



The University of the South Pacific

Cook Islands, Fiji, Kiribati, Marshall Islands, Nauru, Niue, Samoa, Solomon Islands, Tokelau, Tonga, Tuvalu and Vanuatu

MASTER COPY

To: Student Academic Services

Subject: EXAMINATION INFORMATION FORM

1. School: Law 3. Semester/Year: 2/2006
2. Course No: LA324 4. Title: EU Law in relation to the South Pacific
5. Time allowed: 3 hours (plus 10 minutes reading time)
6. Number of questions on paper: fifteen (15)
7. Number of questions to be answered: ten (10)
8. Mark values

PART A: All students must answer this part (4 sub-questions) which is worth 20 marks.

PART B: Students must answer FIVE questions from this part. Each question is worth 3 marks, making a total of 15 marks for the part

PART C: Students must choose ONE question from this part to answer. Each question is worth 15 marks.

9. Number of candidates expected: fifty (50)
10. Materials required: (log tables, graph paper, etc): none
11. Number of extra paper required for Departmental records, etc: _____

Other details of instructions: students are allowed to bring to the examination room an unannotated copy of the Treaty of Nice and the Table of Equivalences. These materials should be inspected before exam start.

13. We, the lecturer in charge of the course and the head of department, confirm that the attached examination paper for course LA324 was moderated by the School of Law Department at its meeting on 27/9/06

Lecturer K.A. Schuilenburg Date 22 September 2006
(Signature)

HOD: [Signature] Date 27/9/06
(Signature)

Note : The examination paper will be returned to the lecturer if the lecturer and the Head of Department have not certified that the paper has been moderated, as required by clause 2 of the Assessment Regulations.

[Please attach this form to your examination paper].



The University of the South Pacific

Emalus Campus

Supplementary
Examinations

Semester 2 2006

SCHOOL OF LAW

**COURSE NAME: EU Law and Policy relating to
the Pacific**

COURSE NO: LA 324

TIME ALLOWED: THREE (3) HOURS

READING TIME: TEN (10) MINUTES

NUMBER OF PAGES: FOURTEEN (14) (including cover page)

NUMBER OF QUESTIONS ON PAPER: FIFTEEN (15)

NUMBER OF QUESTIONS TO BE ANSWERED: TEN (10)

MARK ALLOCATED FOR EACH QUESTION:

PART A: All students must answer this part which is worth 20 marks in total.

PART B: Students must answer FIVE questions from this part. Each question is worth 3 marks, making a total of 15 marks for the part

PART C: Students must choose ONE question from this part to answer. Each question is worth 15 marks.

TOTAL MARKS: FIFTY (50) MARKS

MATERIALS PERMITTED IN EXAMINATION ROOM:

An unannotated Copy of the EC Treaty (Treaty of Nice 2003) and Table of Equivalences.

Approved by Head of School: Z. Repasku Date: 14/10/2008

PART A

This part is **COMPULSORY**. It is worth 20 marks. You will need to refer to relevant Articles of the EC Treaty and ECJ case-law.

Julia Tiramisu is an Italian secretary who recently moved to Belgium in order to seek employment as a secretary. She applied ~~with~~^{to} the Department of Social Affairs of the Belgian government in Brussels. She was told that she may apply for the secretary post but that the department can only pay her a salary which is 20% lower than the advertised salary. The Human Resources Manager told Julia that this was common practice if someone was not able to provide a Belgian secretary diploma.

Julia is now suing the department before a lower national court in Brussels, claiming that she ~~has been~~^{was} discriminated against when the department refused to employ her on the same terms as Belgian secretaries.

Article 5 of the 2002 Equal Treatment Directive, as implemented by Belgium, reads as follows:

'A national of a Member State who seeks employment in the territory of another Member State shall receive the same treatment there as that afforded by the Member State to their own nationals seeking employment'.

Julia would like to see her case brought before the European Court of Justice. However, the Judge presiding the lower court in Brussels, Lord Anti Euro, seems not convinced.

Question 1 – give brief answers in whole sentences. Where possible, refer to the EC Treaty provisions and case-law.

- Explain whether and, if so, why the national court should refer a question to the ECJ. (2 marks)
- Independent of your answer under a.), provide details as to the procedure to be followed by the lower Court in Brussels. (2 marks)
- What defence is available for the Department of Social Affairs? (1 mark)

Imagine that Julia Tiramisu insists that the problem should be considered by the European Court of Justice and that a preliminary ruling should be requested. The national court admits that European law is relevant in the present case, but it will not make a request for a preliminary ruling. The reason for this is that according to the Constitution of Belgium only the Supreme Court is allowed to ask the European Court of Justice for a preliminary ruling.

Question 2 - give a brief answer in whole sentences. Where possible, refer to the EC Treaty provisions and case-law.

- a. Should the national court in the present case refrain from making a reference for a preliminary ruling, given the rules in the Constitution of Belgium? Why / why not? (5 marks)

While the national court is still not sure whether to refer the case to the European Court of Justice, Scotland Yard finds out that Julia Tiramisu is a member of a famous Sicilian Mafia family and that she came to Brussels for the sole purpose of laundering money for some cousins.

Question 3 - give a brief answer in whole sentences. Where possible, refer to the EC Treaty provisions and case-law.

- a. How, if at all, would this information affect Julia's status as an Italian job seeker in Belgium? (5 marks)

Article 22 of the 2002 Equal Treatment Directive reads as follows:

'This Directive must be implemented by all Member States by 15 March 2002.'

Imagine that Belgium has not implemented the Directive at the time Julia's case reaches the lower court in Brussels on 15 April 2002.

Question 4 - give brief answers in whole sentences. Where possible, refer to the EC Treaty provisions and case-law.

- a. Does this information affect Julia Tiramisu in any way (positively or negatively)? If yes, how? If not, why not? (1 mark)
- b. Independent of your answer under a.), discuss the criteria for state liability under European Law and apply these to the present case. (2 marks)
- c. Discuss what defence(s) might be available for the government of Belgium and say whether the ECJ is likely to consider them. (2 marks)

PART B

You must answer FIVE questions from this part (in whole sentences). Each question is worth 3 marks, making a total of 15 marks in total.

Question five

Is there a unified Jurisprudence of free movement? If no, why not? If yes, what does it look like? (3 marks)

Question six

How did the ECJ manage to make European law more effective than it used to be at the beginning of European integration? (3 marks)

Question seven

Explain and evaluate the landmark decision of the European Court of Justice in the case of Van Gend and Loos C- 26/62 (3 marks)

Question eight

Discuss internal and external forces which are said to have made a change in the EU-ACP relationship inevitable? (3 marks)

Question nine

Discuss the following statement: "With negotiations at many levels, the Pacific ACP states are overextended". (3 marks)

Question ten

Explain what you understand by (i) supranationalism and (ii) intergovernmentalism. Why are these two theories important? (3 marks)

Question eleven

Why did the EU for decades defend non-reciprocity in its ACP trade relations and why did it (suddenly) decide to change its trade policy towards reciprocity in all agreements with ACP countries? Explain. (3 marks)

Question twelve

What is the difference between direct applicability and direct effect in EU law? Explain using examples from ECJ case law. (3 marks)

Question thirteen

Discuss integration in the South Pacific and how it compares to the integration efforts in the Caribbean region. (3 marks)

PART C

You must answer ONE question from this part. Each question is worth 15 marks.

Question fourteen

Discuss the following statement, making reference to the ECJ's case law:

"The European Court of Justice has been responsible for undermining the foundations of national legal systems of EU Member States."

- (a) What objectives, tasks, interests and powers does the ECJ have?
- (b) What relationship does the ECJ have with national courts?
- (c) What benefits and disadvantages does this relationship have for the Member States?
- (d) Would a "Pacific Court" in your opinion benefit the South Pacific region or not? Why/why not?

N.B. Do **NOT** answer (a) – (d) as separate questions; these are only suggestive points to be considered in your essay answer.

(15 marks)

Question fifteen

Imagine that you are a legal adviser at the Ministry of Foreign Affairs of a country in the South Pacific region (please assume that at that point in time you do not know yet into which category this country will fall – developing country, least developed country etc). You must write a concise briefing for your minister, setting out the current situation with regard to the EU-ACP negotiations under the Cotonou Agreement and you must give your advice for the country's future policy with regard to the options available for Pacific ACP members. Remember that you work in your country's best interests.

You should consider:

- (a) What objectives do the EPAs have and what is at stake for Pacific Island States (PIS)?
- (b) What interests does the EU have?
- (c) What negotiation options are there under Economic Partnership Agreements (EPAs)?
- (d) What would be, in your opinion, a reasonable (long-term) solution for PICs as a group of countries?

N.B. Do **NOT** answer (a) – (d) as separate questions; these are only suggestive points to be considered in your essay answer.

(15 marks)

Additional Legislation

Cotonou Agreement

TITLE II ECONOMIC AND TRADE COOPERATION CHAPTER 1 OBJECTIVES AND PRINCIPLES

ARTICLE 34

Objectives

1. Economic and trade cooperation shall aim at fostering the smooth and gradual integration of the ACP States into the world economy, with due regard for their political choices and development priorities, thereby promoting their sustainable development and contributing to poverty eradication in the ACP countries.
2. The ultimate objective of economic and trade cooperation is to enable the ACP States to play a full part in international trade. In this context, particular regard shall be had to the need for the ACP States to participate actively in multilateral trade negotiations. Given the current level of development of the ACP countries, economic and trade cooperation shall be directed at enabling the ACP States to manage the challenges of globalisation and to adapt progressively to new conditions of international trade thereby facilitating their transition to the liberalised global economy.
3. To this end economic and trade cooperation shall aim at enhancing the production, supply and trading capacity of the ACP countries as well as their capacity to attract investment. It shall further aim at creating a new trading dynamic between the Parties, at strengthening the ACP countries trade and investment policies and at improving the ACP countries' capacity to handle all issues related to trade.
4. Economic and trade cooperation shall be implemented in full conformity with the provisions of the WTO, including special and differential treatment, taking account of the Parties' mutual interests and their respective levels of development.

CHAPTER 2 NEW TRADING ARRANGEMENTS

ARTICLE 36

Modalities

1. In view of the objectives and principles set out above, the Parties agree to conclude new World Trade Organisation (WTO) compatible trading arrangements, removing progressively barriers to trade between them and enhancing cooperation in all areas relevant to trade.
2. The Parties agree that the new trading arrangements shall be introduced gradually and recognize the need, therefore, for a preparatory period.
3. In order to facilitate the transition to the new trading arrangements, the non-reciprocal trade preferences applied under the Fourth ACP-EC Convention shall be maintained during the preparatory period for all ACP countries, under the conditions defined in Annex V to this Agreement.
4. In this context, the Parties reaffirm the importance of the commodity protocols, attached to Annex V of this Agreement. They agree on the need to review them in the context of the new trading arrangements, in particular as regards their compatibility with

WTO rules, with a view to safeguarding the benefits derived therefrom, bearing in mind the special legal status of the Sugar Protocol.

ARTICLE 37

Procedures

1. Economic partnership agreements shall be negotiated during the preparatory period which shall end by 31 December 2007 at the latest. Formal negotiations of the new trading arrangements shall start in September 2002 and the new trading arrangements shall enter into force by 1 January 2008, unless earlier dates are agreed between the Parties.
2. All the necessary measures shall be taken so as to ensure that the negotiations are successfully concluded within the preparatory period. To this end, the period up to the start of the formal negotiations of the new trading arrangements shall be actively used to make initial preparations for these negotiations.
3. The preparatory period shall also be used for capacity-building in the public and private sectors of ACP countries, including measures to enhance competitiveness, for strengthening of regional organisations and for support to regional trade integration initiatives, where appropriate with assistance to budgetary adjustment and fiscal reform, as well as for infrastructure upgrading and development, and for investment promotion.
4. The Parties will regularly review the progress of the preparations and negotiations and, will in 2006 carry out a formal and comprehensive review of the arrangements planned for all countries to ensure that no further time is needed for preparations or negotiations.
5. Negotiations of the economic partnership agreements will be undertaken with ACP countries which consider themselves in a position to do so, at the level they consider appropriate and in accordance with the procedures agreed by the ACP Group, taking into account regional integration process within the ACP.
6. In 2004, the Community will assess the situation of the non-LDC which, after consultations with the Community decide that they are not in a position to enter into economic partnership agreements and will examine all alternative possibilities, in order to provide these countries with a new framework for trade which is equivalent to their existing situation and in conformity with WTO rules.
7. Negotiations of the economic partnership agreements shall aim notably at establishing the timetable for the progressive removal of barriers to trade between the Parties, in accordance with the relevant WTO rules. On the Community side trade liberalisation shall build on the *acquis* and shall aim at improving current market access for the ACP countries through *inter alia*, a review of the rules of origin. Negotiations shall take account of the level of development and the socio-economic impact of trade measures on ACP countries, and their capacity to adapt and adjust their economies to the liberalisation process. Negotiations will therefore be as flexible as possible in establishing the duration of a sufficient transitional period, the final product coverage, taking into account sensitive sectors, and the degree of asymmetry in terms of timetable for tariff dismantlement, while remaining in conformity with WTO rules then prevailing.
8. The Parties shall closely cooperate and collaborate in the WTO with a view to defending the arrangements reached, in particular with regard to the degree of flexibility available.
9. The Community will start by the year 2000, a process which by the end of multilateral trade negotiations and at the latest 2005 will allow duty free access for essentially all products from all LDC building on the level of the existing trade provisions of the Fourth ACP-EC Convention and which will simplify and review the rules of origin, including cumulation provisions, that apply to their exports.

Article 3

Free Trade Area

- 1 The Parties shall gradually establish a free trade area in accordance with the provisions of this Agreement, with the understanding that Least Developed Countries and Small Island States may be integrated in accordance with different structures and by different time frames than other Parties. The Area shall consist of the territories of the Parties to this Agreement.

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Article 4

Coverage of the Agreement

This Agreement shall apply to trade in originating goods exported from one Party to another Party, in accordance with the terms of this Agreement.

Article 24

Effect on other Agreements

- 1 This Agreement shall not exempt any Party from its obligations, or abrogate the rights of any Party, under any existing international agreements to which it is Party.
- 2 Nothing in this Agreement shall prevent Parties from entering into any other agreements relating to the maintenance or establishment of customs unions, free trade areas or arrangements for frontier trade to the extent that those agreements are consistent with the terms and objectives of this Agreement.

Pacific Agreement on Closer Economic Relations (PACER)

Article 2

Objectives

- 1 The Parties wish to establish a framework for the gradual trade and economic integration of the economies of the Forum members in a way that is fully supportive of sustainable development of the Forum Island Countries and to contribute to their gradual and progressive integration into the international economy.
- 2 The objectives of this Agreement include the following:
 - (a) to provide a framework for cooperation leading over time to the development of a single regional market;
 - (b) to foster increased economic opportunities and competitiveness through more effective regional trade arrangements;
 - (c) to minimise any disruptive effects and adjustment costs to the economies of the Forum Island Countries, including through the provision of assistance and support for the Forum Island Countries to undertake the necessary structural and economic adjustments for integration into the international economy;
 - (d) to provide economic and technical assistance to the Forum Island Countries in order to assist them in implementing trade liberalisation and economic integration and in securing the benefits from liberalisation and integration; and

- (e) to be consistent with the obligations of any of the Parties under the Marrakesh Agreement Establishing the World Trade Organization.

Article 3

Guiding Principles

- 1 The objectives of sustainable development of the Forum Island Countries and gradual and progressive integration of the Forum Island Countries into the international economy shall guide all aspects of all stages of the development of the trade and economic partnership established under this Agreement.
- 2 The trade arrangements established in accordance with Part 2 of this Agreement are intended to provide “stepping stones” to allow the Forum Island Countries to gradually become part of a single regional market and integrate into the international economy.
- 3 The Parties recognise that the purpose of free trade areas should be to facilitate trade between the constituent parties and not to raise barriers to the trade of other Parties to this Agreement, and shall endeavour to act consistently with that purpose.
- 4 Nothing in this Agreement shall be construed as restricting the right of the Parties to undertake an arrangement between two or more of them to regulate trade and economic relations between them as they may agree, except when necessary to achieve the objectives of this Agreement.
- 5 The Parties shall use their best endeavours to follow international best practice in formulating the rules governing the trade relations between them, taking into account the development status, capacity and resource constraints of Forum Island Countries.
- 6 Consistent with the objectives set out in Paragraph 1, Least Developed Countries and Small Island States may be integrated in accordance with different structures and by different time frames than other Parties.
- 7 This Agreement is not intended to be:
 - (a) a customs union, an interim agreement leading to the formation of a customs union, a free trade area, or an interim agreement leading to the formation of a free trade area notifiable under Article XXIV of the General Agreement on Tariffs and Trade;
 - (b) an agreement notifiable under Article V of the General Agreement on Trade in Services; or
 - (c) in derogation of any pre-existing arrangements, obligations or treaties.

Article 4

Arrangements among Forum Island Countries

- 1 The Parties agree that it is desirable for the Forum Island Countries to commence trade liberalisation and economic integration among themselves first.
- 2 The Forum Island Countries may liberalise trade among themselves and integrate their economies at a different pace and with different priorities than those with which they liberalise trade, and integrate their economies, with the economies of Australia and New Zealand.
- 3 Any arrangements established in accordance with this Article shall:

- (a) be consistent with the objectives and guiding principles of this Agreement; and
- (b) confer no rights or obligations on any Party not party to that arrangement.

Article 5

Future Negotiation of Forum-wide Trade Arrangements

- 1 In accordance with the objectives of this Agreement, and notwithstanding the process for further integration established in the following Paragraph, eight years after the PICTA has entered into force, unless earlier agreed as part of the general review of this Agreement under Paragraph 2 of Article 16 or otherwise triggered by the provisions of Article 6, the Parties will enter into negotiations with a view to establishing reciprocal free trade arrangements between the Forum Island Countries and Australia and New Zealand.

...

Article 6

Consultations between Forum Island Countries and Australia and New Zealand relating to the negotiation of free trade arrangements

- 1 For the purposes of this Article:
 - (a) “free trade arrangements” means at least one free trade area or customs union, or at least one agreement leading to the formation of such area or union, as defined in Article XXIV:8 of the General Agreement on Tariffs and Trade;
 - (b) “developed country” means any member of the Organisation for Economic Cooperation and Development as at 1 January 2001; and
 - (c) “least developed country” means any country that is for the time being designated as a least developed country by the United Nations.
- 2 If any Party enters into negotiations for a free trade arrangement with a non-Forum country, that Party shall notify the Forum Secretariat, which, in turn, shall notify all other Forum members.
- 3 Subject to Paragraph 10, if any Forum Island Country which is Party to this Agreement:
 - (a) commences formal negotiations for free trade arrangements which would include one or more developed non-Forum country, then that Forum Island Country shall offer to undertake consultations as soon as practicable with Australia and New Zealand, whether individually or jointly, with a view to the commencement of negotiation of free trade arrangements; or
 - (b) concludes free trade arrangements which would not include any developed non-Forum country, then that Forum Island Country shall offer to undertake consultations with Australia and New Zealand as soon as practicable after such arrangements are concluded. In cases where such arrangements involve a country which has a higher per capita GDP than the lowest per capita GDP of a developed Forum member, then the Forum Island Country shall offer the opportunity for negotiation of free trade arrangements with Australia and New Zealand, whether individually or jointly, following the consultation.
- 4 Subject to Paragraph 10, if all the parties to the PICTA jointly commence negotiations for free trade arrangements which would include one or more non-Forum country, they shall offer to undertake consultations, as soon as practicable,

- with Australia and New Zealand, whether individually or jointly, with a view to the commencement of negotiation of free trade arrangements.
- 5 Any Forum Island Country not party to the negotiations with a country referred to in Paragraph 3 may participate in any resulting consultations and negotiations with Australia or New Zealand.
 - 6 If Australia or New Zealand commence formal negotiations for free trade arrangements with any non-Forum country, then Australia and New Zealand shall offer to undertake consultations, as soon as practicable, with each Forum Island Country with a view to the commencement of negotiations for improved market access.
 - 7 In undertaking any negotiations under Paragraphs 3, 4 or 6, the relevant Parties shall endeavour to negotiate arrangements which are mutually beneficial, provide equal or better market access for the Parties, and are consistent with the relevant provisions of the Marrakesh Agreement Establishing the World Trade Organization.
 - 8 Where more than one consultation or negotiation is required under this Article, the relevant Parties shall consider how best to coordinate their consultations and negotiations.
 - 9 The obligation to consult under Paragraphs 3, 4 or 6 shall cease if the negotiation with a non-Forum country or countries is discontinued without producing an agreement.
 - 10 The obligations in Paragraphs 3 and 4 do not apply to:
 - (a) the accession of any Pacific Island Country or Territory to the PICTA, provided that the PICTA rules of origin do not discriminate between Australia and New Zealand and other developed countries; or
 - (b) the negotiation of any bilateral or plurilateral free trade arrangements between or among countries each of which is a Forum Island Country, or a Pacific Island Country or Territory, or a least developed country, provided that the rules of origin of such bilateral or plurilateral free trade arrangements do not discriminate between Australia and New Zealand and other developed countries.
 - 11 Nothing in this Article shall be construed so as to undermine or impede the ability of any Party to effectively and independently negotiate a free trade arrangement with a third country.
 - 12 Trade negotiations under this Agreement should be independent of other aspects of the relationship between Parties, including the provision of aid or technical assistance, outside that provided under this Agreement.

PART III

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 of 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 subparagraphs (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 subparagraph 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 subparagraph (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.