom duties, benefit from this preferential treatment. Adding to this figure the duty-free exports to the EU, represent more than 85% of all Lebanese exports to the EU, benefit from preferential treatment.

A recent study of the Lebanese economy states "a critical view of exports markets firmly suggest that Lebanese industrial exports remain tied to regional markets by an array of favourable trade protocols and agreements, by long-standing contacts, business relations and partnerships, and by a sure knowledge of demand conditions. Therefore, a significant shift of Lebanese industrial exports towards new markets is not only improbable but could even be detrimental[37]. In this connection preferential trade agreements will be continuously, and increasingly important for Lebanon. In particular the new generation of agreements signed with other Arab countries, and in this context the current process of economic integration with Syria[38], and the prospects for a common market with Syria and Jordan[39]. The Social and Economic Cooperation Agreement with Syria aims at establishing a common market between the two countries, and provides for: (i) free circulation of individuals, labour, goods, and capital, (ii) freedom of employment and residence, (iii) abolition of custom duties, (iv) coordination of legislation pertaining to labour and social security, and (v) the coordination of industrial development policies.

Preferential trade agreements are permitted under the GATT provisions. Article XXIV allows, subject to certain conditions, for the establishment of custom duties, free trade areas, or entering agreements leading to a custom union or a free trade area. More important for developing countries is the 1979 Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries ("Enabling Clause") that provides, inter-alia, that

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[37] Middle East Economic Consultants: The Lebanese Economy on the Eve of 1991: Living on the Current Account, Beirut, February 1991, pp. 47.

[38] Syrian-Lebanese relations are currently governed by the Threaty of Brotherhoud, cooperation and Coordination Signed on May 22/1991. Furthermore several bilateral economic agreements have been concluded between the two countries: Four of there on september 17/1993: (i) Socio and Economic Cooperation Agreement, (ii) Agreement Regulating the movement of individual and goods, (iii) Agricultural Cooperation and Coordination Agreement, (iv) Health Agreement. On October 1994, other Agreements were signed, the Agreement on tourism, on Labor, and the one related to the use of the water of the Orontes River. For a discussion of the economic agreements refer to: Ghazi Tinaoui, "Syrian-Lebanese Economic Cooperation", in Beirut Review # 8, Fall 1994.

[39] Plans are underway to establish a common market between the three countries, as reported in SEARCHE/Issue 1, July 1994, Interview with Dr. Assad Rizk, Minister of Industry and Oil.

"notwithstanding the provision of Article I of the GATT contracting parties may accord differential and more favourable treatment to developing countries, without according such treatment to other contracting parties". Both Article XXIV and the Enabling Clause provides for an exception to the MFN Clause in the case of preferential trade Agreements. Therefore the agreements signed by Lebanon, and any future agreement the country decides to participate in should not be compromised because of the Accession to the WTO[40]. During the accession negotiations this issue will be discussed by members of the Working Party, and Lebanon will have to present complete information, including amount of trade involved, with respect to the different agreements to which it is a party.

The issue of Agreements with countries that are not members to the WTO, case of the Lebanese Agreements with Syria and Jordan, has been analyzed in the GATT in the past, and it is possible to form a custom union or a free trade area, or to enter into an interim agreements in which one or more parties are non-members of the WTO[41]. Nevertheless this is an issue that merits further analysis to be adequately prepared for the accession process.

1.2 AGREEMENT ON AGRICULTURE

Summary of Provisions

The Agreement on Agriculture (AA) provides multilaterally agreed rules and disciplines in the three main areas: (i) market access, (ii) domestic support measures; and (iii) export subsidies. The operation of these rules are linked to the specific commitments adopted by WTO Members in these areas and contained in the Countries' Schedules annexed to the Marrakesh Protocol to the GATT 1994. The AA covers agriculture products classified in Chapters 1 through 24 of the HS (excluding fish and fish products), and thirteen additional heading and subheadings in other chapters of the HS, including

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[40] For a comprehensive discussion of this issue refer to:

[41] For example free trade areas including a contracting party and one or more non-contracting parties have been approveed by the Contracting Parties in the case of the Free-trade area treaty between Nicaragua and El Salvador (Decision, October 25, 1951), and participation of Nicaragua in the Central American Free-Trade Area (Decision, Nov 13/1956). See: GATT: Guide to GATT Law and Practice, Geneva, 1994) pp 771. Furthermore, the Latin American Integration Association (ALADI), and the Andean Pact, have notify their agreements under the Enabling Clause, in which there was participation of non-contractring parties.

cotton, wool, hides and skins[42].

The AA introduces for the first time trade of agricultural products into the multilateral framework, and is the beginning of a reform process of international agricultural trade. A second round of negotiations, to further liberalize agricultural trade has been agreed to be launched in the year 2000.

With respect to market access, Article 4.2° requires all members not to maintain, resort or revert to any measure -such as quantitative import restrictions, variable import levies, minimum import prices, discretionary import licensing, non-tariff measures maintained through state trading enterprises, voluntary export restraints, and similar other border measures- that effect imports of agricultural products other than custom duties. All non tariff measures, other than those maintained under other general, non-agricultural specific, provisions of GATT 1994 or under other Multilateral Trade Agreements, must be converted to ordinary custom duties[43]. Non-tariff measures required to be converted to tariff may not be applied in the future, and no new non-tariff measures may be introduced[44].

The AA establishes a special safeguard mechanism for products subject to tariffication, allowing countries to impose additional temporary duties when import volumes exceed a trigger level, or import prices fall below a trigger level[45].

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[42] See Article 2°, and Annex 1 of the Agreement.

[43] During the Uruguay Round this process of convertion was called "tariffication". In the commiments adopted by the mayority of participating countries non-tariff measures were replaced by tariffs set at rates that provide protection equivalent to the protection provided during the base period 1986-1988 by the non-tariff barriers.

Tariffication worked in he following manner: assuming that during the base period a country limited imports of a certain agricultural product to 50,000 tons, and aplied a 10% ad-valorem duty on those imports. This trade barrier resulted in a domestic price for that product 80% above the world market price. Under tariffication that country established a tariff-rate quota for that product with a quota of 50,000 tons, and an in-quota tariff-rate of 10% ad-valorem. Out of quota imports are subject to an 80% ad-valorem duty.

[44] Under Article 4° of the Agreement the special treatment provisions set in Annex 5 provide for limited exceptions to the general prohibition of non-Tariff measures.

[45] See Article 5° of the Agreement.

The AA guarantees a minimum level of market access in every WTO country. If imports of a product subject to tariffication exceed 5% of domestic consumption during the base period the country must maintain that level of access. If imports were less than 5% of domestic consumption the country must establish a "minimum access quantity" for imports equal to 3% of base period consumption in the first year and increase it to 5% by the year 2,000. Imports under minimum access commitments are subject to low duties, while imports over the minimum access are subject to the level resulting from tariffication.

The Schedules of participating countries in the Uruguay Round reflect: (i) the conversion of non-tariff barriers to tariffs through tariffications, (ii) commitments to maintain current or minimum market access opportunities, (iii) tariff reductions and, (iv) tariff bindings for all agricultural products. Under the AA market access provisions, developed countries have agreed to reduce existing tariff on agricultural products by 36% on average, with a minimum reduction of 15% at the product level. Developing countries will reduce tariffs in 24% and 10% respectively. Tariff reductions are on the basic of the existing levels in the 1986-1988 period. The tariffs established under tariffication will follow the same reduction commitments. Tariffs will be reduced over a period of six years in the case of developed countries, and over a 10 year period for developing countries.

Table IV presents a summary of the tariff commitments adopted by arab countries with respect to agricultural products.

TABLE IV
TARIFF COMMITMENTS IN AGRICULTURAL
PRODUCTS ARAB COUNTRIES

	ROUND RATE OF DUTY a/ (%) MINIMUM - MAXIMUM	TARIFF QUOTAS # ITEMS
BAHRAIN	35 - 200 b/	-
EGYPT	2.5 - 3,000 b/	-
KUWAIT	100+15 STAMP DUTY	-
MOROCCO	19 - 289	19
TUNISIA	17 - 200	13

a/ : after the reduction commitment.
b/ : alcoholic beverages have the higher level.

With respect to Domestic Support Commitments the Agreement establishes criteria to differentiate internal support programmes for agricultural production that distort trade from those non-trade distorting measures (green box measures). Any policy that is not specifically a green box measure as identified in Annex 2 of the Agreement, is subject to support reduction commitments as set forth in each Member Schedule (Part IV, Section I of the Schedule). Green Box Measures are not

subject to any commitment. Some internal support policies applied by developing countries are exempt from reduction commitments. Those include investment subsidies that are generally available to agricultural producers, support to encourage diversification away from production of illicit narcotic crops, and input subsidies to low-income producers.

In their Schedules of Commitments some countries, on the bases of the Total Aggregate Measurement of Support (AMS) have bound the level of domestic support measures and adopted the compromise to reduce the AMS during the implementation period. Article 3° of the Agreement prohibits WTO Members from providing support to domestic producers in excess of the committed level, and makes this commitments an integral part of the GATT 1994. Article 7.2 (b) forbids a government from providing support in excess of certain de minimis levels set out in Article 6.4 if there is no total AMS commitment in the country's schedule.

Domestic support measures, other than green box measures, will be reduced as a result of the Uruguay Round Agreement, by 20% of the AMS in base year (1986-1988) by developed countries, and by 13% by Developing Countries. Least developed countries are not required to adopt any commitment. This reduction will be implemented in equal parts during the implementation period[46].

Finally, with respect to export subsidies, Article 8° of the AA prohibits any WTO Member from providing export subsidies except in conformity with the Agreement and in terms of the reduction commitments contained in the respective member's schedule (Section II Part IV). Export subsidies for agricultural products are defined by the Agreement as subsidies contingent upon export performance[47]. If no schedule has been submitted, Article 3.3° prohibits the country from granting any export subsidy for agricultural products in the future. Under Article 9.4°. Developing countries are not required to undertake reduction commitments for marketing and internal transport subsidies so long as these subsidies do not circumvent other reduction commitments.

As a result of the AA developed countries must reduce the quantity of subsidized exports by 21% and budgetary outlays for export subsidies by 36% by the year 2000. These countries may

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[46] GATT. The Results of the Uruguay Round of Multilateral Trade Negotiations; Geneva, November 1994.

[47] The Agreement Article 9°, identify the following export subsidies: direct subsidies, disposal of government stocks below market prices, producer-financed export subsidies, marketing subsidies, transportation and freight subsidies, and subsidies for commodities contingent on their incorporation in exported products.

implement the reductions starting from the higher level of their 1986-1988, or 1991-1992 levels. Developing countries must establish their ceilings at the 1986-1988 level and implement a reduction of 14% of subsidize exports and of 24% of budgetary out lays over a 10 year period.

Implications for Lebanon

During the accession negotiations to the WTO Lebanon will be required to adopt commitments with respect to market access, internal support measures, and export subsidies of agricultural products. In this connection, it is important to highlight the fact that negotiations during the Uruguay Round, and the commitments and concessions contained in the Member's Schedules, were derived from principles and guideline set forth for the negotiation process, and most of those guidelines did not become a permanent part of the text of the Agreement. Therefore, the parameters of the commitments adopted during the Uruguay Round will not necessarily hold for the accession negotiations. As has been the case of other processes of accession, Lebanon might expect pressures to undertake commitments in the Agricultural sector beyond those adopted by Member Countries during the Uruguay Round[48]. For example, there are already signs of some WTO Members reluctance to extend the concept of the "Tariffication" of market access commitments for newly acceding countries[49].

Market Access

Lebanon maintains a number of non-tariff barriers to imports of agricultural products. There are instituted, inter-alia, through the Agricultural Calendar, which is enacted by Ministerial Decision of the Ministry of Agriculture. The Agricultural Calendar is subject to frequent changes, and establishes the list of imports prohibitions and of those products subject to prior import license. The license regime is used to administer trade of agricultural products. According to the information provided by the Ministry of Agriculture one of the policy objectives pursued through the Agricultural Calendar is to protect agricultural production of those products where the country is self-sufficient and those products that Lebanon exports. Table V presents a summary of the Agricultural Calendar currently in effect in Lebanon.

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[48] This was the case with the accession of Venezuela, and during the negotiations for the accession of Ecuador to the GATT.

[49] UNCTAD, Challenges Faced by the Countries in Accession to the WTO, mimeo April 1995, p.p. 5.

Lebanon will have to bring its agricultural trade policy into conformity with the provisions of Article 4.2° of the AA. Therefore, all non-tariff measures[50] should be converted into ordinary customs duties, or those that can be maintained should be applied in conformity to the other Multilateral Trade Agreements[51]. This will demand profound changes in current Lebanese policy and practice with respect to trade of agricultural products.

TABLE V
LEBANON: AGRICULTURAL CALENDAR
(MINISTERIAL DECISION 13 MARCH 1995)

I	IMPORT PROHIBITIONS	
	Citric fruits, apples, karma, stargal, fresh strawberries, all kinds of green leaves (parsley, mint,spinach, green thyme, green mulukiya, roka, bakle), lettuce, radich and carrots.	
II	PRIOR LICENSE ALL YEAR	
	Olives, pine seeds, potatoes and onions for plantation, silk cocoon.	
III	SEASONAL LICENSE REQUIRED (Dates provided are the period were a license is not required)	
	Potato, fresh and frozen	01 January end March
	Onions	15 January end May
	Garlic (all forms)	01 December end April
	Cucumber	01 December end March
	Tomato	01 December 20 March
	Squash	01 December end March
	Eggplant	01 December end April
	Green beans	01 November end April
	Cabbage	01 February end March
	Cauliflower	01 February end March
	Green bamia	01 January end June
	Watermelon (red)	01 October end May
	Watermelon (yellow)	01 October end June
	Sweet green pepper	01 December end May
	Pears	01 November end April
	Peaches	01 December end April
	Grapes	15 March end June
	Apricot	01 October end April
	Passion flower	01 January end June
	Green almond	01 November 23 March
	Lima bean	01 November end March
	Green peas	01 November end March

[50] These measures include quantitative import restrictions, variable import levies, minimum import prices, discretionary import licensing, non-tariff measures maintained through state-trading enterprises, voluntary export restraints and similar border measures other than ordinary custom duties.

[51] The Agreement Establishing the WTO provides for the prevalence of this Agreement over any provision of the Multilateral Trade Agreements (See Article XVI (3) of the WTO Agreement). In the event of conflict between provisions of the GATT 1994, and a provision of other Multilateral Trade Agreements on Trade in Goods, the provisions of the other agreement will prevail (See general interpretative note to Annex 1A of the Multilateral Agreements on Trade in Goods). Nevertheless, there are no provisions that establish the prevalence of a one of the Multilateral Agreements over other Multilateral Agreement. Therefore, any measure allowed under a mulilateral agreement, other than the AA, can be applied by a member country to agricultural products, except as especifically prohibited.

During the accession negotiations Lebanon should adopt specific commitments in terms of tariff bindings for agricultural products. According to the proposed tariff reform, import duties for agricultural products will be in average around the 20% level, and vegetables and fruits will be subject to a 10% tariff rate[52]. This levels are relative low in terms of the standards of most developing countries, and will allow for an adequate bases for negotiation. Nevertheless, it would be an interesting exercise to calculate the tariff equivalent of current non-tariff measures that affect agricultural imports in Lebanon. The results will provide the necessary elements to evaluate the possible impact of the tariff reform on the Lebanese agricultural sector, and will also provide important inputs to conduct the negotiations process to accede to the WTO. The calculations should be done applying the formula utilized for tariffication during the Uruguay Round Negotiations.

Domestic Support Measures

The Lebanese Agricultural sector has traditionally received very little support from Government. The Ministry of Agriculture usually gets a minimal share of total budget allocations. Its budget varied between 1 and 5 million dollars during the second half of the eighties, and was estimated at 9 million in 1991, that is less than one percent of total budget allocations[53]. In 1992 the budget of the Agricultural Ministry reached 27 million, around 2% of total allocations.

Data for the 1994 Budget, shows that the Ministry of Agriculture received 21 million dollars, equivalent to 1.35% of total expenditures. The Grain & Sugar Beet Office was allocated around 60 millions dollars during that year, that is 2.17 of total budget allocations. In the Budget for the current year the Ministry of Agriculture has been granted 24 million dollars (1.24 of total), and the Grains & Sugar Beet Office with 61 million dollars, equivalent to 1.7% of total expenditures. Therefore, in 1994 the agriculture sector received 81 million dollars or 3.5% of total budget allocations, and for the current year 85 million, or 2.9% of all budget allocations.

There are limited support programs for the agricultural sector currently in effect in Lebanon. Price support mechanisms, and other measures, are in effect for sugar beet production, for tobacco through the Tobacco Monopoly (Régie), and the support programs for wheat have been progressively eliminated since 1992. Furthermore, since the restoration of government authority efforts have been

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[52] Information provided by Custom Authorities.

[53] Yusif al-Khalil, "Economic Development in Lebanon since 1982", in Beirut Review N°3, Spring 1992.

undertaken to reduce and replace cultivation of illicit crops in certain regions of the country. The Expert Consultation on Drug Control Assistance, organized by the Lebanese Government in cooperation with UNDP and UNDCP, on october 1992, recommended, inter-alia, integrated area development or regions affected by cultivation of illicit crops[54]. In this connection the Food and Agricultural Organization (FAO) is assisting the Lebanese Government with a program to encourage dairy and meat production instead of illicit crops. Equally, the Ministry of Agriculture is undertaking new policies in this sector with the aim to integrate physical investment with improvement in marketing and farming techniques[55]. There are no other support mechanisms for agriculture in Lebanon. The National Bank for Agricultural Development is sought to provide the financial needs of the agricultural sector. This institution will work with market interests. There is no intention to subsidize agricultural credit.

The accession to the WTO should no compromise Lebanese Agricultural development policies. The AA is flexible enough in this area to allow even for an intensification of internal support programs to the agricultural sector in the country. According to the AA Developing countries are permitted to grant product-specific support, through non green box measures, where such support does not exceed 10% of the total value of production of an agricultural product during the relevant year; or non-product specific support where such support does not exceed 10% of the value of the country's total agricultural production[56]. The value of agricultural production is that at the point of first sale.

Value added by the agricultural sector represents 8% to 10% of the country's GDP, which reached around 7,500 million dollars in 1993. Value added by the agricultural sector was therefore around 750 million dollars in that year. The value of agricultural production at market prices is higher than the value added generated by the agricultural sector. Therefore, current expenditures in domestic support to the sector fall below even of the allowed level for trade distorting measures. Given the low level of domestic support granted to the agricultural sector in Lebanon in the past, it might be in the country's benefit not to adopt any compromise, during the accession negotiations, with respect to

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[54] See Development Cooperation: Lebanon, UNDP Report, September 1993.

[55] A US 25 million five year proyect funded by the Government, OPEC and IFAD, aims to improve livestock production through improvement in extension techniques, marketing co-operatives and credit squemes to financie the purchase of better stock. Another 4 million, 18 month proyect, funded by UNDP, and signed in February 1994, consists of an integrated approach to rural development. Refer to: Merril Lynch International Limited, The Lebanese Republic, Offering Circular, 14 October 1994.

[56] See Article 6.4°(b) of the Agreement.

binding domestic support levels and make use of the margin allowed by Article 6.2[57] of the AA and Annex 2.

Furthermore, Lebanon is absolutely free to implement green box measures whatever the level of government expenditure they may represent.[58] Moreover, there are no limits to the amount that can be allocated for programs for reducing and replacing illicit narcotic crops.

Export Subsidies

Lebanon does not apply any subsidy to agricultural exports. The country when acceding to the WTO could adopt the compromise not to provide export subsidies, other than those authorized to developing countries by the AA[59].

Lebanon is a net importer of agricultural products. Its exports are citrus products, apples, grapes and other fruits, and vegetables. These products constitute the second export item of the country and are exported principally (75%) to Arab countries. On the other hand, it depends heavily on the imports of wheat, sugar, oils, meat and animal products, and prepared food products. Lebanese imports of products covered by the AA amounted to nearly one billion US dollars (990 million) according to 1994 data[60]. Different studies have estimated the price impact of the export subsidy reduction, and other commitments adopted by the major exporting countries for the principal agricultural products. Even though there are different results across studies the majority tend to

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[57] Article 6.2 of the Agreement provides "government measures of assistance, whether direct or indirect, to encourage agricultural and rural development are an integral part of the development programmes of developing countries, investment subsidies which are generally available to agriculture in developing country Members and agricultural input subsidies generally available to low-income or resource-poor producers in developing country Members shall be exempt from domestic support reduction commitments that would otherwise be applicable to such measures, as shall domestic support to producers in developing country Members to encourage diversification from growing illicit narcotic crops. Domestic support meeting the criteria of this paragraph shall not be required to be included in a Member's calculation of its Current Total AMS".

[58] These measures include, inter-alia, research and extension services, past and disease control, inspection services, stockholding for food security, domestic food aid, environmental and conservationp rogramas, regional aid, structural investiment aid, crop insurance, desaster releif, decoupled direct payments to producers, and income insurance and income safety not programs. See Annex 2 of the Agreement.

[59] See Article 9.4° of the Agreement.

[60] Source: calculated on the bases of data provided by the Ministry of Finance.

predict, in the medium term, significant increases in international prices of principal agricultural commodities[61]. Therefore, a major implication of the AA for the Lebanese economy might be a significant increase in its agricultural import bill after all the Uruguay Round commitments are implemented. As an example, taking the lower and higher estimates of different studies of price increases for sugar, on the basis of 1994 import data, the import bill of this product for Lebanon could increase, ceteris paribus, between 7 and 16.5 million dollars. In the case of milk products the import bill could increase between 14 and 34 million dollars a year.

1.3 AGREEMENT ON THE APPLICATION OF SANITARY AND PHYTOSANITARY (S&P)MEASURES

Sumnary of Provisions

The Agreement on the application of sanitary and phytosanitary measures (S&P) establishes a number of general requirements and procedures to ensure that a measure of this type is in fact intended to protect against the risk asserted, rather than to serve as a disguised trade barrier. The Agreement applies only to measures by the government that may, directly or indirectly, affect international trade. The right of the countries to maintain and institute regulations to protect human, animal and plant live and health, including food safety regulations, is explicitly recognized by the Agreement. Under this Agreement each country is free to decide on the appropriate level of sanitary and phytosanitary protection.

Implications for Lebanon

Lebanon, when acceding to the WTO must conform to the basic obligations established in the Agreement. These are, inter-alia: (i) measures may be applied only to the extent necessary to protect human, animal or plant live or health, and all measures must be based on scientific principles, (ii) every country must ensure that none of the measures arbitrarily and unjustifiably discriminates between WTO Members, (iii) transparency of all the measures must be ensured through prompt publication,

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[61] For a summary of findings, refer to Alberto Valdez, La Agricultura en la Ronda Uruguay: Los intereses de los paises en desrrollo, in Comercio Exterior, Vol 38, N°9, September 1988; also Valdez, A and Zeitg J: Distortions in World Food Markets in the wake of GATT: Evidence and Policy Implications, mimeo April 1994.

and an inquiry point must be established in the country,[62] and,(iv) specific disciplines must be followed with respect to control, inspection and approval procedures of sanitary and phytosanitary regulations[63]. Furthermore, the Agreement calls for each country to use the relevant international standards as a basis for establishing its national sanitary and phytosanitary measures.[64] Countries, within the limits of their resources should actively participate in these international organizations. Subject to demonstration, every importing country must accept the S&P measures of the exporting country as equivalent to its own when those measures achieve the importing country's appropriate level of protection.

The Agreement on S&P measures provides for adequate flexibility for developing countries to comply with its provisions. Least developed countries may delay the application of the Agreement until the year 2000. Other developing countries have to conform to the provisions of the Agreement by the year 1997.[65] Taking into account the financial, trade and development needs, the Committee on S&P measures may grant, upon request, specified, time limited exceptions in whole or in part from the obligations of the Agreement to developing countries. The provision of technical assistance, bilateral or through the relevant international organizations, is contemplated in the Agreement.

In Lebanon S&P measures are established and administered by the Ministry of Agriculture, Director of Plant Resources, in coordination with the Agricultural Research Institute of Lebanon. According to the information provided by the Ministry of Agriculture there are around 200 S&P measures in effect in the country. Currently the institutional capabilities of the Ministry are being upgraded to improve the control and the application of these measures.[66].

All imports of agricultural and animal products into Lebanon require the presentation of a sanitary certificate and a certificate of origin at the border. The Quarantine Department of the Ministry

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[62]/ See Anex B of the Agreement: Transparency of Sanitary and Phyrosanitary Regulations.

[63]/ See Anex C of the Agreement on Sanitary and Phytosanitary measures.

[64]/ Anex A of the Agreement defines the international standards, guidelines and recommendations covered by it as those issued by specified international organizations. The international organizations are the Codex Alimentarius (F.A.O), the International Office of Epizootics, and the Secretariat of the International Plant Protection Convention. The Committee on Sanitary ans Phytosanitary Measures, established under Article 12.1 can identify additional international organizations.

[65]/ See Articles 10 and 14 of the Agreement.

[66]/ Adecuate laboratories will be installed in the Ministry for controll of plant and animal products.

of Agriculture has the authority to forbid imports of any product not complying with the S&P regulations.

The implementation of the Agreement on S&P Measures in Lebanon should not involve major changes from the present regime. Currently European standards are the reference point for S&P regulations in the country, and the Codex Alimentarius is used. In principle, and in practice, there is automatic recognition of foreign S&P certificates, depending on the country of origin of the products, and the extent to which the certificate can be trusted. If a product is used and authorized in its country of origin, in principle, it is accepted in Lebanon. In case of disputes, arbitrage - for example the inspection by an specialized company as SGS or any other - is accepted by the Lebanese authorities.[67]

During the accession negotiations the S&P regulations applied by Lebanon will be reviewed by the Working Party, and when acceding to the WTO the country will have to notify to the Committee on S&P Measures all the existing regulations. Therefore, it could be convenient to undertake an evaluation, in the light of the provisions of the Agreement on S&P Measures, of all regulations currently in effect in the country.

1.4 AGREEMENT ON TEXTILES AND CLOTHING

Summary of Provisions

International trade in textile and clothing has been governed by the Arrangement Regarding International Trade in Textiles (Multi-Fibre Arrangement, or MFA) of december 1973, as extended by various protocols. The MFA permitted the use of quantitative restrictions contrary to the GATT's general prohibition against their use. The MFA set the norms and conditions for the imposition of quantitative restrictions by developed countries on textile and clothing exports of developing countries, either through negotiations of bilateral agreements or on a unilateral basis. The WTO Agreement on Textiles and Clothing replaces the MFA and provides for the gradual and complete integration of clothing and textile products into the GATT over a ten year transition period.

The Agreement provides for the progressive elimination over the transition period of quotas on the importation of textile and clothing products. The integration of products into the GATT will

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[67]/ Information gathered in an interview in the Ministry of Agriculture.

be achieved through four stages: (i) at the entry into force of the Agreement, January 1995, products accounting for 16 per-cent of 1990 imports have been integrated, (ii) on January 1988 products which in 1990 accounted for no less that 17 per-cent of imports, (ii) on January 2002 products which accounted 18 per-cent of 1990 imports, and finally, (v) on January 2005 all remaining products will be integrated into the GATT. That is, 49 per-cent of textile and clothing products could be maintained at the margin of GATT's norms and disciplines until the last year of the transition period.

With respect to the Agreement on Textile and Clothing it is important to highlight the following issues:

(i) the integration into GATT does not mean that tariffs will be reduced more than what every country has committed in its respective Schedule of Tariff Concessions. It means that all measures that affect trade of these products have to be compatible with the GATT norms and disciplines. Tariff commitments adopted by major textile and clothing importers have not been significant. Average tariffs for this products will be reduced, as a consequence of the Uruguay Round, in the United States from 19.8 to 17.5, in the European Union from 9.9 to 8.3, and in Japan the reduction is more important, from 10.4 to 6.8. This reductions will be implemented during a five year period.

(ii) while each country is free to select the products to integrate in each stage, the goods must include products from each of the following categories: tops and yarns, fabrics, made-up textile products, and clothing,

(iii) for those products not yet integrated and for which quotas are maintained a growth factor for the quota has been established. On January 1995 a 16 per-cent increase came into effect from pre-agreement levels. From January 1988 to December 2001 a 25% increase is contemplated, and from January 2002 until December 2004 the growth rate for phase two increased by 27 per-cent.

(iv) a transitional safeguard is contemplated in the Agreement. It may be invoked if the importing country determines that a particular product is being imported into its territory in such quantities as to cause, or threat with, serious damage to domestic production. The safeguard may be applied only to products that are neither subject to quota in the importing country nor integrated into the GATT 1994. Every country has to notify to the Textile Monitoring Body, created by the Agreement, its intention to reserve the right to apply the transitional safeguard measures.

Implications for Lebanon

Textiles and clothing products represent an important export item for Lebanon. As an average during the period 1988/1993 exports of these products have accounted for 18.4 per-cent of total Lebanese exports.[68] In this connection "the clothing industry in Lebanon has very rapidly evolved into a major earner of foreign exchange and is expected to retain its lead in the near future."[69] Exports markets for textiles and clothing are significantly diversify. Lebanon registers exports of these products to 39 different countries. The major importers are the European Union and other Arab countries.

Lebanon did not participate in the MFA, and has not been subject to any restrictions on textiles and clothing exports in the major importing countries. According to the information available Lebanese exports of textiles and clothing faced some restrictions only in Canada and only for a very limited number of product categories.[70] A medium term impact of the WTO Agreement on Textiles and Clothing will be increasing levels of competition in the major importing markets as the existing quantitative restrictions are progressively eliminated. Lebanese exports in the future will have to compete on equal basis with production from every origin in its major export markets. Furthermore, as the Agreement applies to all WTO Member countries Lebanese exports in the future during the transitional period could be affected, in case of rapid increases, by the transitional safeguard measures allowed by the Agreement.

1.5 AGREEMENT ON TECHNICAL BARRIERS TO TRADE (TBT)

Summary of Provisions

The Agreement on TBT establishes rules and procedures regarding the development, adoption and application of voluntary and mandatory product standards, and the procedures used to determine whether a particular product meets such standards. The Agreement on TBT establishes general procedural and other requirements intended to ensure that product standards do not create unnecessary obstacles to trade. This Agreement clarifies and extends the provisions of the Standards Code

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[68]/ Source: Ministry of Finance

[69]/Middle East Economic Consultants, February 1994, op.cit pp 44.

[70]/ See: GATT document, COM.TEX/SB/1975/Add.1, 16 November 1994.

negotiated during the Tokyo Round.

The Agreement applies to all products, including industrial and agricultural products (Article 1.3), however it explicitly does not apply: (i) to sanitary and phytosanitary measures (Article 1.5), and, (ii) to purchasing specifications of governmental bodies for the production or consumption requirements of those bodies (Article 1.4). The TBT Agreement encompasses three types of measures: standards, technical regulations, and conformity assessment regulations, and covers measures established by governmental bodies, central, local or regional level, as well as those established by a private body.[71] The Agreement establishes different rules for each of the three types or measures, and those rules may vary depending on whether they apply to central or local governments or nongovernmental bodies. The Agreement explicitly recognizes the right of the countries to establish standards and technical regulations, and does not compromise the nature and content of such regulations or standards.

Implications for Lebanon

The TBT Agreement establishes the obligation to provide, to imports from the territory of any Member of the WTO, for national treatment and non-discrimination. Furthermore, to ensure that product standards do not create unnecessary obstacles to trade, and to provide for transparency with respect to all standards and technical regulations in effect in the country. In addition to this general obligations, Lebanon when acceding to the WTO, will have to commit itself to:

(i) to apply, to the extent possible, relevant international norms regarding technical regulations or standards.

(ii) to participate, to the extent possible according to its resources, in the work carried on by relevant international organizations to establish technical norms.

(iii) to notify, to the Committee on TBT, before putting into effect any measure, if it might affect trade, for which there is no international norm or, if it is not in conformity with existing international norms.

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[71]/ Standards refer to voluntary product standards, technical regulations refers to mandatory product standards, and conformity assessment procedure is the method used to determine that a product satisfies a standard or technical regulation. This concepts are explicitly defined in the Agreement. See Anex I of the TBT Agreement.

(iv) to accept and comply with the Code of Good Practice for the Preparation, Adoption and Applications of Standards, incorporated in Annex III of the Agreement.

(v) to have an inquiry point to provide for relevant documents to, and answer reasonable inquiries from, other Members or interested persons in another Member country regarding the subjects covered by the Agreement,

(vi) to notify to the Committee on TBT, once the Agreement enters into force for Lebanon, all standards and technical regulations in effect in the country, and any change or any new measure introduced in the future in the country.

The Agreement on TBT provides for special and differential treatment for developing countries.[72] The Committee on TBT is enabled to grant, upon request, time limited exceptions in whole or in part from obligations under the Agreement to developing countries. Moreover, these countries are not expected to use international standards as the basis for its technical regulations and standards which are not appropriate to its financial, trade and development needs. Technical assistance to developing countries, bilateral or through relevant international organizations, is considered in the Agreement.

Standards and technical regulations in Lebanon are the responsibility of the Measures and Standards Organization (LIBNOR) which is the exclusive institution entrusted with the elaboration of standards and technical regulations. The Industrial Research Institute, an independent public institution, has the function of controlling the quality of goods, and to ensure that specifications conform to international export standards, and to control the conformity of imported products with national standards and technical regulations. Both institutions are currently in a process of rehabilitation and reinforcement.[73] According to the information provided by the Ministry of Industry there are around 160 national standards in Lebanon, and the objective is to conform national regulations with Arab standards as provided by the relevant regional body in the context of the Arab League.

The implementation of the Agreement on TBT in Lebanon would demand basically the strengthening of the relevant institutions in order for them to have the required capabilities to comply

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[72]/ See Artticle 12 of the Agreement.

[73]/ Interview in the Ministry of Industry and Oil, see also, SEARCH, Issue 1, July 1995, Interview with Dr. Assad Rizk, Minister of Industry and Oil.

with the different obligations as derived from the Agreement. Substantively the Agreement is flexible enough as not to impose strong immediate commitments on Lebanon in this area; and current application of standards and technical regulations in the country conform to the basic obligations of national treatment and non-discrimination provided by the Agreement.

1.6 AGREEMENT ON TRADE RELATED INVESTMENT MEASURES (TRIMS)[74]

Summary of Provisions

The objective of the TRIMS Agreement is to ensure that governments do not apply measures to investments that create trade restrictions or distortions. In this connection it prohibits those measures which are prohibited by GATT 1994 Articles III (national treatment) and Article XI which prohibits WTO Members from imposing quantitative restrictions on the importation or exportation of goods.[75] Countries must refrain from applying these measures whether the measures are a mandatory condition to operate in the country, or whether they are part of an incentive scheme. The Agreement only applies to investment measures that relate to trade in goods. All existing TRIMS that are not in conformity with the Agreement should be notified to the Committee on TRIMS established by the Agreement, and should be eliminated by developed countries by the year 1997, and by developing countries by the year 2000. Least developed countries have two additional years to comply with this obligation.

Implications for Lebanon

No trade related investment measures have been identified in Lebanon in this preliminary evaluation.

1.7 AGREEMENT ON THE IMPLEMENTATION OF ARTICLE VII OF THE GATT 1994: CUSTOM VALUATION

Lebanon currently applies the Brussels Definition of Value (BDV), and minimum reference

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[74]/ For a comprehensive discussion of the negotiations during the Uruguay Round, and of the scope of the Agreement on TRIMS refer to: UNCTAD, Chapter VI, Supporting Papers to the Trade and Development Report, 1994.

[75]/ The Annex to the Agreement on TRIMS provides an illustrative list of measures that are deemed to be inconsistent with Articles III or XI, among them: local content requirements, trade balancing requirements, foreign exchange balancing, and restrictions that limit an enterprise's exports.

prices are applied only for iranian carpets, used cars and used books.[76] Presently, Lebanese Customs make extensive use of transaction values. The current system (BDV) provides wide powers to the authorities to challenge declared values. It is to the importer to prove that the values declared correspond to the actual dutiable values. When acceding to the WTO Lebanon will have to adopt the rules of custom valuation as provided by the Agreement on the implementation of Article VII of GATT 1994 (Custom Valuation Code), and ensure the conformity of its laws, regulations and administrative procedures with the provisions of that Agreement.

With the Custom Valuation Code the value of imported goods for custom purpose must be the "transaction value", that is the price actually paid; or payable, for the goods when sold for export to Lebanon, and the burden of the proof that the declared value is not the transaction value is placed basically on Customs. In the case of Lebanon, as reported "undervaluation of imported goods is considered the main problem facing the Lebanese customs. Values are often under-declared and fraud is also due to forged invoices. There are important discrepancies between the declared values of identical products over short periods of time."[77] With the application of the Customs Valuation Code the possibilities of customs authorities to confront this problem will be diminished, with a possible strong negative impact on customs revenues which are the main source of Governmental income in Lebanon.

The implementation of the Customs Valuation Code requires an efficient, well trained and equipped customs. The Lebanese Government has undertaken strong efforts to increase the institutional capabilities of Customs.[78] Until that process is completed Lebanon, when acceding to the WTO, might consider making use of the transition periods provided for developing countries by Part III of the Agreement. Lebanon could delay for five years from the date of entry into force of the WTO Agreement for the country the application of the provisions of the Agreement on the Implementation of Article VII. Furthermore, it could delay the application of certain aspects of this Agreement for

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[76]/ Reference prices are not officially stated by a legal instrument, they are a guideline for custom imspectors. The importer has the right to challenge the minimun reference price. Information provided by customs authorities.

[77]/ IMF, Lebanon: Review of Selective Tax and Custom Issues, Fiscal Affairs Department, March 1995, pp 3.

[78]/ UNCTAD/ASYCUDA Proyect. Also the IMF and the World Bank are providing assistance to the Ministry of Finance in this regard in the context of the current efforts to raise and diversify Government revenues.

three additional years.[79] The progressive implementation of the Valuation Code could be considered by Lebanese authorities. As mentioned, already in current operations transaction values are being widely used by customs.

1.8 AGREEMENT ON IMPORT LICENSING PROCEDURES

Lebanon maintains a complex import licensing system. Products subjected to import licenses are determined by the relevant Ministry, who applies the regime. Currently licences are administered by: the Ministry of Industry and Oil, Ministry of Economy and Trade, Ministry of Agriculture, Ministry of Health, the Ministry of Internal Affairs and by the Ministry of the Environment. According to the information provided by relevant authorities the objectives pursued by the license regime are, inter-alia: (i) political-boycott on Israel, (ii) security, (iii) statistical purposes, (iv) public health, (v) moral objectives, and (vi) economic reasons. Except for the boycott on Israel the system is non-discriminatory. Table XX shows the list of products subjected to import licenses in Lebanon other than those included in the Agricultural Calendar. In principle it is an automatic import licensing regime, nevertheless licences applied for economic reasons are used to administer trade in order to grant protection to domestic production.[80] Licences are not always granted.

Once Lebanon becomes a member of the WTO it will have to bring the administrative procedures used to implement its import licensing regime into conformity with the Agreement on Import Licensing Procedures and with all the relevant provisions of GATT 1994. The Agreement, as such, does not question the basis of the licensing regime of the country. The Agreement strengthens the disciplines on governments that use import licensing systems and is designed to increase the transparency and predictability of such systems.

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[79]/ See Artile 20 of the Agreement.

[80]/ Interview in the Ministry of Industry and Oil.

TABLE V
LEBANON: PRODUCTS SUBJECT TO IMPORT LICENSES

PRODUCT	LICENSE GRANTED BY
Silk worms	Ministry of Economy and Trade
Wheat and all by Products	" " " " "
Olive oil	" " " " "
Orange and apple juice	" " " " "
Mustard seed	" " " " "
White cement	Ministry and Oil
Natural cement	" " "
Gypsum	" " "
Tar	" " "
Petroleum, fuels, fuel oils	" " "
gas, kerosene	" " "
Silk thread	" " "
Pyjamas and night gowns	" " "
Electrical wire	" " "
Telecommunications wire	" " "
Cooper wire	" " "
Industrial Machinery and Equipment	" " "
Arms	Ministry of Economy after approval by the Ministry of Internal Affairs
	Ministry of Internal Affairs
Ammoniac	Ministry of Defense and the Council of Ministers
Military arms and guns	Ministry of Internal Affairs
Fireworks	Ministry of the Environment
Chemical Products	Ministry of Agriculture
Agricultural Products	Ministry of Health
Pharmaceutical products	

According to the provisions of the Agreement licensing procedures have to be made public, be simple to observe and apply, and be fairly and expeditiously administered. Application and renewal forms and procedures have to be as simple as possible, and adequate time should be provided for application (if there is a deadline a 21 day period should be granted). A maximum of approval from two bodies when "strictly indispensable" is permitted. The Agreement prescribes additional rules for automatic and non-automatic import licensing. An automatic import licensing regime must not restrict imports and must provide immediate approval of applications, not delaying the approval more than 10 days. In the case of non-automatic import licensing the system, inter-alia, can not impose more restrictions to trade than those intended to implement and shall be no more burdensome that necessary to administer the measure.[81]

This Agreement has very limited special provisions for developing countries. A developing country not signatory of the Tokyo Round Code can delay until 1997 the implementation of certain requirements regarding the time period for processing applications, and it is provided that these countries are not expected to undertake additional administrative or financial burdens when responding to requests for information concerning the administration of their regimes.

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[81]/ Non-automatic import licensing are the systems used to administered import restriction such as quotas and tariff rate quotas. Only those imports restrictions that are in conformity with the provisions of the GATT 1994 can be administered through a non-automatic import licensing system.

Lebanon will have to notify to the Committee on Import Licensing the import licensing systems it has in effect when acceding to the WTO. This issue will be analyzed by the Working Party during the accession negotiations. The functioning of the current system, and the procedures, should therefore be reviewed in order to introduce the necessary modifications to adapt it, to the requirements of the Agreement. Licence requirements in the case of security objectives and to protect public morals or human, animal, or plant live or health are covered by the General Exceptions and the Security Exceptions provided by Articles XX and XXI of the GATT 1994.

1.9 AGREEMENT ON SUBSIDIES AND COUNTERVAILING MEASURES AND THE AGREEMENT ON THE IMPLEMENTATION OF ARTICLE VI (DUMPING) OF GATT 1994

The Agreements reached in these areas during the Uruguay Round improve, clarify and expand the Tokyo Round Codes[82]. These agreements provide, inter-alia, with the norms and disciplines that countries must follow in order to apply measures to protect domestic production from unfair competition of foreign exporters (dumping), or from subsidies granted by governments to the exports from their territories.

Lebanon does not apply any subsidy to exports. In this connection the main implications of these agreements for the country are that once Lebanon becomes a Member of the WTO it will only be able to apply anti-dumping measures or countervailing duties to remedy the effect of unfair competition. These remedies could only be applied in the circumstances provided by the Agreements and after investigations are initiated and conducted in accordance with the provisions of these Agreements. Therefore, domestic legislation must be in full conformity with the Agreements in order to allow Lebanon to exercise its rights.

Anti-dumping measures and the application of countervailing duties are regulated in Lebanon by Legislative Decree N°31 dated 5/8/1967. Investigations are carried out in cases of dumping or export subsidies at the request of the interested parties or at request of the Custom Administration. The investigation is handled by the Ministry of Economy and Trade in co-operation with the Customs Authorities within a period not exceeding one month. Measures to remedy the effect of unfair trade are imposed through a joint decision of the Ministers of Economy and Trade, and the Minister of

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[82] For a comprehnesive discussion of these two Agreements refer to UNCTAD; the outcome of the Uruguay Round: An/NITIA/ASSESMENT, Supporting Papers, Chapters III and IV.

Finance. No complaints have been presented in the past. Therefore, current legislation has not been applied. Current legislation is not completely compatible with the WTO Agreements. These Agreements provide for very detailed provisions concerning, inter-alia, the nature of the investigations, time frameworks, rights of the exporter, determination of dumping and prove of subsidies, determination of material injury and the determination of the existence of threat of material injury to domestic production, and the right to appeal the final decisions of the authorities. Lebanon will have to modify existing legislation to make it compatible with the WTO Agreements. Laws and regulations relevant to these agreements, should be notified by Lebanon to the respective Committees when acceding to the organization.

1.10 IMPACT OF THE URUGUAY ROUND TARIFF CONCESSIONS ON LEBANESE EXPORTS

The main impact of tariff concessions on MFN basis will be, the erosion of the margin of preference granted to developing countries by different preferential schemes in the major importing countries. In the case of Lebanon due to the fact that almost 60% (57.8%) of total exports are directed to other arab countries; and those countries are either non WTO Members, or those that are members have bound tariff at higher levels than tariffs effectively applied, the impact will not be that significant for the country's exports.

Table VI presents a summary of the effects of tariff concessions of the European Union, and the U.S.A. on Lebanese exports. These trading partners import around 25% of total Lebanese Exports. The U.S.A., according to 1994 data, only represents 3.66 of total Lebanese exports.

TABLE VI
IMPACT OF URUGUAY ROUND TARIFF CONCESSIONS
ON LEBANESE EXPORTS
(1992 DATA. 000 US DOLLARS. EXPORTED
ITEMS FOR MORE THAN 50.000 DOLLARS)
EUROPEAN UNION

	# TARIFF ITEMS	LEBANESE EXPORTS	% TOTAL EXPORTS
ZERO BASE AD-VALOREM	32	25.626	28.25
NOT INCLUDED IN OFFER	15	8.374	9.23
EROSION OF MARGIN OF PREFERENCE	184	56.707	62.51
TOTAL	231	90.707	100.00
UNITED STATES			
ZERO BASE AD-VALOREM	6	1.988	8.17
NOT INCLUDED IN OFFER	1	249	1.02
EROSION OF MARGIN OF PREFERENCE	40	22.069	90.79
TOTAL	47	24.306	100.00

Source: UNCTAD: SAS System. Elaborated by the author.

In the Table data is provided on: (i) those exports which have not been subject to tariff preferences because the MFN tariff has been zero before the Uruguay Round, (ii) those items in which Lebanon registers exports but have not been included in the Schedule of Tariff Commitments, therefore the conditions of market access will not be modified, and (iii) those items included in the Schedules and that will be subject to tariff reductions generating therefore an erosion of the margin of preference granted to Lebanese exports by preferential schemes.

In the case of the European Union which is the second most important market for Lebanese exports, 62.5% of exports might be affected by an erosion of the margins of preference. Of the 231 items, 15 were not included in the EU GSP therefore Lebanese exports had the same treatment than imports from any origin. Lebanese exports competed under the same conditions as other countries. Excluding these, 216 items will experience an erosion of preferences. Of these, in the case of 19 tariff items the EU concession has been elimination of the tariff or tariffs below 2%. In these items that include wooden furniture, some machinery and tools, monumental building stones, lentils, kidney beans, lows bean seed, wheat groats, medicines and toilet waters there will be increased competition for Lebanese exports in the European market. The rest of tariff items will experiment a practical erosion of the margin of preference. The following items are also in the same situation: leather products (3 tariff items), textile and clothing products (95 items), fruit and vegetables (14 items), aluminum articles (5 items), jewelry (2 items), electric machinery and wire (16 items). In these

products Lebanon will maintain a significant margin of preference in respect to the MFN tariff. For Lebanon, the preferential agreements being negotiated by the EU with other mediterranean countries might have a greater impact on exports than the concessions granted during the Uruguay Round Negotiations.

CHAPTER II

GENERAL AGREEMENT ON TRADE IN SERVICES (GATS)

Introduction

The General Agreement on Trade in Services (GATS) is the first multilateral, legally enforceable agreement to establish guidelines governing international trade and investment in services. The GATS establishes a framework of rules and principles with the objective to expand trade in services under conditions of transparency and progressive liberalization and as a means of promoting economic growth of all trading partners and the development of developing countries.

The GATS contains three basic parts: (i) a framework of rules and disciplines that establishes the basic obligations that should be accepted by all members, (ii) the specific commitments adopted by the different countries, registered in the National Schedules, which form an integral part of the Agreement, and (iii) annexes addressing the specificities of individual services sectors and modes of supply, and exemptions from the MFN clause. Moreover, there are eight Ministerial Decisions, and one Understanding, relating to the GATS. These cover future negotiations, institutional arrangements, dispute settlement procedures and environment.

The first section of this chapter presents a brief summary of the structure and principal provisions of the GATS, addressing the main obligations that Lebanon should assume when becoming a member of the WTO. The second section of the report analyzes the nature of the specific commitments that the country will have to adopt during the accession negotiations. The third section analyzes current barriers to trade in services in selected activities in Lebanon.

2.1 STRUCTURE AND SCOPE OF THE GATS: GENERAL OBLIGATIONS

With respect to the GATS it is important to highlight five aspects that pertain to the general scope of the Agreement:

(i) applies to all measures affecting trade in services, whether in the form of a law, regulation, rule, procedure, decision, administrative action; it includes measures taken by central, regional and local governments and authorities, and non-governmental bodies in the exercise of powers delegated by any authority at any level of government.

(ii) excludes services supplied in the exercise of governmental authority, that is any service which is supplied neither on a commercial basis, nor in competition with other service suppliers.

(iii) the basic provisions (Articles II, XVI, XVII) does not apply to laws, regulations or requirement governing procurement by governmental agencies or services purchased for governmental purposes.[83]

(iv) does not apply to traffic rights in air transport (bilateral air-service agreements conferring landing rights) but applies to aircraft repair and maintenance services, selling and marketing of air transport services, and computer reservation systems.[84]

(iv) the Agreement does not prevent Member Countries from conferring advantages to adjacent countries in order to facilitate border exchanges of services that are both locally produced and consumed.[85]

Once Lebanon becomes a member of WTO it will be obliged to implement the provisions of Part II of the Agreement which establishes the basic obligations applying to all parties. Therefore, the country must comply with the following provisions:

A) MFN CLAUSE:

Lebanon could not maintain any national measure that provides for different treatment to service providers on the basis of the country of origin, other than those that Lebanon includes in the list of exceptions under paragraph 2 of Article II. Under this provision all Member Countries are allowed to schedule exemptions to MFN, in principle for a period not exceeding 10 years. Any service activity, or measure, through which a country grants special treatment to providers of another country and that the country does not wish to extend to all Member Countries should be listed as an MFN exemption. This provision only applies to those measures granting special treatment in effect at the time of entry into force of the Agreement for Lebanon. After that date no new special treatment

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[83] In 1997 multilateral negotiations on government procurement will be launched. See Article XIII of the Agreement. Lebanon might expect therefore that this issue could arise during the accession negotiations at the request of some interested trading partners. [83]

[84]/ Refer to Annex on air-transport services. Subject to review at least every five years.

[85]/ See Article II (3) of the Agreement.

could be established except in accordance with paragraph 3 of Article IX of WTO Agreement (i.e. through the grant of a waiver).[86]

The Lists of Exemptions under paragraph 2 of Article II annexed to the Agreement has included two basic types of exemptions: (i) those activities in which national legislation provides for certain treatment on the basis of reciprocity. and (ii) treatment to foreign services provides granted on the basis of bilateral or plurilateral agreements.

In the case of Lebanon the following measures has been identified, in the preliminary evaluation, that might be considered for inclusion in the country's List of Exemptions under paragraph 2 of Article II:

(i) A foreign insurance company is allowed to operate in Lebanon if the country of origin of the insurance company allows Lebanese companies to operate on their territory and on their annexed territories. An exception is made for foreign companies whereby the regulations of their countries forbids the establishment of private insurance companies. An insurance company can only undertake those operations in Lebanon for which it is authorized in its home country.[87]

(ii) A foreigner is allowed to practice in Lebanon the Accountancy Profession if his country of origin allows Lebanese nationals to practice in that country.[88]

(iii) Foreigners can provide legal services in Lebanon if its country of origin allows lebanese nationals to provide services in its territory. There is a special relationship with France with respect to legal services derived from the fact that the legal system is based on the french system and french case Laws are frequently cited by the Lebanese Courts.

(iv) Arab nationals have a preferential treatment with respect to the acquisition of real state property in Lebanon. Persons of Lebanese origin, or nationals of Arab countries, or companies

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[86]/ After the entry into force of the Agreement for Lebanon, any excemption to the MFN Clause should be treated in accordance with Article IX paragraph 3 of the WTO Agreement. That is, it would be necesary to ask for a waiver of the countries obligations through the established procedures.

[87]/ See Bank of Lebanon, Insurance Company, draft;n.d

[88]/ See Law 364/94

with absolute majority of shares held by Lebanese or arab nationals do not require approval for the acquisition of a certain amount of real property in Lebanon.[89]

(v) Foreign salaried persons working in Lebanon are not subject to the provisions of social security, unless their governments provide Lebanese nationals with an equal right to social security benefits.[90]

(vi) Lebanon grants special treatment with respect to labour movement to foreigners of Lebanese origin, and to some nationals of Arab countries on the basis of different agreements.[91] In particular the Labour Agreement with Syria has detailed provisions with respect to labour movement between the two countries.[92] Labour movement provisions in the different agreements of which Lebanon is a member should be reviewed in order to assess the inclusion of such treatment in the exemptions to the MFN Clause.

(vii) Companies from the former territories of the French Mandate are granted a special treatment with respect to establishment in Lebanon.[93]

(viii) Branches of foreign companies and lebanese subsidiaries are subject to taxation under the same conditions as Lebanese companies. Nevertheless, they are subject to a tax at source of 5 per cent on the net profits, after taxation, on the profits realised in Lebanon. Lebanon has signed an Agreement with France (July 1962) avoiding double taxation through which taxes can be cancelled or reduced. Lebanon has also signed treaties on avoiding double taxation on revenues derived from airline and shipping companies with Japan, Pakistan, Norway and Italy. Moreover, income of foreign airlines and maritime companies are non-taxable income in Lebanon on condition of reciprocity for Lebanese entities. This agreements, and reciprocity

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[89]/ Decree No 11614, 4 of april 1965.

[90]/ Decree No 13955 of 27 September 1963 and admenments.

[91]/ For example, the stamp duty for residence permits is significantly lower for foreigner of Lebanese origin than for other foreigners (75.000 LP vs 400,000 LP). Gulf Arab national have, by virtue of a unilateral desicion of the Lebanese Government, some facilities in adquiring a visa to entry the country which is not granted to other foreigners.

[92]/ Refer to the Agreement on Labor signed on October 18 of 1994.

[93]/ Decree No 96 of the 30th of Jannuary 1926 on Foreign Corporations, still in effect in Lebanon.

clause, should be evaluated in the light of the exemptions allowed by paragraph 2 of Article II of the Agreement, and with respect to the General Exception provided by paragraph (e) of Article XIV of the Agreement.[94]

(ix) The supply of road transport services by foreign suppliers into and across the territory of Lebanon is limited to vehicles registered in the Arab-League countries [95].

(x) Full national treatment in audiovisual works (Co production) is extended only to countries with which Lebanon is a party o bilateral or multilateral agreements (as Egypt for example)[96].

(xi) Commercial representation, and the protection provided by law, is limited to Lebanese nationals, unless the country of origin of the foreign provider provides for similar treatment to Lebanese nationals[97].

(xii) Foreigner can apply for work and residence permits in Lebanon only if his country of origin provides Lebanese nationals reciprocal treatment [98].

The list of exemptions that is included by Lebanon under paragraph 2 of Article II will depend on the policy decisions adopted by the Lebanese Government. Nevertheless, contrary to the process during the Uruguay Round which did not require real negotiation with respect to the exemptions listed by the different countries, it could be expected that during the negotiations to accede to the WTO, Lebanon might receive some concrete demands by some interested trading partners in this respect.

National legislation related to services activities should be reviewed to identify other cases of treatment based on reciprocity. Moreover, the preferential treatment provided to certain countries related to services activities on the basis of the provisions of trade agreements should be further

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[94]/ nothing in the Agreement prevent the adoption by Member Countries of measures that are inconsistent with Article II, provided that the treatment is the result of an agreement on the avoidance of double taxation. See Article XIV (e) of the Agreement.

[95] Stipulated in the Arab-League Agreement

[96] As reported in the final Lista of Article II Exemptions of Egypt.

[97] Decree N°34 of 5 August 1967, amended by Decree N°73/83 of 9 September 1983.

[98] Refer to Code of Labour, and Decree 17561 of 18 September 1964.

analyzed.

B) TRANSPARENCY [99]

The Agreement provides that all Member Countries must publish all relevant domestic measures of general application that relate to the object of the Agreement, as well as all international agreements affecting trade in services to which the country is part. Therefore, Lebanon once it becomes a member of the WTO should publish, or make available when publication is not possible, all laws, regulations, rules and procedures that affect trade in services. All legal provisions are published in Lebanon in the Official Gazettes. Nevertheless, as was evident during the advisory mission legal instruments, and information related to norms and procedures, are not easily available for any interested party, in particular legal instruments of a regulatory or administrative character and international agreements [100].

Some adjustments should be made in Lebanon to fully comply with this obligation. Besides access to the required information, the Agreement provides for obligations that would demand some institutional capacity building in the country. Specifically, Lebanon should establish one or more "enquiry points" to provide information to interested parties, upon request, about all aspects pertaining to the measures that affect trade in services in the country. This enquiry points should be established by all Member Countries of WTO by 1997.

Contrary to other sectors of economic activity, like agriculture or industry, where regulations are usually issued by Law or by administrative rulings of a single public entity, in the case of services there are multiple public bodies, or private entities entrusted with regulatory powers, that issue norms that affect the different services activities. Therefore, some institutional engineering, defining efficient coordination channels, will be required to establish the enquiry point in the country. Moreover, Lebanon will be obliged in future to notify, at least once a year, to the Council for Trade in Services

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[99]/ See Article III of the Agreement

[100] Also Publications issued by private sources contain different and sometimes contradictory information with respect to the regulatory framework in effect in Lebanon. Refer to: Freifer RizKallah, and Farhat Alldallah, To invest in Lebanon: the legal and Fiscal Incentives, Beirut, July 1994; Tyan et Associes (Law Firm), Legal Guide to Investments in Lebanon; Librarie Antoine, Beirut, 1994. Chamber of Commerce and Industry, Beirut, Doing Bussines in Lebanon, BDO. Fiduceaire Du Moyen - Orient, Beirut, N.D.; Horwath Aboud Chakda Co, Doing Bussiness in Lebanon, Beirut, Beirut March 1995; Investors Guide: Lebanon 1994, Beirut, 1994, Etudes et Consultations Economiques S.A.R.L.

of the WTO any changes introduced in the Laws, regulations or administrative guidelines that affect trade in services in those activities included in the specific commitments adopted by Lebanon during the accession negotiations.

C) ECONOMIC INTEGRATION

The GATS, by virtue of Article V allows Member Countries to enter into agreements liberalizing trade in services among the parties to such agreements provided that the agreements have substantial sectoral coverage and grant national treatment to the providers of Member countries eliminating any existing discriminatory measures. Therefore, it allows for an exception to the MFN Clause in those cases, as Article XXIV of the GATT 1994 permits for trade in goods. Where developing countries are parties to an agreement adequate flexibility is provided by the GATS with respect to the extent of the sectoral coverage and the elimination of all discriminatory measures.[101] All the agreements should be notified to the Council for Trade in services.

Lebanon has signed eleven bilateral trade agreements since the early fifties with other Arab countries, and is a signatory of the Conventions of the Arab League. Furthermore, has entered into six commercial agreements with Eastern European countries, and recently signed an economic, financial and technical cooperation agreement with Italy, and has concluded a similar agreement with Turkey. The agreements between Lebanon and Arab Countries included customs exemptions on several agricultural and industrial products and varying preferences on a list of products. The Agreements with Eastern European countries addressed basically the issue of compensatory trade, and conditions of payment.[102] Services trade as such was not covered in this first generation agreements as has been the case in most of trade agreements among developing countries.

In recent years the Lebanese Government has signed new agreements with Egypt, Jordan and Syria replacing the old protocols.[103] This new generation agreements, in particular the agreements

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[101]/ See Article V 3(a) of the Agreement

[102]/ Refer to: Investors Guide, Lebanon 1994; Etudes et Consultations Economiques S.A.R.L (ECE).

[103]/ The Lebanese-Egyptian agreement dated February 13, 1992 which replaced the 1965 protocol; the Agreement for the increase of Commercial Exchanges and Reduction of Custom Duties between Lebanon and Jordan signed in Amman the 14th of october of 1992, and the Treaty of Brotherhood, Cooperation and Coordination signed on May 22/1991 between Lebanon and Syria, and the subsecuent bilateral economic agreements signed since that date.

with Syria, go beyond the traditional trade preferences in goods and address some relevant issues for trade in services. These agreements[104] provides, inter-alia, for the free circulation of individuals, labour, goods and capital, and freedom of employment and residence by citizens of one State in the territory of the other, and the coordination of some sectorial policies. Therefore they include the basic issues pertaining to the liberalization of trade in services between the two countries.[105] Furthermore, the Government of Lebanon is considering entering into a new agreement with the European Union under the EU New Mediterranean Policy, agreement that will probably include a strong services component as is the case of other agreements recently negotiated by the EU with some mediterranean countries.[106]

The provisions, and evolution, of these agreements should be evaluated in the light of Article V of the GATS, and the labour provisions of the agreements with Syria also in the light of article V bis that allows for the full integration of the labour markets between the parties to an agreement.[107]

D) RECOGNITION OF QUALIFICATIONS

In the application of standards and criteria for the authorization, licensing or certification of service suppliers Member Countries should apply the MFN principle, and should not accord recognition in a manner which would constitute a disguised restriction to trade in services. Member Countries are free to recognize the qualifications obtained by a service provider in another country by means of harmonization, autonomous decision, or by means of an agreement. Nevertheless, it should allow any interested party the opportunity to accede to such an agreement or to negotiate a comparable one. In the case of autonomous recognition, the opportunity should be provided to other parties to

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[104]/ The Socio and Economic Cooperation Agreement, The Agreement Regulating the Movement of Individuals and Goods, The Agricultural Cooperation and Coordination Agreement, and the Health Agreement signed on September 16/1993. On October 1994 the Agreements on Tourism and Labor were signed.

[105]/ Ghazi Tinaoui, "Syrian-Lebanese Economic Cooperation", in Beirut Review, No 8, Fall 1994

[106]/ See for example: Euro-Mediterranean Agreement Establishing an association Between the European Communities and their Member States of the One Part, and the Arab Republic of Egypt of the Other Part, Draft, 10 March 1995.

[107]/ During the mission was not posible to have access to the text of the Lebanese-Syrian Agreements, or the other new agreements.

demonstrate that their qualifications should be also recognized.[108] The GATS encourages recognition requirements achieved through harmonization of internationally-agreed criteria.

The issue of recognition of qualifications of service providers is particularly relevant in the case of professional services.[109] An in depth review of existing qualification requirements and procedures in Lebanon fall beyond the scope of the preliminary evaluation undertaken.[110] One year after Lebanon becomes a Member of the WTO all existing recognition measures, from governmental and non-governmental bodies, in effect in the country should be notified to the Council for Trade in Services.

This issue might also arise during the accession negotiations.[111] In those sectors where Lebanon will adopt specific commitments during the negotiations it has to provide that licensing and recognition requirements are based on objective and transparent criteria, are not more burdensome than necessary, that are not in themselves a restriction to the supply of the service, and for the case of professional services has to provide for adequate procedures to verify the competence of the suppliers.[112] Therefore it might be convenient to review and assess all requirements and procedures for certification, licensing and recognition of qualifications existing in the country, and if necessary to introduce the required modifications before submitting the first notification.

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[108]/ See Article VII of the Agreement

[109]/ See Decision on Professional Services; A Working Party has been established to examine and report on the disciplines necessary to ensure that measures related to qualification requirements and procedures, technical standards and licensing requirements in this field do not constitute unnecessary barriers to trade in services.

[110]/ The first priority of the working party on professional services will be to make recommendations with regard to the accountancy industry, concentrating on ensuring objective and transparent criteria that are not unnecessary burdensome, and using international standards. Lebanon has already adopted the International Accounting Standards and Principles, and the International Standards on Auditing, and has formulated professional rules of conduct administered by the Lebanese Association of Certified Public Accountants. Source: Horwath Abou Chakra & Co, Doing Business in Lebanon, Beirut, March 1, 1995. In the Legal Services, according to the information provided, there is an especial relationship with France with respect to the licensing of the professionals and in the participation in the Bar Associations.

[111]/ By virtue of Article XVIII of the Agreement Member may negociate commitments with respect to qualifications, standards and licensing matters. That commitments shall be inscribed in the Member's Schedule.

[112]/ See Article VI (4), (5), and (6) of the Agreement.

E) GENERAL OBLIGATIONS WITH RESPECT TO SPECIFIC COMMITMENTS

In those service sectors in which Lebanon undertakes specific commitments during the accession negotiations it has to provide for the following:

(i) shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner. It will have to institute judicial, arbitral or administrative tribunals or procedures that could provide, at the request of any interested party, for the prompt review, and appropriate remedies if required, for administrative decisions affecting trade in services [113]. The establishment of administrative procedures in Lebanon, that guarantee a prompt response, could demand some institution building because governmental, non-governmental and even autonomous entities' administrative decisions might be subject of review and remedial action. This issue has to be analyzed in the context of the Lebanese administrative and legal system.

(ii) shall not apply restrictions on international transfers and payments for current transactions regarding the services incorporated in its specific commitments.[114] Currently Lebanon is a free exchange system country. Movement of currency into and out of the country and all exchange transactions are completely free of any kind of control [115].

(iii) shall ensure that any monopoly supplier of a service, or an exclusive service supplier, does not act in a manner inconsistent with the country's general obligations and specific commitments.[116] In Lebanon, monopoly or exclusive suppliers of a service could only be identified in the Basic Telecommunications sector, and in fee-gathering public services such

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[113]/ See Article VI (1) and (2) of the Agreement. The country is not obliged to institute tribunals or procedures that are inconsistent with its constitutional structure or the nature of its legal system.

[114]/ See Article XI of the Agreement. Restrictions to payments and transfers can only be established to safeguard the balance of payments according to the conditions and procedures established in Article XII of the Agreement.

[115] According to a law issued on 1948. Since then total freedon of capital and payments has been in effect.

[116]/ See Article VIII of the Agreement.

as railways, and public utilities (water and electricity).[117]

F) FUTURE AND ONGOING NEGOTIATIONS

The GATS reflects the level of consensus that has been achieved at the end of the Uruguay Round. The Agreement, as well as the Decisions adopted establishes the compromise, and the time framework to undertake future negotiations on different issues to complement the Agreement. The result of those negotiations can have profound implications on the nature of the Agreement itself, and on the prospects for the development of the service sector of developing countries. Lebanon should follow up, and prepare itself on those issues subject to negotiation as they can emerge during the country's accession negotiations to the WTO, and to be able to take an active role in the process once it becomes a member of that organization.

Future negotiations has been agreed on the following:

(i) a new round of multilateral negotiations: to take place in the year 2000 with a view of achieving a higher level of liberalization of trade in services. During the accessions negotiations Lebanon should consider, in its negotiating position and strategy, that further commitments will be demanded from the country in this round of negotiations shortly after its accession to the WTO.

(ii) development of disciplines relating to qualification requirements and procedures, technical standards and licensing requirements: the work programme has been put into effect and, as an initial step, a Working Party on Professional Services has been established.

The first priority of the Working Party will be to make recommendations with regard to the accountancy sector, concentrating on ensuring objective and transparent criteria that are not unnecessarily burdensome, using international standards, encouraging cooperation with relevant international organizations, establishing guidelines for recognizing qualifications, and taking account of the importance of governmental and non-governmental bodies regulating professional services. This is an area in which Lebanon's accession negotiations might overlap

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[117]/ A proyect for the installation of cedullar lines, privately finance through a Built Operate Transfer contract is under implementation. Semi-privatization of some public services (railways, public transport, electrical power generation) has been approved by Parliament.

with the multilateral process.[118]

(iii) development of disciplines with respect to emergency safeguard measures: the objective is to define disciplines, based on the principle of non-discrimination, that will allow for temporary relief to domestic service suppliers suffering damage resulting from an increase of services imports. In accordance with Article X, the results of this negotiations must enter into effect by the year 1998.[119]

(iv) government procurement: negotiations will start in November 1995 with the objective of incorporating, through a set of norms and disciplines, government purchases of services into the GATS. Government procurement for some service activities, as construction and engineering for example, represents an important share of the international market. This issue has been included in most of the new regional agreements, and Lebanon should expect some demands to adopt specific commitments in this area during the accession negotiations, as has been the case of other acceding countries both for the case of goods and services.[120]

(v) development of multilateral disciplines to avoid the trade-distorting effects of subsidies: The negotiations will start in March 1996.[121] In the case of Lebanon there are some particular treatment with respect to the establishment of banks in the country, and with respect to tourism activities that might be considered subsidies to provision of services [122].

(vi) Services Trade and the environment: the Committee on Trade and Environment has been requested to examine the relationship between services trade and the environment including

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[118]/ See Decision on Professional Services

[119]/ A Working Party on Safeguards, Government Procurement and Subsidies has been established. The Working Party would consider the subjects at staggered dates with four months interval (i.e. safeguards in July, government procurement in November and subsidies in March).

[120]/ The new plurilateral Agreement on Government Procurement, expected to enter into force on January 1,1996, expands coverage to include services and construction contracts. There has been strong demands placed on developing countries in general to join this Agreement.

[121]/ See Article XV of the Agreement.

[122] By virtue of Decree N°50 of 15 July 1983 commercial Banks and specialized banks are excempt either from income taxation, or from taxes on the interests of loans. Equally, Decree 13908, 30 October 1956 and its amendments, establishes fiscal exceptions to the touristic establishments.

the issue of sustainable development, and the relevance of inter-governmental agreements on the environment and their relationship to the Agreement.[123] The objective is to determine is there is a need for further development of the provisions of Article XIV (b).

(vii) sectoral negotiations: at the end of the Uruguay Round, decisions were adopted to continue negotiations on some sectors (Financial Services, Basic Telecommunications and Maritime Transport), and mode of supply of natural person in order to achieve greater trade liberalization. The Negotiating Group on financial services concluded its work in July 1995, with the conclusion of an interim agreement until 1997. Furthermore, negotiations on movement of natural persons also concluded in July 1995 with a few improvements in the concessions particularly in relation to contract related professionals. There are no significant developments in the Negotiating Groups on Maritime Transport and Basic Telecommunications. Draft offers have been put forth by some countries. These Negotiating Groups should present their reports and conclude their negotiations by June 1996. Nevertheless the evolution of these negotiations should be carefully followed by the Lebanese Government as they can bear upon the dynamics of the accession negotiations.

2.2 SPECIFIC COMMITMENTS

During the accession negotiations Lebanon would be required to undertake specific commitments with respect to services activities in accordance with Part III and IV of the GATS. Lebanon shall set out in a schedule the specific commitments it undertakes specifying: (i) committed sectors and modes of delivery, (ii) terms, limitations and conditions on market access [124], (iii)

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[123]/ See Decision on Trade in Services and the Environment.

[124] Article XVI of the GATS defines the measures which a Member shall not maintain or adopt unless specified in its Schedule. They are: (a) limitations on the number of service suppliers wheter in the form of numerical quotas, monopolies, exclusive service suppliers or the requirement of an economic test needs, (b) limitations in the total value or service transactions or assets in the form of numerical quotas or the requirement of an economic needs test, (c) limitations in the number of service operations or on the total quantity of service aoutput expressed in designated numerical units in the form of quotas or the requirement of an economic needs test, (d) limitations on the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test; (e) measures which restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service, and; (f) limitations on the participation of foreign capital in terms of maximun percentage limit on foreign shareholding or the total value of individual or aggregated foreign investment.

conditions and qualifications on national treatment [125], (iv) undertakings relating to additional commitments, (v) the time-frame for the implementation of its commitments, and (vi) the date of entry into force of the commitments.[126] When the accession process is completed the schedule of specific commitments will be annexed to the Agreement and will form an integral part of it.

The GATS provides appropriate flexibility for developing countries for opening fewer sectors, liberalizing fewer types of transactions, and to attach conditions when market access is granted in order to promote their national development objectives.[127]

The greater frequency of specific commitments adopted by participating countries (percentage of all countries that have provided commitments in each service sector) can be found in tourism (93.6%), financial services (71.3%) and business services (67.0%) [128]. Nevertheless, it is important to highlight the fact that most of the offers have consolidated, at the most, the current situation in the respective countries. The final result of the Uruguay Round on services do however provide predictability and security of market access in the sectors covered by commitments.

The annexed chart provides information regarding the specific commitments adopted by other countries of the region. The pattern of commitments is similar to those of other developing countries, and in most cases the current regulatory regime in effect in the Arab countries, in the sectors covered by commitments, has been consolidated. Majority of commitments have been adopted in all sectors with respect to commercial presence made of supply, maintaining the current limitations established by national laws. Other modes of supply are mostly unbound. In some cases, in which there is absolute liberalization of trade in services (market access and national treatment without limitations), that situation has been consolidated by the respective country.

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[125] The Agreement does not include definitions on the measures that limit national treatment. National treatment can be granted either by formally identical treatment or by formally diferent treatment. Formally diferent treatment can result in effective equal tratment, and formally equal treatment can produce a less favourable treatment for foreigners. Therefore, limitations to national treatment cover both the cases of de jure and de facto discrimination Article XVII of the Agreement.

[126]/ See Article XX of the Agreement.

[127]/ See Article XIX (2) of the Agreement.

[128] The Results of the Uruguay Round of Multilateral Trade Negotiations, GATT, Geneva, November 1994.

SCHEDULES OF SPECIFIC COMMITMENTS
ARAB COUNTRIES
(NUMBER OF ACTIVITIES INCLUDED IN EACH SECTOR)

	GATS/SC/1 ALGERIA	GATS/SC/97 BAHRAIN	GATS/SC/30 EGYPT	GATS/SC/49 KUWAIT	GATS SC/57 MOROCCO	GATS/SC/87 TUNISIA
1.Business Services				12	04	
2.Value Added Telecommunications					06	
3.Construction and Related Engineering			04		03	
4.Tourism and travel related services	2		10	03	09	03
5.Insurance and Reinsurance		2	05		a	05
6.Financial Services (Banking and other)			11		11	16
7.Distribution Services				03		
8.Environmental Services				03	01	
9.Transport			03		06	
10 Health Related Services				03		
11. Recreational and Sporting Services				02		

a : All Branches
Source : Schedules of Specific Commitments Annexed to the GATS

The dynamics of the negotiations during the accession process might be radically different than the one that took place during the Uruguay Round. Notwithstanding the flexibility provided by the Agreement to developing countries. Lebanon should expect concrete demands to liberalize certain sectors and modes of delivery during the negotiations, which might infringe its development objectives and policies.

Lebanon might facilitate and accelerate the negotiations to accede to the WTO if the country starts the preparation of an initial schedule of specific commitments.[129] The elaboration of the Schedule of specific commitments will demand the definition of those services sectors on which

[129]/ The guidelines for the elaboration of the Schedule of Commitments are presented in the Document of the Uruguay Round MTN.GNS/W/164, September 3, 1993.

Lebanon is willing to adopt the compromise to grant market access and national treatment to foreign services providers. The initial offer could consider commitments on whole services sectors, or subsectors, or even specific activities in a subsector. Furthermore it can only commit a certain mode of delivery, more than one, or the four modes of delivery as defined in the Agreement.[130] In adopting specific commitment the country can also determine the extent to which it will grant market access and national treatment. They can be granted without any limitation (full liberalization), or the concrete limitations that the country wishes to maintain or to put into effect in the future, in every sector or subsector or mode of supply, can be explicitly inscribed in the Schedule. Some developing countries have conditioned their offers by including requirements on training, transfer of technology and joint venture.

The specific commitments which will be included in the Schedule of Lebanon at the end of the accession process will be legally binding for the country. They will impose restrictions to future modifications of regulations in the committed sectors or subsectors. No new measure that restricts market access or national treatment beyond whatever limitations are registered in the Schedule could be introduced, or existing incompatible measures maintained in the future. Therefore, in order to define an initial Lebanese offer and to be able to conduct negotiations in an adequate manner, a comprehensive assessment of all current regulations affecting services activities in Lebanon should be undertaken, as well as a review of all general or sectoral policies relevant to these areas. Furthermore, a cost-benefit analysis of alternative commitments in the most important services sectors would greatly contribute to define the initial Lebanese Schedule of offers, and provide inputs for policy decisions during the negotiations. This evaluations will demand some in depth sectoral studies of services in Lebanon.

2.3 MEASURES AFFECTING TRADE IN SERVICES IN LEBANON: SELECTED SECTORS.

The measures that affect trade in services, limiting or restricting or conditioning market access and national treatment, adopts two main forms: (i) horizontal measures that apply to all service activities, and (ii) sectoral measures which affect specific sectors or subsectors. This section of the report discusses some of the measures existing in Lebanon. In the case of horizontal measures they are presented according to the mode of supply to which they more directly apply.

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[130]/ The modes of supply are: (1) Cross-border suply, (2) Comsumption abroad, (3) Commercial presence, and (4) Presence of natural persons.

2.3.1. HORIZONTAL MEASURES

A) MOVEMENT OF NATURAL PERSONS

The mode of supply through the presence of natural persons includes both individuals that are themselves service suppliers (as is the case of professional service for example), as well as natural persons employed by a service provider. The presence of foreign workers in Lebanon, individual or hired, is regulated by the Code of Labour of 23 of September 1964,[131] the Law of 10 July 1962 governing the entry, exit, work and stay of foreigners, and the Decree No 17561 of 18 September 1964. Every foreigner that wants to enter Lebanon in order to work must have a prior approval from the Ministry of Labour and Social Affairs before entering the Lebanese territory, and after receiving the approval must get a work permit from the same Ministry [132].

The work permit is a continuation of the prior approval and a complementary condition to it. The work permit may be given and renewed for a period of two years,[133] and it is forbidden to change the nature of the job or the company without a preliminary authorization given by the Ministry. Furthermore, a residence permit must be obtained from the service of the National Security. The work and residence permits[134] are subject to a fee which is established every year in the Budget Law.

The granting of work permits for foreigners is based on the principle of reciprocity, and subject to a needs test. In case of specialists the permit is granted if the job can not be done by a

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[131]/ Aricles 9 and 64 of the Code of Labor

[132] On the 30th of June 1992, the minister of Labour issued the Decision N°31311, wich submits the works permit for foreigners to the prior approbal of the labour Ministry and the General Security.

[133]/ The work permit can be cancelled, inter-alia, if the company dismisses a Lebanese wage-earner and keeps a foreign wage worker who is equivalent to the dismissed in qualifications and work conditions, or it the company refuses to give preference to a Lebanese national that has all the required qualifications, and if the company fails to train a Lebanese national in place of the foreigner. Aricle 17, Decree 17561.

[134]/ For example, according to information available 23,632 work permits were issued on 1993. Data for 1991 shows that out of 16,145 permits issued during that wear 16,937 corresponded to workers, 1606 for technicians, 269 for administrative posicions and 1,333 for other cathegories. In the case of workers 8,120 corresponded to domestics. In the case of technicians the vast mayority of permits were issued for professors and teachers 1412. Source, Investors Guide, Lebanon 1994, pp 164, 165.

Lebanese national.[135] Foreigners residing in Lebanon prior to January 1954, or of Lebanese origin or married to a Lebanese can obtain work permits without the economic needs test. Work permits are granted to foreigners, without a test, if the foreign natural person is one of the managers of a foreign company in Lebanon, or a chief accountant, or a deputy-manager of a branch of a foreign company in Lebanon or operating in the Middle East. Representatives of foreign companies may also receive a work permit if it is proven that they do not execute any direct activity with the public.

In the case of businessmen or craftsmen, and professionals the two following conditions has to be met to receive a work permit: (i) that such person is a resident in Lebanon since the beginning of 1954 and that has started his work before 1 January 1960, and (ii) if such person entered the country after 1 January 1960, or is an individual who wants to come into the country by a prior approval his capital has to be not less than 50,000 Lebanese pounds and employ three Lebanese wage-earners. In case of a service company, of limited responsibility, owned by foreigners each member should invest at least 50,000 pounds and the company should employ at least three Lebanese for every foreign member of the company.[136]

During the month of December of every year the Ministry of Labour and Social Affairs determines the professions and jobs that are strictly limited for Lebanese nationals only. This does not qualify as a horizontal measure as it affects market access only in those service activities incorporated in the prohibitions. This will be analyzed in the context of the sectoral measures affecting trade in services in Lebanon.

B) COMMERCIAL PRESENCE

This mode of supply covers not only the presence in Lebanon of juridical persons, in strict

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[135]/ The Department of Working Foreigners at the Ministry of Labour and Social Affairs may require the employer to publish an advertisement on his own expense in three daily newspapers at least three times, stating the nature of the job, the qualifications requirements and it shall invite any interested party to contact to this end with the Department. Article 8, Decree 17561, 18 September 1964.

[136]/ According to a source, Investors Guide, Lebanon 1994, pp 52, an employer must present a contract of association signed with one or several Lebanese nationals, indicating precisely the names of the partners, the object of the activities and their assets, and that the share of the Lebanese should not be inferior to 51 per cent. The Ministry of Labour decides on the foreigners share in the capital of the company, according to the size of the company provided that this share that not exceed 500 million LP. It has not been posible to validate this information. It should be analized.

sense, owned or controlled by foreigners, but also any other form of commercial presence in the country such as a branch, representative offices, associations of capital, joint-ventures and any other form that share some of their characteristics.[137] Three main horizontal measures has been identified in Lebanon that pertain to this mode of supply: the regulations related to acquisition of real state property by foreigners; the requirements of registry of any business that establishes an enterprise in Lebanon and the general conditions provided by trade and corporate Law in the country; and the conditions related to the provision of a public service in Lebanon.

(i) Acquisition of Real State

The acquisition of real state by foreigners in Lebanon is limited subject to the dispositions of Decree No 11614 of January 4 1969. No foreign, natural or legal person, or Lebanese legal person deemed foreign under the Law may acquire real state or other real property rights in Lebanon unless it receives prior authorization by means of a Decree of the Council of Ministers.[138] Foreigners may not acquire real property in Lebanon with a surface exceeding 10,000 square meters on Lebanese soil, and the aggregate surfaces held by foreign, legal and natural persons or deemed foreign by the Law may not exceed five percent of Lebanon's surface.[139] Moreover, is strictly forbidden to acquire land at 3 kms of the lebanese-israeli border.

Foreigners may acquire land, without authorization, not exceeding 10,000 sq.m for the different activities of their companies if the majority of shares of general partnership or limited liability companies belong to lebanese individual or companies, and in the case of limited partnership companies or stock companies if at least one third of the shares are owned, subscribed and registered by Lebanese shareholders.[140]

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[137]/ See Article XXXIV, Definitions, of the Agreement.

[138]/ According to the Law a foreign legal person is defined as personal companies and limited liability companies whose shares are not 100 percent own by Lebanese nationals; and joint-stock companies and companies in commandite whose shares are not all nominative and 100 percent held by Lebanese nationals.

[139]/ The surface of the properties purchased by non Lebanese does not yet represent 3 percent of the total surface.

[140]/ These companies may acquire real state with a surface exceeding 10,000 sq.m provided it is necessary for the companies' purpose and provided that the aggregare surfaces of their real state does not exceed 50,000 square meters in Lebanese soil.

(ii) Registration and General Conditions Required by Corporate Law

Corporations and trade are regulated in Lebanon by the Code of Commerce, enacted on 24 December 1942, and subsequent amendments. The conditions for the exercise on any trade activity depends on the juridical form of the company, and the general requirements apply equally to foreign and Lebanese companies.[141] All companies are required to register in the Commercial Register of the Tribunal of the district where the commercial activities are exercised. Lebanon recognized the legal validity of foreign companies of whatever type, so long as they are dully organized in accordance with the Laws of their country of origin. A foreign company whose incorporation requires a governmental approval, but from which such approval has been withdrawn in the country of origin can not be recognized in Lebanon.[142]

A foreigner can establish or acquire a business under the form of a personal enterprise under the same general conditions as a Lebanese person subject to his personal registration with the Commercial Register, which first requires residency and work permits. Further, according to Article 28 of the Code of Commerce it is required that every individual, operating a main establishment outside Lebanon, to register every branch office or agency in the Commercial Register of the district were he is operating within a month of starting business. The activities of a foreign personal enterprise are subject to the limitations discussed above with respect to Labour Law.

In the case of joint-stock established in Lebanon they shall have their Head Office in the Lebanese territory, and those companies are vested with the Lebanese nationality. The company can be fully or majority foreign owned and controlled. Nevertheless, the majority of the Members of the Board of Directors have to be Lebanese citizens. The Chairman of the Board, who acts as General Director, may be a foreigner provided he has obtained residency and work permits in Lebanon. Foreign joint-stock companies and limited partnerships by shares are required to register with the Commercial Register in the district in which their subsidiaries or agencies are located. They also must register before the Patent Office of the Ministry of Economy and Trade. This companies must also designate an agent empowered to negotiate, sign agreements and to represent the company before the Courts and

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[141]/ According to Lebanese Law the following types of corporate entities exits: (i) personal enterprise, (ii) joint-stock, (iii) limited liability, (iv) limited partnerhip, (v) limited partnership by shares, (vi) general partnership, (vii) societe en participation, (viii) holding, and (ix) off-shore.

[142]/ TYAN et ASSOCIES, Law Firm, Legal Guide to Investments in Lebanon, Librairie Antoine, Beirut 1994.

administrative bodies. Other foreign companies must register their branch or agency at the Commercial Register of the district in which the relevant establishment is located.[143]

Limited liability companies, limited partnerships and limited partnership by shares have to be incorporated in Lebanon to have the company's office registered in the country. All the partners can be foreigners. The rules applicable to joint-stock companies apply to this types of companies.

The Holding Company, and the Off-Shore company, invariably a joint-stock company, is subject to the same rules of organization as a joint-stock company, except for the following provisions: the purpose of the company is limited to certain activities, that the Board of Directors should be composed of at least two Lebanese Directors and the others, whatever their number can be foreigners; the Chairman of the Board is not required to hold a work permit; and these type of companies are required, besides registration in the general register of commerce, to register in special registries at the Court of First Instance in Beirut.[144]

(iii) Provision of a Public Service

When the objective of any company is the provision of a public service there is a limitation of foreign capital in terms of a maximum percentage limit on foreign shareholding. It is currently establish at 2/3 of the shares.[145] Therefore there is the requirement than one third of the capital should be in the form of nominal shares owned by Lebanese shareholders. These shares are only transferable to Lebanese persons. There is no clear definition with respect to which activities are considered to be a provision of a public service; or a legal instrument that establishes a list of activities subjected to this limitation. This limitation is established by sectoral regulations as in the case of banking services for example.

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[143]/ For a comprhensive presentation of the conditions and requirements of joint-stock companies refer to: The Lebanese Joint-Stock Companies (S.A.L), Bank of Lebanon, Department of Foreign Affairs, December 1994.

[144]/ Refer to: The Off-Shore Company, and The Holding Company, Bank of Lebanon; Department of Foreign Affairs, March 1995.

[145]/ This limit has been recently increased from the previous limit of 50 percent of the capital.

2.3.2 Sectoral Measures

This section reviews measures affecting trade in services in some services activities in Lebanon. An attempt has been made to identify those measures that constitute limitations to market access (as provided by Article XVI of the GATS), and limitations to national treatment. It is a preliminary evaluation that should be extended both in scope, covering other service sectors, and in depth by further analyzing the sectors covered in this report.

A) COMMERCIAL BANKING AND FINANCIAL INSTITUTIONS

The Lebanese financial sector is comprised of commercial banks, specialized banks, foreign banks, financial institutions and representative offices. Financial activities are regulated by the Code of Money and Banking, and controlled and supervised by the Bank of Lebanon and the Banking Control Commission (BCC).[146] Participation of foreign providers of financial services in the Lebanese market is open, subject to the provisions of national law. Market access to foreign providers can be obtained either through the establishment of a Lebanese Financial company, or by means of a branch office (foreign bank) operating in the country.

The establishment of any type of financial institution requires a special licence from the Central Council of the Bank of Lebanon. Furthermore, the registration in the relevant commercial register is required, and after the licence is approved the company should be registered in the List of Financial Institutions issued by the Bank of Lebanon. The Council decides whether to approve or to reject the granting of a licence as dictated by public interest (needs test). The council possesses a discretionary authority to approve or to reject the licence.[147] Reciprocity is applied in practice (de facto) in granting licenses to foreigners. Foreign ownership is authorized to nationals of those countries that allows for Lebanese nationals to own banks in their countries. In accordance with the Agreements signed with Arab countries a preference is granted in the acquisition of shares to nationals of those

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[146]/ For an overall discussion of the current situation of the Lebanese financial sector refer to, World Bank; **Lebanon: Financial Policy for Stabilization, Reconstruction, and Development**, Report No 13183 LE, JULY 27, 1994. A complete discussion of the requirements for establishing a financial institution in Lebanon can be found in: Establishing and Activities of a Commercial Bank in Lebanon, Establishment and Activities of a Foreign Bank's Representative Office in Lebanon; Establishment and Activities of a Lebanese Financial Institution; and in Establishment and Activities of a Specialized Bank; Bank of Lebanon, Department of Foreign Affairs, April 1995.

[147]/ Establishment and Activities of a Commercial Bank in Lebanon; Draft, Bank of Lebanon, 1995.

countries.[148] Currently no new licences are being approved for the establishment of commercial banks in order to allow existing institutions to recover from the effects of the troubled years.[149]

Commercial Banks, Specialized Banks and Financial Institutions can only be established in Lebanon as joint-stock companies being subject therefore to all the requirements and conditions imposed by national legislation to this type of organizations.[150] There are limitations to the activities that can be undertaken by the banks in Lebanon: they can not conduct a trade or engage in any business other than banking, or combine under whatever form with industrial, commercial or agricultural activities. Financial services are considered a provision of a public service therefore a minimum of one third of the shares must be owned by natural Lebanese persons, or by Lebanese Associations of Persons whose members are all natural Lebanese persons, or by Lebanese Associations of Capital whose shares are nominal and one third are owned by Lebanese persons. Moreover, the bylaws of these Associations of Capital must prohibit the transfer of shares (one third) to other than Lebanese natural persons.

Off-Shore companies are prohibited from engaging in banking activities within the Lebanese territory. They can only conduct banking and financial services and activities and intermediation to be executed outside Lebanon.[151]

In the case of Lebanese financial companies, foreign owned and controlled, no limitations to national treatment were identified during the evaluation. Nevertheless, in the case of foreign banks (branches of foreign banks) some special provisions apply. A foreign bank can only open one branch in Lebanon, in the Great Beirut area, and at least 30 percent of its deposits have to be invested in Lebanon. Furthermore, a foreign bank can not acquire participation in Lebanese joint-stock companies, only in mixed companies with State participation. Moreover, in the case of a branch of a foreign bank or a representative office it is required to provide the Central Council of the Bank of Lebanon with a testimony from the Ministry of Economy and Trade (Office of Israeli Boycott) confirming that no

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[148]/ This preference has been applied only in one case. Information provided in an interview in the Bank of Lebanon.

[149]/ Authorizations for specialized banks, medium and long term lending, are being considered. The policy objective is to promote the establishment of this type of institutions to support the reconstruction effort.

[150]/ Holding Companies have been recently authorized to undertake limited banking operations.

[151]/ Legislative Decree No 46, June 24 1983.

connection exits between the foreign bank and Israel.

There are limitations to the movement of natural persons in the financial sector. Foreigners can only hold the job of Chairman, or General Director in a bank. For any other job an economic needs test is required, and most jobs are included in the list of occupations prohibited for foreigners.[152]

B) INSURANCE SERVICES [153]

(i) Insurance Companies

In general terms insurance legislation in Lebanon has been less restrictive than has been the case of other developing countries. There has not been strict controls to new entry, domination of state-owned companies and barriers to the admission of foreign companies. Currently, the insurance sector is dominated by foreign companies. Insurance activities in Lebanon are divided in four branches according to the type of risk covered. Companies are allowed to engage in any of this branches provided they present the required guarantees, and fulfil the general conditions established by the regulatory framework.[154]

With respect to commercial presence the following conditions must be met. Only insurance companies which have a licence, granted by the Ministry of Economy and Commerce after consultations with the National Insurance Council, are permitted to operate in Lebanon. The conditions required to be licensed vary between a Lebanese Insurance company and a foreign one. A Lebanese insurance company must be a joint-stock company. In the case of foreign companies they are exempted from this requirement if they were registered in Lebanon prior to May 4, 1968, if the company deals

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[152]/ Refer to Decree 1/3 of 1993 that establihes the professions and activities strictly limited to Lebanese persons. The more recent Decrees in this respect should be analized.

[153]/ Insurance legislation in Lebanon is currently under review. The last complete revision of the law was in 1968. The Association of Insurance Companies has proposed a series of amendments to modernize the law, and these are under consideration by the National Council on Insurance. Any proposed change in the legislation should be closely coordinated with the evolution of the accession negotiations. For a discussion of the current situation of the Lebanese Insiurance sector refer to World Bank Report No 13185 LE op.cit.

[154]/ Refer to: Bank of Lebanon, Insurance Company; op.cit

with mutual founds, and there is a particular exception to the Lloyds Stockholders groups.[155]

A foreign insurance company is required to provide a certificate that proves that its country of origin allows Lebanese insurance companies to operate on their territory, and the company must possess in its country of origin legal competence allowing it to carry insurance activities. Reciprocity is not required in the case of reinsurance operations. To carry out insurance operations in Lebanon related to life, disability or the elderly, and to deal with mutual funds (first branch of insurance in Lebanon) a foreign company must be carrying out the same operations in its country of origin.

A foreign insurance company must have a place of residence in Lebanon, and a resident legal representative in the country who must be approved by the Ministry of Economy and Commerce. The Ministry can accept or refuse the representative suggested by the company, and its decision can not be appealed.

Movement of natural persons is highly restricted in the insurance sector in Lebanon. All employees of insurance companies must have the Lebanese nationality. Nevertheless, companies are allowed to employ three specialists at the most, who are required to receive a permission of the Ministry of Labour and Social Affairs upon suggestion of the National Insurance Council. Permission is only granted to specialists that do not practice any other profession. Additionally, foreign insurance companies are allowed to have a foreign manager or a foreign general representative resident in Lebanon

Crossborder trade in insurance services is limited in Lebanon. The Lebanese Law forbids taking out insurance with companies not registered in Lebanon. The only exception is the transport insurance of imported goods.[156]

(ii) Insurance Related Services

Lebanese law establishes special conditions for the provision of insurance intermediaries services (natural independent persons working in the insurance field, and insurance brokerage offices

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[155]/ The juridical base for this exception is not clear. This issue should be further analized because it introduces discrimination uncompatible with the commitments the country will adopt when entering the WTO.

[156]/ Decree No 9812, May 4,1968. Source: Investors Guide, op.cit pp 93.

in whatever legal form), and for the work of insurance specialists [157]. For these services qualifications requirements apply (baccalaureate degree in a related field and practical experience, a degree in insurance field, or to pass a special exam prepared by the Ministry of Economy an trade. All intermediaries and experts must be registered in the special registry at the Ministry. If the intermediary is a judicial person the manager in charge must satisfy the above mentioned conditions. The Ministry of Economy and Commerce can approve the registration of foreign international firms specialized in the expertise related to insurance in the register on condition that they have a representative in Lebanon, and prove its competence by presenting an official certified certificate from the concerned authorities of its main branch.

C) ACCOUNTANCY AND AUDITING SERVICES

This services are regulated by Law 364/94, which provides qualification requirements for professionals. Such qualifications should be legalized by the Lebanese Association of Certified Public Accountants. The provision of these services by foreigners is dealt with in Articles 18 and 19 of the Law, that establish the following requirements: (i) a foreigner can practice in Lebanon if his country of origin allows Lebanese nationals to practice in that country, after obtaining the work and residence permits;[158] (ii) a foreign must be qualified to act in the profession in his country to be able to practice in Lebanon, provided that his qualifications are not less than those required by the Lebanese Law, (iii) a foreigner must form a partnership with a Lebanese CPA; (iv) a foreigner must be registered with the Lebanese Association of Certified Public Accountants to which he is entitled to become a Member if his country of origin provides for similar treatment to Lebanese nationals.

(D) TOURISM AND RELATED SERVICES ACCORDING TO LEBANESE LAW

The following subsectors are included within tourism: hotels, restaurants, motels, furnished apartments, sea and mountain resorts, travel agencies and related services, touristic transport and car rental services, pubs, shows and theatres, and artistic activities [159]. Subject to the horizontal

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[157] Specialists are classified in the following cathegories: (i) maritime, land and air transport and insuring their risks, (ii) vehicles and insuring then risks, (iii) fire, explosions and insuring their risks, for other cathegories the high judicial council elaborates a list.

[158]/ In Decree 1/3 1993, a foreigner was forbiden to work in accountancy as an employer. See Investors Guide, op.cit pp 52.

[159] Decree N°9427, 7 February 1968

measures, any person who meets the requirements to practice commerce can exploit a touristic establishment, on the condition of obtaining prior authorization of the Ministry of Tourism and an exploitation permit. The exploitation permit is subject, inter-alia to the following conditions: (i) the applicant must be a Lebanese national, (ii) must possess the necessary technical and professional qualifications, (iii) the company must be registered in Lebanon [160]. Permission can be granted to foreigners it they meet certain qualifications established by law [161].

Some specific tourism related occupations are strictly reserved for Lebanese national such as: tourist guide, and certain jobs are included in the list of jobs forbidden to foreigners as waiters and drivers [162].

E) CONSTRUCTION AND RELATED SERVICES

According to the information gathered during the mission commercial presence of foreign construction companies is permitted in Lebanon [163]. Nevertheless in Decree 1/3, 1993, among the occupations foreign employers or employees can not occupy in Lebanon the following were included: for employers all engineering works. In the case of employees all engineering works and specific jobs as electrician and plumber. The conditions, and limitations, established for foreign providers in Lebanon in this sector should be further analyzed.

F) WHOLESALE AND RETAIL TRADE

In this sector market access and national treatment are provided by the Lebanese regulatory framework, subject to the horizontal measures, and some specific limitations. These are provided inter-alia by the prohibition for foreigners to occupy certain positions as the case of storekeeper as an employee and commercial travelling; and by specific sectoral regulations as those pertaining to the sale of agricultural medicaments to the public which can only be done by a foreigner in association with a Lebanese national, and also with respect to other commercial activities related to agricultural

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[160] Decree N°15598, 21 Octuber 1970. The specific requirements for foreigners should be reviewed, the consultant has not analized this Decreed.

[161] Decree 1/3, 1993.

[162] Freifer and Farhat, op. cit. p.p. 321

[163] Interview in the Ministry of Public works and transport.

products [164].

With respect to wholesale and retail trade, commercial representation is reserved to Lebanese nationals, who have commercial premises in Lebanon, unless reciprocity is provided by the country of origin of the service supplier [165]. According to the Law a commercial representative is defined as an agent, who, by virtue of his usual and independent profession, undertakes negotiation for the conclusion of operations of sale, purchase, lease or performance of services, and, if necessary carries such activities in the name of the represented parties and for their account. The law recognizes as a commercial representative any person, natural or juridical, who sells for his own account merchandise which he has bought pursuant to a contract appointing him as exclusive representative or distributor.

G) TELECOMMUNICATIONS

This sector is monopolized by the state company, and regulated by the Ministry of Posts and Telecommunications of Lebanon. In the area of Celullar Communications, two companies, one foreign and a mixed one, have been granted exclusive rights, through a BOT (Buy, Operate and Transfer) contract, to provide this service. The privatization of telecommunications services is under considerations by the Lebanese Government.

H) MARITIME TRANSPORT [166]

A ship is considered to be Lebanese if its home port is Lebanese, at least half of it is owned by Lebanese Nationals, or Lebanese Joint-Stock companies, whose board of Directors is comprised of a majority of Lebanese nationals, and whose Chairman is also Lebanese. Ships whose tonnage exceeds 500 net nautical tons can be considered Lebanese, whatever the nationality of the owners might be if their home port is Lebanese and prior authorization of the concerned Ministry has been given for its registry. Ships belonging to foreigners residing in Lebanon may be considered national through an authorization from the concerned Ministry if the ships are equipped for touring and cruising

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[164] Decree 1/3, 1993, and Ruling 5039, ussued on 26/03/1982 (Official Gazette Issue 14)

[165] Decree N°34 of August 1967, amerided by Decree N°9639 February 6, 1975 and Decree N°73/83 of 9 September 1983.

[166] Regulated by law issued on 18 of February 1946, and admendments date 21 of Jannuary 1954, and 30 December 1964, and 14 December 1966.

within Lebanese ports [167].

There is no cargo reservation law. Nevertheless Lebanese ships have preferential treatment when docking in Lebanese ports, they have a reduction of all charges and taxes that foreign vessels have to paid [168]

I) AUDIO VISUAL SERVICES

This area is reserved for Lebanese nationals (TV and Radio Broadcast). Recently a new Law was issued regulating this services.

J) LEGAL SERVICES

The provision of legal services in Lebanon by foreign lawyers is subject to reciprocity from the country of origin of the service supplier. The work permit must be obtained, and also a certification by one of the two Bar Associations that exists in Lebanon. A foreign legal firm has to act though a lebanese firm in order to engage in business in the country.

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[167] Freifer y Farhat, op. cit. p.p. 175-178

[168] Lebanese ships are excempted from 25 percent of all dues and taxes. There are some reciprocal preferences with other countries. This issue should be further sanalyzed.

CHAPTER III
AGREEMENT ON TRADE RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS (TRIP'S)

Introduction

Obtaining improved intellectual property protection through multilateral and bilateral efforts is an important and continuing objective of the major industrialized countries.[169] Therefore, the extent to which Lebanese laws and regulations comply with the TRIP's provisions will be under close scrutiny during the process of negotiations to accede to the WTO. Furthermore, Lebanon should expect, during the negotiations, strong pressures to undertake specific commitments in this area that might be above those negotiated during the Uruguay Round, and incorporated on the TRIP's Agreement. This has been the case in some of the recent processes of accession to the WTO.[170]

The purpose of this section of the report is to examine the main issues that the Government of Lebanon should address with respect to the TRIP's Agreement; and to present a preliminary assessment of the major challenges it could confront in relation to this issue during the accession negotiations. In the first part a brief summary of the content of the Agreement is presented. The second part evaluates, in the light of the Agreement current Lebanese legislation, and practice, on intellectual property rights. Finally, some of the principal issues that the lebanese authorities should contemplate in enacting new legislation in this area, and during the accession process, are discussed.

3.1 SUMMARY AND PROVISIONS OF THE TRIP'S AGREEMENT [171]

The TRIP's Agreement establishes, for the first time, detailed and enforceable multilateral

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[169] **For example; refer to section 315. House Document 103-316, Vol, 103 Congress, 2nd Session. Messaje from the President of the United States, transmiting de Uruguay Round Text of Agreements. Implementing Bill, Statement of Administrative Action and Required Supporting Statements, Octuber 1994.**

[170] **The United States negotiated, during the accesion negotiations, a Bilateral Agreement with the government of Ecuador, that includes commitments above those required by the TRIPS Agreement. Refer to: "Agreement Between the government of the United States of America and the government of Ecuador concerning the protection and enforcement of Intellectural Property Rights". This Agreement is still waiting congressional ratification in Ecuador due to strong domestic oppossition.**

[171] **For a complete discussion of the Agreement refer to UNCTAD, 1994, op-cit, Chapet VIII.**

obligations regarding intellectual property rights. The Agreement covers all categories of intellectual property, and enact norms and disciplines concerning the acquisition, scope, maintenance, working and the enforcement of the different categories of intellectual property rights. For Lebanon, once the country becomes a member of the WTO, the main implication of this Agreement, is that it has to guarantee the conformity of its laws, regulations and administrative procedures with the provisions of the Agreement, both in terms of the substantive standards of protection of intellectual property rights, as well as in terms of the enforcement of those rights in the country.

The TRIP's Agreement introduces, National Treatment, and the Most-Favourable-Nation Treatment as the basic principles. Member Countries must give effect, through national legislation, to the provisions of the Agreement. The level of protection established by the TRIPS Agreement must be granted by national law. The Agreement contemplates specific norms, and establishes minimum universal standard, with respect to copyright and related rights, trademarks, geographical indications, industrial designs, patents, layout-designs of integrated circuits, and with respect to the protection of undisclosed information. Furthermore, the Agreement imposes the obligation to member countries to comply with the substantive norms of the Paris Convention (1967), the Berne Convention (1971), the Rome Convention (1961), and the Washington Treaty regarding intellectual Property of Integrated Circuits (1988). It is legitimate, for any country, to grant higher protection than that mandated by the Agreement. Nevertheless, no country can be obliged to implement in its law more extensive protection than is required by the agreement [172].

The Agreement on TRIPS does not include, with respect to substantive norms, any differential treatment for developing countries. All members are required to adopt the same obligations relating to intellectual property rights. However, it allows for a general transition period, of 5 years, for developing countries to comply with the provisions of the Agreement.[173]

The TRIPS Agreement contains a comprehensive set of provisions on the enforcement of intellectual property rights. Countries should ensure that procedures and remedies are available under their laws to permit right holders to take action against any act of infringement of intellectual property rights. Procedures that are not complicated, costly, or that entail unreasonable time limits or unwarranted delays must be provided by national legislation. This is one of the major challenges that Lebanon, and all developing countries, must confront when implementing the Agreement.

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[172] **See article 1 of the Agreement.**

[173] **For least developed countries the transition period extends to 11 years.**

The institutional and juridical method by which the countries obligations are implemented are not constrained by the agreement. The domestic legal system and practice should not be compromised by the Agreement. Therefore, Lebanon has complete freedom to determine the ways and means by which it will comply with the obligations with respect to the protection and enforcement of intellectual property rights once it becomes a member of the WTO.

3.2 PROTECTION OF INTELLECTUAL PROPERTY RIGHTS IN LEBANON

Lebanon is a member of the World Intellectual Property Organization (WIPO), and a signatory of the Paris Convention, the Bern Convention for the Protection of Literary and Artistic Works, the Madrid Agreement for the Repression of false or deceptive indications on goods, the Nice Agreement for the Classification of Goods and Services, and the Convention of Geneva for the Protection of Literary and Artistic Works [174]. Intellectual property rights are protected in the country by means of Order (Arreté) No 2385, of january 17. 1924, and its amendments, Regulating the Rights of Commercial, Industrial, Artistic, Literary and Musical Ownership in Lebanon which establishes protection to patents, industrial designs and models, trademarks, and copyrights.[175] Geographical Indications are protected by specific legal instruments dating from 1932. [176] Intellectual property rights are administer by the Office of Protection of Commercial, Industrial, Literary, Artistic and Musical Property at the Ministry of Economy and Trade.

Even though the current legal framework adequately addresses some of the issues covered by the TRIPS Agreement, it does not comply with crucial provisions regarding the nature and extent of the protection that has to be granted to intellectual property rights. Some issues are not explicitly covered in the current legal framework, and the basic terms of protection of some rights differ from those considered in the Agreement. Current legislation is not compatible with the provisions of the

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[174] **Paris Convention (Stockholm 1987), articles 13 to 30 in eflect since december 30 1986; The Madrid Agreement of April 8, 1891 (London text); Nice Agreement, 15 june 1957; The Convencion of Bern of june 2, 1928 (Rome Text) as from 24th december 1933; the Convencion of Geneva of september 6, 1952, as from octuber 17, 1959. Sarkis Fady; B. Sc, LLB" Lebanon Patent, trademark, Copyright law and practice" (mimeo nd)**

[175] **Order No. 2385 was, amended by orders: No. 84, January 30, 1926; No. 526, 21 september 1926, No. 24/LR 27 january 1936; No. 170/LR december 6, 1938; No. 177/FL, march 23, 1942; and by the Lebanon law of 31st of january 1946. English version of the Law Published in Patent and Trade Mark Review, Vol 58, No. 3, december 1959.**

[176] **Arreté No. 8/LR of 26, january 1932; Arreté No. 90/LR, april 1934; Decret Legislative No. 48/L, from 27 octuber of 1932, and Decret No. 1495 dated january 30 1933.**

TRIPS Agreement both in terms of the scope of intellectual property rights covered, as well as in terms of the nature of the protection granted. Some examples follow to highlight this issue:

(i) with respect to patents: protection is granted for 15 years, in comparison with the 20 years protection provided by TRIPS; patent rights are forfeited if the right holder does not put the invention into practice in Lebanon within two years of granting, or if he introduces to the country objects similar to those guaranteed by his patent; patent for pharmaceutical formulae and compositions are not allowed by current legislation [177] and only foreigners are required to have a representative domiciled in Lebanon to be able to apply for a patent [178]. All these provisions, among other incorporated in current legislation, directly contradicts the TRIPS Agreement.

(ii) with respect to copyright and related rights: current Lebanese legislation does not explicitly grant protection to the compilations of data as mandated by Article 10 of the TRIPS Agreement; nor clearly recognizes Rental Rights to the authors and their successors (Article 11 of TRIPS), nor incorporates the provisions related to the protection of performers, producers of phonograms and broadcasting organizations on the terms established by Article 14 of TRIPS.

(iii) with respect to undisclosed information: lebanese legislation does not grant explicit protection in this case, and the provisions on unlawful competition incorporated in Order No 2385 (Articles 97 and 98) are insufficient to deal with this issue. Furthermore, no provisions exist to protect, as mandated by Article 39.3 of the TRIPS Agreement, data submitted to the government as a requirement for marketing approval of pharmaceutical or agricultural chemical products.

(iv) protection to plant varieties, as established in Article 27.3.b) of the TRIPS Agreement, is not being granted according to current practice in Lebanon, even though it could be covered by legal provisions on patents.

It will be necessary to enact new legislation to give effect to the provisions of the TRIPS

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[177] **Process patent, even though permited by law has just began to be granted this year on the bases of an opinion of the Ministry of Justice.**

[178] **This provision should be evaluated in terms of Article 3.2 of the Agreement.**

Agreement in Lebanon. It is important to stress the fact that current legislation is not compatible with the obligations the country will assume once it becomes a member of WTO; and that this issue could be highly sensitive during the negotiations to accede to that organization.

Moreover, in order to avoid subjecting the domestic legislative decision-making process to multilateral negotiations, the timing for enacting the implementing legislation should be carefully assessed. The process might be facilitated by an early implementation of a new intellectual property regime in Lebanon, compatible with the Agreement, preempting therefore any specific demands that could be made beyond the country's obligations as provided by the Agreement.

The Lebanese Government, on the 13 of April 1994, presented a formal request to the WIPO's Director General for technical assistance for the elaboration of a new legal framework for the protection of intellectual property rights in the country [179]. Considering that the Lebanese Government has already adopted the decision to enact new legislation in this area, it is not necessary, in this report, to present a comprehensive evaluation of the compatibility of the current laws with the provisions of the TRIPS Agreement. WIPO's model Law takes into account TRIPS requirements, as well as those deriving from other international conventions administered by that Organization.

The TRIPS Agreement provides only broad directions for the elaboration of national legislation in some complex areas of intellectual property rights, and allows for a margin of national decision with respect to some important issues of the Agreement. Therefore, whatever draft proposal is elaborated it will have to be evaluated, by the Government of Lebanon, in the light of the country's developmental needs and institutional capabilities. Some of this issues are discussed in the third part of this section.

The implementation of a TRIPS compatible national intellectual property regime will impose new and increased demands on national institutions entrusted with the administration of the regime. At present the Office of Protection of Commercial, Industrial, Literary, Artistic and Musical Property at the Ministry of Economy and Trade in Lebanon, might not be able to adequately respond to the new requirements. The Director of the office is at a relative low level of the government hierarchy, the office is currently understaffed, and it lacks the necessary resources, equipment, and installations. Until now its activities have been mainly limited to the registration of intellectual property rights in the

[179] According to information provided by an officer of WIPO, a draft law could be available for the Lebanese Government in three months.

country, encountering difficulties to undertake the various tasks as mandated by current national legislation [180]. Some technical cooperation has been offered by WIPO to upgrade the office's equipment.

Bringing the national institutional framework and administrative procedures in line with the provisions and the requirements of the TRIPS Agreement is a major challenge, which would undoubtedly involve considerable effort and expenditure, that should be undertaken by the Government of Lebanon in the near future. Some developing countries have put into practice new institutional arrangements to enhance their capabilities to administer new and more demanding intellectual property rights regime. The institutional framework adopted varies. Some countries have created new institutions to deal, with inter-alia, intellectual property rights issues. Other countries have upgraded, strengthened and modernized existing arrangements [181]. Nevertheless, there are some common features to the solutions adopted by other developing countries that might be evaluated, and considered, by the Government of Lebanon, inter-alia: (i) upgrading the hierarchy within the governmental structure of the institution entrusted with the administration of the regime, (ii) increasing the autonomy of the institution, both in administrative and financial matters, (iii) increasing the amount of resources available to the institution, inter-alia, by means of guaranteeing, by Law, that the total income generated by the registration of intellectual property rights in the country, and by any other activity of the institution, will be allocated to the institutional budget; and (iv) providing adequate infrastructure and highly skilled manpower.

The TRIPS Agreement contains a comprehensive set of provisions on the enforcement of intellectual property rights. A country in order to comply with its obligations, besides having in force a regime that is compatible with the substantive norms concerning the nature of protection of IPR's

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[180] Interview with the Director of the Office of Intellectual property rights.

[181] For example Perú, in december 1992 created a new "National Institute for the Defense of Competition and Protection of Intellectual Property" this institute (INDECOPI) is charged with registering and protecting intellectual property rights in all forms. This model is being considered by some other countries in the Latin American Region. For example, Argentina, by virtue of the new Law on Industrial Property, will create the National Institute of Industrial Property, and the Dominican Republic is currently evaluating the adaptation of the INDECOPI to National realities.

In contrast Colombia opted for strenghtening the existing office of Intellectual Property at the Ministry of Economic Development, in order to increase its resources and institucional capabilities to cope with the increasing demands resulting from the new Andean Intellectual Property regime.

contained in the Agreement, has to guarantee that national legislation and practice allows for an effective enforcement of those rights. In fact the problem of many developing countries to comply with the Agreement rests on the enforcement side rather than with the legislation itself [182].

Current intellectual property rights legislation in Lebanon, and Articles 701 to 709, 713, 720, 721, and Articles 722 to 729 of the Criminal Code, establishes the measures for enforcing IPR's. It is provided that the infringement of intellectual property rights can be prosecuted before civil or criminal courts. Such offenses are sanctioned by a fine, or imprisonment, or both; as well as with the confiscation of the infringing goods and implements, remedies to the right holder, and advertisement of the judgment in local newspapers at the expense of the infringer. The lebanese legal framework equally allows for provisional measures to be taken, at the request of the right holder, to stop an act that might infringe on his rights.

In general terms current legal provisions incorporate the basis of the enforcement requirements of the TRIPS Agreement. Nevertheless, in enacting new intellectual property legislation in Lebanon, matters related to enforcement would need to be further examine. In this context, inter alia, the following issues should receive particular attention due to their wide legal and administrative implications: (i) special requirements related to border measures [183], (ii) other remedies to create an effective deterrent to infringement [184], (iii) the reverse of the burden of proof in investigations regarding the infringement of process patents [185]. Furthermore, the effectiveness of the administrative and judicial procedures should be evaluated, and measures implemented to guarantee that the processes comply with the general obligations regarding the enforcement of intellectual property rights as provided by the Agreement.

3.3 ISSUES REGARDING THE IMPLEMENTATION OF THE AGREEMENT ON TRIPS IN LEBANON.

The Lebanese Government, as previously stated, has decided to enact new legislation

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[182] UNCTAD (1994) op.cet, pp 20.

[183] See Seccion 4 of the Agreement.

[184] See Article 46 of the Agreement.

[185] See Article 34 of the Agreement.

concerning the protection and enforcement of intellectual property rights. In the process of drafting and putting into effect new legislation in the country, two different, but interrelated, sets of issues should be taken into proper consideration:

(i) in order to adopt definitive decisions with respect to the intellectual property regime to be implemented in Lebanon the provisions of the Agreement providing broad directions should be carefully examined with a view to assessing the implications of different alternatives for Lebanese development prospects.

As it has been mentioned, supra, Lebanon should expect pressures, from some countries during the negotiations to accede to the WTO, to undertake commitments in this area above those deriving directly from the Agreement. For example, the stated objective of the United States in this area is to seek enactment and effective implementation by foreign countries of laws to protect and enforce intellectual property rights that supplement and strengthen the standards of the Agreement on TRIPS[186].

This section of this chapter examine some of the main issues that the Lebanese government might have to confront in these areas. Some of the alternatives that are available for Lebanon regarding certain issues of Agreement are also discussed.

3.3.1 Disputed Provisions of the Agreements on TRIPS

Some of the provisions of the Agreement on TRIPS are not completely accepted by some developed countries, and its implementation by WTO Members is disputed, notwithstanding that according to the Agreement no country can be obliged to implement in their Law more extensive protection than is required by the Agreement. The United States, for example, has incorporated in its domestic legislation, a provision that states that a foreign country may be determined to deny adequate and effective protection of intellectual property rights, notwithstanding the fact that the foreign country may be in compliance with the specific obligations of the Agreement on Trade-Related Aspects of Intellectual Property Rights [187]. The following paragraphs analyzes the principal provisions of the

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[186] Refer to seccion 315: Us Congress House Document op.cet.

[187] Seccion 313 (B), impplementing legislation, House Document 1994, op.cet. pp 346, see also Foreigh Trade Barriers Report, USTR, 1994.

Agreement on TRIPS the implementation of which could be challenged during accession process to the WTO.

A) TRANSITIONAL ARRANGEMENTS

The Agreement provides for transitional arrangements, which allows developing countries to delay the implementation of some of its provisions. The only obligations that will come immediately into effect after the entry into force of the Agreement for Lebanon are to provide national treatment - Lebanon shall accord to nationals of other WTO'S Members treatment no less favourable that the one conferred to Lebanese nationals- and to provide most-favoured-nation treatment that is any advantage, favour privilege or immunity granted to the nationals of any other WTO Member shall be accorded immediately and unconditionally to the nationals of all Members. An additional obligation with immediate effect is that all international agreements, regulations, final judicial decisions, and administrative rulings, pertaining to the subject matter of the Agreement must be published, or made publicly available to all interested parties [188]. According to the preliminary evaluation, current Lebanese legislation and practice states, in principle, these basic obligations [189]. Therefore, Lebanon could maintain the current intellectual property regime during the transition period provided by the Agreement.

The Agreement on TRIPS provides a general transitional period during which the developing countries, and economies in transition are given five years to comply with its provisions [190]. Notwithstanding this, the transitional periods contemplated in the Agreement are considered overly long by some develop countries, in particular by the United States which considers that its implementation will delay the benefits of the Agreement for US companies. Therefore its stated objective in this area is to accelerate the implementation of the Agreement on TRIPS in all Member

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[188] See article 63 of the Agreement.

[189] Lebanon has signed two bilateral agreements that incorporate provisions on intellectual property rights: Convention del 18 mars 1955 avec l'Allemagne (Republique Federale) sur la propiete industriele; and Traite consulaire et de navigation, de droits civils et commerciany et d'establissement avec la Grece, del 6 octubre 1948 (with provisions concerning intellectual property). This treaties should be analized in the light of article 4 (d) of the Agreement. During the mission it was not posible to have access to these Agreements.

[190] See article 65.1,2 of the Agreement

Countries [191]. This issue is particularly relevant with regard to the 5 year additional transition period which is allowed by the Agreement when its implementation would entail extending product patent protection to a field of technology not previously protected in the country [192]. This is the case of patent protection for pharmaceutical products in Lebanon. According to the Agreement Lebanon could delay for ten years, the granting of patent protection to pharmaceutical products. Nevertheless, Lebanon should expect strong opposition from the USA among other countries during the accessions negotiations , to make use of the transition period allowed by the Agreement [193]. This have been the case of other Member Countries of WTO that have implemented the transition periods through national legislation [194]. The implications of extending pharmaceutical product patent as from the date of application of the Agreement in Lebanon should be adequately evaluated.

B) PATENTABLE SUBJECT MATTER: EXCLUSIONS

The Agreement provides that patents shall be available for any invention, whether product or process,in all fields of technology [195]. Nevertheless, it allows for excluding from patentability the following:

- inventions, the prevention within their territory of the commercial exploitation of which is necessary to protect order public or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to the environment.

- diagnostic, therapeutic and surgical methods for the treatment of humans or animals.

- plants and animals other than micro-organisms, and essentially biological processes

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[191] Seccion 315: Use Congress House Document (1994), op.cit

[192] See article 65.4 of the Agreement

[193] The Pharmaceutical industry in Develop Countries strongly opposes this transition period. Refer to: "Propiedad Intelectural e Innovacion farmaceutica", Report of the International Federation of Pharmaceutical Industry; Geneva, Spring 1995.

[194] Argentina implemented an 8 year transition period for patenting pharmaceutical products in the Law approved by Congress on May 1994. This has been strongly apposed by the US Government, forcing a veto of the legislation by the President of Argentina. The issue is still pending a final resolution by the Congress.

[195] See article 27 of the Agreement.

for the production of plants or animals other than non-biological and microbiological processes.

Many legislation of developing, and develop countries include these exclusions, and some differentiate between inventions and discoveries, excluding the latter from patentability. Therefore, in accordanace with such laws, natural products and the genetic material of the human body, inter alia are excluded from patentability. Some countries consider that these exclusions hinder an effective protection of intellectual property rights in the country, and demand the patentability of any invention or discovery, without exclusions [196]. In drafting new legislation in Lebanon this issue should be rigorously analyzed due to the profound implications, in terms of social welfare and development, of granting patents to some of those areas that could be excluded according to the provisions of the agreement.

C) EXHAUSTION OF INTELLECTUAL PROPERTY RIGHTS

A patent confers to its owner the right to prevent third parties not having its consent from making, using, offering for sale, selling or importing the protected product. In the case of process patent, the right to prevent third parties from realizing the same acts, with respect to the product obtained directly by that process [197]. In practice, the granting of a patent would be equivalent to conferring monopoly rights in the national economy to the right holder. This contradicts the worldwide tendency towards trade liberalization and the enforcement of national competition policies to maximize social welfare.

In order to mitigate the effect of conferring exclusive rights, that could evolve in an abuse of dominant market position, and to promote greater competition in the market, many countries have incorporated in national legislation, the notion of the exhaustion of intellectual property rights [198]. This implies, that after the first distribution of a protected product, a title holder will no longer be entitled to make use of his exclusive right to prevent further distribution of the protected product in

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[196] Evaluation of the US Government of the Decision 344, 345 and 351 of the Comission of the Andean Pact. Communication of the USTR, August 1994.

[197] See article 28 of the Agreement.

[198] For example the European Union, and the Andean Pact Countries.

the domestic market. There is no international norm governing the principle of exhaustion [199]. National legislation based on TRIPS Agreement may therefore continue to allow parallel imports, notwithstanding the fact that there could exist an intellectual property right holder legally registered in the country. The inclusion of provisions on the exhaustion of intellectual property rights is considered to diminish the value of patents in the country, and to seriously affect trade of patented products in a certain region or country. Therefore the inclusion of this provision in national legislation is being challenged by certain transnational industries and by the US Government that "energetically opposes" this notion.

D) USE WITHOUT THE AUTHORIZATION OF THE RIGHT HOLDER: COMPULSORY LICENSING

The Agreement allows countries to adopt measures, provided they are consistent with it, deemed necessary to: protect public health and nutrition; promote public interest in sectors of vital importance for socio-economic and technological development; and, to prevent the abuse of intellectual property rights by right holders, or the resort to practices which unreasonably restrain trade or adversely affect the transfer of technology [200]. Among other measures, compulsory licensing is the standard remedial action to deal with public interest exception, and to prevent the abuse of intellectual property right, incorporated the recently issued implementing legislation adopted by some developing countries [201].

The establishment of a compulsory licensing regime in national intellectual property legislation is legitimate under the Agreement. The Agreement, only sets the conditions to be met when national law allows for use without the authorization of the right holder [202]. Nevertheless, the incorporation of a compulsory licensing regime in national legislation has been criticized by some countries on the grounds that it seriously affects the effectiveness of protection in the country. In particular regarding the following provisions incorporated in many legislation (i) when: a compulsory licence can be granted on the grounds that the invention has not been worked out, or exploited, in the country for a

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[199] See article 6 of the Agreement.

[200] See Article 8 of the Agreement.

[201] Refer among other to: Decision 344 of the Andean Pact, Draft Centroamerican Agreement for the Protection of Patent Rights.

[202] See Article 31 of the Agreement.

determined time period, or under specific conditions, such as to reasonably satisfy market demands [203]. (ii) the use of compulsory licensing to remedy anti-competitive behaviour by right holders of intellectual property rights. The alternative position is that restrictive business behaviour should be remedied by the relevant Laws, such as anti-monopoly legislation, or competition policies, and not through intellectual property rights legislation.

E) EXCEPTION TO RIGHTS CONFERRED BY THE PATENT

The Agreement establishes that Members may provide limited exceptions to the exclusive rights conferred by a patent, provided that such exceptions do not unreasonably conflicts with a normal exploitation of the patent and do no unreasonably prejudice the legitimate interests of the right holder [204]. The reasons by which such exceptions can be provided in national legislation are not explicitly stated in the Agreement. They can be derived from the general provisions of the Agreement, its objectives, and its basic principles [205]. Therefore, any country may establish exception in order, for example, to promote public interest in sectors of vital importance for socio-economic or technological development, or to accelerate technological innovation in the country. Many legislation, provide that the right holder can not exercise its exclusive rights with regard to: (i) non commercial acts undertaken in the private sphere; (ii) acts undertaken exclusively will the object of experimenting with the patented invention, and, (iii) acts related to teaching, or to scientific or academic research. In particular, the last two exceptions are considered by some developed countries to affect the value of protection in the country that provide for these in its national legislation, and have demanded the elimination of such exceptions to the rights conferred.

F) PROTECTION OF EXISTING SUBJECT MATTER

The Agreement does not give rise to obligations in respect of acts which occurred before the

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[203] It is necesary to mention in this respect that according to the provisions of the Paris Convention, if a patent is not work out in the country three years affter being granted, or four year since the application for the papent, whichever period is longer, a licence can be granted without the authorization of the right holder. Notwhistanding this, and the fact that the Agreement on TRIP'S does not abrogate this provisions of the Convension of Paris, the incorporation of related provisions on national legislation is being challenged by the government of the U.S.A. See for example: Communication of the USTR, op.cit. 1994.

[204] See Article 30 of the Agreement.

[205] See in particular articles 7, and 8 of the Agreement.

date of it's application in the country. Therefore, there is no obligation to provide for protection to those inventions that were excluded, by national law, from patentability prior to the coming into effect of the Agreement for Lebanon. Protection should only be granted to all categories of intellectual property, as provided by the Agreement, after it becomes legally biding for the country.

With respect to those inventions in areas of technology not protectable under national legislation prior to the coming into effect of the Agreement, as is the case of pharmaceutical products in Lebanon, developed countries attempt to enforce retroactive protection, through what has been called pipeline protection. That is, for the developing countries to recognize protection for those products that had received a patent in its home country, but which had not been marketed in the other country in question, for the remainder of the original patent's term. This demands have been strongly opposed by developing countries, and pipeline protection is not recognized in the overwhelming majority of recent intellectual property legislation implemented in developing countries. Lebanon should be ready to confront demands to implement pipeline protection for pharmaceutical products.

3.3.2 Extending Protection to Intellectual Property Rights to New Areas in Lebanon

The Agreement on TRIPS establishes that Member Countries shall provide for protection to intellectual property rights in areas that are novel for most developing countries. According to the provisions of the Agreement protection should be granted to plant varieties, undisclosed information and to Layout-designs (topographies) of Integrated Circuits. These areas are not currently covered by intellectual property legislation in Lebanon, as in most developing countries. The extension of protection of intellectual property rights in these areas involve very complex issues that should be evaluated in the process of enacting, and putting into effect, new legislation in Lebanon.

The Agreement only provides for the obligation to grant protection to IPR's in these new areas, establishing some minimum requirements. The manner through which protection is granted is left for national decision. This section of the report discusses the alternatives open for Lebanon in providing for protection of IPR's in these new areas.

Protection of Plant Varieties

The Agreement allows for excluding plant varieties from patentability. However, it requires Member Countries to provide for protection of plant varieties either by patents, by an effective sui

generis legislation or by any combination of systems.[206] This is an area that was subject to strong debate during the Uruguay round negotiations due to the possible profound implications for agricultural development of developing countries. Furthermore, in those countries where protection is provided for plant varieties, micro-organisms, and biological processes for the production of plant varieties many contending issues has risen with respect to the nature and scope of the protection. Due to the complexities of this area the Agreement provides that the provisions related to this issue should be reviewed by the year 1999.

Currently plant varieties are subject to protection in many countries either by patents or by the national implementation of the International Convention for the Protection of New Varieties of Plantas (UPOV), done in 1962 and its revision. Each of these options have different implications for the prospects of agricultural development, and for research and development of new plant varieties in the country. Most recent legislation adopted in developing countries have opted for granting protection to plant varieties by means of the national implementation of the provisions of the UPOV Convention because they are more compatible with its developmental needs than granting protection through patents. There are significant differences in providing protection through UPOV provisions or through patents. Some of the most important differences are presented in the following chart.

[206] See Article 27.3(b) of the Agreement

	UPOV AGREEMENT	PATENTS
SUBJECT OF PROTECTION	PLANT VARIETY DEFINED AS SUCH.	PRODUCT OR PROCESS. EXTENDING PROCESS PROTECTION TO THE PRODUCT.
REQUIREMENT FOR PROTECTION	UNIVERSAL NOVELTY AND DISTINCTION. HOMOGENEITY AND STABILITY OF THE PLANT VARIETY.	NOVELTY. INVENTIVE STEP AND INDUSTRIAL APPLICATION.
DEFINITION OF EXCLUSIVE RIGHT	BY THE DESCRIPTION OF THE VARIETY AS IT APPEARS IN THE REGISTRY. DEPOSIT OF THE VARIETY	REINVINDICATIONS OF THE PATENTS.
RIGHTS CONFERRED	PREVENT THIRD PARTIES WITHOUT CONSENT TO UNDERTAKE COMMERCIAL ACTS WITH RESPECT TO: - REPRODUCTION MATERIALS OF PLANT VARIETIES. - PRODUCTS OF THE CROP OBTAINED FROM UNAUTHORIZED USE OF REPRODUCTION MATERIAL. - PRODUCTS ELABORATED DIRECTLY FROM THE PRODUCE OF THE UNAUTHORIZED CROP. - OTHER VARIETIES FROM THIRD PARTIES WHICH COULD BE CONSIDERED ESSENTIALLY DERIVATED OR THAT ARE NOT CLEARLY DISTINCT, OR THAT HAS BEEN OBTAINED BY THE REPETITIVE USE OF THE PROTECTED VARIETY.	PREVENT THIRD PARTIES NOT HAVING THE OWNERS CONSENT FROM THE ACTS OF MAKING, USING, OFFERING FOR SALE, SELLING, OR IMPORTING THE PROTECTED PRODUCT OR PROCESS.
EXCEPTIONS TO RIGHTS CONFERRED	- PRIVATE NON COMMERCIAL ACTS. - ACTS UNDERTAKEN TO CREATE NEW VARIETIES. (BREEDER'S EXCEPTION). - FARMER PRIVILEGE (USE OWN CROP FOR REPRODUCTION PURPOSES. - EXHAUSTION OF RIGHTS. - PRIOR USER (ACQUIRED RIGHTS)	THOSE PROVIDED BY NATIONAL LEGISLATION ON PATENTS.

B) Protection of Undisclosed Information (Trade Secrets)

The Agreement establishes the obligation of Member Countries to provide protection to undisclosed information and to data submitted to governments or governmental agencies as a condition of approving marketing of pharmaceutical or agricultural chemical products.[207] The protection of undisclosed information, in order to prevent third parties of acquiring and using information that is secret without the consent of the natural or legal person that holds it, is a new and complex development in intellectual property rights that could have profound implications for developing countries in many respects.

Usually the basis for protection of IPR's is the requirement that the owner disclose and register the object of protection to receive it. In this case the object of protection is not known, and according to the Agreement the only requirements for protection are: (i) that the information be secret, (ii) it has

[207] See Article 39 of the Agreement

commercial value because it is secret, and (iii) it has been subject to reasonable steps by the person in control of it to keep it secret. The future challenges involved in the administration and enforcement of this rights are significant.

Recent legislation have adopted two different approaches for the protection of undisclosed information: (i) through provisions related to unfair competition, or (ii) recognizing undisclosed information as an specific category of intellectual property rights. The second option, adopted in some of recent legislation in developing countries has the benefit that allows for further specification of the object of protection and of the conditions for such protection, reducing therefore the complexity of administering and enforcing those rights in the country.[208]

(C) Protection of Layout-designs(Topographies) of Integrated Circuits.

The Agreement on TRIPS establishes the obligation of Member Countries to provide for protection to the Lay-out design of integrated circuits in accordance with the Treaty on Intellectual Property in Respect to Integrated Circuits.[209] Countries must put into effect the provisions of that treaty through national legislation,[210] complying in addition with some further obligations that derives from the Agreement on TRIPS.

The Washington Treaty clearly defines the object of protection with respect to integrated circuits[211], and provides for the protection of integrated circuits in the territory of Member Countries establishing the requirement that national legislation should provide adequate means to impede illicit acts and guarantee effective administrative and judicial procedures when such acts have taken place. The following should be considered illicit acts: (i) reproduction, total or any part by incorporation in an integrated circuit, or in any other form of a protected Layout-design, except the reproduction of any part that does not fulfil the requirement of originality, and (ii) the selling, importing or distributing for

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[208] For example refer, among others, to: Andean Pact Decision 344, Mexican intellectual Property Legislation, Dominican republic draft intellectual Property Law.

[209] Washington Treaty, done on the 26 of May of 1989. This Treaty is not currently in effect due to lack of ratification by the required number of countries. Notwhistanding this fact its provisions have come into effect with the Agreement of the WTO

[210] Countries should give effect to Articles 2 through 7 (other than paragraph 3 of Article 6), and Article 12 and paragraph 3 of Article 16, of the Treaty

[211] See Article 2 of the Washington Treaty

commercial purposes of a protected Layout-design, or an integrated circuit that incorporates a protected Layout-design.[212] The Agreement on TRIPS introduces a further act that should be considered illicit in national legislation, that is the importations, selling or distribution for commercial purposes a product that has an integrated circuit which incorporates a protected layout-design, as long as it has been illicitly reproduced.[213] Notwithstanding, the performance of any of these acts should not be considered unlawful if the person performing those acts did not know that a violation of property rights was involved.

The protection of Layout-designs of integrated circuits could be provided by a wide diversity of legal forms. The Agreement leaves complete freedom to determine in national legislation the form of protection. It can be granted by means of special legislation, or by means of copyrights legislation, patents, utility models, industrial design, provisions on unlawful competition, or through a combination of these forms. Furthermore countries are free to determine if registration would be a requirement for protection or not, and can establish a compulsory licence if that is the national decision. The type of protection to be provided to Layout-designs of integrated circuits in Lebanon is an issue that should be present in the future agenda.

[212] See Article 6 of the Treaty of Washnington

[213] See Article 36 of the Agreement.