ROADMAP
INTERNATIONAL TRADE LAW ASPECTS OF EXPORTING MORPHINE AND CODEINE FROM AFGHANISTAN

Report Prepared for the Senlis Council by the British Institute of International and Comparative Law, London

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GUIDE TO ABBREVIATIONS

CCP	European Community Common Commercial Policy
EBA	Everything-but-Arms
EC	European Community
EU	European Union
FTA	Free Trade Agreement
GATT	General Agreement on Tariffs and Trade
GSP	Generalised System of Preferences
ICA	International Commodity Agreement
INCB	International Narcotics Control Board
JVE	Joint Venture Enterprise
LDC	Least Developed Country
MFN	Most-Favoured Nation
PTA	Preferential Trade Agreement
RSA	Revenue Sharing Agreement
STE	State Trading Enterprise
UN	United Nations
WTO	World Trade Organization

EXECUTIVE SUMMARY

The report explores various international legal avenues for enhancing the export opportunities for Afghan morphine and codeine, taking into account the existing framework of international law in relation to the trade in these substances.[1] It is assumed for the purposes of this report that Afghanistan has in place a system of licit opium production. The **legal framework** relevant to international trade in narcotic drugs comprises (i) the 1961 UN Single Convention on Narcotic Drugs, (ii) WTO rules, and (iii) European Community law (in case Afghanistan's prospective trading partner is an EU Member State or an enterprise established in the EU).

Analysis of the relevant provisions of the **1961 Convention** reveals the basic features of international trade in morphine and codeine:

- It may be conducted by private parties holding a special licence, by State enterprises or by States themselves.
- Each import and export transaction is subject to a separate authorisation by the competent national drugs authority of the exporting and importing countries.
- Afghanistan, as a manufacturer and exporter of morphine and codeine, must observe the limitations for manufacture of the drugs, which are based on estimates submitted annually for the approval of the International Narcotics Control Board (INCB).
- States importing morphine and codeine must observe the limitations for importation of the said drugs based on their estimates submitted annually for the approval of the INCB;
- Although under the Convention the INCB limits the overall production of opium for exports, this limitation does not apply to manufacturing of opium alkaloids such as morphine and codeine.

WTO rules apply to international trade in morphine and codeine. Despite the fact that Afghanistan is not a WTO member, some WTO rules are relevant in determining the conditions of exports of morphine and codeine from Afghanistan:

- The most-favoured-nation (MFN) principle prevents WTO members from trading with Afghanistan on terms more favourable than the terms of trade with WTO members, unless this more favourable treatment is justified by one of the exceptions or a waiver from WTO obligations.
- As a least-developed country (LDC), Afghanistan may benefit from the exceptions which allow more favourable treatment under the 'generalised systems of preferences' granted by some developed countries.
- The GATT prevents importing WTO members from circumventing trade rules through their state-trading enterprises, which must conduct transactions in accordance with commercial considerations and on a non-discriminatory basis.
- The relationship between the WTO regime and the 1961 Conventions regime is not settled; however, there are reasons to believe that in a case of conflict, provisions of the 1961 Convention prevail over WTO rules.

The **European Community** is not a party to the 1961 Convention and does not regulate licit trade in morphine or codeine, leaving this matter to Member States, all

[1] The findings in this report do not apply to possible exports of Afghan *opium*. Such exports would be subject to special rules different from those applicable to international trade in morphine and codeine.

of which are parties to the Convention. Nevertheless, certain provisions of EC law are relevant to the drugs trade. In particular:

- The common commercial policy of the EC requires that all trade agreements with third countries are concluded by the Community. The Community, not individual Member States, would have competence to conclude any agreement with Afghanistan that would regulate or promote trade.
- The conduct of development policies is shared between the Community and Member States. Member States retain the right to enter into development agreements with third countries, unless the development provisions take a form of trade measures.
- The EC maintains the Generalised System of Preferences granting reduced customs tariffs to products originating from developing countries, as well as the 'Everything but Arms' scheme for least-developed countries . Under the latter arrangement, all products originating in least-developed countries, except arms and ammunition, are imported into the EC tariff-free.

Against the backdrop of the legal framework for trade in narcotic drugs, the report first considers whether and to what extent Afghanistan can benefit from the **EU's 'Everything but Arms' scheme** for least-developed countries. The scheme applies, *inter alia*, to Afghanistan and provides duty-free access to the European market for Afghan morphine and codeine. However, given that the EU applies 0% tariff to imports of opium alkaloids from all other countries (developing and developed), in reality this scheme does not offer additional benefits to morphine and codeine imported from Afghanistan.

The report further explores **options for** promoting exports of Afghan morphine and codeine. As far as **intergovernmental treaties** are concerned, a free-trade agreement and a commodity agreement would not constitute legally sound options, nor would any other agreement for preferential treatment of Afghan exports as this would appear to be *prima facie* inconsistent with WTO rules as well as EC law (for the EU Member States). Hence, the report proposes the option of a **framework cooperation agreement** between Afghanistan and a third State with development assistance provisions at its core, possibly supplemented by institutional, investment protection, and anti-drug trafficking provisions.

The report examines two types of **commercial contracts** for the promotion of Afghan exports: (i) a contract of sale of goods, and (ii) a revenue sharing agreement.

A **contract of sale** could be concluded between States, between State enterprises or between private businesses. There appears to be no legal obstacle for a State-State commercial contract; at the same time, politically States may be reluctant to enter into such contracts as they may give rise to sensitive issues of State sovereignty and immunity. A State-State contract would be implemented by designated agencies of respective countries but the rights and obligations under such contract would arise for the States. By contrast, under a contract of sale between an Afghan State enterprise and that of an importing country would avoid sensitive issues of State sovereignty and immunity (the obligations would be assumed by respective enterprises, not the States) and remain in compliance with relevant laws including WTO rules – provided that the contracts are concluded in accordance with commercial considerations. Lastly, the purchase of Afghan morphine or codeine through licensed private companies is

possible, but an importing State cannot instruct a private company to trade with a particular supplier (Afghanistan) as this would violate both WTO and European law.

The final option considered is a **revenue sharing agreement (RSA)** between Afghanistan and a (possibly, State-controlled) company of a third State. The Company would invest in developing the manufacture of morphine and codeine in Afghanistan (including the supply of required technology, equipment, infrastructure and training) and would oversee the relevant business process. Afghanistan would ensure the supply of poppies or raw opium materials from licensed Afghan producers. The parties may establish a joint venture enterprise to manage the project, or operate it though the foreign investor's subsidiary. Manufactured morphine and codeine would be exported by the Company, and the profit derived from such exports would be shared between the parties to the RSA. To provide additional guarantees for the foreign investor, the RSA could be brought under the umbrella of the intergovernmental framework cooperation agreement mentioned above.

From a legal point of view, an RSA appears to be a viable option. It would also allow for the transfer of technology and expertise to Afghanistan, assist in controlling the produced drugs from being diverted into illicit trade and – if the investor would be a State-controlled company – ensure that the exports go along preferred routes.

Any chosen legal instrument may be designed to take into account, as far as possible, the **fair trade** elements with a view to ensure that Afghan farmers licensed to grow opium poppies are paid a fair and stable price for their supplies. This is necessary to prevent diversion of the produced poppies and raw opium into illicit trade, to improve the working conditions and well-being of producers, promote development opportunities, sound environmental practices and economic security. The findings of this report may be used, *mutatis mutandis*, to devise fair-trade legal mechanisms that would apply to a broader range of Afghan products.

INTRODUCTION[2]

A sustainable system of legal opium-for-morphine production in Afghanistan would require export channels for Afghan opium-based products, such as morphine and codeine, widely used in the pharmaceutical industry and to satisfy pain relief needs throughout the developed and developing world. The **aim** of the present report is to explore international legal avenues for enhancing export opportunities for Afghan morphine and codeine, taking into account the existing framework of international law in relation to the trade in these substances. The report is predicated on the assumption that Afghanistan has in place a system of licit opium production.

Due to the special nature of narcotic drugs, international trade in these products is subject not only to the 'normal' international trade rules (the law of the World Trade Organization (WTO)) but also to special international law disciplines which reflect the desire of international community to strictly control such trade in order to prevent its diversion into an illicit market (the United Nations Drugs Conventions regime).

These two sets of rules have different purposes. **WTO law** aims at ensuring the free international flow of goods as determined by supply and demand; it seeks to minimize governmental measures which may impede the market-based system and thus distort trade. The **UN Drug Conventions regime** is not concerned with the market aspects of international trade in drugs. Its aim is to control such trade by (i) limiting the volume of traded drugs so that it does not exceed the amount of drugs required for medical and scientific purposes, and (ii) establishing mechanisms for State supervision of the participants of drugs trade and of each export-import transaction.

In case a prospective trading partner for Afghanistan is a Member State of the European Union (EU), or an enterprise established in an EU Member State, it is also necessary to ensure that any proposed action is consistent with **European Community law**.

The report will be divided into three parts. **Part I** will identify the products at issue and give a brief overview of the international market in these products. **Part II** will set out the existing legal framework on international trade in morphine and codeine, and will consider the relevant multilateral instruments, namely the UN Drug Conventions Regime and the WTO rules, as well as relevant regional rules under EU law. In **Part III**, the report will explore possibilities for concluding bilateral or multilateral agreements between Afghanistan and other countries or enterprises of respective countries, which would enable the promotion of exports of Afghan morphine and codeine. This part will also consider whether and to what extent Afghanistan can benefit from the EU arrangements for special and preferential treatment accorded to least-developed countries.

[2] The information set out in this report is not intended as legal advice or legal opinion. Ideas expressed reflect only the views of the authors of the report. For any specific action to be taken by an interested party, a fuller legal and economic assessment of the relevant issues would be required

PART I. PRODUCTS IN QUESTION AND OVERVIEW OF THE MARKET

A. The Products in Question

The present report concerns two narcotic drugs – **morphine** and **codeine**, both of which are opiates. An opiate is any of a group of alkaloids derived from opium poppy.[3] Opium is the coagulated juice of the opium poppy.

Morphine
Morphine is the principal alkaloid derivative of opium. It is considered the most effective drug for the relief of moderate to severe pain. It can be extracted from opium, or from concentrate of poppy straw,[4] and is often transformed into codeine.

Morphine is listed in Schedule I of the 1961 UN Single Convention on Narcotic Drugs, and is classified under code 2939.11 in the Harmonized Commodity Description and Coding System, applied by most countries in their systems of customs tariffs. Morphine is classified as an 'essential medicine' by the World Health Organization (WHO).

Codeine
Codeine is one of the main alkaloids found in opium. Codeine is the most widely used, naturally occurring narcotic in medical treatment in the world. It can be extracted from opium, but is usually manufactured from morphine.

Codeine is included in Schedule II of the 1961 UN Single Convention on Narcotic Drugs, and is also classified under code 2939.11 in the Harmonized Commodity Description and Coding System. Codeine too is classified as an 'essential medicine' by the WHO.

The findings in this report **do not apply** to possible exports of Afghan *opium*. Such exports would be subject to special rules different from those applicable to international trade in morphine and codeine.[5]

B. Overview of the International Market for Morphine and Codeine

Any country is at liberty to cultivate, produce and trade in licit opium, provided that it complies with international legal instruments concerning narcotic drugs. Currently, there are eighteen countries that cultivate opium poppy on a licit basis (Afghanistan is not one of them). Four of these countries cultivate opium poppy for the production of

[3] Alkaloid is an organic compound derived from plants. Opium alkaloids used in medicine include morphine, codeine, thebaine, papaverine and noscapine.
[4] Concentrate of poppy straw (CPS) is the alkaloid-rich material obtained through the chemical processing of poppy straw.
[5] See, for example, Article 24 of the 1961 Single Convention on Narcotic Drugs.

raw opium.[6] A further fourteen cultivate it for the production of concentrate of poppy straw, poppy straw poppy seeds, and alkaloids.[7,8]

Over the last 20-25 years the demand for opium-based narcotic drugs has increased significantly. However, of the four countries that produce raw opium, only India exports raw opium, the other three producing opium only for their domestic needs. Five countries dominate the export market for opiate raw materials: Australia, France, India, Spain, and Turkey. Over the last ten years Australia and France witnessed a steady increase in their market shares, whilst India and Turkey have experienced wide fluctuations in both the area harvested and production.[9]

The publicly-available information about the functioning of the international market of opium alkaloids is limited. According to the accessible data, at present international opium-based medicines market, which includes morphine and codeine, is dominated by several multinational pharmaceutical groups, such as Sanofi-Aventis, Johnson & Johnson, GlaxoSmithKlineBeecham, Tyco Healthcare and Abbott. Most operate in opium-producing countries through local subsidiaries which manufacture and market the opium-based medicines, including morphine and codeine.

Some pharmaceutical companies are licensed by governments to grow opium poppy, and so control the entire value chain of the opium poppy, for example in Australia (GlaxoSmithKline), France (Francopia, a subsidiary of Sanofi-Aventis) and the UK (SmithKline Beecham). Those companies are licensed by the governments to cultivate, produce and export the raw materials, from which they then manufacture morphine, codeine and other substances. Countries that do not have licensed opium production systems, such as the United States, import raw opium materials, mostly from India and Turkey.[10] Instead of exporting raw opium materials, opium-producing countries may process raw materials into morphine and codeine locally, and market these products internationally.

In 2003, total worldwide exports of **morphine** amounted to only 19.2 tons, a much smaller number than morphine-rich concentrate of poppy straw (478 tons exported in 2003) because most countries prefer to import concentrate of poppy straw in order to avoid diversion. At the same time, the total number of countries reporting imports of morphine has increased as a result of its growing medical use. In 1990, 113 countries reported the importation of morphine; by 2003, this number increased to 159. Most of the morphine used in 2003 was converted into other narcotics drugs (82%), mainly

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[6] China, the Democratic Republic of Korea, India and Japan.
[7] Australia, Austria, Czech Republic, Estonia, France, Germany, Hungary, Netherlands, Poland, Romania, Slovakia, Spain, The Former Yugoslav Republic of Macedonia and Turkey.
[8] D. Mansfield, *An Analysis of Licit Opium Poppy Cultivation: India and Turkey*, April 2001, p.ii, available at http://www.pa-chouvy.org/Mansfield2001AnalysisLicitOpiumPoppyCultivation.pdf#search=%22mansfield%20licit%22.
[9] See *ibid.*, pp.5-6.
[10] Based on Senlis Council, *Overview of the Global Opium Market*, Feasibility Study on Opium Licensing in Afghanistan for the Production of Morphine and Other Essential Medicines, available at http://www.senliscouncil.net/modules/afghanistan_initiatives/feasibility_study/fs_study/pharmaceutical_chain, visited on 15 August 2006.

codeine. Only about 10% of the total amount of morphine utilised in 2003 was consumed for medical purposes.[11]

Although **codeine** is a natural alkaloid found within the opium poppy, most of the codeine manufactured (85-90%) for medical and scientific use is obtained through the use of morphine. Exports of codeine totalled 77.8 tons in 2003, with Australia the largest single exporter, accounting for 23.8 tons (or 30%) of world exports. More than 90 countries import codeine, Canada being the main importer in 2003 (17.8 tons).[12]

[11] Based on B. Fischer, J. Rehm, T. Culbert, *Opium-Based Medicines: A Mapping of Global Demand, Supply and the Pharmaceutical Industry*, in Feasibility Study on Opium Licensing in Afghanistan for the Production of Morphine and Other Essential Medicines (MF Publishing Ltd., 2005), pp.95-97.
[12] *Ibid.*, p.98.

PART II. LEGAL FRAMEWORK

This part will review:

(A) Rules on trade in morphine and codeine established by the UN Drug Conventions;
(B) International trade rules of the World Trade Organization applicable to potential exports of morphine and codeine from Afghanistan;
(C) Relevant provisions of the European Community law.

A. UN Drug Conventions Regime

This section outlines the general features of the UN Drug Conventions regime in relation to international drugs trade and identifies rules that are relevant to potential exports of morphine and codeine from Afghanistan.

The UN Drug Conventions regime consists of:

1. The 1961 Single Convention on Narcotic Drugs, as amended by the 1972 Protocol (hereinafter "The 1961 Convention");
2. The 1971 Convention on Psychotropic Substances; and
3. The 1988 Convention against Illegal Traffic in Narcotic Drugs and Psychotropic Substances.

Only the 1961 Convention regulates the legitimate trade in narcotic drugs, therefore this section will be limited to the provisions of the 1961 Convention.

1. The 1961 Convention: introduction

The main focus of the 1961 Convention is primarily to control the licit trade of narcotic drugs. The Convention aims to restrict the use of narcotic drugs to medical and scientific purposes only – thus ensuring their availability for legitimate purposes – and to prevent their diversion and abuse. The system of control over all stages of the drug economy under the 1961 Convention has two basic features: limitation of narcotics supplies of each country and territory to the quantities required for medical and scientific purposes; and authorization of each form of participation in the drug economy, including licensing of producers, manufacturers and traders, and governmental authorizations of each import and export transaction.

Afghanistan signed and ratified the 1961 Convention but has neither signed, nor ratified the 1972 Protocol amending the Convention. However, this fact is of little relevance to the present study, as the 1972 Protocol did not affect the provisions of the 1961 Convention that relate to legitimate international trade in drugs.

According to Article 4 of the 1961 Convention, its provisions are not self-executing and require implementing legislative and administrative measures from each of the Parties. This provides Parties with a certain degree of flexibility in interpreting the rules of the Convention when adopting implementing measures.

At the international level the Convention established the **Commission on Narcotic Drugs**, a policy-making subsidiary organ of the UN Economic and Social Council, and the **International Narcotics Control Board** (the "Board" or "INCB"), a control and quasi-judicial organ charged with supervising the functioning of the system established by the UN Drug Conventions.

At the domestic level, each Party must maintain **special administration** for the purpose of applying the provisions of the Convention.[13] States which permit the cultivation of the opium poppy for the production of opium must additionally create National Opium Agencies to perform specific functions related to the production and marketing of opium.[14]

2. Classification of drugs

The 1961 Convention classifies all narcotic drugs into four groups (schedules), with different legal regimes applying to drugs in different schedules. **Morphine** is listed in Schedule I, and **codeine** in Schedule II. Schedule II drugs are subject to the same measures of control as those in Schedule I, with the only exception that certain provisions of the Convention do not apply to their retail trade and retail distribution (provisions preventing excessive accumulation of drugs in the possession of traders and setting out requirements for medical prescriptions and labelling).[15]

As far as international trade is concerned, drugs listed in both Schedules I and II, i.e. both morphine and codeine, are subject to the same regime of the Convention.

3. Rules of the 1961 Convention relevant to international trade

The following basic disciplines of the Convention are relevant to international trade in opium and opium-based narcotic drugs:

1. Limitation to medical and scientific purposes of all phases of narcotics trade.
2. Requirement of governmental authorization (licensing or state ownership) for participation in any phase of the narcotics trade.
3. Specific import and export authorization of each individual international transaction.
4. A system of estimates imposing limits of the quantities of drugs available, by manufacture or import or both, in each country.
5. Limits on production of opium for international trade.

Each of these disciplines will now be briefly reviewed.

3.1. Limitation to medical and scientific purposes of all phases of narcotics trade

[13] 1961 Convention, Article 17.
[14] 1961 Convention, Article 23.
[15] 1961 Convention, Articles 2.2, 30.2, 30.5 and 30.6.

Parties accepted the obligation to limit production, manufacture, export, import, distribution, trade, possession and use of all narcotics to medical and scientific purposes.[16] This is a dual obligation which implies, on the one hand, that governments should ensure adequate availability of narcotic drugs for medical and scientific purposes. At the same time, they should limit the availability of narcotic drugs to the medical and scientific needs of the countries.

3.2. Requirement of governmental authorization (licensing or state ownership) for participation in any phase of the narcotics trade

The 1961 Convention establishes the Government monopoly on "importing, exporting, wholesale trading and maintaining stocks" of **opium**.[17] However, these exclusive rights do not extend to morphine and codeine, which can be thus traded without the direct involvement of States. At the same time, nothing in the Convention prevents States from participating in exports and imports of morphine and codeine.

With respect to all narcotic drugs, the 1961 Convention requires that the "trade in and distribution of drugs be under license except where such trade or distribution is carried out by a State enterprise".[18] The licensing criteria and procedures are a matter of domestic legislation. According to the Official Commentary to the Convention, such a license must state expressly that the right to engage in drugs trade includes international trade.[19] The Commentary also suggests that although under the Convention State enterprises do not need a license, this does not mean that any State enterprise may engage in international trade in drugs. Only State enterprises so tasked by the national authorities concerned have the right to do so.

Therefore, international trade in morphine and codeine may be carried out by persons authorized to do so under a special license, or by entrusted State enterprises. The Convention does not prevent States as such to act as buyers or sellers of drugs.

3.3. Specific import and export authorization of each individual international transaction

The 1961 Convention provides that "[e]very Party permitting the import or export of drugs shall require a separate import or export authorization to be obtained for each such import or export whether it consists of one or more drugs."[20] The Convention lays down the requirements to be met by such export and import authorizations.[21]

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[16] 1961 Convention, Article 4(c).
[17] 1961 Convention, Article 23.2(e).
[18] 1961 Convention, Articles 30.1(a) and 31.3(a). The licensing requirement does not apply to "persons duly authorized to perform and while performing therapeutic or scientific functions" (Article 30.1(c)), i.e. to medical practitioners.
[19] UN Secretary-General, *Commentary on the Single Convention on Narcotic Drugs*, available at http://www.drugtext.org/library/legal/treat/commentary/, visited on 15 August 2006, commentary to Article 31.3(a), para.1.
[20] 1961 Convention, Article 31.4(a).
[21] 1961 Convention, Article 31.4 – 31.7. For the plain-language explanation of the function of the system of export and import authorizations, see also UN International Narcotics Control Board, *Training Material on 1961 Single Convention on Narcotic Drugs*, Part 1, paras. 44-49, available at http://www.incb.org/pdf/e/estim/trainmat/NAR_1%20English%202005.pdf, visited on 15 August 2006.

These authorizations are to be granted by a special administration that each Party maintains for the purpose of applying the provisions of the Convention.[22]

3.4. The estimates system and limitation of manufacture and importation of drugs

(a) The estimates system

The purpose of the estimates system is to limit the supply of narcotic drugs of each country to the quantities which it needs for legitimate uses only, and thus to minimize the risk of diversion into the illicit drug trade. To achieve this objective, it is the responsibility of each government to determine the legitimate requirements for **each narcotic drug** in its own country and to submit the relevant estimates to the Board annually.[23]

Importantly for **countries-producers** of opium-based substances, the estimates must include *inter alia* "quantities of drugs to be utilized for the manufacture of other drugs", "approximate quantity of opium to be produced" and "stocks of drugs held".[24] The Convention does not provide for any estimate of exports but stock estimates should include the amounts necessary to allow the export during the following year. Importantly for **counties-importers** of opium-based substances, the estimates must include "quantities of drugs to be consumed for medical and scientific purposes" and "quantities of drugs to be utilized for the manufacture of other drugs".[25] The estimates are particularly important because they serve as the basis for determining limitations of manufacture and importation of narcotic drugs.

The 1961 Convention requires that States inform the Board of the **method** used for determining quantities shown in the estimates (all the facts and considerations which have been taken into account in establishing the estimated figures) but does not prescribe any particular method to be used.[26]

The estimates enter into force after the confirmation by the Board. The Board **must confirm the estimates**; it may also amend the estimates, but only with the consent of the government concerned.[27] Governments may reject amendments made by the Board to their estimates.[28] During the year they may also furnish to the Board

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[22] One exception from the authorizations requirement is contained in Article 32 of the 1961 Convention and concerns the "international carriage by ships or aircraft of such limited amounts of drugs as may be needed during their journey or voyage for first-aid purposes or emergency cases". The sole purpose of the drugs is to be readily available to be administered to persons aboard the ship/aircraft. Such drugs must not be removed from the ship/aircraft, nor cross the customs stations at points of transit or destination of the ship/aircraft, other than those in the country of registration of the aircraft concerned.

[23] 1961 Convention, Articles 12 and 19. For the 2006 estimates, see International Narcotics Control Board, *Estimated World Requirements for 2006 - Statistics for 2004*, available at http://www.incb.org/incb/en/narcotic_drugs_2005.html, visited on 15 August 2006.

[24] 1961 Convention, Article 19.1(b), (c) and (f).

[25] 1961 Convention, Article 19.1(a) and (b).

[26] 1961 Convention, Article 19.4; *Commentary on the Single Convention on Narcotic Drugs*, commentary to Article 19.4.

[27] 1961 Convention, Article 12.5.

[28] This system was modified by the 1972 Geneva Protocol to the 1961 Convention. In accordance with these modifications, in case of disagreements between a Government and the Board, the latter shall

supplementary estimates, if a need arises to manufacture or import more drugs than have been provided for in their original annual estimates.[29]

The Official Commentary to the Convention confirms that countries "are legally the final masters of their estimates, and thus of the quantities of drugs which they may manufacture and import."[30] The Commentary notes, however, that governments are "subject to various measures of persuasion […], such as amendments proposed by the Board for their acceptance, or less formal suggestions and critical comments […]. This has in practice proved to be an effective system of moral control […]. Amendments which the Board makes are generally accepted and revisions which it proposes informally are mostly accepted by the Governments concerned."[31]

(b) Limitation of manufacture and importation

Countries' estimates form the basis for determining limitations of manufacture and importation of narcotic drugs established pursuant to Article 21 of the Convention. Essentially, a country may not manufacture or import narcotic drugs in excess of its estimates confirmed by the Board.[32] An exporting country may not exceed its limit for manufacture or export of drugs in excess of the importing country's corresponding estimates.[33]

The limitations apply to both manufacture and importation of each narcotic drug. For **countries-producers**, the limitation of manufacture is important because it also covers the quantity of a drug exported,[34] i.e. it limits the right of a producing country to manufacture for exports. For **countries-importers**, the limitation of importation is important because they are restricted from imports in excess of the limitation.

The Board checks whether imports and exports do not exceed the total of estimates of the importing country, and whether manufacture does not exceed the total estimates of the manufacturing country. If there is excess export, excess import or excess manufacture, the Board contacts the Government concerned, requesting remedial measures to be taken. The 1961 Convention also provides that the Board may "call the attention" of the Parties, the ECOSOC and the Commission on Narcotic Drugs to any violation by a Party of its obligations which may seriously endanger the aims of the Convention. Additionally, the Board may recommend the embargo of the country concerned.[35] It appears that the Board reserves these enforcement measures for use in exceptional cases of serious and consistent breaches only. Generally, it has been noted than UN bodies lack coercive powers to ensure a proper implementation of the 1961 Convention.[36]

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have the right to establish the estimates (1972 Geneva Protocol, Article 5). Note that the 1972 Protocol does not apply to Afghanistan but applies to most other Parties to the 1961 Convention.

[29] 1961 Convention, Article 19.3.

[30] *Commentary on the Single Convention on Narcotic Drugs*, commentary to Article 12.5, para.8.

[31] *Ibid.*

[32] 1961 Convention, Article 21.1.

[33] 1961 Convention, Article 31.1.

[34] 1961 Convention, Article 21.1(c).

[35] 1961 Convention, Article 14.

[36] See, e.g., B. Leroy, *International Drug Policy: Challenges and Perspectives*, p.3, available at http://www.senliscouncil.net/documents/Leroy_paper#search=%22International%20Drug%20Policy%3A%20Challenges%20and%20Perspectives%22.

3.5. Limitation on production of opium for international trade

Specifically in relation to opium, the 1961 Convention provides that each Party "shall take account of the prevailing world need for opium in accordance with the estimates thereof published by the Board so that the production of opium by such Party does not result in overproduction of opium in the world."[37] Importantly, this limitation rule applies to opium only, not to opium alkaloids such as morphine or codeine. Therefore, it appears that the mentioned provision does not limit the right of countries to produce opium to manufacture morphine and codeine.

This conclusion is further confirmed by another provision in the same Article whereby a Party is not prevented from "producing opium sufficient for its own requirements".[38] In accordance with the Official Commentary to the 1961 Convention, "own requirements" of a Party include not only the needs of opium for domestic consumption, but also "the quantities of opium required for domestic **manufacture of alkaloids**, whether for domestic use or **export**."[39]

Therefore, countries do not face any restrictions in producing opium that is used for manufacture of morphine and codeine, including if the latter are manufactured with a view to be exported.

Conclusions

- International trade in morphine and codeine is regulated by the provisions of the 1961 Convention.
- So far as international trade is concerned, the same rules of the 1961 Convention apply to both morphine and codeine.
- The content of the rules in relation to Afghanistan is *not* altered by the fact that Afghanistan has not signed the 1972 Protocol amending the 1961 Convention.
- International trade in morphine and codeine may be carried out by private parties holding a special license, by State enterprises or by States themselves.
- Each import and export transaction is subject to a separate authorization by the competent national drugs authority.
- Afghanistan, as a potential manufacturer and exporter of morphine and codeine, must respect the limits on manufacture of the drugs, based on its estimates to be submitted annually to the Board.
- Countries importing morphine and codeine must respect the limits for imports of the drugs, based on their relevant estimates submitted annually to the Board and confirmed by it.
- As an exporter of morphine and codeine, Afghanistan must also respect the limits for imports in force for the importing country.

[37] 1961 Convention, Article 24.1(a).
[38] 1961 Convention, Article 24.5(a).
[39] UN Secretary-General, *Commentary on the Single Convention on Narcotic Drugs*, available at http://www.drugtext.org/library/legal/treat/commentary/, visited on 15 August 2006, commentary to Article 24.5(a), para.3.

- Legally, counties are free to determine the quantities of drugs in their estimates submitted to the Board for confirmation. However, informally the Board may pressure the countries to amend these quantities.
- The right of countries to export morphine and codeine is not affected by the provision of the 1961 Convention preventing the world overproduction of opium.
- Under the 1961 Convention, there is no restriction for countries to produce opium which is used for the manufacture of other products, even if these products are subsequently exported.

B. WTO Regime for International Trade

WTO rules on trade in goods and services apply to trade between 149 WTO member countries. At present, Afghanistan is not a WTO member. Nevertheless, some WTO rules may be relevant in determining the conditions of exports of morphine and codeine from Afghanistan. This section provides a general overview of relevant WTO provisions.

1. WTO regime: an introduction

The WTO regime consists of a set of agreements that apply to trade in goods and services, as well as to trade-related investment measures and intellectual property rights. WTO law comprises about 60 agreements and decisions. The ultimate aim of the WTO regime is to liberalise trade by curbing the ability of members to impose measures that would restrict access of other members to their markets. WTO rules do not seek to regulate the content of trade, nor do they apply to individual commercial transactions. Instead, they seek to supervise government restrictions of trade and apply to government measures and practices affecting trade in goods and services.

Trade in goods is regulated by the General Agreement on Tariffs and Trade (GATT) and a number of further agreements detailing general GATT obligations. The GATT lowers tariffs by limiting customs duties and contains general rules regulating the conduct of WTO members to ensure that tariff concessions are not undermined by measures that could arbitrarily restrict imports. Since trade in narcotic drugs is not excluded from the WTO regime, WTO rules apply to it.

2. Relevance for Afghanistan

Afghanistan is not a WTO member. In 2004, it submitted a renewed request for the accession to the WTO. The negotiations are now at a very early stage and it is difficult to predict how long they will take (usually, no less than five years). WTO accession will mean that Afghanistan will be required to comply with the whole body of WTO rules and will thus have less flexibility in imposing measures affecting goods imported from other WTO members.

WTO membership would favour Afghan exports because Afghan goods will benefit from improved market access to other members, and other members will have to treat goods imported from Afghanistan in a manner consistent with WTO rules Thus, the danger of discriminatory or otherwise adverse measures against imports from Afghanistan will be diminished.

As long as Afghanistan is not a WTO member, Afghan products and services do not enjoy the protection offered by WTO rules. Nevertheless, certain WTO disciplines have relevance for imports of Afghan morphine and codeine into the territories of WTO members, in the sense that an importing WTO member has to comply with WTO obligations vis-à-vis other WTO members. These disciplines include in particular:

- Most-favoured-nation (MFN) treatment obligation (GATT Article I);
- Rules on quantitative restrictions (GATT Articles XI and XIII);
- Rules on state-trading enterprises (GATT Article XVII).

These rules will now be briefly reviewed.

3. Most-favoured-nation (MFN) treatment obligation

GATT Article I:1 provides that any advantage, favour, privilege or immunity granted by any WTO member to any product originating in any other country shall be accorded immediately and unconditionally to the like product originating in the territories of all other WTO members. Essentially, Article I:1 **prohibits discrimination** between products originating in any country and like products originating in a WTO member country – the former cannot be treated more favourably than the latter.

The **scope** of the MFN obligation is quite broad – it encompasses customs duties, other charges, internal taxes and regulations affecting the sale, distribution and use of products, as well as all rules and formalities in connection with importation and exportation.

The MFN obligation concerns advantages granted to products of **all other countries** (including non-members of the WTO). If a member grants an advantage to a non-member, Article I:1 obliges this member to extend this advantage to all WTO members. Therefore, **this rule prevents WTO members from trading with Afghanistan on terms that would be more favourable than the terms of trade with WTO members**.

The MFN principle is subject to two major **exceptions**. First, it does not prohibit **trade preferences** in favour of developing and least-developed countries. As a least-developed country, Afghanistan may benefit from more favourable treatment extended to such countries by some WTO members, like the European Union and the United States, within the framework of their generalised systems of preferences (GSP).[40]

Secondly, the MFN principle does not prohibit trade preferences in connection with the formation of **customs unions and free trade areas** (GATT Article XXIV). Members of customs unions and free trade areas can provide preferential treatment to each other without extending such treatment to other WTO members. However, this exception is generally limited to customs unions and free trade areas formed between WTO members only; it does not apply to free trade agreements of WTO members with non-members.[41] Exceptionally, WTO members may by a two-thirds majority approve a customs union or an FTA with a non-member.[42] **Consequently, a WTO member cannot enter into a free trade agreement with Afghanistan without extending identical treatment to all other WTO members, unless this FTA is approved by a two-thirds majority of WTO members.**

[40] The ability of Afghanistan to benefit from the EU preferential schemes is discussed in Section III.A of this study.
[41] See GATT Article XXIV:5.
[42] See GATT Article XXIV:10.

WTO law contains a possibility of **waivers** from WTO obligations, including from the MFN rule. For a WTO member that wanting grant more favourable treatment to Afghan exports than to those from other countries, one option would be to obtain a waiver. In law, waivers are granted by a three-fourths majority of the Members;[43] in practice decisions on waivers are taken by consensus.[44] The decision of the WTO Ministerial Conference (or the General Council) granting the waiver must state the exceptional circumstances justifying the decision, the terms and conditions governing the application of the waiver and the date on which the waiver shall be terminated.[45]

4. Quantitative restrictions

A quantitative restriction is a measure, which **limits the quantity** of a product that may be imported or exported. Examples of quantitative restrictions are a total ban of a product, or a quota, i.e. a measure indicating the maximum quantity that may be imported.

GATT Article XI:1 generally prohibits imposition of quantitative restrictions. However, in relation to trade in drugs, under the 1961 Single Convention on Narcotic Drugs every country is limited in the quantity of drugs it can import.[46] In terms of the GATT, this clearly is a quantitative restriction inconsistent with Article XI. Nevertheless, in this case a violation of Article XI may be justified as being mandated by another multilateral treaty.[47]

In cases where quantitative restrictions are justified, GATT Article XIII sets out rules on distribution of trade, that is, how the allowable trade should be distributed among different countries. This Article does not lay down hard and fast rules but requires members to aim at a distribution of trade approaching as closely as possible the shares which the various countries might be expected to obtain in the absence of import restrictions.[48]

Article XIII:2 suggests that, where practicable, members should fix **quotas** among supplying countries representing the total amount of permitted imports. This provision refers to "countries" and not to "contracting parties", therefore, **non-members such as Afghanistan can also be allocated a quota by an importing WTO member**.

5. State trading enterprises

To recall, the 1961 Single Convention on Narcotic Drugs envisages the possibility of trade in drugs being carried out by State enterprises. The GATT contains rules on state-trading enterprises (Article XVII), which aim to prevent distortive trade practices which such enterprises might engage in. The economic underpinning of the

[43] Agreement Establishing the World Trade Organization, Article IX:3.
[44] Decision-making procedures under Articles IX and XII of the WTO Agreement, WT/L/93, dated 24 November 1995.
[45] Agreement Establishing the World Trade Organization, Article IX:4.
[46] For a more detailed analysis of limitation of importation, see Section II.A.3 of this study.
[47] More generally on the relationship between WTO law and UN Drug Conventions regime, see below, Section II.B.8.
[48] GATT, Article XIII:2.

relevant GATT provisions is such that, while generally traders act on the basis of commercial considerations, if an enterprise has significant power in a given market, it may exercise this power in a way which may distort trade. Thus, relevant GATT rules seek to make State traders behave as private competitive traders.

GATT Article XVII applies to state trading enterprises as well as to any enterprises that have been granted exclusive or special privileges that enable them to influence the level or direction of trade.[49] Article XVII requires such enterprises, in their purchases involving either imports or exports, to "act in a manner consistent with the general principles of **non-discriminatory treatment** prescribed in this Agreement for governmental measures affecting imports or exports by private traders."[50] In other words, **state-trading enterprises are subject to the MFN principle**.[51]

Article XVII sets out the content of the MFN principle in relation to state-trading enterprises, by requiring such enterprises to make any export/import purchases or sales "solely in accordance with **commercial considerations**, including price, quality, availability, marketability, transportation and other conditions of purchase or sale".[52] With respect to potential drug exports from Afghanistan, this discipline essentially means that **a state-trading enterprise of a WTO member cannot purchase drugs from Afghanistan on conditions totally alienated from commercial considerations** (for example, at a price significantly higher than otherwise available on the market for like products).

In addition to the MFN obligation, state-trading enterprises are subject to the prohibition of **quantitative restrictions** in GATT Article XI. The prohibition of import restrictions applies not only to States but also to state-trading enterprises. However, under the 1961 Convention each country has to comply with quantitative restrictions with respect to imports of narcotic drugs. Therefore, the relevant GATT obligation will translate into a prohibition for state-trading enterprise to impose *additional* import restrictions or to change quotas of supplying countries, if they have been allocated.

6. General exceptions

Two exceptions to the MFN rule are noted above – preferential schemes for developing countries and customs unions/FTAs. The GATT also contains a list of **general exceptions** (Article XX). If a WTO member proves that its measure falls under the general exceptions, it can justify violation of **any** other GATT rule. General exceptions potentially relevant to international trade in drugs include measures:

- necessary to protect public morals (Article XX(a));
- necessary to protect human, animal or plant life or health (Article XX(b);

[49] GATT, Article XVII:1(a), "Understanding on the Interpretation of Article XVII of the General Agreement on Tariffs and Trade 1994".
[50] GATT, Article XVII:1(a).
[51] There is a disagreement whether state-trading enterprises must also comply with the principle of national treatment (GATT Article III) but in any event, the national treatment obligation is not relevant for the present study because Afghanistan is not a WTO member and cannot demand that the importing country comply with GATT Article III.
[52] GATT, Article XVII:1(b).

- necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement […] (Article XX(d)).

To give a specific example relevant to trade in narcotic drugs, under Article XX(b) a WTO member could ban a certain narcotic drug if it considers that it poses a particularly serious threat to the health of its population.

However, it is not enough to justify a measure only under one of the heads of Article XX. The measure had also to be justified under the **chapeau of Article XX**. Specifically, a WTO member would have to prove that the measure at issue is not applied in a manner which constitutes:

- a means of arbitrary or unjustifiable discrimination between countries, or
- a disguised restriction on international trade.

In relation to the example above, a member would have to prove that its ban of the narcotic drug in question applies equally to all members and was not imposed in order to protect its domestic industry that manufactures a substitutable drug.

The WTO has developed rich jurisprudence interpreting and clarifying the meaning of particular exceptions and the chapeau of Article XX. This jurisprudence would have to be consulted when considering a specific measure of a WTO member seeking justification under Article XX.

7. Dispute settlement

The WTO has established an effective system of settlement of disputes between its members. When a WTO member considers that other member's measure violates WTO law, it may request a dispute settlement panel to rule on the matter. The panel's findings may be subsequently appealed to the WTO Appellate Body. If the measure is found inconsistent with WTO obligations, it has to be withdrawn; otherwise retaliatory trade measures may be imposed. It is, of course, at the discretion of States whether to initiate a case in the WTO or not. WTO members may often be influenced by political, economic or other considerations prompting them to refrain from initiating the proceedings.

8. Relationship between the WTO regime and the UN Drug Conventions regime

The relationship between WTO law and other public international law is a matter of controversy. The dominating academic opinion supported by some WTO jurisprudence is that WTO law is *not* a closed, self-contained system, isolated from the rest of international law.[53] However, it remains controversial whether other international agreements can be a source of WTO law in the sense that they provide for rights and obligations for members that can be invoked in WTO dispute settlement procedures.

[53] P. Van den Bossche, *Law and Policy of the World Trade Organization* (Cambridge, 2005), p.63.

In particular, problems arise when the rights and obligations of States under the WTO agreements are in conflict with their rights and obligations under other international agreements. For example, with respect to trade in narcotic drugs, the 1961 Convention imposes limitations on importation of drugs, whereas GATT Article XI prohibits such quantitative restrictions.

It is not clear whether a WTO member can rely on the rules of the 1961 Convention as a defence against a claim of violation of WTO rules; this has never been tested in practice. One reason to answer this question in the affirmative is that the 1961 Convention is a truly universal treaty with 183 parties, including all or the great majority of WTO members; it may be considered *lex specialis* in relation to trade in narcotic drugs, and thus prevail over WTO law for drug-trade issues.[54] There is a stronger case for relying on non-WTO agreement if all the disputing WTO members are also parties to that non-WTO agreement. Also, measures undertaken in pursuance of the Convention could possibly be justified under the 'public morals' and/or 'human health' exception under GATT Article XX(a) and (b).

Conclusions

- WTO rules apply to international trade in morphine and codeine.
- Despite the fact that Afghanistan is not a WTO member, some WTO rules are relevant in determining the conditions of imports of morphine and codeine from Afghanistan to WTO members.
- The MFN principle does not allow WTO members to trade with Afghanistan on terms that would be more favourable than the terms of trade with WTO members, unless this more favourable treatment is justified by one of the exceptions or a waiver from WTO obligations.
- As a least-developed country, Afghanistan may benefit from more favourable treatment under the generalised systems of preferences.
- A WTO member cannot enter into a free trade agreement with Afghanistan without extending identical treatment to all other WTO members, unless this agreement is approved by a two-thirds majority of WTO members.
- It is GATT-consistent for a country importing narcotic drugs to allocate quotas between supplying countries, including Afghanistan.
- Importing WTO members must not circumvent GATT rules by using their state-trading enterprises. In particular, state-trading enterprises must make their purchase in accordance with commercial considerations.
- If a particular measure of a WTO member falls under a general exception, it will be justified even if it violates one or more GATT obligations.
- The WTO has an effective dispute settlement system but the use of this system may be subject to relevant political and economic considerations of WTO members.

[54] The principle of "*lex specialis"* in public international law says that if all parties to a general treaty conclude a more specialized treaty, the provisions of the latter prevail over those of the former.

- The issue of the relationship between WTO regime and the UN Drug Conventions regime is not settled; however, there are reasons to believe that in case of conflict, provisions of the 1961 Convention prevail over WTO rules as far as trade in narcotic drugs is concerned (at least as long as all disputing parties are also parties to the 1961 Convention).

C. Law of the European Union

If Afghanistan's prospective trading partner is a Member State of the European Union, it is necessary to ensure that any proposed action is consistent with European Community (EC) law. The Community is not a party to the 1961 Convention and does *not* regulate legal trade in morphine and codeine[55]; this matter is left to national laws of the Member States, all of which are parties to the Convention. Nevertheless, three areas of EC law still appear to have potential relevance in relation to the drugs trade: (i) EC common commercial policy, (ii) EC development policy, and (iii) EC Generalised System of Preferences.

1. Common commercial policy

The key EC Treaty provision on the common commercial policy (CCP) is Article 133 EC. It provides the Community with power to regulate external commercial policy relations either by unilateral measures concerning imports and exports or by agreements with third countries. The European Court of Justice (the "Court") held that the Community enjoys *exclusive competence* in the field of CCP, which means that Member States do not have competence to conduct any affairs in this area individually, save where the Community grants them specific authorization.[56]

Article 133 EC Treaty does not delimit the scope of the CCP but provides a non-exhaustive list of issues that the CCP includes, one of which is the "conclusion of tariff and trade agreements".[57] The scope of the CPP has been to some extent determined through the jurisprudence of the Court which has defined the term "common commercial policy" broadly. In particular, in a number of cases the Court ruled in favour of a "non-restrictive interpretation of that concept".[58] The main argument for this approach was the perceived need to eliminate all "national disparities" affecting trade with third countries. The Court refused "to restrict the CPP to the use of instruments intended to have effect only on the traditional aspects of external trade to the exclusion of more highly developed mechanisms" such as the international commodity agreements.[59]

In one case the Court held that Member States may not restrict the scope of the CCP by freely deciding, in the light of their own foreign policy or security requirements, whether a measure is covered by Article 133 of the EC Treaty.[60] In another case, the

[55] There is a Community act implementing the 1988 Convention against Illegal Traffic in Narcotic Drugs and Psychotropic Substances but it does not contain information that would be pertinent to this Study and, in any even, it does not apply to morphine and codeine. See Council Regulation (EEC) No 3677/90 of 13 December 1990 laying down measures to be taken to discourage the diversion of certain substances to the illicit manufacture of narcotic drugs and psychotropic substances. The Community also regulates external trade in drug precursors – see Council Regulation (EC) No 111/2005 of 22 December 2004 laying down rules for the monitoring of trade between the Community and third countries in drug precursors.

[56] Case 41/76 *Donckerwolke v Procureur de la République*, para. 32, and Case 174/84 *Bulk Oil v Sun International*, para. 31.

[57] EC Treaty, Article 133.1

[58] Opinion 1/78 of the Court, para.45.

[59] *Ibid.*, para.44

[60] Case C-70/94, *Fritz Werner Industrie-Ausrüstungen GmbH v Federal Republic of Germany*, 17 October 1995, para.11

Court ruled that the nature of dual-use goods (goods that have both a commercial and another aspect relevant under the Treaty, such as armaments) could not be invoked to take them outside the scope of the CCP.[61]

To conclude, the scope of the CCP, although not precisely defined, has been interpreted very broadly. Essentially, it is understood to cover all matters in any way related to trade with third countries. The Community retains exclusive competence in these matters. It appears, therefore, that it is a competence of the Community to conclude any intergovernmental agreement with Afghanistan that would have regulation or promotion of trade as its objective.

2. Development policy

According to Article 177 EC Treaty, the Community development policy is complementary to the policies pursued by Member States. The Community and Member States are under an obligation to coordinate their policies on development cooperation and consult each other on their aid programmes (Article 180 EC Treaty). At the same time, Member States retain competence to act in a way they see fit and retain the power to conclude international agreements (Article 181 EC Treaty).

However, development policies, which at the same time are trade policies (such as the EC generalised system of tariff preferences for developing countries), are considered to be part of the common commercial policy and are thus an exclusive competence of the Community.[62] Similarly, an agreement containing both trade and development provisions would fall under the common commercial policy.

3. Generalised System of Preferences

As noted in Section II.B.3, the MFN principle, generally applicable in trade between WTO members, is subject to an exception in favour of developing countries; the latter may benefit from more favourable treatment granted to them by developed countries. The legal basis for this exception is the so-called Enabling Clause adopted by the GATT Contracting Parties in 1979.[63] According to the clause, preferential treatment under the GSP has to be non-discriminatory, non-reciprocal and autonomous. The requirement of non-discrimination is especially important; it means essentially that developed countries cannot grant more favourable treatment only to *particular* developing countries, or only to particular LDCs. The Enabling Clause only allows treating LDCs (as a group) better than developing countries.

Pursuant to the Enabling Clause, the European Community maintains the 'Generalised System of Preferences' (GSP) granting reduced customs tariffs to products originating from developing countries. In addition to the general GSP scheme, the EC has a specialised scheme for least-developed countries (LDC) – the so-called 'Everything

[61] Case C-83/94, *Leifer et al*, para.11
[62] Case 45/86 *Commission v. Council*, Case C-62/88 *Greece v. Council*.
[63] Decision of the GATT Contracting Parties, *Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries*, 28 November 1979, L/4903.

but Arms' (EBA) arrangement, under which all products originating from LDCs, except arms and ammunition, are imported into the EC tariff-free.

LDCs are those countries officially recognized by the UN as the world's poorest, currently consisting of a group of 50 countries. Afghanistan is one of them and thus a beneficiary under the EBA arrangement. The question of to what extent Afghan exporters of morphine and codeine can benefit from these EC GSP and EBA arrangements is discussed in Section III.A.

PART III. OPTIONS FOR PROMOTING AFGHAN EXPORTS OF MORPHINE AND CODEINE

This part begins by considering the extent to which Afghanistan can benefit from the EU arrangements for special and preferential treatment for least-developed countries. It also explores the possibilities for concluding various treaties and agreements between Afghanistan and other States or enterprises, which would promote exports of Afghan morphine and codeine.

A. Special and Preferential Treatment Arrangements of the European Union

This section presents an overview of the preferential arrangements established by the European Union for imports of products from developing and least-developed countries (LDCs) and discuss whether Afghan exporters of morphine and codeine can benefit from these arrangements.[64]

1. Generalised System of Preferences

The EU's 'Generalised System of Preferences' (GSP) is an integral part of EU trade policy. Its purpose is to accord preferential treatment to developing countries primarily through reduction of tariffs.

As discussed above, the GSP is based on the 'Enabling Clause', a decision adopted by the GATT Contracting Parties in 1979.[65] Under this framework, developed countries are authorized and encouraged (but not obliged) to establish individual GSPs. According to the clause, preferential treatment under the GSP has to be non-discriminatory, except when for the benefit of least-developed countries (LDCs). However, a GSP-granting country cannot discriminate within a group of developing countries or within a group of LDCs.

The EU GSP scheme is implemented in ten-year cycles. The current GSP scheme was established pursuant to Council Regulation EC No 980/2005 and applies to products listed in Annex II of this Regulation. Annex II does *not* include opium alkaloids. **Therefore Afghan exports of morphine and codeine cannot benefit from the current EU GSP scheme**.

2. 'Everything But Arms' arrangement

[64] LDCs are those countries officially recognized by the UN as the world's poorest, currently consisting of a group of 50 countries. Afghanistan is one of that group.
[65] Decision of the GATT Contracting Parties, *Differential and More Favourable Treatment, Reciprocity, and Fuller Participation of Developing Countries*, 28 November 1979, L/4903.

In addition to the general GSP scheme, the EU has implemented a number of specialised schemes,[66] including a scheme for a particularly wide-ranging system of benefits for LDCs – the 'Everything but Arms' (EBA) arrangement, established in 2001 by the Council Regulation (EC) 416/2001. Under the EBA, the European Union grants duty free access to imports of all products from LDCs, except arms and munitions, without any quantitative restrictions.[67] The EBA regulation foresees that the special arrangements for LDCs should be maintained for an unlimited period of time and are not subject to the periodic renewal of the Community's GSP scheme. Afghanistan's non-membership of the WTO does not bar it from participating in the EBA.

The EBA applies to all products mentioned in Chapters 1 to 97 of the Harmonized System except those listed in Chapter 93 (arms and munitions). Opium alkaloids, among them morphine and codeine, are listed in Chapter 29 of the Harmonized System and are, therefore, eligible for the EBA.

The EBA does not envisage any quantitative restrictions for LDC imports. However, imports of morphine and codeine remain subject to import limitations established pursuant to the 1961 UN Convention.[68] Relevant limitations are established for each EU Member State, which also operate their separate systems of licensing and authorization of imports of opium alkaloids, subject to the provisions of the 1961 Convention and general guidelines contained in EU Directive 2001/83/EC.[69]

When assessing the actual benefits of the EBA for Afghan exports of opium alkaloids, one has to take into account that the current MFN tariff of the EU applied to all WTO members is 0%. The tariff applied to all other countries (non-members of the WTO) is also 0%. **Therefore, in practice the EBA does not offer *additional* market access opportunities for Afghan exports of morphine and codeine**.

Conclusions

- The current EU GSP scheme for developing countries does not apply to opium alkaloids.
- The EU 'Everything but Arms' arrangement for LDCs applies to Afghanistan and covers imports of morphine and codeine.
- Under the EBA, Afghan exports of morphine and codeine enjoy duty free access to the European market.
- The EBA does not impose quantitative restrictions on imports but imports of opium alkaloids remain subject to the system of import limitations established under the 1961 UN Convention.
- Given that the EU applies 0% tariff to imports of opium alkaloids from all other countries (developing and developed), in reality the EBA scheme does

[66] According to Article 1(2) of Council Regulation (EC) No 980/2005 these include special incentive arrangements for sustainable development, good governance and special arrangements for LDCs.
[67] Only imports of fresh bananas, rice and sugar were not fully liberalized immediately.
[68] For the details of this system see Section II.A.3 of this study.
[69] Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community Code relating to Medicinal Products for Human Use, Official Journal L – 311, 28/11/2004, p 67 – 128.

not offer additional benefits to morphine and codeine imported from Afghanistan.

B. Intergovernmental Treaties

This section presents an overview of the various options relating to agreements between Afghanistan and other States for the export of morphine and codeine.

1. Free trade agreement

A broad free trade agreement (FTA) appears to be an unattractive option, for the following reasons:

- Under WTO rules, an FTA would need to eliminate the duties and other restrictive regulations of commerce on substantially *all the trade* between the constituent territories in products originating in such territories (GATT Article XXIV:8(b));
- Under WTO rules, an FTA with a non-member, such as Afghanistan, would need to be approved by two-thirds of WTO membership (GATT Article XXIV:10);
- Under EU law (applicable only to the EU Member States), the power to conclude FTAs with third countries lies with the Community, not with individual Member States (Article 133 EC Treaty).

2. International commodity agreement

A framework treaty between Afghanistan and a third State concluded with a view of promoting trade would *not* qualify as an 'international commodity agreement' (ICA), as it is understood in international economic law.

ICAs are, generally speaking, agreements between States to regulate international trade in primary commodities. An ICA has been defined in the Agreement Establishing the Common Fund and Commodities as "any intergovernmental agreement or agreement to promote trade cooperation in a commodity, the parties to which include producers and consumers covering the bulk of world trade in the commodity covered." The concluded ICAs concerned coffee, sugar, natural rubber, olive oil, cocoa, tin, jute, tropical timber and wheat. The objectives of ICAs are price stabilization and long-term development of the commodity.[70]

Relevant ICAs are excluded from GATT rules by virtue of GATT Article XX(h), i.e. State parties to an ICA, when acting in pursuance of that agreement, may violate any GATT obligation subject to compliance with the chapeau of GATT Article XX. However, as stated above, a contemplated treaty would *not* qualify as an ICA because an ICA is a multilateral treaty covering the *bulk of world trade* in the commodity concerned. An ICA applicable to narcotic drugs or to opium/opiate would require participation of all (or most) countries producing relevant drugs.

3. Other preferential trade agreements

[70] TD/IPC/CF/CONF/25, 1981, Article (1), para.(2). See also B.S. Chimni, *International Commodity Agreements: A Legal Study* (Croom Held, 1987), p.33.

Any other international treaty between Afghanistan and an EU Member State setting out provisions for regulating or promoting exports *specifically* in relation to products (drugs) originating from Afghanistan would be:

- inconsistent with the WTO's MFN provision (GATT Article I), unless such inconsistency can be justified under one of the GATT exceptions;[71]
- inconsistent with EC provisions on the common commercial policy (Article 133 EC Treaty), applicable to EU Member States.

4. Possibility of justification under GATT Article XX

Can a preferential trade agreement (PTA) with Afghanistan which would otherwise violate the GATT MFN provision constitute a measure falling under the general exceptions of Article XX? The WTO has developed rich jurisprudence interpreting and clarifying the meaning of particular exceptions and the chapeau of Article XX. This jurisprudence would have to be consulted when considering a specific measure of a WTO member seeking justification under Article XX. Nonetheless, a brief analysis of the possibility for a PTA gaining exemption from that Article is set out below.

It is clear that, above other considerations in Article XX, the illicit production and trade in opium has detrimental effects on human life and health (paragraph b) and also 'public morals' (paragraph a). Were a PTA to constitute a means of protecting either or both of these non-trade considerations, it would be permissible under those heads of Article XX.

Two issues should be addressed at this point. First, as far as the **scope of application** of either or both measures is concerned, it should be noted that GATT Article XX generally allows a State to protect non-economic concerns only in its own country, as a means of preventing the extraterritorial applications of one State's standards to others.[72] The WTO has established jurisprudence that is fairly restrictive to extraterritorial measures. Most countries, in particular European countries, would be able to invoke the public morals and human life or health considerations on a domestic basis in support of a preferential trade agreement, as more than 90% of the illicit opiates destined for use in Europe originate in Afghanistan.[73]

Second, having established the non-trade considerations and their scope of application, Article XX demands the assessment of whether the measures under paragraphs (a) or (b) are **necessary** to achieve their policy objective. It would have to be argued that in order to protect such non-trade considerations a PTA would be a necessary measure, resulting in the reduction of the illicit trade in opium by means of promotion of the licit trade.

How would such an evaluation be made? Some general points on the approach of the WTO to the interpretation of the 'necessity' requirement in Article XX should be

[71] For a possibility of justification of the MFN violation under GATT Article XX see the following Section III.B.4.

[72] At the same time, the concern for the protection of public morals, human life and health can be said to apply not just between the parties concluding the PTA but also third States in which illicit opium originating in Afghanistan is consumed. It is uncertain where such argument would be treated as valid by a WTO dispute settlement panel.

[73] United Nations Office on Drugs and Crime, *2006 World Drug Report*, p.65

made. **First**, the WTO considers a narrow interpretation of the exceptions of Article XX to be inappropriate. Rather, it advocates a balance between trade liberalisation and other societal values – potentially giving more importance to the latter. **Second**, in considering the necessity of a measure related to human life or health, the WTO will look at alternative measures which might be taken in order to reach the stated policy objective and which would be less detrimental to the affected WTO members, as demonstrated in the *Thailand – Cigarettes* and *US - Gasoline* cases.[74] **Finally**, the WTO also considers the **importance** of the societal value pursued by the measure at issue, as well as the **extent** to which the alternative measure would contribute to the protection or promotion of that value.

Following an assessment of the necessity of measures contained within a PTA to protect the mentioned non-trade considerations, one should address the second part of the two-tier test set out by Article XX of the GATT. If the PTA meets the requirements of paragraphs (a) and/or (b), it must also satisfy the requirements of the **chapeau** of that Article. This requires that the measures discussed must not be applied 'in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade'. This deals less with the measure adopted and more with the manner in which it is applied.

It can be argued that a PTA would not discriminate between countries where the same conditions prevail (that is, those in which opium is produced illicitly) for the reason that Afghanistan's conditions are unique.

To illustrate: in 2005 Afghanistan was the source of 89% of the World's illicit opium.[75] Myanmar, currently the second biggest producer, accounts for only 7% by comparison.[76] Not only does Afghanistan's current production of illicit opium dwarf that of Myanmar's; the markets for the illicit opium produced in these two countries are effectively partitioned: opium from Afghanistan is trafficked to neighbouring countries, the Middle East and Europe; opium from Myanmar is trafficked to neighbouring countries of South-East Asia, (notably China) and to the Oceania region (mainly Australia). Levels of production in other countries are negligible by comparison and serve illegal markets which again are quite distinct from those of Afghanistan.[77] If the conditions between Afghanistan and its counterparts are so dissimilar, the issue of 'discrimination' itself is eliminated, and one need not even consider whether it is arbitrary or unjustifiable.

Finally, to refer to the second part of the chapeau of Article XX, it is unlikely that a PTA with Afghanistan could be read as a disguised restriction on international trade – any PTA would be intended to promote rather than suppress trade.

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[74] *Thailand – Cigarettes* GATT Panel Report, adopted 7 November 1990, BISD 37S/200; *US – Gasoline* Panel Report, WT/DS2/R, adopted 20 May 1996, as modified by the Appellate Body Report, WT/DS2/AB/R, DSR 1996:I.

[75] See United Nations Office on Drugs and Crime, *2006 World Drug Report*, Chapter 1, available at www.unodc.org.

[76] United Nations Office on Drugs and Crime, *2006 World Drug Report*, p12

[77] A counter-argument might be ventured here: that whilst a PTA might not discriminate between Afghanistan and countries in which *illicit* opium production takes place, it might nonetheless discriminate between Afghanistan and those countries with a *licensed* opium industry (such as France and Australia). However, the size of the licit opium industry relative to other sectors of Afghanistan's economy, the country's LDC status and the threat of domestic instability posed by diversion or resumption of illicit opium production would, inter alia, represent possible rebuttals to such a claim.

Under the assumption on which this Study is based (of there being a licit system of opium production for morphine and codeine), the requirements of the chapeau at least would appear to be satisfied. However, to conclude that a PTA as such could be justified under GATT Article XX, a much more sophisticated analysis of the content of the PTA, of the relevant WTO jurisprudence and of all relevant circumstances would be required.

5. Framework cooperation agreement

A viable option would be the conclusion of an agreement between Afghanistan and a third State which could set out basic cooperation activities in the area of drug production/manufacturing in Afghanistan. In particular, it could include:

- development assistance provisions: identification of the areas in which the third State could assist Afghanistan in developing its licit opium industry (for example, provisions on technology transfer, technical assistance, training of local personnel, etc.);
- the possibility of a revenue sharing agreement between Afghanistan and a company of a third State and possibly basic guarantees for the future investor (concerning full protection and security, expropriation, taxation, etc.);[78]
- mechanisms to ensure that Afghan farmers supplying opium poppies or raw opium materials receive a fair price for these products;
- institutional provisions (e.g., creation of a Joint Committee);
- measures to prevent diversion of opium and opiates into the illicit drugs market.

However, such framework agreement should *not* include provisions on trade for the reasons set out above.[79]

6. Can a treaty include development provisions?

The need to provide all kinds of development assistance to developing and least-developed countries has been widely recognized by the international community. From the **public international law** perspective, there are no obstacles to including into a treaty with Afghanistan development provisions aimed at improving the capacity of Afghanistan to develop a viable opium-based medicines industry.

Such development assistance could include in particular:

- Capacity-building and technical assistance, e.g., through education, training and information programmes;
- Assistance with drafting and implementing relevant legislation;
- Programmes and projects related to the development of a sustainable opium economy;
- Transfer of required technology;

[78] See Section III.D.
[79] See Section III.B.3.

- Improving the standard of living and working conditions for people engaged in the opium sector in Afghanistan;
- Encouraging and promoting of scientific research and development in the opium-based medicines sector;
- Encouraging foreign investors' activity in the relevant sector.

From the point of view of **EU law**, as discussed above, the development policy is shared between the Community and Member States, and latter retain the right to conclude international agreements in this area (Article 181 EC Treaty). Investment promotion and protection rests fully with the Member States.

Note that it would be appropriate to include development provisions into an international treaty governed by international law. However, it would not be appropriate to include them into a commercial State-State contract[80] as this will confuse the role of States as commercial actors and as governmental authorities.

Conclusion

Out of the options discussed in this section, a framework cooperation agreement, as described above, appears to be the only feasible option. It could also serve as an 'umbrella agreement' for a revenue sharing agreement discussed below in Section III.D.

[80] On State-State commercial contracts see Section III.C.1.

C. Contract of Sale of Goods

This section first examines classic contracts of sale of goods – contracts whereby the seller agrees to transfer the property in goods to the buyer for an agreed price. So far as such contracts are concerned, morphine and codeine can be traded between different actors. There are three types of actors that may potentially be involved in such a transaction, as buyer or seller:

- State;
- State enterprise;
- Private company.

There are different rules applicable to different actors, and thus differences in legal and political viability of relevant instruments. This part will examine each of the combinations of actors with a focus on compatibility with the relevant legal instruments of WTO law and UN Drug conventions, as well as EU law where relevant.

1. Sales contracts between States[81]

Contracts of sale of goods between two States are concluded only rarely today. The mentioning of such contracts has only been found in relation to multilateral contracts concluded between governments in the implementation of certain international commodity agreements, in particular the one on wheat.[82] Possibly the main reason for the scarcity of such contracts is that any State's primary purpose and function is governmental, a creator and enforcer of rules. Rarely do States themselves engage in commercial activities. If they wish to be involved in trade (for example, in the areas of natural resources or trade in arms), States usually act through State enterprises created especially for this purpose.

A related reason is that States as sovereign entities are unwilling to undertake enforceable commercial obligations and expose themselves to international liability. Pure inter-State dealings may entail complications arising out of the doctrine of sovereign immunity. At the same time, however, there are many examples of States entering into contracts with private parties and submitting their disputes to binding international arbitration (for example, in the area of foreign investment). But from a technical legal point of view, there seems to be no obstacle for a State to enter into a private sales contract with another State.

Taking into account the particular situation of Afghanistan and the need to devise instruments that would promote exports of Afghan morphine/codeine, an option of a State-State contract should be explored. As any private contract of sale of goods, a State-State contract would have to include *inter alia*:

- specifications and quantities of the goods;;

[81] For a flowchart illustrating a sales contract between States, see Annex I.1.
[82] A multilateral contract is an agreement among more than two governments over their countries' purchases and sales of one or more commodities. They can be legally binding contracts to buy and sell under stated conditions and aim at providing supply of a specified quantity of a commodity within a stated price range. See B.S. Chimni, *International Commodity Agreements: A Legal Study* (Croom Held, 1987), p.49.

- price;
- terms, dates and methods of delivery;
- dates and methods of payment and transfer of funds;
- other obligations of the buyer and the seller;
- penalties for non-performance;
- applicable law;
- dispute settlement;
- terms of modification and termination of the contract.

To enter into a private contract, rather than an international treaty, participant States would have to avoid application of international law to the contract, so that the contract does not fall under the definition of a 'treaty' in Article 2(1)(a) of the Vienna Convention on the Law of Treaties (1969). To achieve this, participant States would have to submit the contract to the domestic law of one of the parties or to the law of a third State.[83]

Even if a contract itself may be entered into by two States, its actual implementation would be carried out by a designated entity on behalf of the State – be it a State agency (e.g., health authority) or a State enterprise. However, the rights and obligations under such a contract will arise for States themselves and not for these entities.

1.1. Compatibility with UN Drug Conventions regime

Nothing in the 1961 Convention prevents States from acting as buyers or sellers of narcotic drugs at the international level for scientific and medical purposes. It must therefore be presumed that such transactions are in principle allowed. However, when undertaking such an activity, States have to comply with general obligations of the 1961 Convention and in particular:

- Each import and export transaction (between entities charged with the implementation of the contract) must be subject to a separate authorisation by the competent national drugs authority;
- The quantities of contracted narcotic drugs must not exceed the annual limitations for manufacture and importation of the given narcotic drugs, established for each State on the basis of the relevant estimates and confirmed by the INCB.

1.2. Compatibility with WTO regime

Generally, WTO rules do not regulate the content of trade, nor do they apply to individual commercial transactions. Instead, they seek to supervise government restrictions of trade and apply to government measures and practices *affecting* trade in goods and services. In this context, the term 'measure' is usually used to define what can be a subject-matter of a challenge in the WTO and thus, subject of WTO obligations. The types of measures challenged in the GATT/WTO in the past 60 years included legislation, executive rules, administrative practice, guidelines, administrative decisions, and judicial decisions. In all of these cases, the acts of the

[83] Taking the agreement outside the scope of public international law will also help with ensure the agreement's compatibility with WTO rules. An international treaty entered into by a State would be a 'measure' challengeable under the WTO rules, whereas a private contract would not.

State were governmental in nature (*jure imperii*), not commercial (*jure gestionis*). On the basis of this past experience, it appears that commercial activities of State, and in particular contracts entered into by States, do not fall within the ambit of the WTO rules.

This conclusion is further confirmed by the text of the GATT, which refers to the following measures (in Articles I and III):

- customs duties and charges of any kind imposed on or in connection with importation or exportation;
- the method of levying such duties and charges;
- rules and formalities in connection with importation and exportation;
- internal taxes and other internal charges;
- laws, regulations and requirements affecting the internal sale, offering for sale, purchase, transportation, distribution or use of products.

A contract concluded between States would not fall under any of these categories, thus it would be excluded from the scope of these provisions. Neither would it generally fall under Article XI (quantitative restrictions) – another WTO provision relevant to imports of narcotic drugs from Afghanistan.[84]

For these reasons, a State-State contract appears to be a viable option from the point of view of WTO law.

1.3. Compatibility with EU law

If a buyer-country is a Member State of the European Union, it is necessary to ensure that the competence to enter into such a contract rests with the State, and not with any European institutions. In this context, Article 133 of the EC Treaty on the Common Commercial Policy (CCP) is relevant.

The CCP is an exclusive competence of the EU, so Member States are prevented from acting unilaterally in this area. Article 133 EC Treaty gives a right to Commission to enter into international trade agreements with one or more States or international organisations. However, such trade agreements are understood as the ones that establish *rules* for trade. These are the rules of general application that must be followed by all private traders, including States if they act as private traders. For example, rules on customs tariffs, customs formalities, anti-dumping, subsidies and countervailing measures, customs valuation, rules of origin, all fall under such treaties. Moreover, Article 133 impliedly refers to international agreements governed by *international* law. As suggested above, the contemplated contract would be governed not by international but by domestic law of one of the parties or of a third country. Hence, an international contract of sale of goods would not be an 'agreement' in the meaning of Article 133.

[84] However, one concern to bear in mind is that the quantity of morphine/codeine imported from Afghanistan under the State contract should not reach the maximum quantity of a respective narcotic drug allowed into the country in a given year. Otherwise, such a contract could be viewed as an unfair way to distribute quotas between other possible suppliers of morphine and codeine under GATT Article XIII.

Therefore, it appears that an EU Member State is free to enter into private commercial contracts; by doing so the State would not encroach upon the competence of the Community.

1.4. Other matters to be considered

Domestic law. When considering a possibility of a State-State contract, each State has to comply with its domestic constitution and other legislation in order to ensure that it is not prevented from entering into commercial contracts of the described kind. One also has to be aware of a procedure relevant for the conclusion of such contracts (for example, requirement of ratification). The relevant rules may differ from State to State.

Immunities. The doctrine of State immunity must be taken into account and, if necessary, be waived in the contract in order to ensure the contract's performance and enforcement. A dispute settlement provision should be considered whereby disputes between parties would be submitted to international arbitration. Matters concerning the enforcement of arbitral decisions must also be looked into. In particular, the place of arbitration should be in a country that is party to the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards, to ensure enforcement of an arbitral award. Any award would have to be legal in the place of arbitration and enforcement, and care should be taken that an award under the contract does not contravene public policy in either the place of arbitration or the place of enforcement.

1.5. Conclusion

A commercial contract between Afghanistan and another State for the sale of agreed quantities of morphine and codeine appears to be an option for promoting Afghan exports of the drugs. From a technical legal point of view there appears to be no obstacle for this solution. However, politically countries may be reluctant to enter into such contracts as the latter may give rise to sensitive issues of State sovereignty and immunity.

2. Contracts between State enterprises[85]

The main advantage of trading through State enterprises is that this option can avoid sensitive issues of State sovereignty and immunity, because a State enterprise would not be able to claim immunity from jurisdiction or enforcement.[86] A State enterprise is a legally separate entity which acquires rights and obligations in its own name. At the same time, such enterprises are controlled by the State. State enterprises are frequently used as a tool for carrying out commercial activities in areas where a State wishes to retain involvement. State trading through State enterprises is in general widely practiced throughout for variety of products.

An international commercial contract between two State enterprises would not differ in content from a similar contract between two private enterprises. It may be short-

[85] For a flowchart illustrating a sales contract between State enterprises, see Annex I.2.
[86] Note, however, that there has been international jurisprudence where States have been held liable for contract breaches by State enterprises, where conduct of State enterprises has been *attributed* to a State.

term or long-term, and would include the terms and conditions routinely included into such contracts: the subject-matter of the sale, quality, price, delivery, etc.

2.1. Compatibility with UN Drug Conventions regime

The 1961 Convention expressly provides for the possibility of international trade in narcotic drugs through State enterprises.[87] These enterprises must comply with the generally applicable obligations of the 1961 Convention:

- The relevant State enterprise must be authorised to engage in international trade in narcotic drugs by the competent national drugs authority;
- Each import and export transaction must be subject to a separate authorisation by the competent national drugs authorities of both an exporting and an importing country;
- The quantities of contracted narcotic drugs must not exceed the annual limitations for manufacture and importation of the given narcotic drugs, established for each State on the basis of the relevant estimates and confirmed by the INCB.

2.2. Compatibility with WTO regime

As discussed above, the GATT contains Article XVII on State-trading enterprises (STEs).[88] Its most important aspect is that it aims to prevent discriminatory trade practices that could be carried out by governments indirectly through STEs. In particular, it requires STEs to make any export/import purchases or sales "solely in accordance with **commercial considerations**, including price, quality, availability, marketability, transportation and other conditions of purchase or sale".[89] If a violation of this obligation results in discriminatory treatment of goods from particular WTO members, then Article XVII will be considered breached.

As noted above, with respect to potential exports of morphine/codeine from Afghanistan, this discipline essentially means that an STE of a WTO member may not purchase narcotic drugs from Afghanistan on conditions totally alienated from commercial considerations (for example, at a price significantly higher than otherwise available on the market for like products).

GATT rules on STEs are considered as not easily enforceable. Despite wide-spread State trading practices, there have been only two cases where a claim under Article XVII was made.[90] The Appellate Body in *Canada – Wheat* confirmed that to find a violation of Article XVII, it would need to establish both: (i) purchases/sales *not* in accordance with commercial considerations, and (ii) discriminatory treatment.[91] In any case, the inquiry would have to take account of the particularities of the relevant market, including the nature and extent of competition therein.[92]

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[87] 1961 Convention, Articles 30.1(a) and 31.3(a).
[88] See above, Section II.B.5.
[89] GATT, Article XVII:1(b).
[90] *Korea - Measures Affecting Imports of Fresh, Chilled and Frozen Beef (Korea – Beef)*, and *Canada - Measures Relating to Exports of Wheat and Treatment of Imported Grain (Canada – Wheat)*.
[91] Appellate Body Report, *Canada – Wheat*, paras.110-112.
[92] Appellate Body Report, *Canada – Wheat*, para. 145, Panel Report *Canada – Wheat*, para.6.103.

Therefore, a buyer-STE may purchase Afghan morphine/codeine so long as it takes into account commercial considerations.

It has to be noted that the conditions of each particular transaction (in particular, the price) are frequently kept confidential, therefore for external observers/competitors it is not always possible to determine whether the terms of the contract run contrary to commercial considerations.

2.3. Compatibility with EU law

If a buying State enterprise is controlled by an EU Member State, it is necessary to secure compliance with EU law. In principle, EC legislation does not prohibit or regulate commercial activities of State enterprises; these matters lie in the domain of domestic law.

One matter to be aware of is Article 86 of the EC Treaty, which extends the **EC rules on competition** to 'public undertakings and undertakings to which Member States grant special or exclusive rights'. In particular, relevant State enterprises must not engage into prohibited practices such as price fixing or dividing the markets (Article 81 EC Treaty). Also, a State enterprise must not abuse a dominant position in the relevant market, for example, through discriminatory pricing (Article 82 EC Treaty).

2.4. Conclusion

A commercial contract for the sale of morphine and codeine between State enterprises of Afghanistan and a State enterprise of an importing country appears to be a viable option for the promotion of Afghan exports of the drugs. This option avoids the sensitive issues of State sovereignty and immunity, and remains in compliance with relevant laws including WTO rules, provided that relevant contracts are concluded taking into account commercial considerations.

3. Contracts between private companies

The 1961 UN Convention allows private companies to buy and sell narcotic drugs for medical and scientific purposes, provided that such private companies have an appropriate license from a competent State authority and subject to other conditions of the 1961 Convention. In fact, licit world trade in narcotic drugs is mostly carried out through private businesses.[93]

The main disadvantage of this option as a means of promoting exports of Afghan morphine and codeine is that a government cannot require a company to buy narcotic drugs from a particular supplier (Afghanistan) and on particular terms. Such an instruction would be in violation of the WTO MFN provision in GATT Article I and also, if a buyer-country is an EU Member State, of EU competition law.

At the same time, for example, the United States adopted the '80-20' rule which obliges the private importers to buy 80% of all raw opium materials from two countries, Turkey and India. On its face, the relevant provision of the US legislation is in violation of the WTO MFN principle, but to date it has not been challenged in the

[93] For details, see Section I.B.

WTO.[94] Therefore, although it is a possible solution, it does not appear to be a legally-sound solution.

Conclusion

The purchase of Afghan morphine/codeine through licensed private companies is possible but any State interference in this process may be contrary to WTO law and European law.

4. Supply of morphine/codeine to international NGOs

There is a question of whether international NGOs may receive, by virtue of commercial sales contracts, part of contracted morphine/codeine for humanitarian purposes? The two situations must be distinguished: (1) provision of narcotic drugs to NGOs for use domestically, and (2) provision of narcotic drugs to NGOs for use outside the territory of a State providing the drugs.

Domestic trade and distribution[95] of narcotic drugs is primarily a question of domestic jurisdiction subject to compliance with the 1961 Convention. The basic obligation under the Convention is that trade in or distribution of drugs must be under license. The Parties are required to control all persons and enterprises engaged in the trade in or distribution of drugs.[96] The 1961 Convention does not restrict the type of entities that can be licensed – a non-governmental organisation could be one of them, unless this is prohibited by national legislation.

If a given NGO wishes to **export** the amount of drugs from the State where the drugs were received (for example, to a site of human disaster), that NGO would have to comply with rules of the 1961 Convention on international trade. These rules apply as long as there is a "physical transfer of drugs from one State to another State" regardless of whether this transfer is done through a sale-purchase transaction or not (for example, if an NGO ships a certain amount to its office in another country).[97] In particular, each import and export transaction is subject to a separate authorisation by the competent national drugs authorities of the exporting and an importing country.

Any contract or agreement could contain a reference to a possibility of redistributing the purchased narcotic drugs to humanitarian NGOs. However, this will not make any difference because no agreement/contract can create rights or obligations in relation to third parties (NGOs).

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[94] However, it may be argued that this MFN violation is justified. Under the 1961 Convention each country has an annual limitation for importation of each drug. Using GATT terminology, the 1961 Convention sets a quantitative restriction on importation. GATT Article XIII includes rules for administration of quantitative restrictions where the latter are allowed. Among other things, it advises WTO members to allocate quotas between supplying countries and sets out criteria and procedures for quota allocation (to achieve a distribution of trade approaching, as closely as possible, the shares which the various Members might be expected to obtain in the absence of such restrictions). Accordingly, the US might argue that the '80-20' rule is an implementation of Article XIII and that it allocates quotas between opium-producing countries, representing their fair shares in the world trade in raw opium materials. One other possible justification could be under Article XX(a) and/or (b), with the reasoning similar to that set out in Section III.B.4 in relation to a possible PTA with Afghanistan.

[95] It is submitted that the term "distribution" includes *inter alia* gratuitous transfer of narcotic drugs between entities.

[96] 1961 Convention, Article 30.1. Medical practitioners are an exception from the licensing obligation.

[97] 1961 Convention, Article 1.1(m), definition of "import" and "export".

D. Revenue Sharing Agreement[98]

This section will consider an agreement with the participation of a **foreign investor**. A common mode of entry for foreign investors, especially into developing countries, is through the making of an investment agreement with the State or a State entity. This is often the case in sectors in which the State entity functions as a statutory monopoly under local laws and where developing countries need substantial initial investment (for example, in relation to the oil and gas sectors). Investment agreements take different forms, such as construction or management contracts, production or revenue-sharing contracts, concessions, etc. In all, the foreign investor is admitted to a host country to establish and operate a particular business using local (natural) resources and in return, the investor remunerates the host State through either (or a combination of) a down-payment, royalties on produced/exported goods, a fee, a share of the production, or a share of the profits. The foreign investor usually funds the whole or substantially the whole of the initial development and frequently receives generous tax concessions.

An example of such investment contracts is a **revenue sharing agreement (RSA)**. For the sake of simplicity, this section will focus only on this type of investment contract. A proposed RSA is a commercial contract to be concluded between Afghanistan (or its authorised State enterprise) and a company of a third State (the "Company").[99] Under the RSA, the parties may establish a **joint venture enterprise (JVE)** to develop and operate the facilities for manufacturing morphine/codeine from raw opium materials produced in Afghanistan, as well as for exporting these drugs. Alternatively, parties may choose to establish an Afghan subsidiary wholly-owned by the foreign investor as a vehicle for carrying out the project, thus fully attributing operational control to the foreign investor. In any event, the agreement must ensure that Afghan farmers supplying opium poppies or raw opium materials to the JVE receive a fair price. The fair-trade character of the RSA may even be reflected in the agreement's title (as an example, it could be entitled 'Fair Trade and Revenue Sharing Agreement').

The proposed RSA would include the following **basic features**:

- The Company invests in building the production facilities for the manufacturing of morphine and codeine in Afghanistan (including the supply of required technology, equipment, infrastructure and training);
- The Company manages the organisation of the complete business process from purchasing of poppies or raw opium materials from Afghan producers to exports of the manufactured morphine or codeine;
- The legal vehicle to operate the arrangement would be a joint venture between Afghanistan and the Company, or Company's wholly-owned subsidiary (the "Operator");

[98] For a flowchart illustrating a revenue sharing agreement, see Annex I.3.

[99] To ensure the control of this third State over the Company's activities in Afghanistan, the Company may be State-controlled, e.g. by holding 51% of the share capital. Although foreign investors participating in RSAs are usually privately-owned, there is no reason to prevent an enterprise owned in whole or in part by a State. There are examples of State-owned oil companies entering into investment contracts with third States.

- The RSA would establish appropriate management and decision-making procedures;
- Afghanistan would provide the Operator with all licenses necessary for manufacturing and exporting of morphine or codeine;[100]
- Afghanistan would ensure the licit supply of poppies or raw opium materials to the Operator from licensed Afghan producers;
- The Company would have ownership of all of the manufactured morphine/codeine but would share with Afghanistan the profit that it would derive from exports of drugs (if desired, a revenue sharing arrangement can be substituted or complemented by a production sharing arrangement whereby a certain share of manufactured drugs would go to Afghanistan);
- The RSA would ensure that Afghan farmers supplying opium poppies or raw opium materials to the JVE receive a fair price for these products;
- The RSA could be brought under the umbrella of the **framework cooperation agreement** discussed in section III.B.5 and benefit from the guarantees established in that agreement for foreign investors, if any;
- The parties to the RSA would make a choice of the convenient law and submit the possible future disputes to international arbitration;
- Usually RSAs are limited in duration but concluded for a long period of time (20-60 years).

Morphine/codeine manufactured using the proposed scheme would be exported from Afghanistan. If the Company is controlled by the third State, the relevant State would be able to influence the direction of exports.

1. Compatibility with the UN Drug Conventions regime

The proposed scheme appears to be in compliance with the 1961 Convention. The Convention does not prevent foreign-owned entities from obtaining licensing for manufacturing and exportation of narcotic drugs. Basic obligations of the Convention would have to be complied with:

- The Operator must be authorised by the Afghan national drugs authority to manufacture export narcotic drugs;
- Afghanistan must "control all persons and enterprises carrying on or engaged in the manufacture of drugs" and control "the establishments and premises in which such manufacture takes place".[101]
- Each import and export transaction must be subject to a separate authorisation by the competent national drugs authorities of both Afghanistan and an importing country;
- The quantities of contracted narcotic drugs must not exceed the annual limitations for manufacture and importation of the drugs, established for each State on the basis of the relevant estimates and confirmed by the INCB.

[100] The licenses would be unnecessary if the JVE qualified as a State enterprise under Afghan law. In that case, under the provisions of the 1961 Convention, a general authorization would be sufficient.
[101] 1961 Convention, Article 29(2)(a, b).

2. Compatibility with WTO regime

As discussed above, WTO rules do not regulate the content of trade, nor do they apply to individual commercial transactions. Instead, they seek to supervise government restrictions of trade and apply to government measures and practices *affecting* trade in goods and services. The WTO does not have rules applying to companies of WTO members establishing their enterprises and trading from the territories of other countries.

According to the proposed RSA, there will be no preferential trade arrangement with Afghanistan at the governmental level; therefore GATT Article I (MFN treatment obligation) will not be violated.

GATT Article XVII on state-trading enterprises would apply if the manufactured morphine or codeine is imported by a State enterprise of a WTO member. Such State enterprise would have to comply with the requirements of this Article regarding commercial considerations and non-discrimination.[102]

3. Compatibility with EU law

There appear to be no relevant issues arising under EU law.

Conclusion

An RSA for the production and exports of morphine/codeine concluded between Afghanistan and a company of a third State appears to be a viable option for the promotion of Afghan exports of drugs. Because this is a commercial contract, there is flexibility in the drafting of a contract that will meet the economic, social and development needs of Afghanistan. It would allow bringing technology and expertise to Afghanistan, assisting it in controlling the produced drugs from being diverted into illicit trade and, if necessary, ensuring that the exports go along the preferred routes.

The limitations on an RSA would be the political and social instability in Afghanistan and its developing legal system. However, it is possible to submit the contract to the applicable law of a stable State, and subject the dispute resolution to arbitration that would ensure an enforceable award. In general, an RSA would require careful and extensive drafting supported by detailed economic, social and technical assessments.

[102] See Sections II.B.5 and III.C.2.

E. Fair Trade Elements

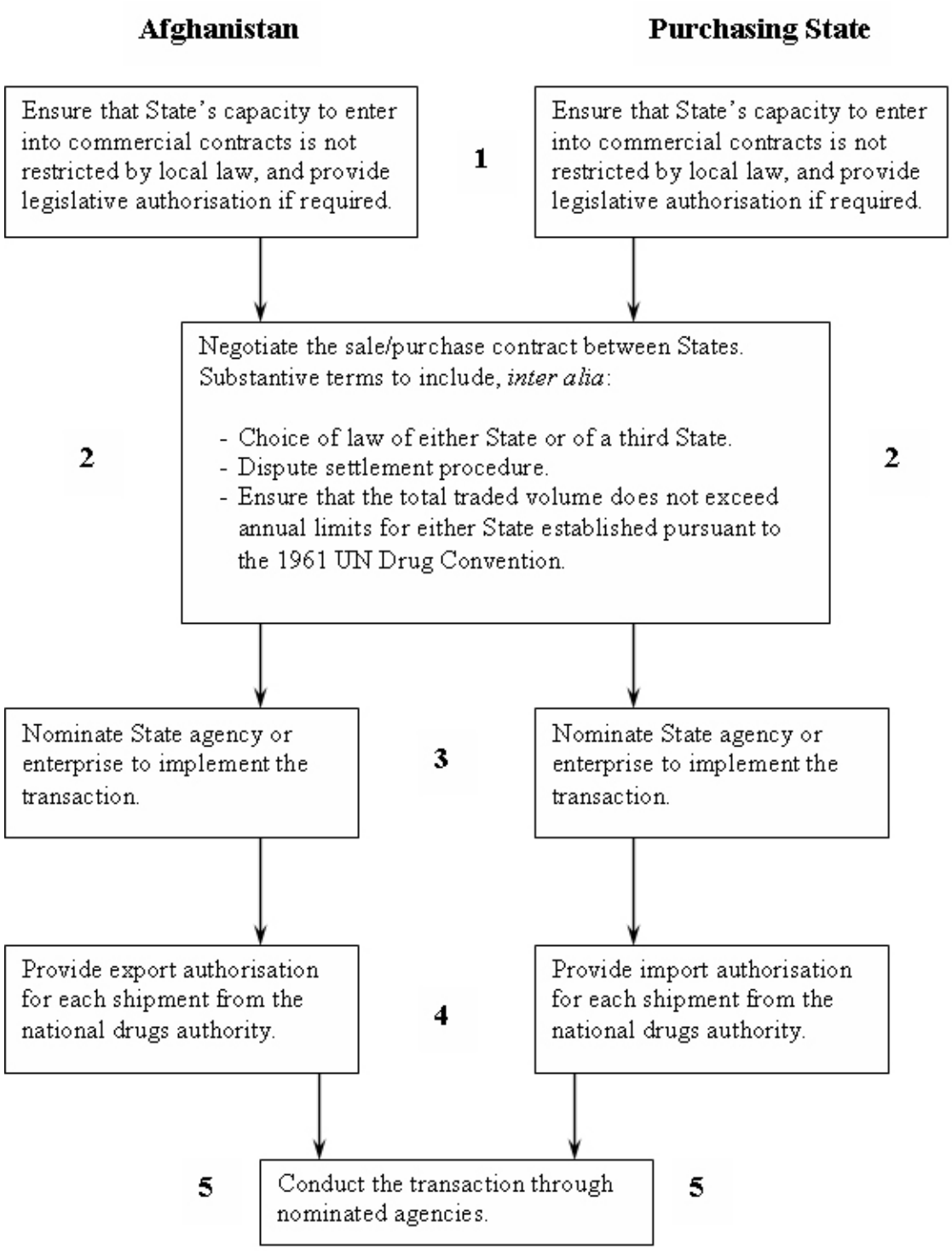
Any chosen legal instrument can be designed to take into account, as far as possible, the 'fair trade' elements with a view to ensure that Afghan farmers licensed to grow opium poppies are paid a fair price for their supplies. The fair and stable price is necessary to prevent diversion of the produced poppies and raw opium into illicit trade. The fair trade features may also help improving marketability of Afghan opium-based products in the world markets. Among other goals of the fair trade are the following:

- To improve the livelihoods and well-being of producers and allow long term production planning;
- To promote development opportunities for disadvantaged and/or small producers;
- To improve working conditions and protect children from exploitation in the production process.
- To set an example of partnership in trade through dialogue, transparency and respect.
- To protect human rights by promoting social justice, sound environmental practices and economic security.

The fair trade elements would include, primarily, clauses on direct purchasing from producers and on stable minimum purchase prices that would cover the cost of production and give a fair profit premium to the farmers.

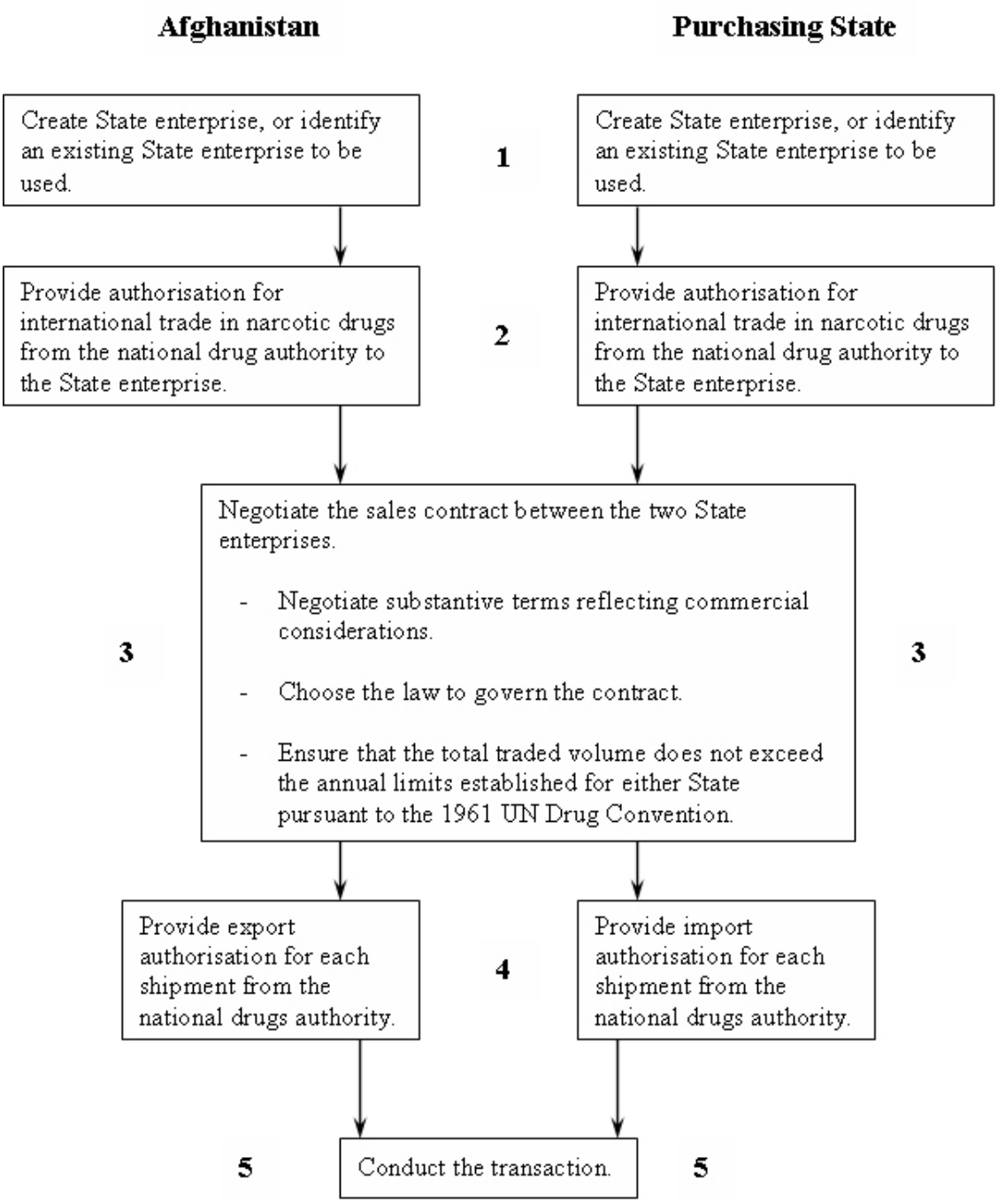
Annex I. Flowcharts

1. Sales Contract between States



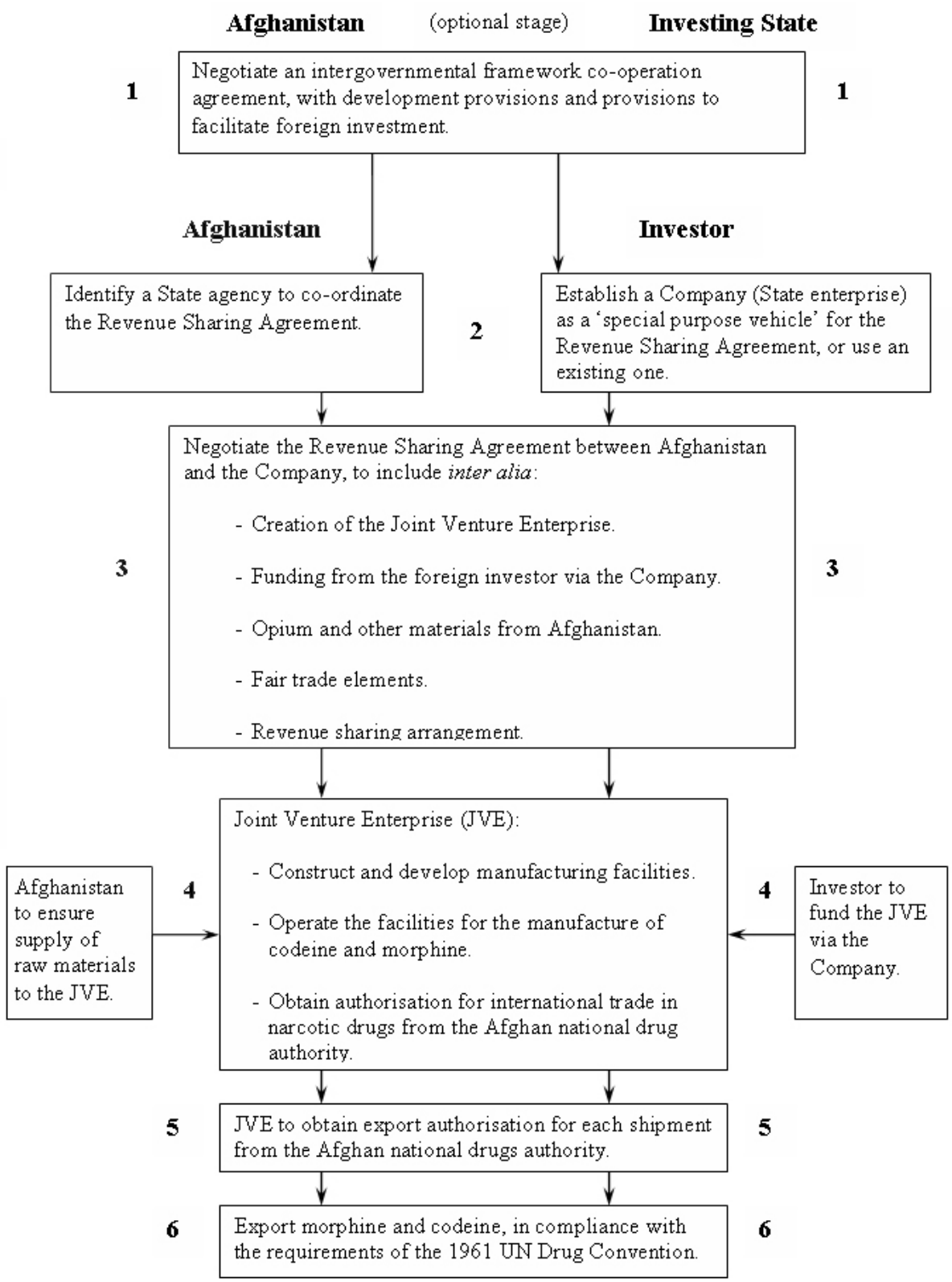
This is for illustrative purposes only. Please consult accompanying text for substantive explanations and legal requirements.

2. Sales Contract between State Enterprises



This is for illustrative purposes only. Please consult accompanying text for substantive explanations and legal requirements.

3. Revenue Sharing Agreement



This is for illustrative purposes only. Please consult accompanying text for substantive explanations and legal requirements.

Annex II. Relevant Legal Instruments

1. 1961 Single Convention on Narcotic Drugs, as amended by 1972 Protocol

[Excerpts]

Article 1
DEFINITIONS

1. Except where otherwise expressly indicated or where the context otherwise requires, the following definitions shall apply throughout the Convention:
(a) "Board" means the International Narcotics Control Board,
[…]
(g) "Commission" means the Commission on Narcotic Drugs of the Council.
(h) "Council" means the Economic and Social Council of the United Nations.
(i) "Cultivation" means the cultivation of the opium poppy, coca bush or cannabis plant.
(j) "Drug" means any of the substances in Schedules I and II, whether natural or synthetic.
(k) "General Assembly" means the General Assembly of the United Nations.
(l) "Illicit traffic" means cultivation or trafficking in drugs contrary to the provisions of this Convention.
(m) "Import" and "export" mean in their respective connotations the physical transfer of drugs from one State to another State, or from one territory to another territory of the same State.
(n) "Manufacture" means all processes, other than production, by which drugs may be obtained and includes refining as well as the transformation of drugs into other drugs.
(o) "Medicinal opium" means opium which has undergone the processes necessary to adapt it for medicinal use.
(p) "Opium" means the coagulated juice of the opium poppy.
(q) "Opium poppy" means the plant of the species Papaver somniferum L.
(r) "Poppy straw" means all parts (except the seeds) of the opium poppy, after mowing.
(s) "Preparation" means a mixture, solid or liquid, containing a drug.
(t) "Production" means the separation of opium, coca leaves, cannabis and cannabis resin from the plants from which they are obtained.
(u) "Schedule I", "Schedule II", "Schedule III" and "Schedule IV" mean the correspondingly numbered list of drugs or preparations annexed to this Convention, as amended from time to time in accordance with article 3.
[…]
(x) "Stocks" means the amounts of drugs held in a country or territory and intended for:
(i) Consumption in the country or territory for medical and scientific purposes,
(ii) Utilization in the country or territory for the manufacture of drugs and other substances, or
(iii) Export;
but does not include the amounts of drugs held in the country or territory,
(iv) By retail pharmacists or other authorized retail distributors and by institutions or qualified persons in the duly authorized exercise of therapeutic or scientific functions, or
(v) As "special stocks".
[…]

Article 2
SUBSTANCES UNDER CONTROL
1. Except as to measures of control which are limited to specified drugs, the drugs in Schedule I are subject to all measures of control applicable to drugs under this Convention and in particular to those prescribed in article 4 (c), 19, 20, 21, 29, 30, 31, 32, 33, 34 and 37.

2. The drugs in Schedule II are subject to the same measures of control as drugs in Schedule I with the exception of the measures prescribed in article 30, paragraphs 2 and 5, in respect of the retail trade.

3. Preparations other than those in Schedule III are subject to the same measures of control as the drugs which they contain, but estimates (article 19) and statistics (article 20) distinct from those dealing with these drugs shall not be required in the case of such preparations, and article 29, paragraph 2 (c) and article 30, paragraph 1 (b) (ii) need not apply.

4. Preparations in Schedule III are subject to the same measures of control as preparations containing drugs in Schedule II except that article 31, paragraphs 1 (b) and 3 to 15 and, as regards their acquisition and retail distribution, article 34, paragraph (b), need not apply, and that for the purpose of estimates (article 19) and statistics (article 20) the information required shall be restricted to the quantities of drugs used in the manufacture of such preparations.

5. The drugs in Schedule IV shall also be included in Schedule I and subject to all measures of control applicable to drugs in the latter Schedule, and in addition thereto:
(a) A Party shall adopt any special measures of control which in its opinion are necessary having regard to the particularly dangerous properties of a drug so included; and
(b) A Party shall, if in its opinion the prevailing conditions in its country render it the most appropriate means of protecting the public health and welfare, prohibit the production, manufacture, export and import of, trade in, possession or use of any such drug except for amounts which may be necessary for medical and scientific research only, including clinical trials therewith to be conducted under or subject to the direct supervision and control of the Party.

6. In addition to the measures of control applicable to all drugs in Schedule I, opium is subject to the provisions of article 19, paragraph 1, subparagraph (f), and of articles 21 bis, 23 and 24, the coca leaf to those of articles 26 and 27 and cannabis to those of article 28.

7. The opium poppy, the coca bush, the cannabis plant, poppy straw and cannabis leaves are subject to the control measures prescribed in article 19, paragraph 1, subparagraph (e), article 20, paragraph 1, subparagraph (g), article 21 bis and in articles 22 to 24; 22, 26 and 27; 22 and 28; 25; and 28, respectively.

8. The Parties shall use their best endeavours to apply to substances which do not fall under this Convention, but which may be used in the illicit manufacture of drugs, such measures of supervision as may be practicable.

9. Parties are not required to apply the provisions of this Convention to drugs which are commonly used in industry for other than medical or scientific purposes, provided that:
(a) They ensure by appropriate methods of denaturing or by other means that the drugs so used are not liable to be abused or have ill effects (article 3, paragraph 3) and that the harmful substances cannot in practice be recovered; and
(b) They include in the statistical information (article 20) furnished by them the amount of each drug so used.

[…]

Article 4
GENERAL OBLIGATIONS
The parties shall take such legislative and administrative measures as may be necessary:
(a) To give effect to and carry out the provisions of this Convention within their own territories;
(b) To co-operate with other States in the execution of the provisions of this Convention; and
(c) Subject to the provisions of this Convention, to limit exclusively to medical and scientific purposes the production, manufacture, export, import, distribution of, trade in, use and possession of drugs.

[…]

Article 12
ADMINISTRATION OF THE ESTIMATE SYSTEM
1. The Board shall fix the date or dates by which, and the manner in which, the estimates as provided in article 19 shall be furnished and shall prescribe the forms therefor.

2. The Board shall, in respect of countries and territories to which this Convention does not apply, request the Governments concerned to furnish estimates in accordance with the provisions of this

Convention.

3. If any State fails to furnish estimates in respect of any of its territories by the date specified, the Board shall, as far as possible, establish the estimates. The Board in establishing such estimates shall to the extent practicable do so in co-operation with the Government concerned.

4. The Board shall examine the estimates, including supplementary estimates, and, except as regards requirements for special purposes, may require such information as it considers necessary in respect of any country or territory on behalf of which an estimate has been furnished, in order to complete the estimate or to explain any statement contained therein.

5. The Board, with a view to limiting the use and distribution of drugs to an adequate amount required for medical and scientific purposes and to ensuring their availability for such purposes, shall as expeditiously as possible confirm the estimates, including supplementary estimates, or, with the consent of the Government concerned, may amend such estimates. In case of a disagreement between the Government and the Board, the latter shall have the right to establish, communicate and publish its own estimates, including supplementary estimates.

6. In addition to the reports mentioned in article 15, the Board shall, at such times as it shall determine but at least annually, issue such information on the estimates as in its opinion will facilitate the carrying out of this Convention.

Article 13
ADMINISTRATION OF THE STATISTICAL RETURNS SYSTEM
1. The Board shall determine the manner and form in which statistical returns shall be furnished as provided in article 20 and shall prescribe the forms therefor.
2. The Board shall examine the returns with a view to determining whether a Party or any other State has complied with the provisions of this Convention.
3. The Board may require such further information as it considers necessary to complete or explain the information contained in such statistical returns.
4. It shall not be within the competence of the Board to question or express an opinion on statistical information respecting drugs required for special purposes.

Article 14
MEASURES BY THE BOARD TO ENSURE THE EXECUTION OF PROVISIONS OF THE CONVENTION
1. (a) If, on the basis of its examination of information submitted by Governments to the Board under the provisions of this Convention, or of information communicated by United Nations organs or by specialized agencies or, provided that they are approved by the Commission on the Board's recommendation, by either other intergovernmental organizations or international non-governmental organizations which have direct competence in the subject matter and which are in consultative status with the Economic and Social Council under Article 71 of the Charter of the United Nations or which enjoy a similar status by special agreement with the Council, the Board has objective reasons to believe that the aims of this Convention are being seriously endangered by reason of the failure of any Party, country or territory to carry out the provisions of this Convention, the Board shall have the right to propose to the Government concerned the opening of consultations or to request it to furnish explanations. If, without any failure in implementing the provisions of the Convention, a Party or a country or territory has become, or if there exists evidence of a serious risk that it may become, or if there exists evidence of a serious risk that it may become, an important centre of illicit cultivation, production or manufacture of, or traffic in or consumption of drugs, the Board has the right to propose to the Government concerned the opening of consultations. Subject to the right of the Board to call the attention of the Parties, the Council and the Commission to the matter referred to in subparagraph (d) below, the Board shall treat as confidential a request for information and an explanation by a Government or a proposal for consultations and the consultations held with a Government under this subparagraph.
(b) After taking action under subparagraph (a) above, the Board, if satisfied that it is necessary to do so, may call upon the Government concerned to adopt such remedial measures as shall seem under the circumstances to be necessary for the execution of the provisions of this Convention.
(c) The Board may, if it thinks such action necessary for the purpose of assessing a matter referred to in subparagraph (a) of this paragraph, propose to the Government concerned that a study of the matter be carried out in its territory by such means as the Government deems appropriate. If the Government concerned decides to undertake this study, it may request the Board to make available the expertise and

the services of one or more persons with the requisite competence to assist the officials of the Government in the proposed study. The person or persons whom the Board intends to make available shall be subject to the approval of the Government. The modalities of this study and the time-limit within which the study has to be completed shall be determined by consultation between the Government and the Board. The Government shall communicate to the Board the results of the study and shall indicate the remedial measures that it considers necessary to take.
(d) If the Boards finds that the Government concerned has failed to give satisfactory explanations when called upon to do so under subparagraph (a) above, or has failed to adopt any remedial measures which it has been called upon to take under subparagraph (b) above, or that there is a serious situation that needs co-operative action at the international level with a view to remedying , it may call the attention of the Parties, the Council and the Commission to the matter. The Board shall so act if the aims of this Convention are being seriously endangered and it has not been possible to resolve the matter satisfactorily in any other way. It shall also so act if it finds that there is a serious situation that needs co-operative action at the international level with a view to remedying it and that bringing such a situation to the notice of the Parties, the Council and the Commission is the most appropriate method of facilitating such co-operative action; after considering the reports of the Board, and of the Commission if available on the matter, the Council may draw the attention of the General Assembly to the matter.

2. The Board, when calling the attention of the Parties, the Council and the Commission to a matter in accordance with paragraph 1 (d) above, may, if it is satisfied that such a course is necessary, recommend to Parties that they stop the import of drugs, the export of drugs, or both, from or to the country or territory concerned, either for a designated period or until the Board shall be satisfied as to the situation in that country or territory. The State concerned may bring the matter before the Council.

3. The Board shall have the right to publish a report on any matter dealt with under the provisions of this article, and communicate it to the Council, which shall forward it to all Parties. If the Board publishes in this report a decision taken under this article or any information relating thereto, it shall also publish therein the views of the Government concerned if the latter so requests.

4. If in any case a decision of the Board which is published under this article is not unanimous, the views of the minority shall be stated.

5. Any State shall be invited to be represented at a meeting of the Board at which a question directly interesting it is considered under this article.

6. Decisions of the Board under this article shall be taken by a two-thirds majority of the whole number of the Board.

Article 14 bis
TECHNICAL AND FINANCIAL ASSISTANCE
In cases which it considers appropriate and either in addition or as an alternative to measures set forth in article 14, paragraphs 1 and 2, the Board, with the agreement of the Government concerned, may recommend to the competent United Nations organs and to the specialized agencies that technical or financial assistance, or both, be provided to the Government in support of its efforts to carry out its obligations under this Convention, including those set out or referred to in articles 2, 35, 38 and 38 bis.

[…]

Article 17
SPECIAL ADMINISTRATION
The Parties shall maintain a special administration for the purpose of applying the provisions of this Convention.

Article 18
INFORMATION TO BE FURNISHED BY PARTIES TO THE SECRETARY-GENERAL
1. The Parties shall furnish to the Secretary-General such information as the Commission may request as being necessary for the performance of its functions, and in particular:
(a) An annual report on the working of the Convention within each of their territories;
(b) The text of all laws and regulations from time to time promulgated in order to give effect to this Convention;
(c) Such particulars as the Commission shall determine concerning cases of illicit traffic, including particulars of each case of illicit traffic discovered which may be of importance, because of the light

thrown on the source from which drugs are obtained for the illicit traffic, or because of quantities involved or the method employed by illicit traffickers; and
(d) The names and addresses of the governmental authorities empowered to issue export and import authorizations or certificates.
2. Parties shall furnish the information referred to in the preceding paragraph in such manner and by such dates and use such forms as the Commission may request.

Article 19
ESTIMATES OF DRUG REQUIREMENTS
1. The Parties shall furnish to the Board each year for each of their territories, in the manner and form prescribed by the Board, estimates on forms supplied by it in respect of the following matters:
(a) Quantities of drugs to be consumed for medical and scientific purposes;
(b) Quantities of drugs to be utilized for the manufacture of other drugs, of preparations in Schedule III, and of substances not covered by this Convention;
(c) Stocks of drugs to be held as at 31 December of the year to which the estimates relate;
(d) Quantities of drugs necessary for addition to special stocks;
(e) The area (in hectares) and the geographical location of land to be used for the cultivation of the opium poppy;
(f) Approximate quantity of opium to be produced;
(g) The number of industrial establishments which will manufacture synthetic drugs; and
(h) The quantities of synthetic drugs to be manufactured by each of the establishments referred to in the preceding subparagraph.

2. (a) Subject to the deductions referred to in paragraph 3 of article 21, the total of the estimates for each territory and each drug except opium and synthetic drugs shall consist of the sum of the amounts specified under subparagraphs (a), (b) and (d) of paragraph 1 of this article, with the addition of any amount required to bring the actual stocks on hand at 31 December of the preceding year to the level estimated as provided in subparagraph (c) of paragraph 1.
(b) Subject to the deductions referred to in paragraph 3 of article 21 regarding imports and in paragraph 2 of article 21 bis, the total of the estimates for opium for each territory shall consist either of the sum of the amounts specified under subparagraphs (a), (b) and (d) of paragraph 1 of this article, with the addition of any amount required to bring the actual stocks on hand at December of the preceding year to the level estimated as provided in subparagraph(c) of paragraph 1, or of the amount specified under subparagraph (f) of paragraph 1 of this article, whichever is higher.
(c) Subject to the deductions referred to in paragraph 3 of article 21, the total of the estimates for each territory for each synthetic drug shall consist either of the sum of the amounts specified under subparagraphs (a), (b) and (d) of paragraph 1 of this article, with the addition of any amount required to bring the actual stocks on hand at 31 December of the preceding year to the level estimated as provided in subparagraph (c) of paragraph 1, or of the sum of the amounts specified under subparagraph (h) of paragraph 1 of this article, whichever is higher.
(d) The estimates furnished under the preceding subparagraphs of this paragraph shall be appropriately modified to take into account any quantity seized and thereafter released for licit use as well as any quantity taken from special stocks for the requirements of the civilian population.

3. Any State may during the year furnish supplementary estimates with an explanation of the circumstances necessitating such estimates.

4. The Parties shall inform the Board of the method used for determining quantities shown in the estimates and of any changes in the said method.

5. Subject to the deductions referred to in paragraph 3 of article 21, and account being taken where appropriate of the provisions of article 21 bis, the estimates shall not be exceeded.

Article 20
STATISTICAL RETURNS TO BE FURNISHED TO THE BOARD
1. The Parties shall furnish to the Board for each of their territories, in the manner and form prescribed by the Board, statistical returns on forms supplied by it in respect of the following matters:
(a) Production or manufacture of drugs;
(b) Utilization of drugs for the manufacture of other drugs, of preparations in Schedule III and of substances not covered by this Convention, and utilization of poppy straw for the manufacture of drugs;
(c) Consumption of drugs;
(d) Imports and exports of drugs and poppy straw;

(e) Seizures of drugs and disposal thereof;
(f) Stocks of drugs as at 31 December of the year to which the returns relate; and
(g) Ascertainable area of cultivation of the opium poppy.

2. (a) The statistical returns in respect of the matters referred to in paragraph 1, except subparagraph (d), shall be prepared annually and shall be furnished to the Board not later than 30 June following the year to which they relate.
(b) The statistical returns in respect to the matters referred to in subparagraph (d) of paragraph 1 shall be prepared quarterly and shall be furnished to the Board within one month after the end of the quarter to which they relate.

3. The Parties are not required to furnish statistical returns respecting special stocks, but shall furnish separately returns respecting drugs imported into or procured within the country or territory for special purposes, as well as quantities of drugs withdrawn from special stocks to meet the requirements of the civilian population.

Article 21
LIMITATION OF MANUFACTURE AND IMPORTATION
1. The total of the quantities of each drug manufactured and imported by any country or territory in any one year shall not exceed the sum of the following:
(a) The quantity consumed, within the limit of the relevant estimate, for medical and scientific purposes;
(b) The quantity used, within the limit of the relevant estimate, for the manufacture of other drugs, of preparations in Schedule Ill, and of substances not covered by this Convention;
(c) The quantity exported;
(d) The quantity added to the stock for the purpose of bringing that stock up to the level specified in the relevant estimate; and
(e) The quantity acquired within the limit of the relevant estimate for special purposes.

2. From the sum of the quantities specified in paragraph 1 there shall be deducted any quantity that has been seized and released for licit use, as well as any quantity taken from special stocks for the requirements of the civilian population.

3. If the Board finds that the quantity manufactured and imported in any one year exceeds the sum of the quantities specified in paragraph 1, less any deductions required under paragraph 2 of this article, any excess so established and remaining at the end of the year shall, in the following year, be deducted from the quantity to be manufactured or imported and from the total of the estimates as defined in paragraph 2 of article 19.

4. (a) If it appears from the statistical returns on imports or exports (article 20) that the quantity exported to any country or territory exceeds the total of the estimates for that country or territory, as defined in paragraph 2 of article 19, with the addition of the amounts shown to have been exported, and after deduction of any excess as established in paragraph 3 of this article, the Board may notify this fact to States which, in the opinion of the Board, should be so informed;
(b) On receipt of such a notification, Parties shall not during the year in question authorize any further exports of the drug concerned to that country or territory, except:
(i) In the event of a supplementary estimate being furnished for that country or territory in respect both of any quantity over-imported and of the additional quantity required, or
(ii) In exceptional cases where the export, in the opinion of the Government of the exporting country, is essential for the treatment of the sick.

Article 21 bis
LIMITATION OF PRODUCTION OF OPIUM
1. The production of opium by any country or territory shall be organized and controlled in such manner as to ensure that, as far as possible, the quantity produced in any one year shall not exceed the estimate of opium to be produced as established under paragraph 1 (f) of article 19.

2. If the Board finds on the basis of information at its disposal in accordance with the provisions of this Convention that a Party which has submitted an estimate under paragraph 1 (f) of article 19 has not limited opium produced within its borders to licit purposes in accordance with relevant estimates and that a significant amount of opium produced, whether licitly or illicitly, within the borders of such a Party, has been introduced into the illicit traffic, it may, after studying the explanations of the Party

concerned, which shall be submitted to it within one month after notification of the finding in question, decide to deduct all, or a portion, of such an amount from the quantity to be produced and from the total of the estimates as defined in paragraph 2 (b) of article 19 for the next year in which such a deduction can be technically accomplished, taking into account the season of the year and contractual commitments to export opium. This decision shall take effect ninety days after the Party concerned is notified thereof.

3. After notifying the Party concerned of the decision it has taken under paragraph 2 above with regard to a deduction, the Board shall consult with that Party in order to resolve the situation satisfactorily.

4. If the situation is not satisfactorily resolved, the Board may utilize the provisions of article 14 where appropriate.

5. In taking its decision with regard to a deduction under paragraph 2 above, the Board shall take into account not only all relevant circumstances including those giving rise to the illicit traffic problem referred to in paragraph 2 above, but also any relevant new control measures which may have been adopted by the Party.

[…]

Article 23
NATIONAL OPIUM AGENCIES
1. A Party that permits the cultivation of the opium poppy for the production of opium shall establish, if it has not already done so, and maintain, one or more government agencies (hereafter in this article referred to as the Agency) to carry out the functions required under this article.

2. Each such Party shall apply the following provisions to the cultivation of the opium poppy for the production of opium and to opium;
(a) The Agency shall designate the areas in which, and the plots of land on which, cultivation of the opium poppy for the purpose of producing opium shall be permitted.
(b) Only cultivators licensed by the Agency shall be authorized to engage in such cultivation. (c) Each licence shall specify the extent of the land on which the cultivation is permitted.
(d) All cultivators of the opium poppy shall be required to deliver their total crops of opium to the Agency. The Agency shall purchase and take physical possession of such crops as soon as possible, but not later than four months after the end of the harvest.
(e) The Agency shall, in respect of opium, have the exclusive right of importing, exporting, wholesale trading and maintaining stocks other than those held by manufacturers of opium alkaloids, medicinal opium or opium preparations. Parties need not extend this exclusive right to medicinal opium and opium preparations.

3. The governmental functions referred to in paragraph 2 shall be discharged by a single government agency if the constitution of the Party concerned permits it.

Article 24
LIMITATION ON PRODUCTION OF OPIUM FOR INTERNATIONAL TRADE
1. (a) If any Party intends to initiate the production of opium or to increase existing production, it shall take account of the prevailing world need for opium in accordance with the estimates thereof published by the Board so that the production of opium by such Party does not result in overproduction of opium in the world.
(b) A Party shall not permit the production of opium or increase the existing production thereof if in its opinion such production or increased production in its territory may result in illicit traffic in opium.

2. (a) Subject to paragraph 1, where a Party which as of 1 January 1961 was not producing opium for export desires to export opium which it produces, in amounts not exceeding five tons annually, it shall notify the Board, furnishing with such notification information regarding:
(i) The controls in force as required by this Convention respecting the opium to be produced and exported; and
(ii) The name of the country or countries to which it expects to export such opium; and the Board may either approve such notification or may recommend to the Party that it not engage in the production of opium for export.

(b) Where a Party other than a Party referred to in paragraph 3 desires to produce opium for export in amounts exceeding five tons annually, it shall notify the Council, furnishing with such notification relevant information including:
(i) The estimated amounts to be produced for export;
(ii) The controls existing or proposed respecting the opium to be produced;
(iii) The name of the country or countries to which it expects to export such opium; and the Council shall either approve the notification or may recommend to the Party that it not engage in the production of opium for export.

3. Notwithstanding the provisions of subparagraphs (a) and (b) of paragraph 2, a Party that during ten years immediately prior to 1 January 1961 exported opium which such country produced may continue to export opium which it produces.

4. (a) A Party shall not import opium from any country or territory except opium produced in the territory of:
(i) A Party referred to in paragraph 3;
(ii) A Party that has notified the Board as provided in subparagraph (a) of paragraph 2; or
(iii) A Party that has received the approval of the Council as provided in subparagraph (b) of paragraph 2.
(b) Notwithstanding subparagraph (a) of this paragraph, a Party may import opium produced by any country which produced and exported opium during the ten years prior to 1 January 1961 if such country has established and maintains a national control organ or agency for the purposes set out in article 23 and has in force an effective means of ensuring that the opium it produces is not diverted into the illicit traffic.

5. The provisions of this article do not prevent a Party:
(a) From producing opium sufficient for its own requirements; or
(b) From exporting opium seized in the illicit traffic, to another Party in accordance with the requirements of this Convention.

Article 25
CONTROL OF POPPY STRAW
1. A Party that permits the cultivation of the opium poppy for purposes other than the production of opium shall take all measures necessary to ensure:
(a) That opium is not produced from such opium poppies; and
(b) That the manufacture of drugs from poppy straw is adequately controlled.
2. The Parties shall apply to poppy straw the system of import certificates and export authorizations as provided in article 31, paragraphs 4 to 15.
3. The Parties shall furnish statistical information on the import and export of poppy straw as required for drugs under article 20, paragraphs 1 (d) and 2 (b).

[…]

Article 30
TRADE AND DISTRIBUTION
1. (a) The Parties shall require that the trade in and distribution of drugs be under licence except where such trade or distribution is carried out by a State enterprise or State enterprises.
(b) The Parties shall:
(i) Control all persons and enterprises carrying on or engaged in the trade in or distribution of drugs;
(ii) Control under licence the establishments and premises in which such trade or distribution may take place. The requirement of licensing need not apply to preparations.
(c) The provisions of subparagraphs (a) and (b) relating to licensing need not apply to persons duly authorized to perform and while performing therapeutic or scientific functions.

2. The Parties shall also:
(a) Prevent the accumulation in the possession of traders, distributors, State enterprises or duly authorized persons referred to above, of quantities of drugs and poppy straw in excess of those required for the normal conduct of business, having regard to the prevailing market conditions; and
(b) (i) Require medical prescriptions for the supply or dispensation of drugs to individuals. This requirement need not apply to such drugs as individuals may lawfully obtain, use, dispense or administer in connexion with their duly authorized therapeutic functions; and

(ii) If the Parties deem these measures necessary or desirable, require that prescriptions for drugs in Schedule 1 should be written on officials forms to be issued in the form of counterfoil books by the competent governmental authorities or by authorized professional associations.

3. It is desirable that Parties require that written or printed offers of drugs, advertisements of every kind or descriptive literature relating to drugs and used for commercial purposes, interior wrappings of packages containing drugs, and labels under which drugs are offered for sale indicate the international non-proprietary name communicated by the World Health Organization.

4. If a Party considers such measure necessary or desirable, it shall require that the inner package containing a drug or wrapping thereof shall bear a clearly visible double red band. The exterior wrapping of the package in which such drug is contained shall not bear a double red band.

5. A Party shall require that the label under which a drug is offered for sale show the exact drug content by weight or percentage. This requirement of label information need not apply to a drug dispensed to an individual on medical prescription.

6. The provisions of paragraphs 2 and 5 need not apply to the retail trade in or retail distribution of drugs in Schedule II.

Article 31
SPECIAL PROVISIONS RELATING TO INTERNATIONAL TRADE

1. The Parties shall not knowingly permit the export of drugs to any country or territory except:
(a) In accordance with the laws and regulations of that country or territory; and
(b) Within the limits of the total of the estimates for that country or territory, as defined in paragraph 2 of article 19, with the addition of the amounts intended to be re-exported.

2. The Parties shall exercise in free ports and zones the same supervision and control as in other parts of their territories, provided, however, that they may apply more drastic measures.

3. The Parties shall:
(a) Control under licence the import and export of drugs except where such import or export is carried out by a State enterprise or enterprises;
(b) Control all persons and enterprises carrying on or engaged in such import or export.

4. (a) Every Party permitting the import or export of drugs shall require a separate import or export authorization to be obtained for each such import or export whether it consists of one or more drugs.
(b) Such authorization shall state the name of the drug, the international non-proprietary name if any, the quantity to be imported or exported, and the name and address of the importer and exporter, and shall specify the period within which the importation or exportation must be effected.
(c) The export authorization shall also state the number and date of the import certificate (paragraph 5) and the authority by whom it has been issued.
(d) The import authorization may allow an importation in more than one consignment.

5. Before issuing an export authorization the Parties shall require an import certificate, issued by the competent authorities of the importing country or territory and certifying that the importation of the drug or drugs referred to therein, is approved and such certificate shall be produced by the person or establishment applying for the export authorization. The Parties shall follow as closely as may be practicable the form of import certificate approved by the Commission.

6. A copy of the export authorization shall accompany each consignment, and the Government issuing the export authorization shall send a copy to the Government of the importing country or territory.

7. (a) The Government of the importing country or territory, when the importation has been effected or when the period fixed for the importation has expired, shall return the export authorization, with an endorsement to that effect, to the Government of the exporting country or territory.
(b) The endorsement shall specify the amount actually imported.
(c) If a lesser quantity than that specified in the export authorization is actually exported, the quantity actually exported shall be stated by the competent authorities on the export authorization and on any official copy thereof.

8. Exports of consignments to a post office box, or to a bank to the account of a Party other than the Party named in the export authorization, shall be prohibited.

9. Exports of consignments to a bonded warehouse are prohibited unless the Government of the importing country certifies on the import certificate, produced by the person or establishment applying for the export authorization, that it has approved the importation for the purpose of being placed in a bonded warehouse. In such case the export authorization shall specify that the consignment is exported for such purpose. Each withdrawal from the bonded warehouse shall require a permit from the authorities having jurisdiction over the warehouse and, in the case of a foreign destination shall be treated as if it were a new export within the meaning of this Convention.

10. Consignments of drugs entering or leaving the territory of a Party not accompanied by an export authorization shall be detained by the competent authorities.

11. A Party shall not permit any drugs consigned to another country to pass through its territory, whether or not the consignment is removed from the conveyance in which it is carried, unless a copy of the export authorization for such consignment is produced to the competent authorities of such Party.

12. The competent authorities of any country or territory through which a consignment of drugs is permitted to pass shall take all due measures to prevent the diversion of the consignment to a destination other than that named in the accompanying copy of the export authorization unless the Government of that country or territory through which the consignment is passing authorizes the diversion. The Government of the country or territory of transit shall treat any requested diversion as if the diversion were an export from the country or territory of transit to the country or territory of new destination. If the diversion is authorized, the provisions of paragraph 7 (a) and (b) shall also apply between the country or territory of transit and the country or territory which originally exported the consignment.

13. No consignment of drugs while in transit, or whilst being stored in a bonded warehouse, may be subjected to any process which would change the nature of the drugs in question. The packing may not be altered without the permission of the competent authorities.

14. The provisions of paragraphs 11 to 13 relating to the passage of drugs through the territory of a Party do not apply where the consignment in question is transported by aircraft which does not land in the country or territory of transit. If the aircraft lands in any such country or territory, those provisions shah be applied so far as circumstances require.

15. The provisions of this article are without prejudice to the provisions of any international agreements which limit the control which may be exercised by any of the Parties over drugs in transit.

16. Nothing in this article other than paragraphs 1 (a) and 2 need apply in the case of preparations in Schedule III.

Article 32
MEASURES OF SUPERVISION AND INSPECTION
The Parties shall require:
(a) That all persons who obtain licences as provided in accordance with this Convention, or who have managerial or supervisory positions in a State enterprise established in accordance with this Convention, shall have adequate qualifications for the effective and faithful execution of the provisions of such laws and regulations as are enacted in pursuance thereof; and
(b) That governmental authorities, manufacturers, traders, scientists, scientific institutions and hospitals keep such records as will show the quantities of each drug manufactured and of each individual acquisition and disposal of drugs. Such records shall respectively be preserved for a period of not less than two years. Where counterfoil books (article 30, paragraph 2 (b)) of official prescriptions are used, such books including the counterfoils shall also be kept for a period of not less than two years.

[…]

2. General Agreement on Tariffs and Trade (GATT)

[Excerpts]

Article I
General Most-Favoured-Nation Treatment

1. With respect to customs duties and charges of any kind imposed on or in connection with importation or exportation or imposed on the international transfer of payments for imports or exports, and with respect to the method of levying such duties and charges, and with respect to all rules and formalities in connection with importation and exportation, and with respect to all matters referred to in paragraphs 2 and 4 of Article III, any advantage, favour, privilege or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties.

2. The provisions of paragraph 1 of this Article shall not require the elimination of any preferences in respect of import duties or charges which do not exceed the levels provided for in paragraph 4 of this Article and which fall within the following descriptions:

a. Preferences in force exclusively between two or more of the territories listed in Annex A, subject to the conditions set forth therein;

b. Preferences in force exclusively between two or more territories which on July 1, 1939, were connected by common sovereignty or relations of protection or suzerainty and which are listed in Annexes B, C and D, subject to the conditions set forth therein;

c. Preferences in force exclusively between the United States of America and the Republic of Cuba;

d. Preferences in force exclusively between neighbouring countries listed in Annexes E and F.

3. The provisions of paragraph 1 shall not apply to preferences between the countries formerly a part of the Ottoman Empire and detached from it on July 24, l923, provided such preferences are approved under paragraph 51 of Article XXV, which shall be applied in this respect in the light of paragraph 1 of Article XXIX.

4. The margin of preference on any product in respect of which a preference is permitted under paragraph 2 of this Article but is not specifically set forth as a maximum margin of preference in the appropriate Schedule annexed to this Agreement shall not exceed:

a. in respect of duties or charges on any product described in such Schedule, the difference between the most-favoured-nation and preferential rates provided for therein; if no preferential rate is provided for, the preferential rate shall for the purposes of this paragraph be taken to be that in force on April 10, l947, and, if no most-favoured-nation rate is provided for, the margin shall not exceed the difference between the most-favoured-nation and preferential rates existing on April 10, 1947;

b. in respect of duties or charges on any product not described in the appropriate Schedule, the difference between the most-favoured-nation and preferential rates existing on April 10, 1947.

In the case of the contracting parties named in Annex G, the date of April 10, 1947, referred to in sub-paragraph (a) and (b) of this paragraph shall be replaced by the respective dates set forth in that Annex.

[…]

Article III
National Treatment on Internal Taxation and Regulation

1. The contracting parties recognize that internal taxes and other internal charges, and laws, regulations and requirements affecting the internal sale, offering for sale, purchase, transportation,

distribution or use of products, and internal quantitative regulations requiring the mixture, processing or use of products in specified amounts or proportions, should not be applied to imported or domestic products so as to afford protection to domestic production.

2. The products of the territory of any contracting party imported into the territory of any other contracting party shall not be subject, directly or indirectly, to internal taxes or other internal charges of any kind in excess of those applied, directly or indirectly, to like domestic products. Moreover, no contracting party shall otherwise apply internal taxes or other internal charges to imported or domestic products in a manner contrary to the principles set forth in paragraph 1.

3. With respect to any existing internal tax which is inconsistent with the provisions of paragraph 2, but which is specifically authorized under a trade agreement, in force on April 10, l947, in which the import duty on the taxed product is bound against increase, the contracting party imposing the tax shall be free to postpone the application of the provisions of paragraph 2 to such tax until such time as it can obtain release from the obligations of such trade agreement in order to permit the increase of such duty to the extent necessary to compensate for the elimination of the protective element of the tax.

4. The products of the territory of any contracting party imported into the territory of any other contracting party shall be accorded treatment no less favourable than that accorded to like products of national origin in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use. The provisions of this paragraph shall not prevent the application of differential internal transportation charges which are based exclusively on the economic operation of the means of transport and not on the nationality of the product.

[…]

Article XI
General Elimination of Quantitative Restrictions

1. No prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licences or other measures, shall be instituted or maintained by any contracting party on the importation of any product of the territory of any other contracting party or on the exportation or sale for export of any product destined for the territory of any other contracting party.

2. The provisions of paragraph 1 of this Article shall not extend to the following:

a. Export prohibitions or restrictions temporarily applied to prevent or relieve critical shortages of foodstuffs or other products essential to the exporting contracting party;

b. Import and export prohibitions or restrictions necessary to the application of standards or regulations for the classification, grading or marketing of commodities in international trade;

c. Import restrictions on any agricultural or fisheries product, imported in any form, necessary to the enforcement of governmental measures which operate:

i. to restrict the quantities of the like domestic product permitted to be marketed or produced, or, if there is no substantial domestic production of the like product, of a domestic product for which the imported product can be directly substituted; or

ii. to remove a temporary surplus of the like domestic product, or, if there is no substantial domestic production of the like product, of a domestic product for which the imported product can be directly substituted, by making the surplus available to certain groups of domestic consumers free of charge or at prices below the current market level; or

iii. to restrict the quantities permitted to be produced of any animal product the production of which is directly dependent, wholly or mainly, on the imported commodity, if the domestic production of that commodity is relatively negligible.

Any contracting party applying restrictions on the importation of any product pursuant to sub-paragraph (c) of this paragraph shall give public notice of the total quantity or value of the product permitted to be imported during a specified future period and of any change in such quantity or value. Moreover, any restrictions applied under (i) above shall not be such as will reduce the total of imports relative to the total of domestic production, as compared with the proportion which might reasonably be expected to rule between the two in the absence of restrictions. In determining this proportion, the contracting party shall pay due regard to the proportion prevailing during a previous representative period and to any special factors which may have affected or may be affecting the trade in the product concerned.

Article XIII
Non-discriminatory Administration of Quantitative Restrictions

1. No prohibition or restriction shall be applied by any contracting party on the importation of any product of the territory of any other contracting party or on the exportation of any product destined for the territory of any other contracting party, unless the importation of the like product of all third countries or the exportation of the like product to all third countries is similarly prohibited or restricted.

2. In applying import restrictions to any product, contracting parties shall aim at a distribution of trade in such product approaching as closely as possible the shares which the various contracting parties might be expected to obtain in the absence of such restrictions and to this end shall observe the following provisions:

a. Wherever practicable, quotas representing the total amount of permitted imports (whether allocated among supplying countries or not) shall be fixed, and notice given of their amount in accordance with paragraph 3 (b) of this Article;

b. In cases in which quotas are not practicable, the restrictions may be applied by means of import licences or permits without a quota;

c. Contracting parties shall not, except for purposes of operating quotas allocated in accordance with sub-paragraph (d) of this paragraph, require that import licences or permits be utilized for the importation of the product concerned from a particular country or source;

d. In cases in which a quota is allocated among supplying countries the contracting party applying the restrictions may seek agreement with respect to the allocation of shares in the quota with all other contracting parties having a substantial interest in supplying the product concerned. In cases in which this method is not reasonably practicable, the contracting party concerned shall allot to contracting parties having a substantial interest in supplying the product shares based upon the proportions, supplied by such contracting parties during a previous representative period, of the total quantity or value of imports of the product, due account being taken of any special factors which may have affected or may be affecting the trade in the product. No conditions or formalities shall be imposed which would prevent any contracting party from utilizing fully the share of any such total quantity or value which has been allotted to it, subject to importation being made within any prescribed period to which the quota may relate.

[…]

Article XVII
State Trading Enterprises

1.
a. Each contracting party undertakes that if it establishes or maintains a State enterprise, wherever located, or grants to any enterprise, formally or in effect, exclusive or special privileges, such enterprise shall, in its purchases or sales involving either imports or exports, act in a manner consistent with the general principles of non-discriminatory treatment prescribed in this Agreement for governmental measures affecting imports or exports by private traders.

b. The provisions of sub-paragraph (a) of this paragraph shall be understood to require that such enterprises shall, having due regard to the other provisions of this Agreement, make any such purchases or sales solely in accordance with commercial considerations, including price, quality, availability, marketability, transportation and other conditions of purchase or sale, and shall afford the enterprises of the other contracting parties adequate opportunity, in accordance with customary business practice, to compete for participation in such purchases or sales.

c. No contracting party shall prevent any enterprise (whether or not an enterprise described in sub-paragraph (a) of this paragraph) under its jurisdiction from acting in accordance with the principles of sub-paragraphs (a) and (b) of this paragraph.

2. The provisions of paragraph 1 of this Article shall not apply to imports of products for immediate or ultimate consumption in governmental use and not otherwise for resale or use in the production of goods for sale. With respect to such imports, each contracting party shall accord to the trade of the other contracting parties fair and equitable treatment.

3. The contracting parties recognize that enterprises of the kind described in paragraph 1 (a) of this Article might be operated so as to create serious obstacles to trade; thus negotiations on a reciprocal and mutually advantageous basis designed to limit or reduce such obstacles are of importance to the expansion of international trade.

4.
a. Contracting parties shall notify the CONTRACTING PARTIES of the products which are imported into or exported from their territories by enterprises of the kind described in paragraph 1 (a) of this Article.

b. A contracting party establishing, maintaining or authorizing an import monopoly of a product, which is not the subject of a concession under Article II, shall, on the request of another contracting party having a substantial trade in the product concerned, inform the CONTRACTING PARTIES of the import mark-up on the product during a recent representative period, or, when it is not possible to do so, of the price charged on the resale of the product.

c. The CONTRACTING PARTIES may, at the request of a contracting party which has reason to believe that its interest under this Agreement are being adversely affected by the operations of an enterprise of the kind described in paragraph 1 (a), request the contracting party establishing, maintaining or authorizing such enterprise to supply information about its operations related to the carrying out of the provisions of this Agreement.

d. The provisions of this paragraph shall not require any contracting party to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises.

[…]

Article XX
General Exceptions

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures:

a. necessary to protect public morals;

b. necessary to protect human, animal or plant life or health;

c. relating to the importations or exportations of gold or silver;

d. necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement, including those

relating to customs enforcement, the enforcement of monopolies operated under paragraph 4 of Article II and Article XVII, the protection of patents, trade marks and copyrights, and the prevention of deceptive practices;

e. relating to the products of prison labour;

f. imposed for the protection of national treasures of artistic, historic or archaeological value;

g. relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption;

h. undertaken in pursuance of obligations under any intergovernmental commodity agreement which conforms to criteria submitted to the CONTRACTING PARTIES and not disapproved by them or which is itself so submitted and not so disapproved;

i. involving restrictions on exports of domestic materials necessary to ensure essential quantities of such materials to a domestic processing industry during periods when the domestic price of such materials is held below the world price as part of a governmental stabilization plan; Provided that such restrictions shall not operate to increase the exports of or the protection afforded to such domestic industry, and shall not depart from the provisions of this Agreement relating to non-discrimination;

j. essential to the acquisition or distribution of products in general or local short supply; Provided that any such measures shall be consistent with the principle that all contracting parties are entitled to an equitable share of the international supply of such products, and that any such measures, which are inconsistent with the other provisions of the Agreement shall be discontinued as soon as the conditions giving rise to them have ceased to exist. The CONTRACTING PARTIES shall review the need for this sub-paragraph not later than 30 June 1960.

[…]

Article XXIV
Territorial Application - Frontier Traffic - Customs Unions and Free-trade Areas

1. The provisions of this Agreement shall apply to the metropolitan customs territories of the contracting parties and to any other customs territories in respect of which this Agreement has been accepted under Article XXVI or is being applied under Article XXXIII or pursuant to the Protocol of Provisional Application. Each such customs territory shall, exclusively for the purposes of the territorial application of this Agreement, be treated as though it were a contracting party; Provided that the provisions of this paragraph shall not be construed to create any rights or obligations as between two or more customs territories in respect of which this Agreement has been accepted under Article XXVI or is being applied under Article XXXIII or pursuant to the Protocol of Provisional Application by a single contracting party.

2. For the purposes of this Agreement a customs territory shall be understood to mean any territory with respect to which separate tariffs or other regulations of commerce are maintained for a substantial part of the trade of such territory with other territories.

3. The provisions of this Agreement shall not be construed to prevent:

a. Advantages accorded by any contracting party to adjacent countries in order to facilitate frontier traffic;

b. Advantages accorded to the trade with the Free Territory of Trieste by countries contiguous to that territory, provided that such advantages are not in conflict with the Treaties of Peace arising out of the Second World War.

4. The contracting parties recognize the desirability of increasing freedom of trade by the development, through voluntary agreements, of closer integration between the economies of the countries parties to such agreements. They also recognize that the purpose of a customs union or of a free-trade area should be to facilitate trade between the constituent territories and not to raise barriers to the trade of other contracting parties with such territories.

5. Accordingly, the provisions of this Agreement shall not prevent, as between the territories of contracting parties, the formation of a customs union or of a free-trade area or the adoption of an interim agreement necessary for the formation of a customs union or of a free-trade area; Provided that:

a. with respect to a customs union, or an interim agreement leading to a formation of a customs union, the duties and other regulations of commerce imposed at the institution of any such union or interim agreement in respect of trade with contracting parties not parties to such union or agreement shall not on the whole be higher or more restrictive than the general incidence of the duties and regulations of commerce applicable in the constituent territories prior to the formation of such union or the adoption of such interim agreement, as the case may be;

b. with respect to a free-trade area, or an interim agreement leading to the formation of a free-trade area, the duties and other regulations of commerce maintained in each if the constituent territories and applicable at the formation of such free-trade area or the adoption of such interim agreement to the trade of contracting parties not included in such area or not parties to such agreement shall not be higher or more restrictive than the corresponding duties and other regulations of commerce existing in the same constituent territories prior to the formation of the free-trade area, or interim agreement as the case may be; and

c. any interim agreement referred to in sub-paragraphs (a) and (b) shall include a plan and schedule for the formation of such a customs union or of such a free-trade area within a reasonable length of time.

6. If, in fulfilling the requirements of sub-paragraph 5 (a), a contracting party proposes to increase any rate of duty inconsistently with the provisions of Article II, the procedure set forth in Article XXVIII shall apply. In providing for compensatory adjustment, due account shall be taken of the compensation already afforded by the reduction brought about in the corresponding duty of the other constituents of the union.

7.
a. Any contracting party deciding to enter into a customs union or free-trade area, or an interim agreement leading to the formation of such a union or area, shall promptly notify the CONTRACTING PARTIES and shall make available to them such information regarding the proposed union or area as will enable them to make such reports and recommendations to contracting parties as they may deem appropriate.

b. If, after having studied the plan and schedule included in an interim agreement referred to in paragraph 5 in consultation with the parties to that agreement and taking due account of the information made available in accordance with the provisions of sub-paragraph (a), the CONTRACTING PARTIES find that such agreement is not likely to result in the formation of a customs union or of a free-trade area within the period contemplated by the parties to the agreement or that such period is not a reasonable one, the CONTRACTING PARTIES shall make recommendations to the parties to the agreement. The parties shall not maintain or put into force, as the case may be, such agreement if they are not prepared to modify it in accordance with these recommendations.

c. Any substantial change in the plan or schedule referred to in paragraph 5 (c) shall be communicated to the CONTRACTING PARTIES, which may request the contracting parties concerned to consult with them if the change seems likely to jeopardize or delay unduly the formation of the customs union or of the free-trade area.

8. For the purposes of this Agreement:

a. A customs union shall be understood to mean the substitution of a single customs territory for two or more customs territories, so that

i. duties and other restrictive regulations of commerce (except, where necessary, those permitted under Articles XI, XII, XIII, XIV, XV and XX) are eliminated with respect to substantially all the trade between the constituent territories of the union or at least with respect to substantially all the trade in products originating in such territories, and,

ii. subject to the provisions of paragraph 9, substantially the same duties and other regulations of commerce are applied by each of the members of the union to the trade of territories not included in the union;

b. A free-trade area shall be understood to mean a group of two or more customs territories in which the duties and other restrictive regulations of commerce (except, where necessary, those permitted under Articles XI, XII, XIII, XIV, XV and XX) are eliminated on substantially all the trade between the constituent territories in products originating in such territories.

9. The preferences referred to in paragraph 2 of Article I shall not be affected by the formation of a customs union or of a free-trade area but may be eliminated or adjusted by means of negotiations with contracting parties affected. This procedure of negotiations with affected contracting parties shall, in particular, apply to the elimination of preferences required to conform with the provisions of paragraph 8 (a)(i) and paragraph 8 (b).

10. The CONTRACTING PARTIES may by a two-thirds majority approve proposals which do not fully comply with the requirements of paragraphs 5 to 9 inclusive, provided that such proposals lead to the formation of a customs union or a free-trade area in the sense of this Article.

11. Taking into account the exceptional circumstances arising out of the establishment of India and Pakistan as independent States and recognizing the fact that they have long constituted an economic unit, the contracting parties agree that the provisions of this Agreement shall not prevent the two countries from entering into special arrangements with respect to the trade between them, pending the establishment of their mutual trade relations on a definitive basis.

12. Each contracting party shall take such reasonable measures as may be available to it to ensure observance of the provisions of this Agreement by the regional and local governments and authorities within its territories.

[…]

3. Enabling Clause

Differentiation and More Favourable Treatment Reciprocity and Fuller Participation of Developing Countries (Decision of 28 November 1979) (so-called "Enabled Clause")

Following negotiations within the framework of the Multilateral Trade Negotiations, the CONTRACTING PARTIES decide as follows:

1. Notwithstanding the provisions of Article I of the General Agreement, contracting parties may accord differential and more favourable treatment to developing countries 1 , without according such treatment to other contracting parties.

2. The provisions of paragraph 1 apply to the following :

(a) Preferential tariff treatment accorded by developed contracting parties to products originating in developing countries in accordance with the Generalized System of Preferences ;

(b) Differential and more favourable treatment with respect to the provisions of the General Agreement concerning non-tariff measures governed by the provisions of instruments multilaterally negotiated under the auspices of the GATT;

(c) Regional or global arrangements entered into amongst less-developed contracting parties for the mutual reduction or elimination of tariffs and, in accordance with criteria or conditions which may be prescribed by the CONTRACTING PARTIES, for the mutual reduction or elimination of non-tariff measures, on products imported from one another;

(d) Special treatment of the least developed among the developing countries in the context of any general or specific measures in favour of developing countries.

3. Any differential and more favourable treatment provided under this clause:

(a) shall be designed to facilitate and promote the trade of developing countries and not to raise barriers to or create undue difficulties for the trade of any other contracting parties;

(b) shall not constitute an impediment to the reduction or elimination of tariffs and other restrictions to trade on a most-favoured-nation basis;

(c) shall in the case of such treatment accorded by developed contracting parties to developing countries be designed and, if necessary, modified, to respond positively to the development, financial and trade needs of developing countries.

4. 4 Any contracting party taking action to introduce an arrangement pursuant to paragraph 1, 2 and 3 above or subsequently taking action to introduce modification or withdrawal of the differential and more favourable treatment so provided shall:

(a) notify the CONTRACTING PARTIES and furnish them with all the information they may deem appropriate relating to such action;

(b) afford adequate opportunity for prompt consultations at the request of any interested contracting party with respect to any difficulty or matter that may arise. The CONTRACTING PARTIES shall, if requested to do so by such contracting party, consult with all contracting parties concerned with respect to the matter with a view to reaching solutions satisfactory to all such contracting parties.

5. The developed countries do not expect reciprocity for commitments made by them in trade negotiations to reduce or remove tariffs and other barriers to the trade of developing countries, i.e., the developed countries do not expect the developing countries, in the course of trade negotiations, to make contributions which are inconsistent with their individual development, financial and trade needs. Developed contracting parties shall therefore not seek, neither shall less-developed contracting parties be required to make, concessions that are inconsistent with the latter's development, financial and trade needs.

6. Having regard to the special economic difficulties and the particular development, financial and trade needs of the least-developed countries, the developed countries shall exercise the utmost restraint in seeking any concessions or contributions for commitments made by them to reduce or remove tariffs and other barriers to the trade of such countries, and the least-developed countries shall not be expected to make concessions or contributions that are inconsistent with the recognition of their particular situation and problems.

7. The concessions and contributions made and the obligations assumed by developed and less-developed contracting parties under the provisions of the General Agreement should promote the basic objectives of the Agreement, including those embodied in the Preamble and in Article XXXVI. Less-developed contracting parties expect that their capacity to make contributions or negotiated concessions or take other mutually agreed action under the provisions and procedures of the General Agreement would improve with the progressive development of their economies and improvement in their trade situation and they would accordingly expect to participate more fully in the framework of rights and obligations under the General Agreement.

8. Particular account shall be taken of the serious difficulty of the least-developed countries in making concessions and contributions in view of their special economic situation and their development, financial and trade needs.

9. The contracting parties will collaborate in arrangements for review of the operation of these provisions, bearing in mind the need for individual and joint efforts by contracting parties to meet the development needs of developing countries and the objectives of the General Agreement.

4. EC Treaty

Consolidated Version of the Treaty Establishing the European Community

[Excerpts]

TITLE VI - RULES ON COMPETITION
SECTION 1- RULES APPLYING TO UNDERTAKINGS

Article 81
1. The following shall be prohibited as incompatible with the common market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market, and in particular those which:

a) directly or indirectly fix purchase or selling prices or any other trading conditions;
b) limit or control production, markets, technical development, or investment;
c) share markets or sources of supply;
d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

2. Any agreements or decisions prohibited pursuant to this article shall be automatically void.

3. The provisions of paragraph 1 may, however, be declared inapplicable in the case of:

- any agreement or category of agreements between undertakings,
- any decision or category of decisions by associations of undertakings,
- any concerted practice or category of concerted practices,

which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:
a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;
b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

Article 82
Any abuse by one or more undertakings of a dominant position within the common market or in a substantial part of it shall be prohibited as incompatible with the common market in so far as it may affect trade between Member States.
Such abuse may, in particular, consist in:
a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
b) limiting production, markets or technical development to the prejudice of consumers;
c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

Article 83
1. The appropriate regulations or directives to give effect to the principles set out in Articles 81 and 82 shall be laid down by the Council, acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament.

2. The regulations or directives referred to in paragraph 1 shall be designed in particular:
to ensure compliance with the prohibitions laid down in Article 81(1) and in Article 82 by
a) making provision for fines and periodic penalty payments;

b) to lay down detailed rules for the application of Article 81(3), taking into account the need to ensure effective supervision on the one hand, and to simplify administration to the greatest possible extent on the other;
c) to define, if need be, in the various branches of the economy, the scope of the provisions of Articles 81 and 82;
d) to define the respective functions of the Commission and of the Court of Justice in applying the provisions laid down in this paragraph;
e) to determine the relationship between national laws and the provisions contained in this section or adopted pursuant to this article.

Article 86

1. In the case of public undertakings and undertakings to which Member States grant special or exclusive rights, Member States shall neither enact nor maintain in force any measure contrary to the rules contained in this Treaty, in particular to those rules provided for in Article 12 and Articles 81 to 89.

2. Undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly shall be subject to the rules contained in this Treaty, in particular to the rules on competition, in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. The development of trade must not be affected to such an extent as would be contrary to the interests of the Community.

3. The Commission shall ensure the application of the provisions of this Article and shall, where necessary, address appropriate directives or decisions to Member States.

TITLE IX
COMMON COMMERCIAL POLICY

Article 131

By establishing a customs union between themselves Member States aim to contribute, in the common interest, to the harmonious development of world trade, the progressive abolition of restrictions on international trade and the lowering of customs barriers.
The common commercial policy shall take into account the favourable effect which the abolition of customs duties between Member States may have on the increase in the competitive strength of undertakings in those States.

Article 132

1. Without prejudice to obligations undertaken by them within the framework of other international organisations, Member States shall progressively harmonise the systems whereby they grant aid for exports to third countries, to the extent necessary to ensure that competition between undertakings of the Community is not distorted.
On a proposal from the Commission, the Council shall, acting by a qualified majority, issue any directives needed for this purpose.

2. The preceding provisions shall not apply to such a drawback of customs duties or charges having equivalent effect nor to such a repayment of indirect taxation including turnover taxes, excise duties and other indirect taxes as is allowed when goods are exported from a Member State to a third country, in so far as such a drawback or repayment does not exceed the amount imposed, directly or indirectly, on the products exported.

Article 133

1. The common commercial policy shall be based on uniform principles, particularly in regard to changes in tariff rates, the conclusion of tariff and trade agreements, the achievement of uniformity in measures of liberalisation, export policy and measures to protect trade such as those to be taken in the event of dumping or subsidies.

2. The Commission shall submit proposals to the Council for implementing the common commercial policy.

3. Where agreements with one or more States or international organisations need to be negotiated, the Commission shall make recommendations to the Council, which shall authorise the Commission to

open the necessary negotiations. The Council and the Commission shall be responsible for ensuring that the agreements negotiated are compatible with internal Community policies and rules.
The Commission shall conduct these negotiations in consultation with a special committee appointed by the Council to assist the Commission in this task and within the framework of such directives as the Council may issue to it. The Commission shall report regularly to the special committee on the progress of negotiations.
The relevant provisions of Article 300 shall apply.

4. In exercising the powers conferred upon it by this Article, the Council shall act by a qualified majority.

5. Paragraphs 1 to 4 shall also apply to the negotiation and conclusion of agreements in the fields of trade in services and the commercial aspects of intellectual property, in so far as those agreements are not covered by the said paragraphs and without prejudice to paragraph 6.
By way of derogation from paragraph 4, the Council shall act unanimously when negotiating and concluding an agreement in one of the fields referred to in the first subparagraph, where that agreement includes provisions for which unanimity is required for the adoption of internal rules or where it relates to a field in which the Community has not yet exercised the powers conferred upon it by this Treaty by adopting internal rules.
The Council shall act unanimously with respect to the negotiation and conclusion of a horizontal agreement insofar as it also concerns the preceding subparagraph or the second subparagraph of paragraph 6.
This paragraph shall not affect the right of the Member States to maintain and conclude agreements with third countries or international organisations in so far as such agreements comply with Community law and other relevant international agreements.

6. An agreement may not be concluded by the Council if it includes provisions which would go beyond the Community's internal powers, in particular by leading to harmonisation of the laws or regulations of the Member States in an area for which this Treaty rules out such harmonisation.
In this regard, by way of derogation from the first subparagraph of paragraph 5, agreements relating to trade in cultural and audiovisual services, educational services, and social and human health services, shall fall within the shared competence of the Community and its Member States. Consequently, in addition to a Community decision taken in accordance with the relevant provisions of Article 300, the negotiation of such agreements shall require the common accord of the Member States. Agreements thus negotiated shall be concluded jointly by the Community and the Member States.
The negotiation and conclusion of international agreements in the field of transport shall continue to be governed by the provisions of Title V and Article 300.

7. Without prejudice to the first subparagraph of paragraph 6, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may extend the application of paragraphs 1 to 4 to international negotiations and agreements on intellectual property in so far as they are not covered by paragraph 5.

Article 134
In order to ensure that the execution of measures of commercial policy taken in accordance with this Treaty by any Member State is not obstructed by deflection of trade, or where differences between such measures lead to economic difficulties in one or more Member States, the Commission shall recommend the methods for the requisite cooperation between Member States. Failing this, the Commission may authorise Member States to take the necessary protective measures, the conditions and details of which it shall determine.
In case of urgency, Member States shall request authorisation to take the necessary measures themselves from the Commission, which shall take a decision as soon as possible; the Member States concerned shall then notify the measures to the other Member States. The Commission may decide at any time that the Member States concerned shall amend or abolish the measures in question.
In the selection of such measures, priority shall be given to those which cause the least disturbance of the functioning of the common market.

TITLE XX
DEVELOPMENT COOPERATION

Article 177

1. Community policy in the sphere of development cooperation, which shall be complementary to the policies pursued by the Member States, shall foster:
- the sustainable economic and social development of the developing countries, and more particularly the most disadvantaged among them,
- the smooth and gradual integration of the developing countries into the world economy,
- the campaign against poverty in the developing countries.

2. Community policy in this area shall contribute to the general objective of developing and consolidating democracy and the rule of law, and to that of respecting human rights and fundamental freedoms.

3. The Community and the Member States shall comply with the commitments and take account of the objectives they have approved in the context of the United Nations and other competent international organisations.

Article 178
The Community shall take account of the objectives referred to in Article 177 in the policies that it implements which are likely to affect developing countries.

Article 179
1. Without prejudice to the other provisions of this Treaty, the Council, acting in accordance with the procedure referred to in Article 251, shall adopt the measures necessary to further the objectives referred to in Article 177. Such measures may take the form of multiannual programmes.

2. The European Investment Bank shall contribute, under the terms laid down in its Statute, to the implementation of the measures referred to in paragraph 1.

3. The provisions of this Article shall not affect cooperation with the African, Caribbean and Pacific countries in the framework of the ACP-EC Convention.

Article 180
1. The Community and the Member States shall coordinate their policies on development cooperation and shall consult each other on their aid programmes, including in international organisations and during international conferences. They may undertake joint action. Member States shall contribute if necessary to the implementation of Community aid programmes.

2. The Commission may take any useful initiative to promote the coordination referred to in paragraph 1.

Article 181
Within their respective spheres of competence, the Community and the Member States shall cooperate with third countries and with the competent international organisations. The arrangements for Community cooperation may be the subject of agreements between the Community and the third parties concerned, which shall be negotiated and concluded in accordance with Article 300.
The previous paragraph shall be without prejudice to Member States' competence to negotiate in international bodies and to conclude international agreements.

5. EU Generalised System of Tariff Preferences (GSP)

Council Regulation (EC) No 980/2005 of 27 June 2005 applying a Scheme of Generalised Tariff Preferences

[Excerpts]

CHAPTER I GENERAL PROVISIONS

Article 1

1. The Community scheme of generalised tariff preferences (hereinafter referred to as "the scheme") shall, from the date of entry into force of this Regulation until 31 December 2008, apply in accordance with this Regulation.

2. This Regulation provides for:

(a) a general arrangement,

(b) a special incentive arrangement for sustainable development and good governance,

(c) a special arrangement for least developed countries.

Article 2

The beneficiary countries of the arrangements referred to in Article 1(2) are listed in Annex I.

Article 3

1. A beneficiary country shall be removed from the scheme when it has been classified by the World Bank as a high-income country during three consecutive years, and when the value of imports for the five largest sections of its GSP-covered imports to the Community represent less than 75 % of the total GSP-covered imports of the beneficiary country to the Community.

2. When a beneficiary country benefits from a preferential commercial agreement with the Community which covers at least all the preferences provided by the present scheme for that country, it shall be removed from the list of beneficiary countries in Annex I.

3. The Commission shall notify a beneficiary country of its removal from the list of beneficiary countries in Annex I.

Article 4

The products included in the arrangements referred to in points (a) and (b) of Article 1(2) are listed in Annex II.

Article 5

1. The tariff preferences provided for by this Regulation shall apply to imports of products included in the arrangements enjoyed by the beneficiary country in which they originate.

2. For the purposes of the arrangements referred to in Article 1(2), the rules of origin, concerning the definition of the concept of originating products, the procedures and the methods of administrative cooperation related thereto, are laid down in Regulation (EEC) No 2454/93.

3. Regional cumulation within the meaning of Regulation (EEC) No 2454/93 shall also apply where a product used in further manufacture in a country belonging to a regional group originates in another country of the group, which does not benefit from the arrangements applying to the final product, provided that both countries benefit from regional cumulation for that group.

Article 6

For the purposes of this Regulation:

(a) "Common Customs Tariff duties" means the duties specified in Part Two of Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff [6], except those duties set up within the framework of tariff quotas;

(b) "Section" means any of the sections of the Common Customs Tariff as adopted by Regulation (EEC) No 2658/87. For the purposes of this Regulation only, Section XI is treated as two separate sections: Section XI(a) comprising Common Customs Tariff chapters 50-60 and Section XI(b) comprising Common Customs Tariff chapters 61-63;

(c) "Committee" means the Committee referred to in Article 28.

CHAPTER II ARRANGEMENTS AND TARIFF PREFERENCES

SECTION 1 General arrangement

Article 7

1. Common Customs Tariff duties on products listed in Annex II as non-sensitive products shall be entirely suspended, except for agricultural components.

2. Common Customs Tariff ad valorem duties on products listed in Annex II as sensitive products shall be reduced by 3,5 percentage points. For products of sections XI(a) and XI(b), this reduction shall be 20 %.

3. Where preferential duty rates, calculated in accordance with Article 7 of Regulation (EC) No 2501/2001 [7] on Common Customs Tariff ad valorem duties applicable on the day before the entry into force of this Regulation, provide a tariff reduction, for the products referred to in paragraph 2 of this Article, of more than 3,5 percentage points, those preferential duty rates shall apply.

4. Common Customs Tariff specific duties other than minimum or maximum duties on products listed in Annex II as sensitive products shall be reduced by 30 %.

5. Where Common Customs Tariff duties on products listed in Annex II as sensitive products include ad valorem duties and specific duties, the specific duties shall not be reduced.

6. Where duties reduced in accordance with paragraphs 2 and 4 specify a maximum duty, that maximum duty shall not be reduced. Where such duties specify a minimum duty, that minimum duty shall not apply.

7. The tariff preferences referred to in paragraphs 1 to 4 shall not apply to products of sections in respect of which those tariff preferences have been removed, for the country of origin concerned, according to Article 14, Article 21(8) and column C of Annex I.

SECTION 2 Special incentive arrangement for sustainable development and good governance

Article 8

1. Common Customs Tariff ad valorem duties on all products listed in Annex II which originate in a country included in the special incentive arrangement for sustainable development and good governance shall be suspended.

2. Common Customs Tariff specific duties on products referred to in paragraph 1 shall be entirely suspended, except for products for which Common Customs Tariff duties also include ad valorem duties. For products of CN codes 17041091 and 17041099, the specific duty shall be limited to 16 % of the customs value.

3. For a beneficiary country the special incentive arrangement for sustainable development and good governance shall not include products of the sections for which these tariff preferences have been withdrawn according to column C of Annex I.

Article 9

1. The special incentive arrangement for sustainable development and good governance may be granted to a country which:

(a) has ratified and effectively implemented the conventions listed in Part A of Annex III, and

(b) has ratified and effectively implemented at least seven of the conventions listed in Part B of Annex III, and

(c) commits itself to ratify and effectively implement by 31 December 2008 those conventions listed in Part B of Annex III which it has not yet ratified and effectively implemented, and

(d) gives an undertaking to maintain the ratification of the conventions and their implementing legislation and measures and which accepts regular monitoring and review of its implementation record in accordance with the implementation provisions of the conventions it has ratified, and

(e) is considered as a vulnerable country as defined in paragraph 3.

2. By way of derogation from paragraph 1 (a) and (c) for countries faced with specific constitutional constraints, the special incentive arrangement for sustainable development and good governance may be granted to a country which has not ratified and effectively implemented a maximum of two of the sixteen conventions listed in Part A of Annex III provided:

(a) that a formal commitment has been made by the country concerned to sign, ratify and implement any missing Convention should it be ascertained that there exists no incompatibility with its Constitution no later than 31 October 2005, and

(b) in case of an incompatibility with its Constitution, the country concerned has formally committed itself to sign and ratify any missing Convention no later than 31 December 2006.

Before the end of 2006, the Commission shall report to the Council on the compliance by a country concerned with the above-mentioned commitments. The granting of the special incentive arrangement for sustainable development and good governance to this country beyond 1 January 2007 is subject to a Council decision. As appropriate, and on the basis of the abovementioned report, the Commission shall propose to the Council such a continuation.

3. A vulnerable country is one:

(a) that is not classified by the World Bank as a high income country during three consecutive years, and whose five largest sections of its GSP-covered imports to the Community represent more than 75 % in value of its total GSP-covered imports, and

(b) whose GSP-covered imports to the Community represent less than 1 % in value of total GSP-covered imports to the Community.

The data to be used are those available on 1 September 2004, as an average over three consecutive years.

4. The Commission shall keep under review the status of ratification and effective implementation of the conventions listed in Annex III. Before the end of the period of application of this Regulation and in time for the discussion on the next Regulation, the Commission shall present to the Council a report concerning the status of ratification of such conventions, including recommendations by monitoring bodies.

Article 10

1. Without prejudice to paragraph 3, the special incentive arrangement for sustainable development and good governance shall be granted if the following conditions are met:

(a) a country or territory listed in Annex I has made a request to that effect by 31 October 2005, and

(b) an examination of the request shows that the requesting country fulfils the conditions laid down in Article 9(1), (2) and (3).

2. The requesting country shall submit its request to the Commission in writing and shall provide comprehensive information concerning ratification of the conventions referred to in Annex III, the legislation and measures to effectively implement the provisions of the conventions and its commitment to accept and fully comply with the monitoring and review mechanism envisaged in the relevant conventions and related instruments.

3. Those countries that are granted provisionally the special incentive arrangement for sustainable development and good governance from the date of entry into force of this Regulation shall also submit a request according to paragraphs 1 and 2 by 31 October 2005. The Commission shall assess the request according to Article 11.

Article 11

1. Where the Commission receives a request accompanied by the information referred to in Article 10, the Commission shall examine the request. The examination shall take into account the findings of the relevant international organisations and agencies. It may ask the requesting country any questions which it considers relevant and may verify the information received with the requesting country or any other relevant sources.

2. The Commission shall decide, in accordance with the examination referred to in paragraph 1 and the procedure referred to in Article 28(4), whether to grant a requesting country the special incentive arrangement for sustainable development and good governance as of 1 January 2006.

3. The Commission shall notify a requesting country of a decision taken in accordance with paragraph 2. Where a country is granted the special incentive arrangement, it shall be informed of the date on which that decision enters into force. The Commission shall by 15 December 2005 publish a notice in the Official Journal of the European Union, listing the countries benefiting from the special incentive arrangement for sustainable development and good governance.

4. Where a requesting country is not granted the special incentive arrangement, the Commission shall explain the reasons if that country so requests.

5. The Commission shall conduct all relations with a requesting country concerning the request in close coordination with the Committee acting in accordance with the procedure referred to in Article 28(4).

SECTION 3 Special arrangement for least developed countries

Article 12

1. Without prejudice to paragraphs 2, 3 and 4, Common Customs Tariff duties on all products of Chapters 1 to 97 of the Harmonized System except those of Chapter 93 thereof, originating in a country that according to Annex I benefits from the special arrangement for least developed countries, shall be entirely suspended.

2. Common Customs Tariff duties on the products of tariff heading 1006 shall be reduced by 20 % on 1 September 2006, by 50 % on 1 September 2007 and by 80 % on 1 September 2008. They shall be entirely suspended as from 1 September 2009.

3. Common Customs Tariff duties on the products of CN code 08030019 shall be reduced by 20 % annually as from 1 January 2002. They shall be entirely suspended as from 1 January 2006.

4. Common Customs Tariff duties on the products of tariff heading 1701 shall be reduced by 20 % on 1 July 2006, by 50 % on 1 July 2007 and by 80 % on 1 July 2008. They shall be entirely suspended as from 1 July 2009.

5. Until Common Customs Tariff duties are entirely suspended in accordance with paragraphs 2 and 4, a global tariff quota at zero duty shall be opened for every marketing year for products of tariff heading 1006 and subheading 17011110 respectively, originating in the countries benefiting from this special arrangement. The initial tariff quotas for the marketing year 2001/2002 shall be equal to 2517 tonnes, husked rice equivalent, for products of tariff heading 1006, and 74185 tonnes, white sugar equivalent, for products of subheading 17011110. For each of the following marketing years, the quotas shall be increased by 15 % over the quotas of the previous marketing year.

6. The Commission shall adopt detailed rules governing the opening and administration of the quotas referred to in paragraph 5, in accordance with the procedure referred to in Article 28(4). In opening and administrating these quotas, the Commission shall be assisted by the management committees for the relevant common market organisations.

7. When a country is excluded by the United Nations from the list of the least developed countries, it is withdrawn from the list of the beneficiaries of this arrangement. The removal of a country from the arrangement and the establishment of a transitional period of at least three years shall be decided by the Commission, in accordance with the procedure referred to in Article 28(4).

Article 13

Article 12(4) and provisions of Article 12(5) referring to products of tariff subheading 17011110 shall not apply to products originating in countries benefiting from the preferences referred to in this section and released for free circulation in the French overseas departments.

SECTION 4 Common provisions

Article 14

1. The tariff preferences referred to in Articles 7 and 8 shall be removed in respect of products originating in a beneficiary country of a section, when the average value of Community imports from that country of products included in the section concerned and covered by the arrangement enjoyed by that country exceeds 15 % of the value of Community imports of the same products from all countries and territories listed in Annex I over three consecutive years, on the basis of the most recent data available on 1 September 2004. For each of the sections XI(a) and XI(b) the threshold shall be 12,5 %.

2. The sections removed in accordance with paragraph 1 are listed in Annex I, column C.

3. The removal of sections from this scheme shall apply as from 1 January 2006 until 31 December 2008.

4. The Commission shall notify a beneficiary country of the removal of a section.

5. Paragraph 1 does not apply to a beneficiary country in respect of any section which represents more than 50 % in value of all GSP-covered imports to the Community originating from the country in question.

6. The statistical source used for the purpose of this Article shall be the COMEXT statistics.

Article 15

1. Where the rate of an ad valorem duty for an individual import declaration reduced in accordance with the provisions of this Chapter is 1 % or less, that duty shall be entirely suspended.

2. Where the rate of a specific duty for an individual import declaration reduced in accordance with the provisions of this Chapter is EUR 2 or less per individual euro amount, that duty shall be entirely suspended.

3. Subject to paragraphs 1 and 2, the final rate of preferential duty calculated in accordance with this Regulation shall be rounded down to the first decimal place.

[…]