

# Trading into the Future

WTO  
The World Trade Organization

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Revised  
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## Abbreviations

Some of the abbreviations and acronyms used in the WTO:

ACP	African, Caribbean and Pacific Group ( <i>Lomé Convention</i> )	PSE	Producer subsidy equivalent ( <i>agriculture</i> )
AD, A-D	Anti-dumping measures	PSI	Pre-shipment inspection
AFTA	ASEAN Free Trade Area	S&D	Special and differential treatment ( <i>for developing countries</i> )
AMS	Aggregate measurement of support ( <i>agriculture</i> )	SAARC	South Asian Association for Regional Cooperation
APEC	Asia-Pacific Economic Cooperation	SDR	Special Drawing Rights ( <i>IMF</i> )
ASEAN	Association of Southeast Asian Nations	SELA	Latin American Economic System
ATC	Agreement on Textiles and Clothing	SPS	Sanitary and phytosanitary measures
CCC	( <i>former</i> ) Customs Co-operation Council (now WCO)	TBT	Technical barriers to trade
CER	[Australia New Zealand] Closer Economic Relations [Trade Agreement] ( <i>also ANCERTA</i> )	TMB	Textiles Monitoring Body
COMESA	Common Market for Eastern and Southern Africa	TPRB	Trade Policy Review Body
CTD	Committee on Trade and Development	TPRM	Trade Policy Review Mechanism
CTE	Committee on Trade and Environment	TRIMs	Trade-related investment measures
CVD	Countervailing duty ( <i>subsidies</i> )	TRIPS	Trade-related aspects of intellectual property rights
DSB	Dispute Settlement Body	UN	United Nations
DSU	Dispute Settlement Understanding	UNCTAD	UN Conference on Trade and Development
EC	European Communities	UNDP	UN Development Programme
EFTA	European Free Trade Association	UNEP	UN Environment Programme
EU	European Union ( <i>officially European Communities in WTO</i> )	UPOV	International Union for the Protection of New Varieties of Plants
FAO	Food and Agriculture Organization	UR	Uruguay Round
GATS	General Agreement on Trade in Services	VER	Voluntary export restraint
GATT	General Agreement on Tariffs and Trade	VRA	Voluntary restraint agreement
GSP	Generalized System of Preferences	WCO	World Customs Organization
HS	Harmonized Commodity Description and Coding System	WIPO	World Intellectual Property Organization
ICITO	Interim Commission for the International Trade Organization	WTO	World Trade Organization
ILO	International Labour Organization		
IMF	International Monetary Fund		
ITC	International Trade Centre		
ITO	International Trade Organization		
MERCOSUR	Southern Common Market		
MFA	Multifibre Arrangement ( <i>replaced by ATC</i> )		
MFN	Most-favoured-nation		
MTN	Multilateral trade negotiations		
NAFTA	North American Free Trade Agreement		

For a comprehensive list of abbreviations and glossary of terms used in international trade, see, for example:

Walter Goode, *Dictionary of Trade Policy Terms, Centre for International Economic Studies, University of Adelaide, 1997.*

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### A word of caution: the fine print

While every effort has been made to ensure the accuracy of the text in this booklet, it cannot be taken as an official legal interpretation of the agreements.

In addition, some simplifications are used in order to keep the text simple and clear. In particular, the words “country” and “nation” are frequently used to describe WTO members, whereas a few members are officially “customs territories”, and not necessarily countries in the usual sense of the word (see list of members). The same applies when participants in trade negotiations are called “countries” or “nations”.

Where there is little risk of misunderstanding, the word “member” is dropped from “member countries (nations, governments)”, for example in the descriptions of the WTO agreements. Naturally, the agreements and commitments do not apply to non-members.

In some parts of the text, GATT is described as an “international organization”. The phrase reflects GATT’s *de facto* role before the WTO was created, and it is used simplistically here to help readers understand that role. As the text points out, this role was always ad hoc, without a proper legal foundation. International law did not recognize GATT as an organization. For simplicity, the text uses the term “GATT members”. Officially, GATT signatories were “contracting parties”.

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## 1. What is the World Trade Organization?

The World Trade Organization (WTO) is the only international body dealing with the rules of trade between nations. At its heart are the WTO agreements, negotiated and signed by the bulk of the world's trading nations. These documents provide the legal ground-rules for international commerce. They are essentially contracts, binding governments to keep their trade policies within agreed limits. Although negotiated and signed by governments, the goal is to help producers of goods and services, exporters, and importers conduct their business.

### Three main purposes

The system's overriding purpose is to help trade flow as freely as possible — so long as there are no undesirable side-effects. That partly means removing obstacles. It also means ensuring that individuals, companies and governments know what the trade rules are around the world, and giving them the confidence that there will be no sudden changes of policy. In other words, the rules have to be "transparent" and predictable.

Because the agreements are drafted and signed by the community of trading nations, often after considerable debate and controversy, one of the WTO's most important functions is to serve as a forum for trade negotiations.

A third important side to the WTO's work is dispute settlement. Trade relations often involve conflicting interests. Contracts and agreements, including those painstakingly negotiated in the WTO system, often need interpreting. The most harmonious way to settle these differences is through some neutral procedure based on an agreed legal foundation. That is the purpose behind the dispute settlement process written into the WTO agreements.

### Born in 1995, but not so young

The WTO began life on 1 January 1995, but its trading system is half a century older. Since 1948, the General Agreement on Tariffs and Trade (GATT) had provided the rules for the system. The second ministerial meeting, held in Geneva in May 1998, included a celebration of the 50th anniversary of the system.

It did not take long for the General Agreement to give birth to an unofficial, *de facto* international organization, also known informally as GATT. Over the years GATT evolved through several rounds of negotiations.

The latest and largest round, was the Uruguay Round which lasted from 1986 to 1994 and led to the WTO's creation. Whereas GATT had mainly dealt with trade in goods, the WTO and its agreements now cover trade in services, and in traded inventions, creations and designs (intellectual property).

**'[The Uruguay Round] will strengthen the world economy and lead to more trade, investment, employment and income growth throughout the world.'**

*Ministerial Declaration, concluding Uruguay Round, Marrakesh, April 1994*

### 'Multilateral' trading system ...

... i.e. the system operated by the WTO. Most nations — including almost all the main trading nations — are members of the system. But some are not, so "multilateral" is used to describe the system instead of "global" or "world".

In WTO affairs, "multilateral" also contrasts with actions taken regionally or by other smaller groups of countries. (This is different from the word's use in other areas of international relations where, for example, a "multilateral" security arrangement can be regional.)

## 2. Principles of the trading system

The WTO agreements are lengthy and complex because they are legal texts covering a wide range of activities. They deal with: agriculture, textiles and clothing, banking, telecommunications, government purchases, industrial standards, food sanitation regulations, intellectual property, and much more. But a number of simple, fundamental principles run throughout all of these documents. These principles are the foundation of the multilateral trading system.

A closer look at these principles:

### Trade without discrimination

#### 1. *Most-favoured-nation (MFN): treating other people equally*

Under the WTO Agreements, countries cannot normally discriminate between their trading partners. Grant someone a special favour (such as a lower customs duty rate for one of their products) and you have to do the same for all other WTO members.

This principle is known as most-favoured-nation (MFN) treatment (*see box*). It is so important that it is the first article of the General Agreement on Tariffs and Trade (GATT), which governs trade in goods. MFN is also a priority in the General Agreement on Trade in Services (GATS) (Article 2) and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) (Article 4), although in each agreement the principle is handled slightly differently. Together, those three agreements cover all three main areas of trade handled by the WTO.

Some exceptions are allowed. For example, countries within a region can set up a free trade agreement that does not apply to goods from outside the group. Or a country can raise barriers against products from specific countries that are considered to be traded unfairly. And in services, countries are allowed, in limited circumstances, to discriminate. But the agreements only permit these exceptions under strict conditions. In general, MFN means that every time a country lowers a trade barrier or opens up a market, it has to do so for the same goods or services from all its trading partners — whether rich or poor, weak or strong.

### The principles

The trading system should be ...

- **without discrimination** — a country should not discriminate between its trading partners (they are all, equally, granted “most-favoured-nation” or MFN status); and it should not discriminate between its own and foreign products, services or nationals (they are given “national treatment”);
- **freer** — with barriers coming down through negotiation;
- **predictable** — foreign companies, investors and governments should be confident that trade barriers (including tariffs, non-tariff barriers and other measures) should not be raised arbitrarily; more and more tariff rates and market-opening commitments are “bound” in the WTO;
- **more competitive** — by discouraging “unfair” practices such as export subsidies and dumping products at below cost to gain market share;
- **more beneficial for less developed countries** — by giving them more time to adjust, greater flexibility, and special privileges.

#### Why is it called ‘most-favoured’?

The name sounds like a contradiction. It suggests some kind of special treatment for one particular country, but in the WTO it actually means non-discrimination — treating virtually everyone equally.

What happens under the WTO is this. Each member treats all the other members equally as “most-favoured” trading partners. If a country improves the benefits that it gives to one trading partner, it has to give the same “best” treatment to all the other WTO members so that they all remain “most-favoured”.

Most-favoured nation (MFN) status did not always mean equal treatment. In the 19th Century, when a number of early bilateral MFN treaties were signed, being included among a country’s “most-favoured” trading partners was like being in an exclusive club because only a few countries enjoyed the privilege. Now, when most countries are in the WTO, the MFN club is no longer exclusive. The MFN principle ensures that each country treats its over-100 fellow-members equally.

But there are some exceptions ...

## 2. National treatment: Treating foreigners and locals equally

Imported and locally-produced goods should be treated equally — at least after the foreign goods have entered the market. The same should apply to foreign and domestic services, and to foreign and local trademarks, copyrights and patents. This principle of “national treatment” (giving others the same treatment as one’s own nationals) is also found in all the three main WTO agreements (Article 3 of GATT, Article 17 of GATS and Article 3 of TRIPS), although once again the principle is handled slightly differently in each of these.

National treatment only applies once a product, service or item of intellectual property has entered the market. Therefore, charging customs duty on an import is not a violation of national treatment even if locally-produced products are not charged an equivalent tax.

## Freer trade: gradually, through negotiation

Lowering trade barriers is one of the most obvious means of encouraging trade. The barriers concerned include customs duties (or tariffs) and measures such as import bans or quotas that restrict quantities selectively. From time to time other issues such as red tape and exchange rate policies have also been discussed.

Since GATT’s creation in 1947-48 there have been eight rounds of trade negotiations. At first these focused on lowering tariffs (customs duties) on imported goods. As a result of the negotiations, by the late 1980s industrial countries’ tariff rates on industrial goods had fallen steadily to about 6.3%.

But by the 1980s, the negotiations had expanded to cover non-tariff barriers on goods, and to the new areas such as services and intellectual property.

Opening markets can be beneficial, but it also requires adjustment. The WTO agreements allow countries to introduce changes gradually, through “progressive liberalization”. Developing countries are usually given longer to fulfil their obligations.

## Predictability: through binding

Sometimes, promising not to raise a trade barrier can be as important as lowering one, because the promise gives businesses a clearer view of their future opportunities. With stability and predictability, investment is encouraged, jobs are created and consumers can fully enjoy the benefits of competition — choice and lower prices. The multilateral trading system is an attempt by governments to make the business environment stable and predictable.

In the WTO, when countries agree to open their markets for goods or services, they “bind” their commitments. For goods, these bindings amount to ceilings on customs tariff rates. Sometimes countries tax imports at rates that are lower than the bound rates. Frequently this is the case in developing countries. In developed countries the rates actually charged and the bound rates tend to be the same.

A country can change its bindings, but only after negotiating with its trading partners, which could mean compensating them for loss of trade. One of the achievements of the Uruguay Round of multilateral trade talks was to increase the amount of trade under binding commitments (*see table*). In agriculture, 100% of products now have bound tariffs. The result of all this: a substantially higher degree of market security for traders and investors.

The system tries to improve predictability and stability in other ways as well. One way is to discourage the use of quotas and other measures used to set limits on quantities of imports — administering quotas can lead to more red-tape and accusations of unfair play. Another is to make countries’ trade rules as clear and public (“transparent”) as possible. Many WTO agreements require governments to disclose their policies and practices publicly within the country or by notifying the WTO. The regular surveillance of national trade policies through the Trade Policy Review Mechanism provides a further means of encouraging transparency both domestically and at the multilateral level.

### The Uruguay Round increased bindings

Percentage, tariffs bound before and after the 1986-94 talks

	Before	After
Developed countries	<b>78</b>	<b>99</b>
Developing countries	<b>21</b>	<b>73</b>
Transition economies	<b>73</b>	<b>98</b>

(These are tariff lines, so percentages are not weighted according to trade volume or value)

### **Promoting fair competition**

The WTO is sometimes described as a “free trade” institution, but that is not entirely accurate. The system does allow tariffs and, in limited circumstances, other forms of protection. More accurately, it is a system of rules dedicated to open, fair and undistorted competition.

The rules on non-discrimination — MFN and national treatment — are designed to secure fair conditions of trade. So too are those on dumping (exporting at below cost to gain market share) and subsidies. The issues are com-

plex, and the rules try to establish what is fair or unfair, and how governments can respond, in particular by charging additional import duties calculated to compensate for damage caused by unfair trade.

Many of the other WTO agreements aim to support fair competition: in agriculture, intellectual property, services, for example. The agreement on government procurement (a “plurilateral” agreement because it is signed by only a few WTO members) extends competition rules to purchases by thousands of “government” entities in many countries. And so on.

### **Encouraging development and economic reform**

It is widely recognized by economists and trade experts that the WTO system contributes to development. It is also recognized that the least-developed countries need flexibility in the time they take to implement the agreements. And the agreements themselves inherit the earlier provisions of GATT that allow for special assistance and trade concessions for developing countries.

Over three quarters of WTO members are developing countries and countries in transition to market economies. During the seven and a half years of the Uruguay Round, over 60 of these countries implemented trade liberalization programmes autonomously. At the same time, developing countries and transition economies were much more active and influential in the Uruguay Round negotiations than in any previous round.

This trend effectively killed the notion that the trading system existed only for industrialized countries. It also changed the previous emphasis on exempting developing countries from certain GATT provisions and agreements.

At the end of the Uruguay Round, developing countries were prepared to take on most of the obligations that are required of developed countries. But the agreements did give them transition periods to adjust to the more unfamiliar and, perhaps, difficult WTO provisions — particularly so for the poorest, “least-developed” countries. A ministerial decision adopted at the end of the round gives least developed countries extra flexibility in implementing WTO agreements. It says better-off countries should accelerate implementing market access commitments on goods exported by the least-developed countries, and it seeks increased technical assistance for them.

Nobel laureate Paul Samuelson was once challenged by the mathematician Stanislaw Ulam to “name me one proposition in all of the social sciences which is both true and non-trivial.” It took Samuelson several years to find the answer — comparative advantage. “That it is logically true need not be argued before a mathematician; that it is not trivial is attested by the thousands of important and intelligent men who have never been able to grasp the doctrine for themselves or to believe it after it was explained to them.”

### 3. The case for open trade

The economic case for an open trading system based upon multilaterally agreed rules is simple enough and rests largely on commercial common sense. But it is also supported by evidence: the experience of world trade and economic growth since the Second World War. Tariffs on industrial products have fallen steeply and are now close to 4% on average in industrial countries by 1 January 1999. During the first two decades after the war, world economic growth averaged about 5% per year, a high rate that was partly the result of lower trade barriers. World trade grew even faster, averaging about 8% during the period.

The data show a definite statistical link between freer trade and economic growth. Economic theory points to strong reasons for the link. All countries, including the poorest, have assets — human, industrial, natural, financial — which they can employ to produce goods and services for their domestic markets or to compete overseas. Economics tells us that we can benefit when these goods and services are traded.

Simply put, the principle of “comparative advantage” says that countries prosper first by taking advantage of their assets in order to concentrate on what they can produce best, and then by trading these products for products that other countries produce best.

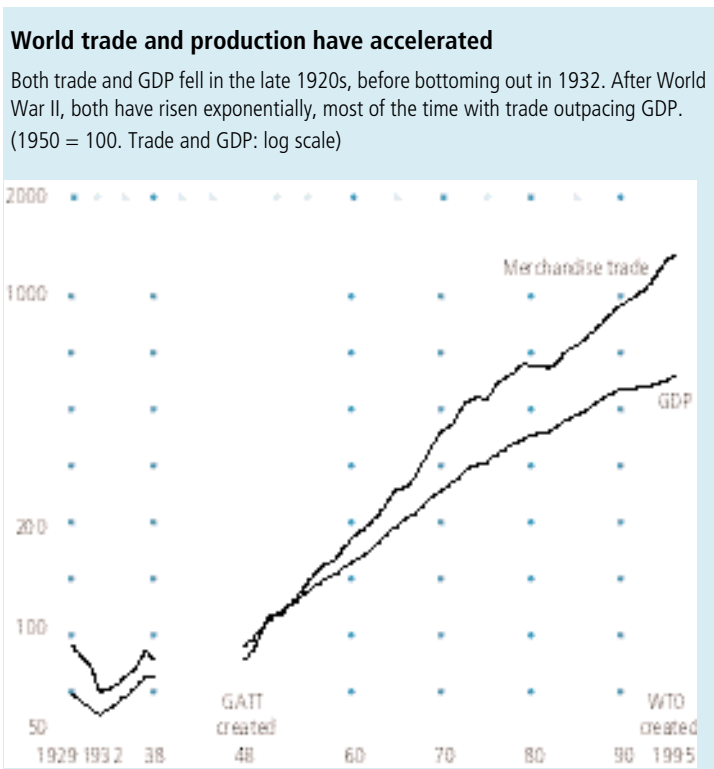
Firms do exactly that quite naturally on the domestic market. But what about the international market? Most firms recognize that the bigger the market the greater their potential — they can expand until they are at their most efficient size, and they can have access to large numbers of customers.

In other words, liberal trade policies — policies that allow the unrestricted flow of goods and services — multiply the rewards that result from producing the best products, with the best design, at the best price.

But success in trade is not static. The ability to compete well in particular products can shift from company to company when the market changes or new technologies make cheaper and better products possible. Experience shows that competitiveness can also shift between whole countries. A country that may have enjoyed an advantage because of lower labour costs or because it had good supplies of some natural resources, could also become uncompetitive in some goods or services as its economy develops. However, with the stimulus of an open economy, the country can move on to become competitive in some other goods or services. This is normally a gradual process.

When the trading system is allowed to operate without the constraints of protectionism, firms are encouraged to adapt gradually and in a relatively painless way. They can focus on new products, find a new “niche” in their current area or expand into new areas.

The alternative is protection against competition from imports, and perpetual government subsidies. That leads to bloated, inefficient companies supplying consumers with outdated, unattractive products. Ultimately, factories close and jobs are lost despite the protection and subsidies. If other governments around the world pursue the same policies, markets contract and world economic activity is reduced. One of the objectives of the WTO is to prevent such a self-defeating and destructive drift into protectionism.





## Comparative advantage



What did the classical economist David Ricardo mean when he coined the term comparative advantage?

Suppose country A is better than country B at making automobiles, and country B is better than country A at making bread. It is obvious (the academics would say “trivial”) that both would benefit if A specialized in automobiles, B specialized in bread and they traded their products. That is a case of absolute advantage.

But what if a country is bad at making everything? Will trade drive all producers out of business? The answer, according to Ricardo, is no. The reason is the principle of comparative advantage, arguably the single most powerful insight in economics.

According to the principle of comparative advantage, countries A and B still stand to benefit from trading with each other even if A is better than B at making everything, both automobiles and bread. If A is much more superior at making automobiles and only slightly superior at making bread, then A should still invest resources in what it does best — producing automobiles — and export the product to B. B should still invest in what it does best — making bread — and export that product to A, even if it is not as efficient as A. Both would still benefit from the trade. A country does not have to be best at anything to gain from trade. That is comparative advantage.

The theory is one of the most widely accepted among economists. It is also one of the most misunderstood among non-economists because it is confused with absolute advantage. It is often claimed, for example, that some countries have no comparative advantage in anything. That is virtually impossible. Think about it ...

## 4. Roots: from Havana to Marrakesh

The WTO’s creation on 1 January 1995 marked the biggest reform of international trade since after the Second World War. It also brought to reality — in an updated form — the failed attempt to create an International Trade Organization in 1948. Up to 1994, the trading system came under GATT, salvaged from the aborted attempt to create the ITO. GATT helped establish a strong and prosperous multilateral trading system that became more and more liberal through rounds of trade negotiations. But by the 1980s the system needed a thorough overhaul. This led to the Uruguay Round, and ultimately to the WTO.

### GATT: ‘provisional’ for almost half a century

From 1948 to 1994, the General Agreement on Tariffs and Trade (GATT) provided the rules for much of world trade and presided over periods that saw some of the highest growth rates in international commerce. It seemed well-established, but throughout those 47 years, it was a provisional agreement and organization.

The original intention was to create a third institution handling international economic cooperation, to join the “Bretton Woods” institu-

tions now known as the World Bank and the International Monetary Fund. The complete plan, as envisaged by over 50 countries, was to create an International Trade Organization (ITO) as a specialized agency of the United Nations. The draft ITO Charter was ambitious. It extended beyond world trade disciplines, to include rules on employment, commodity agreements, restrictive business practices, international investment, and services.

Even before the charter was finally approved, 23 of the 50 participants decided in 1946 to negotiate to reduce and bind customs tariffs. With the Second World War only recently ended, they wanted to give an early boost to trade liberalization, and to begin to correct the large legacy of protectionist measures which remained in place from the early 1930s.

This first round of negotiations resulted in 45,000 tariff concessions affecting \$10 billion of trade, about one fifth of the world’s total. The 23 also agreed that they should accept some of the trade rules of the draft ITO Charter. This, they believed, should be done swiftly and “provisionally” in order to protect the value of the tariff concessions they had negotiated. The combined package of trade rules and tariff concessions became known as the General Agreement on Tariffs and Trade. It entered into force in January 1948, while the ITO Charter was still being negotiated. The 23 became founding GATT members (officially, “contracting parties”).

### The GATT trade rounds

Year	Place/ name	Subjects covered	Countries
1947	Geneva	Tariffs	23
1949	Annecy	Tariffs	13
1951	Torquay	Tariffs	38
1956	Geneva	Tariffs	26
1960-1961	Geneva (Dillon Round)	Tariffs	26
1964-1967	Geneva (Kennedy Round)	Tariffs and anti-dumping measures	62
1973-1979	Geneva (Tokyo Round)	Tariffs, non-tariff measures, “framework” agreements	102
1986-1994	Geneva (Uruguay Round)	Tariffs, non-tariff measures, rules, services, intellectual property, dispute settlement, textiles, agriculture, creation of WTO, etc	123

## The trade chiefs

### The directors-general of GATT and WTO

- Sir Eric Wyndham White (UK) 1948-68
- Olivier Long (Switzerland) 1968-80
- Arthur Dunkel (Switzerland) 1980-93
- Peter Sutherland (Ireland)  
GATT 1993-94; WTO 1995
- Renato Ruggiero (Italy) 1995-1999

Although the ITO Charter was finally agreed at a UN Conference on Trade and Employment in Havana in March 1948, ratification in some national legislatures proved impossible. The most serious opposition was in the US Congress, even though the US government had been one of the driving forces. In 1950, the United States' government announced that it would not seek Congressional ratification of the Havana Charter, and the ITO was effectively dead. Even though it was provisional, the GATT remained the only multilateral instrument governing international trade from 1948 until the WTO was established in 1995.

For almost half a century, the GATT's basic legal text remained much as it was in 1948. There were additions in the form of "plurilateral" agreements (i.e. with voluntary membership), and efforts to reduce tariffs further continued. Much of this was achieved through a series of multilateral negotiations known as "trade rounds" — the biggest leaps forward in international trade liberalization have come through these rounds which were held under GATT's auspices.

In the early years, the GATT trade rounds concentrated on further reducing tariffs. Then, the Kennedy Round in the mid-sixties brought about a GATT Anti-Dumping Agreement. The Tokyo Round during the seventies was the first major attempt to tackle trade barriers that do not take the form of tariffs, and to improve the system. The eighth, the Uruguay Round of 1986-94, was the latest and most extensive of all. It led to the WTO and a new set of agreements.

### The Tokyo Round: a first try to reform the system

The Tokyo Round lasted from 1973 to 1979, with 102 countries participating. It continued GATT's efforts to progressively reduce tariffs. The results included an average one-third cut in customs duties in the world's nine major industrial markets, bringing the average tariff on industrial products down to 4.7%. The tariff reductions, phased in over a period of eight years, involved an element of "harmonization" — the higher the tariff, the larger the cut, proportionally.

In other issues, the Tokyo Round had mixed results. It failed to come to grips with the fundamental problems affecting farm trade and also stopped short of providing a new agreement on "safeguards" (emergency import measures). Nevertheless, a series of agreements on non-tariff barriers did emerge from the negotiations, in some cases interpreting existing GATT rules, in others breaking entirely new ground. In most cases, only a relatively small number of (mainly industrialized) GATT members subscribed to these agreements and arrangements. Because they were not accepted by the full GATT membership, they were often informally called "codes".

They were not multilateral, but they were a beginning. Several codes were eventually amended in the Uruguay Round and turned into multilateral commitments accepted by all WTO members. Only four remained "plurilateral" — those on government procurement, bovine meat, civil aircraft and dairy products. In 1997 WTO members agreed to terminate the bovine meat and dairy agreements from the end of the year.

### The Tokyo Round 'codes'

- Subsidies and countervailing measures — interpreting Articles 6, 16 and 23 of GATT
- Technical barriers to trade — sometimes called the Standards Code
- Import licensing procedures
- Government procurement
- Customs valuation — interpreting Article 7
- Anti-dumping — interpreting Article 6, replacing the Kennedy Round code
- Bovine Meat Arrangement
- International Dairy Arrangement
- Trade in Civil Aircraft

## Did GATT succeed?

GATT was provisional with a limited field of action, but its success over 47 years in promoting and securing the liberalization of much of world trade is incontestable. Continual reductions in tariffs alone helped spur very high rates of world trade growth during the 1950s and 1960s — around 8% a year on average. And the momentum of trade liberalization helped ensure that trade growth consistently out-paced production growth throughout the GATT era, a measure of countries' increasing ability to trade with each other and to reap the benefits of trade. The rush of new members during the Uruguay Round demonstrated that the multilateral trading system was recognized as an anchor for development and an instrument of economic and trade reform. But as time passed new problems arose. The Tokyo Round was an attempt to tackle some of these but its achievements were limited. This was a sign of difficult times to come.

GATT's success in reducing tariffs to such a low level, combined with a series of economic recessions in the 1970s and early 1980s, drove governments to devise other forms of protection for sectors facing increased foreign competition. High rates of unemployment and constant factory closures led governments in Western Europe and North America to seek bilateral market-sharing arrangements with competitors and to embark on a subsidies race to maintain their holds on agricultural trade. Both these changes undermined GATT's credibility and effectiveness.

The problem was not just a deteriorating trade policy environment. By the early 1980s the General Agreement was clearly no longer as relevant to the realities of world trade as it had been in the 1940s. For a start, world trade had become far more complex and important than 40 years before: the globalization of the world economy was underway, trade in services — not covered by GATT rules — was of major interest to more and more countries, and international investment had expanded. The expansion of services trade was also closely tied to further increases in world merchandise trade. In other respects, GATT had been found wanting. For instance, in agriculture, loopholes in the multilateral system were heavily exploited, and efforts at liberalizing agricultural trade met with little suc-

cess. In the textiles and clothing sector, an exception to GATT's normal disciplines was negotiated in the 1960s and early 1970s, leading to the Multifibre Arrangement. Even GATT's institutional structure and its dispute settlement system were giving cause for concern.

These and other factors convinced GATT members that a new effort to reinforce and extend the multilateral system should be attempted. That effort resulted in the Uruguay Round, the Marrakesh Declaration, and the creation of the WTO.

### Trade rounds: progress by package

They are often lengthy — the Uruguay Round took seven and a half years — but trade rounds can have an advantage. They offer a package approach to trade negotiations that can sometimes be more fruitful than negotiations on a single issue.

- The size of the package can mean more benefits because participants can seek and secure advantages across a wide range of issues.
- In a package, the ability to trade-off different issues can make agreement easier to reach because somewhere in the package there is something for everyone. This has political as well as economic implications. Concessions (perhaps in one sector) which are necessary but would otherwise be difficult to defend in domestic political terms, can be made more easily in the context of a package because the package also contains politically and economically attractive benefits (in other sectors). As a result, reform in politically-sensitive sectors of world trade can be more feasible in the context of a global package — reform of agricultural trade was a good example in the Uruguay Round.
- Developing countries and other less powerful participants have a greater chance of influencing the multilateral system in a trade round than in bilateral relationships with major trading nations.

But the wide range of issues that a trade round covers can be both a strength and a weakness, leading to a debate on the effectiveness of multi-sector rounds versus single-sector negotiations. Recent history is ambiguous. At some stages, the Uruguay Round seemed so cumbersome that agreement in every subject by all participating countries appeared impossible. Then the round did end successfully in 1993-94, and this was followed by two years of failure to reach any major agreement in separate, single-sector talks on maritime transport, basic telecommunications and financial services.

Did this mean that trade rounds were the only route to success? No. In 1997, single-sector talks were concluded successfully in basic telecommunications, information technology equipment and financial services. The debate continues. Whatever the answer, the reasons are not straightforward. Perhaps success depends on using the right type of negotiation for the particular time and context.

## The agenda

The 15 original Uruguay Round subjects

**Tariffs**

**Non-tariff barriers**

**Natural resource products**

**Textiles and clothing**

**Agriculture**

**Tropical products**

**GATT articles**

**Tokyo Round codes**

**Anti-dumping**

**Subsidies**

**Intellectual property**

**Investment measures**

**Dispute settlement**

**The GATT system**

**Services**

## 5. The Uruguay Round

It took seven and a half years, almost twice the original schedule. By the end, 123 countries were taking part. It covered almost all trade, from toothbrushes to pleasure boats, from banking to telecommunications, from the genes of wild rice to AIDS treatments. It was quite simply the largest trade negotiation ever, and most probably the largest negotiation of any kind in history.

At times it seemed doomed to fail. But in the end, the Uruguay Round brought about the biggest reform of the world's trading system since GATT was created at the end of the Second World War. And yet, despite its troubled progress, the Uruguay Round did see some early results. Within only two years, participants had agreed on a package of cuts in import duties on tropical products — which are mainly exported by developing countries. They had also revised the rules for settling disputes, with some measures implemented on the spot. And they called for regular reports on GATT members' trade policies, a move considered important for making trade regimes transparent around the world.

### A round to end all rounds?

The seeds of the Uruguay Round were sown in November 1982 at a ministerial meeting of GATT members in Geneva. Although the ministers intended to launch a major new negotiation, the conference stalled on the issue of agriculture and was widely regarded as a failure. In fact, the work programme that the ministers agreed formed the basis for what was to become the Uruguay Round negotiating agenda.

Nevertheless, it took four more years of exploring, clarifying issues and painstaking consensus-building, before ministers agreed to launch the new round. They did so in September 1986, in Punta del Este, Uruguay. They eventually accepted a negotiating agenda which covered

virtually every outstanding trade policy issue. The talks were going to extend the trading system into several new areas, notably trade in services and intellectual property, and to reform trade in the sensitive sectors of agriculture and textiles. All the original GATT articles were up for review. It was the biggest negotiating mandate on trade ever agreed, and the ministers gave themselves four years to complete it.

Two years later, in December 1988, ministers met again in Montreal, Canada for what was supposed to be an assessment of progress at the round's half-way point. The purpose was to clarify the agenda for the remaining two years, but the talks ended in a deadlock that was not resolved until officials met more quietly in Geneva the following April.

Despite the difficulty, during the Montreal meeting, ministers did agree a package of early results. These included some concessions on market access for tropical products — aimed at assisting developing countries — as well as a streamlined dispute settlement system, and the Trade Policy Review Mechanism which provided for the first comprehensive, systematic and regular reviews of national trade policies and practices of GATT members. The round was supposed to end when ministers met once more in Brussels, in December 1990. But they disagreed on how to reform agricultural trade and decided to extend the talks. The Uruguay Round entered its bleakest period.

Despite the poor political outlook, a considerable amount of technical work continued, leading to the first draft of a final legal agreement. This draft "Final Act" was compiled by the then GATT director general, Mr Arthur Dunkel, who chaired the negotiations at officials' level. It was

put on the table in Geneva in December 1991. The text fulfilled every part of the Punta del Este mandate, with one exception — it did not contain the participating countries' lists of commitments for cutting import duties and opening their services markets. The draft became the basis for the final agreement.

For the following two years, the negotiations lurched between impending failure, to predictions of imminent success. Several deadlines came and went. New points of major conflict emerged to join agriculture: services, market access, anti-dumping rules, and the proposed creation of a new institution. Differences between the United States and European Communities (EU) became central to hopes for a final, successful conclusion.

In November 1992, the US and EU settled most of their differences on agriculture in a deal known informally as the "Blair House accord". By July 1993 the "Quad" (US, EU, Japan and Canada) announced significant progress in negotiations on tariffs and related subjects ("market

access"). It took until 15 December 1993 for every issue to be finally resolved and for negotiations on market access for goods and services to be concluded (although some final touches were completed in talks on market access a few weeks later). On 15 April 1994, the deal was signed by ministers from most of the 123 participating governments at a meeting in Marrakesh, Morocco.

The delay had some merits. It allowed some negotiations to progress further than would have been possible in 1990: for example some aspects of services and intellectual property, and the creation of the WTO itself. But the task had been immense, and negotiation-fatigue was felt in trade bureaucracies around the world. The difficulty of reaching agreement on a complete package containing almost the entire range of current trade issues led some to conclude that a negotiation on this scale would never again be possible. Yet, the Uruguay Round agreements contain timetables for new negotiations on a number of topics. And by 1996, some countries were openly calling for a new round early in the next century. The response was mixed; but the Marrakesh agreement does already include commitments to reopen negotiations on a range of subjects at the turn of the century. They are now underway.

### The Uruguay Round – Key dates

Sep 86	<b>Punta del Este:</b> launch
Dec 88	<b>Montreal:</b> ministerial mid-term review
Apr 89	<b>Geneva:</b> mid-term review completed
Dec 90	<b>Brussels:</b> "closing" ministerial meeting ends in deadlock
Dec 91	<b>Geneva:</b> first draft of Final Act completed
Nov 92	<b>Washington:</b> US and EC achieve "Blair House" breakthrough on agriculture
Jul 93	<b>Tokyo:</b> Quad achieve market access breakthrough at G7 summit
Dec 93	<b>Geneva:</b> most negotiations end (some market access talks remain)
Apr 94	<b>Marrakesh:</b> agreements signed
Jan 95	<b>Geneva:</b> WTO created, agreements take effect

## 6. WTO and GATT: are they the same?

No. They are different — the WTO is GATT plus a lot more.

### Two GATTs

It is probably best to be clear from the start that the General Agreement on Tariffs and Trade (GATT) was two things: (1) an international agreement, i.e. a document setting out the rules for conducting international trade, and (2) an international organization created later to support the agreement. The text of the agreement could be compared to law, the organization was like parliament and the courts combined in a single body.

As its history shows, the attempt to create a fully fledged international trade agency in the 1940s failed. But GATT's drafters agreed that they wanted to use the new rules and disciplines, if only provisionally. Then government officials needed to meet to discuss issues related to the agreement, and to hold trade negotiations. These needed secretarial support, leading to the creation of an ad hoc organization — that continued to exist for almost half a century.

GATT, the international agency, no longer exists. It has now been replaced by the World Trade Organization.

GATT, the agreement, does still exist, but it is no longer the main set of rules for international trade. And it has been updated.

What happened? When GATT was created after the Second World War, international commerce was dominated by trade in goods. Since then, trade in services — transport, travel, banking, insurance, telecommunications, transport, consultancy and so on — has become much more important. So has trade in ideas — inventions and designs, and goods and services incorporating this "intellectual property".

The General Agreement on Tariffs and Trade always dealt with trade in goods, and it still does. It has been amended and incorporated into the new WTO agreements. The updated GATT lives alongside the new General Agreement on Trade in Services (GATS) and Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). The WTO brings the three together within a single organization, a single set of rules and a single system for resolving disputes.

In short, the WTO is not a simple extension of GATT. It is much more.

### So, the GATT is dead, long live the GATT!

While GATT no longer exists as an international organization, the GATT agreement lives on. The old text is now called "GATT 1947". The updated version is called "GATT 1994".

Moreover, GATT's key principles have been adopted by the agreements on services and intellectual property. These include non-discrimination, transparency and predictability. As the more mature WTO developed out of GATT, you could say that the child is the father of the man.

### The main differences

- **GATT was ad hoc and provisional. The General Agreement was never ratified in members' parliaments, and it contained no provisions for the creation of an organization. The WTO and its agreements are permanent. As an international organization, the WTO has a sound legal basis because members have ratified the WTO agreements, and the agreements themselves describe how the WTO is to function.**
- **The WTO has "members". GATT had "contracting parties", underscoring the fact that officially GATT was a legal text.**
- **GATT dealt with trade in goods. The WTO covers services and intellectual property as well.**
- **The WTO dispute settlement system is faster, more automatic than the old GATT system. Its rulings cannot be blocked.**

# The Agreements

**In a nutshell**  
The basic structure of the WTO Agreements

	Goods	Services	Intellectual property	Disputes
<i>Basic principles</i>	<b>GATT</b>	<b>GATS</b>	<b>TRIPS</b>	<b>Dispute settlement</b>
<i>Additional details</i>	Other goods agreements and annexes	Services annexes		
<i>Market access commitments</i>	Countries' schedules of commitments	Countries' schedules of commitments (and MFN exemptions)		

## The 'additional details'

These agreements and annexes deal with the following specific sectors or issues:

### For goods (under GATT)

- Agriculture
- Health regulations for farm products (SPS)
- Textiles and clothing
- Product standards (TBT)
- Investment measures
- Anti-dumping measures
- Customs valuation methods
- Preshipment inspection
- Rules of origin
- Import licensing
- Subsidies and counter-measures
- Safeguards

### For services (the GATS annexes)

- Movement of natural persons
- Air transport
- Financial services
- Shipping
- Telecommunications

for sectors such as agriculture and services. Negotiations after the Uruguay Round have focused largely on market access commitments: financial services, basic telecommunications, and maritime transportation (under GATS), and information technology (under GATT).

### Additional agreements

Two other groups of agreements not included in the diagram are also important: the agreement on trade policy reviews, and the two "plurilateral" agreements not signed by all members: civil aircraft and government procurement.

## 1. Overview: a navigational guide

The WTO Agreements cover goods, services and intellectual property. They spell out the principles of liberalization, and the permitted exceptions. They include individual countries' commitments to lower customs tariffs and other trade barriers, and to open and keep open services markets. They set procedures for settling disputes. They prescribe special treatment for developing countries. They require governments to make their trade policies transparent by notifying the WTO about laws in force and measures adopted, and through regular reports by the secretariat on countries' trade policies.

The table of contents of "The Results of the Uruguay Round of Multilateral Trade Negotiations: The Legal Texts" is a daunting list of about 60 agreements, annexes, decisions and understandings. In fact, the agreements fall into a simple structure.

### Three-part broad outline

The agreements for the two largest areas of trade — goods and services — share a common three-part outline, even though the detail is sometimes quite different.

- They start with broad principles: the General Agreement on Tariffs and Trade (GATT) (for goods), and the General Agreement on Trade in Services (GATS). (The agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) also falls into this category although at present it has no additional parts.)
- Then come extra agreements and annexes dealing with the special requirements of specific sectors or issues.
- Finally, there are the detailed and lengthy schedules (or lists) of commitments made by individual countries allowing specific foreign products or service-providers access to their markets. For GATT, these take the form of binding commitments on tariffs for goods in general, and combinations of tariffs and quotas for some agricultural goods. For GATS, the commitments state how much access foreign service providers are allowed for specific sectors, and they include lists of types of services where individual countries say they are not applying the "most-favoured-nation" principle of non-discrimination.

Much of the Uruguay Round dealt with the first two parts: general principles and principles for specific sectors. At the same time, market access negotiations were possible for industrial goods. Once the principles had been worked out, negotiations could proceed on the commitments

### 'Binding' tariffs

The market access schedules are not simply announcements of tariff rates. They represent commitments not to increase tariffs above the listed rates — the rates are "bound". For developed countries, the bound rates are generally the rates actually charged. Most developing countries have bound the rates somewhat higher than the actual rates charged, so the bound rates serve as ceilings.

Countries can break a commitment (i.e. raise a tariff above the bound rate), but only with difficulty. To do so they have to negotiate with the countries most concerned and that could result in compensation for trading partners' loss of trade.

## 2. Tariffs: more bindings and closer to zero

The bulkiest result of Uruguay Round are the 22,500 pages listing individual countries' commitments on specific categories of goods and services. These include commitments to cut and "bind" their customs duty rates on imports of goods. In some cases, tariffs are being cut to zero — with zero rates also committed in 1997 on information technology products. There is also a significant increase in the number of "bound" tariffs — duty rates that are committed in the WTO and are difficult to raise.

### Tariff cuts

Developed countries' tariff cuts are for the most part being phased in over five years from 1 January 1995. The result will be a 40% cut in their tariffs on industrial products, from an average of 6.3% to 3.8%. The value of imported industrial products that receive duty-free treatment in developed countries will jump from 20% to 44%.

There will also be fewer products charged high duty rates. The proportion of imports into developed countries from all sources facing tariffs rates of more than 15% will decline from 7% to 5%. The proportion of developing country exports facing tariffs above 15% in industrial countries will fall from 9% to 5%.

The Uruguay Round package has now been improved. On 26 March 1997, 40 countries accounting for more than 92% of world trade in

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**What is this agreement called?** *There is no legally binding agreement that sets out the targets for tariff reductions (e.g. by what percentage they were to be cut as a result of the Uruguay Round).*

*At the end of the Uruguay Round, individual countries listed their commitments in schedules annexed to Marrakesh Protocol to the General Agreement on Tariffs and Trade 1994. This is the legally binding agreement for the reduced tariff rates.*

information technology products, agreed to eliminate import duties and other charges on these products by 2000 (by 2005 in a handful of cases). As with other tariff commitments, each participating country is applying its commitments equally to exports from all WTO members (i.e. on a most-favoured-nation basis), even from members that did not make commitments.

### More bindings

Developed countries increased the number of imports whose tariff rates are "bound" (committed and difficult to increase) from 78% of product lines to 99%. For developing countries, the increase was considerable: from 21% to 73%. Economies in transition from central planning increased their bindings from 73% to 98%. This all means a substantially higher degree of market security for traders and investors.

### And agriculture ...

Tariffs on all agricultural products are now bound. Almost all import restrictions that did not take the form of tariffs, such as quotas, have been converted to tariffs — a process known as "tariffication". This has made markets substantially more predictable for agriculture. Previously more than 30% of agricultural produce had faced quotas or import restrictions. At first, they were converted to tariffs that represented about the same level of protection as the previous restrictions, but over six years these tariffs are gradually being reduced. The market access commitments on agriculture will also eliminate previous import bans on certain products.

The lists also include countries' commitments to reduce domestic support and export subsidies for agricultural products.



### 3. Agriculture: fairer markets for farmers

The original GATT did apply to agricultural trade, but it contained loopholes. For example, it allowed countries to use some non-tariff measures such as import quotas, and to subsidize. Agricultural trade became highly distorted, especially with the use of export subsidies which would not normally have been allowed for industrial products. The Uruguay Round agreement is a significant first step towards order, fair competition and a less distorted sector. It is being implemented over a six year period (10 years for developing countries), that began in 1995. 1 January 1995 to 31 December 2000. Participants have agreed to initiate negotiations for continuing the reform process one year before the end of the implementation period.

*What is this agreement called? Most provisions: Agreement on Agriculture. Commitments on tariffs, tariff quotas, domestic supports, export subsidies: in schedules annexed to the Marrakesh Protocol to the General Agreement on Tariffs and Trade 1994. Also: Agreement on the Application of Sanitary and Phytosanitary Measures, and [Ministerial] Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries. (See also: "Modalities for the establishment of specific binding commitments under the reform programme", MTN.GNG/MA/W/24.)*

#### New rules and commitments

The objective of the Agriculture Agreement is to reform trade in the sector and to make policies more market-oriented. This would improve predictability and security for importing and exporting countries alike.

The new rules and commitments apply to:

- market access — various trade restrictions confronting imports
- domestic support — subsidies and other programmes, including those that raise or guarantee farmgate prices and farmers' incomes
- export subsidies and other methods used to make exports artificially competitive.

The agreement does allow governments to support their rural economies, but preferably through policies that cause less distortion to trade. It also allows some flexibility in the way commitments are implemented. Developing countries do not have to cut their subsidies or lower their tariffs as much as developed countries, and they are given extra time to complete their obligations. Special provisions deal with the interests of countries that rely on imports for their food supplies, and the least developed economies.

"Peace" provisions within the agreement aim to reduce the likelihood of disputes or challenges on agricultural subsidies over a period of nine years.

#### Market access: 'tariffs only', please

The new rule for market access in agricultural products is "tariffs only". Before the Uruguay Round, some agricultural imports were restricted by quotas and other non-tariff measures. These have been replaced by tariffs that provide more-or-less equivalent levels of protection — if the previous policy meant domestic prices were 75% higher than world prices, then the new tariff could be around 75%. (Converting the quotas and other types of measures to tariffs in this way was called "tariffication".)

The package contained more. It ensured that quantities imported before the agreement took effect could continue to be imported, and it guaranteed that some new quantities were charged duty rates that were not prohibitive. This was achieved by a system of "tariff-quotas" — lower tariff rates for specified quantities, higher (sometimes much higher) rates for quantities that exceed the quota.

#### Numerical targets for cutting subsidies and protection

The reductions in agricultural subsidies and protection agreed in the Uruguay Round.

Only the figures for cutting export subsidies appear in the agreement.

	Developed countries 6 years: 1995-2000	Developing countries 10 years: 1995-2004
<b>Tariffs</b>		
average cut		
for all agricultural products	-36%	-24%
minimum cut per product	-15%	-10%
<b>Domestic support</b>		
total AMS cuts for sector base period: 1986-88)	-20%	-13%
<b>Exports</b>		
value of subsidies subsidized quantities (base period: 1986-90)	-36%	-24%
	-21%	-14%

Least developed countries do not have to make commitments to reduce tariffs or subsidies.

The base level for tariff cuts was the bound rate before 1 January 1995; or, for unbound tariffs, the actual rate charged in September 1986 when the Uruguay Round began.

The other figures were targets used to calculate countries' legally-binding "schedules" of commitments.

The newly committed tariffs and tariff quotas, covering all agricultural products, took effect in 1995. Uruguay Round participants agreed that developed countries would cut the tariffs (the higher out-of-quota rates in the case of tariff-quotas) by an average of 36%, in equal steps over six years. Developing countries would make 24% cuts over 10 years. Several developing countries also used the option of offering ceiling tariff rates in cases where duties were not “bound” (i.e. committed under GATT or WTO regulations) before the Uruguay Round. Least developed countries do not have to cut their tariffs. (These figures do not actually appear in the Agriculture Agreement. Participants used them to prepare their schedules — i.e. lists of commitments. It is the commitments listed in the schedules that are legally binding.)

For products whose non-tariff restrictions have been converted to tariffs, governments are allowed to take special emergency actions (“safeguards”) in order to prevent swiftly falling prices or surges in imports from hurting their farmers. But the agreement specifies when and how those emergency actions can be introduced (for example, they cannot be used on imports within a tariff-quota). Four countries used “special treatment” provisions to restrict imports of

particularly sensitive products (mainly rice) during the implementation period, but subject to strictly defined conditions, including minimum access for overseas suppliers. The four are: Japan, Rep. of Korea, and the Philippines for rice; and Israel for sheepmeat, wholemilk powder and certain cheeses.

### Domestic support: some you can, some you can't

The main complaint about policies which support domestic prices, or subsidize production in some other way, is that they encourage over-production. This squeezes out imports or leads to export subsidies and low-priced dumping on world markets. The Agriculture Agreement distinguishes between support programmes that stimulate production directly, and those that are considered to have no direct effect.

Domestic policies that do have a direct effect on production and trade have to be cut back. WTO members have calculated how much support of this kind they were providing (using calculations known as “total aggregate measurement of support” or “Total AMS”) for the agricultural sector per year in the base years of 1986-88. Developed countries have agreed to reduce these figures by 20% over six years starting in 1995. Developing countries are making 13% cuts over 10 years. Least developed countries do not need to make any cuts.

### What is ‘distortion’?

The concept of “distortion” is used a lot when agricultural trade is discussed. Essentially, trade is distorted if prices are higher or lower than normal, and if quantities produced, bought, and sold are also higher or lower than normal — i.e. than the levels that would usually exist in a competitive market.

For example, import barriers and domestic subsidies can raise crop prices on a country's internal market. The higher prices can encourage over-production, and if the surplus is to be sold on world markets, where prices are lower, then export subsidies have to be paid. When some countries subsidize and others do not, the result can be that the subsidizing countries are producing considerably more than they normally would.

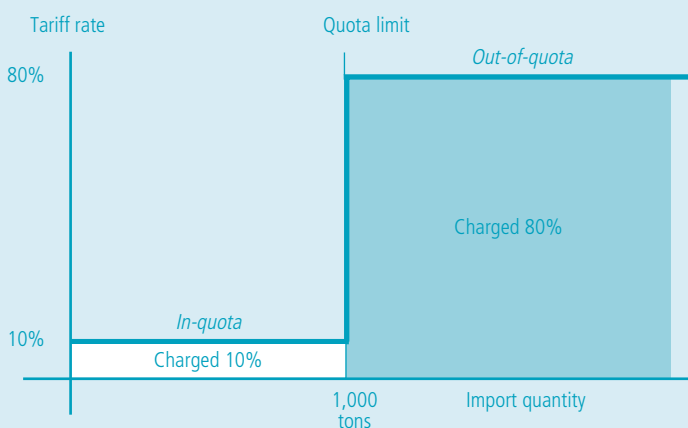
Governments usually give three reasons for supporting and protecting their farmers, even if this distorts agricultural trade:

- to make sure that enough food is produced to meet the country's needs
- to shield farmers from the effects of the weather and swings in world prices
- to preserve rural society.

But the policies have often been expensive, and they have encouraged gluts leading to export subsidy wars. Countries with less money for subsidies have suffered. In negotiations, some countries have argued that trying to meet any of these objectives is counter-productive. Others have attempted to find ways of meeting the objectives without distorting trade too much.

#### A tariff-quota

This is what a tariff-quota might look like



Imports entering under the tariff-quota (up to 1,000 tons) are generally charged 10%. Imports entering outside the tariff-quota are charged 80%. Under the Uruguay Round agreement, the 1,000 tons would be based on actual imports in the base period or an agreed “minimum access” formula.

Tariff quotas are also called “tariff-rate quotas”.

Measures with minimal impact on trade can be used freely — they are in a “green box” (“green” as in traffic lights). They include government services such as research, disease control, infrastructure and food security. They also include payments made directly to farmers that do not stimulate production, such as certain forms of direct income support, assistance to help farmers restructure agriculture, and direct payments under environmental and regional assistance programmes.

Also permitted, are certain direct payments to farmers where the farmers are required to limit production (sometimes called “blue box” measures), certain government assistance programmes to encourage agricultural and rural development in developing countries, and other support on a small scale when compared with the total value of the product or products supported (5% or less in the case of developed countries and 10% or less for developing countries).

### **Export subsidies: limits on spending and quantities**

The Agriculture Agreement prohibits export subsidies on agricultural products unless the subsidies are specified in a member’s lists of commitments. Where they are listed, the agreement requires WTO members to cut both the amount of money they spend on export subsidies and the quantities of exports that receive subsidies. Taking averages for 1986-90 as the base level, developed countries have agreed to cut the value of export subsidies by 36% over the six years starting in 1995 (24% over 10 years for developing countries). Developed countries have also agreed to reduce the quantities of subsidized exports by 21% over the six years (14% over 10 years for developing countries). Least developed countries do not need to make any cuts.

During the six-year implementation period, developing countries are allowed under certain conditions to use subsidies to reduce the costs of marketing and transporting exports.

### **Regulations for animal and plant products: how safe is safe?**

Problem: How do you ensure that your country’s consumers are being supplied with food that is safe to eat — “safe” by the standards you consider appropriate? And at the same time, how can you ensure that strict health and safety regulations are not being used as an excuse for protecting domestic producers?

A separate agreement on food safety and animal and plant health standards (sanitary and phytosanitary measures) sets out the basic rules.

It allows countries to set their own standards. But it also says regulations must be based on science. They should be applied only to the extent necessary to protect human, animal or plant life or health. And they should not arbitrarily or unjustifiably discriminate between countries where identical or similar conditions prevail.

Member countries are encouraged to use international standards, guidelines and recommendations where they exist. However, members may use measures which result in higher standards if there is scientific justification. They can also set higher standards based on appropriate assessment of risks so long as the approach is consistent, not arbitrary.

The agreement still allows countries to use different standards and different methods of inspecting products. So how can an exporting country be sure the practices it applies to its products are acceptable in an importing country? If an exporting country can demonstrate that the measures it applies on its exports achieve the same level of health protection as in the importing country, then the importing country is expected to accept the exporting country’s standards and methods.

The agreement includes provisions on control, inspection and approval procedures. Governments must provide advance notice of new or changed sanitary and phytosanitary regulations, and establish a national enquiry point to provide information. The agreement complements that on technical barriers to trade.

### **The least developed and those depending on food imports**

Under the Agriculture Agreement, WTO members have to reduce their subsidized exports. But some countries have been highly dependent on supplies of cheap, subsidized food imported from the major industrialized nations. They include some of the poorest countries, and although their farming sectors might receive a boost from higher prices, they might need temporary assistance to make the necessary adjustments to deal with higher priced imports, and eventually to export. A special ministerial decision sets out objectives, and certain measures, for the provision of food aid and aid for agricultural development. It also refers to the possibility of assistance from the International Monetary Fund and the World Bank to finance commercial food imports.

## **Whose international standards?**

**An annex to the Sanitary and Phytosanitary Measures Agreement names:**

- **the FAO/WHO Codex Alimentarius Commission: for food**
- **the International Office of Epizootics: for animal health**
- **the FAO’s Secretariat of the International Plant Protection Convention: for plant health.**

**Governments can add any other international organizations or agreements whose membership is open to all WTO members.**

## 4. Textiles: back in the mainstream

Textiles, like agriculture, is one of the hardest-fought issues in the WTO, as it was in the former GATT system. It is now going through fundamental change under a 10-year schedule agreed in the Uruguay Round. The system of import quotas that has dominated the trade since the early 1960s is being phased out.

From 1974 until the end of the Uruguay Round, the trade was governed by the Multifibre Arrangement (MFA) a framework for bilateral agreements or unilateral actions that established quotas limiting imports into countries whose domestic industries were facing serious damage from rapidly increasing imports.

The quotas were the most visible feature. They conflicted with GATT's general preference for customs tariffs instead of measures that restrict quantities. They were also exceptions to the GATT principle of treating all trading partners equally because they specified how much the importing country was going to accept from individual exporting countries.

Since 1995, the WTO's Agreement on Textiles and Clothing (ATC) has taken over from the Multifibre Arrangement. By 2005, the sector is to be fully integrated into normal GATT rules. In particular, the quotas will come to an end, and importing countries will no longer be able to discriminate between exporters. The Agreement on Textiles and Clothing will itself no longer exist: it is the only WTO agreement that has self-destruction built in.

### Integration: returning products gradually to GATT rules

Textiles and clothing products are being returned to GATT rules over the 10-year period. This is happening gradually, in four steps, to allow time for both importers and exporters to adjust to the new situation. Some of these products were previously under quotas. Any quotas that were in place on 31 December 1994 were carried over into the new agreement. For products which had quotas, the result of integration into GATT will be the removal of these quotas.

The agreement states the percentage of products that have to be brought under GATT rules at each step. If any of these products came under quotas, then the quotas must be removed at the same time. The percentages are applied to

the importing country's textiles and clothing trade levels in 1990. The agreement also says the quantities of imports permitted under the quotas should grow annually, and that the rate of expansion should increase at each stage. How fast that expansion should be is set out in a formula based on the growth rate that existed under the old Multifibre Arrangement (*see table*).

Products brought under GATT rules at each of the first three stages must cover the four main types of textiles and clothing: tops and yarns; fabrics; made-up textile products; and clothing. Any other restrictions that did not come under the Multifibre Arrangement and did not conform with regular WTO agreements by 1996 have to be made to conform or phased out by 2005.

If further cases of damage to the industry arise during the transition, the agreement allows additional restrictions to be imposed temporarily under strict conditions. These "transitional safeguards" are not the same as the safeguard measures normally allowed under GATT because they can be applied on imports from specific exporting countries. But the importing country has to show that its domestic industry is suffering serious damage or is threatened with serious damage. And it has to show that the damage is the result of two things: increased imports of the product in question from all sources, and a sharp and substantial increase from the specific exporting country. The safeguard restriction can be implemented either by mutual agreement

following consultations, or unilaterally. It is subject to review by the Textiles Monitoring Body.

In any system where quotas are set for individual exporting countries, exporters might try to get around the quotas by shipping products through third countries or making false declarations about the products' country of origin. The agreement includes provisions to cope with these cases.

The agreement envisages special treatment for certain categories of countries — for example, new market entrants, small suppliers, and least-developed countries.

**A Textiles Monitoring Body (TMB)** supervises the agreement's implementation. It consists of a chairman and 10 members acting in their personal capacity. It monitors actions taken under the agreement to ensure that they are consistent, and it reports to the Council on Trade in Goods which reviews the operation of the agreement before each new step of the integration process. The Textiles Monitoring Body also deals with disputes under the Agreement on Textiles and Clothing. If they remain unresolved, the disputes can be brought to the WTO's regular Dispute Settlement Body. Two dispute cases where the core arguments were based on the Textiles and Clothing Agreement have been taken to the Dispute Settlement Body for examination by a panel. They have subsequently been appealed.

### Four steps over 10 years

The schedule for freeing textiles and garments products from import quotas (and returning them to GATT rules), and how fast remaining quotas should expand.

The example is based on the commonly-used 6% annual expansion rate of the old Multifibre Arrangement. In practice, the rates used under the MFA varied from product to product.

Step	Percentage of products to be brought under GATT (including removal of any quotas)	How fast remaining quotas should open up, if 1994 rate was 6%
<b>Step 1: 1 Jan 1995</b> (to 31 Dec 1997)	16% (minimum, taking 1990 imports as base)	6.96% per year
<b>Step 2: 1 Jan 1998</b> (to 31 Dec 2001)	17%	8.7% per year
<b>Step 3: 1 Jan 2002</b> (to 31 Dec 2004)	18%	11.05% per year
<b>Step 4: 1 Jan 2005</b> Full integration into GATT (and final elimination of quotas). Agreement on Textiles and Clothing terminates.	49% (maximum)	No quotas left

The actual formula for import growth under quotas is: by 0.1% pre-1995 growth rate in the first step; 0.25% Step 1 growth rate in the second step; and 0.27% Step 2 growth rate in the third step.

## 5. Services: rules for growth and investment

The General Agreement on Trade in Services (GATS) is the first ever set of multilateral, legally-enforceable rules covering international trade in services. It was negotiated in the Uruguay Round. Like the agreements on goods, GATS operates on three levels: the main text containing general principles and obligations; annexes dealing with rules for specific sectors; and individual countries' specific commitments to provide access to their markets. Unlike in goods, GATS has a fourth special element: lists showing where countries are temporarily not applying the "most-favoured-nation" principle of non-discrimination. These commitments — like tariff schedules under GATT — are an integral part of the agreement. So are the temporary withdrawals of most-favoured-nation treatment.

A WTO Council for Trade in Services oversees the operation of the agreement. Negotiations on commitments in four topics have taken place after the Uruguay Round. A full new services round will start no later than 2000.

### The framework: the GATS articles

GATS's 29 articles cover all services sectors. They contain the general obligations that all members have to apply (see also *Principles of the trading system*):

#### Total coverage

The agreement covers all internationally-traded services. This includes all the different ways of providing an international service — GATS defines four:

- services supplied from one country to another (e.g. international telephone calls), officially known as "cross-border supply"
- consumers or firms making use of a service in another country (e.g. tourism), officially known as "consumption abroad"
- a foreign company setting up subsidiaries or branches to provide services in another country (e.g. foreign banks setting up operations in a country), officially "commercial presence"
- individuals travelling from their own country to supply services in another (e.g. fashion models or consultants), officially "presence of natural persons".

#### Most-favoured-nation (MFN) treatment

Favour one, favour all. MFN means treating one's trading partners equally. Under GATS, if a country allows foreign competition in a sector, equal opportunities in that sector should be given to service providers from all other WTO members. (This applies even if the country has made no specific commitment to provide foreign companies access to its markets under the WTO.)

MFN applies to all services, but some special temporary exemptions have been allowed (*see below*).

#### What about national treatment?

National treatment — equal treatment for foreigners and one's own nationals — is treated differently for services. For goods (GATT) and intellectual property (TRIPS) it is a general principle. In GATS it only applies where a country has made a specific commitment, and exemptions are allowed (*see below*).

#### Transparency

GATS says governments must publish all relevant laws and regulations. Within two years (by the end of 1997) they have to set up inquiry points within their bureaucracies. Foreign companies and governments can then use these inquiry points to obtain information about regulations in any service sector. And they have to notify the WTO of any changes in regulations that apply to the services that come under specific commitments.

### Basic principles

- All services are covered by GATS
- Most-favoured-nation treatment applies to all services, except the one-off temporary exemptions
- National treatment applies in the areas where commitments are made
- Transparency in regulations, inquiry points
- Regulations have to be objective and reasonable
- International payments: normally unrestricted
- Individual countries' commitments: negotiated and bound
- Progressive liberalization: through further negotiations

### *Regulations: objective and reasonable*

Since domestic regulations are the most significant means of exercising influence or control over services trade, the agreement says governments should regulate services reasonably, objectively and impartially. When a government makes an administrative decision that affects a service, it should also provide an impartial means for reviewing the decision (for example a tribunal).

### *Recognition*

When two (or more) governments have agreements recognizing each other's qualifications (for example, the licensing or certification of service suppliers), GATS says other members must also be given a chance to negotiate comparable pacts. The recognition of other countries' qualifications must not be discriminatory, and it must not amount to protectionism in disguise. These recognition agreements have to be notified to the WTO.

### *International payments and transfers*

Once a government has made a commitment to open a service sector to foreign competition, it must not normally restrict money being transferred out of the country as payment for services supplied ("current transactions") in that sector. The only exception is when there are balance-of-payments difficulties, and even then the restrictions must be temporary and subject to other limits and conditions.

### *Specific commitments*

Individual countries' commitments to open markets in specific sectors — and how open those markets will be — are the outcome of negotiations. The commitments appear in "schedules" that list the sectors being opened, the extent of market access being given in those sectors (e.g. whether there are any restrictions on foreign ownership), and any limitations on national treatment (whether some rights granted to local companies will not be granted to foreign companies).

These commitments are "bound": like bound tariffs, they can only be modified or withdrawn after negotiations with affected countries — which would probably lead to compensation. Because "unbinding" is difficult, the commitments are virtually guaranteed conditions for foreign exporters and importers of services and investors in the sector to do business.

### *Progressive liberalization*

The Uruguay Round was only the beginning. GATS requires more negotiations, the first to begin within five years. The goal is to take the liberalization process further by increasing the level of commitments in schedules.

### **The annexes: services are not all the same**

International trade in goods is a relatively simple idea to grasp: a product is transported from one country to another. Trade in services is much more diverse. Telephone companies, banks, airlines and accountancy firms provide their services in quite different ways. The GATS annexes reflect some of the diversity.

### *Movement of natural persons*

This annex deals with negotiations on individuals' rights to stay temporarily in a country for the purpose of providing a service. It specifies that the agreement does not apply to people seeking permanent employment or to conditions for obtaining citizenship, permanent residence or permanent employment.

## After the Uruguay Round

*GATS talks that resumed after the round*

**A full new services round will start in 2000 at the latest.**

**Basic telecommunications completed February 1997**

**Financial services completed late 1997**

**Maritime transport suspended**

**Movement of natural persons completed July 1995**

**Other issues for future negotiation: subsidies, government procurement, safeguards, qualifications, technical standards, licensing.**

### *Financial services*

Instability in the banking system affects the whole economy. The financial services annex says governments have the right to take prudential measures, such as those for the protection of investors, depositors and insurance policy holders, and to ensure the integrity and stability of the financial system. It also excludes from the agreement services provided when a government exercising its authority over the financial system, for example central banks' services. Negotiations on specific commitments in financial services continued after the end of the Uruguay Round. They ended in late 1997.

### *Telecommunications*

The telecommunications sector has a dual role: it is a distinct sector of economic activity; and it is an underlying means of supplying other economic activities (for example electronic money transfers). The annex says governments must ensure that foreign service suppliers are given access to the public telecommunications networks without discrimination. Negotiations on specific commitments in telecommunications resumed after the end of the Uruguay Round. This led to a new liberalization package agreed in February 1997.

### *Air transport services*

Under this annex, traffic rights and directly related activities are excluded from GATS's coverage. They are handled by other bilateral agreements. However, the annex establishes that the GATS will apply to aircraft repair and maintenance services, marketing of air transport services and computer-reservation services.

### **Countries' commitments: on market-opening**

Each country lists specific commitments on service sectors and on activities within those sectors. The commitments guarantee access to the country's market in the listed sectors, and they spell out any limitations on market access and national treatment.

As an example; if a government commits itself to allow foreign banks to operate in its domestic market, that is a market access commitment. And if the government limits the number of licences it will issue, then that is a market access limitation. If it also says foreign banks are only allowed one branch while domestic banks are allowed numerous branches, that is an exception to the national treatment principle.

### *Market access*

The lists of market access commitments (along with any limitations and exemptions from national treatment) are negotiated as multilateral packages, although bilateral bargaining sessions are needed to develop the packages. The commitments therefore contain the negotiated and guaranteed conditions for conducting international trade in services. If a recorded condition is to be changed for the worse, then the government has to give at least three months' notice and it has to negotiate compensation with affected countries. But the commitments can be improved at any time. They will be subject to further liberalization through the future negotiations already committed under GATS. The first began in 2000 are still continuing.

### *National treatment*

National treatment means treating one's own nationals and foreigners equally. In services, it means that once a foreign company has been allowed to supply a service in one's country there should be no discrimination between the foreign and local companies.

Under GATS, a country only has to apply this principle when it has made a specific commitment to provide foreigners access to its services market. It does not have to apply national treatment in sectors where it has made no commitment. Even in the commitments, GATS does allow some limits on national treatment.

This contrasts with the way the national treatment principle is applied for goods — in that case, once a product has crossed a border and been cleared by customs it has to be given national treatment even if the importing country has not made any commitment under the WTO to bind the tariff rate.

### **MFN exemptions: temporary and one-off**

WTO members have also made separate lists of exceptions to the MFN principle of non-discrimination. When GATS came into force, a number of countries already had preferential agreements in services that they had signed with trading partners, either bilaterally or in small groups. WTO members felt it was necessary to maintain these preferences temporarily. They gave themselves the right to continue giving more favourable treatment to particular countries in particular service activities by listing “MFN exemptions” alongside their first sets of commitments. In order to protect the general MFN principle, the exemptions could only be made once; nothing can be added to the lists. They will be reviewed after five years (in 2000), and will normally last no more than 10 years. The exemption lists are also part of the GATS agreement.

### **On-going work: even before the next round**

At the end of the Uruguay Round governments agreed to continue negotiations in four areas: basic telecommunications, maritime transport, movement of natural persons, and financial services. Some commitments in some of these sectors had been made in the Uruguay Round agreements. The objective of continuing with the negotiations was to improve the package.

#### *Basic telecommunications*

This was an area where governments did not offer commitments during the Uruguay Round — essentially because the privatization of government monopolies was a complex issues in many countries. Sophisticated value-added telecommunications services, which are more commonly provided on a private basis, were, however, included in many of the original GATS schedules. The negotiations on basic telecommunications ended in February 1997 with new national commitments taking effect from February 1998.

#### *Maritime transport*

Maritime transport negotiations were originally scheduled to end in June 1996, but participants failed to agree on a package of commitments. Talks on maritime transport re due to resume in the current round of services negotiations which started in 2000. Some commitments are already included in some countries’ schedules covering the three main areas in this sector: access to and use of port facilities; auxiliary services; and ocean transport.

#### *Movement of natural persons*

“Movement of natural persons” refers to the entry and temporary stay of persons for the purpose of providing a service. It does not relate to persons seeking permanent employment or permanent residence in a country. Some commitments are already included in the schedules but it was agreed that negotiations to improve commitments would take place in the six months after the WTO came into force. These only achieved modest results.

#### *Financial services*

Financial services is another area where further negotiations were scheduled to improve on the commitments included in the initial Uruguay Round schedules. Officially the talks ended in July 1995, but the governments decided that more could be achieved if further talks could be held. They ended in December 1997.

#### *Other issues*

GATS identifies several more issues for future negotiation. One set of negotiations would create rules that are not yet included in GATS: rules dealing with **subsidies, government procurement and safeguard measures**.

Another set of negotiations would seek rules on the requirements foreign service providers have to meet in order to operate in a market. The objective is to prevent these requirements being used as unnecessary barriers to trade. The focus is on: **qualification requirements and procedures, technical standards and licensing requirements**.

As part of this task, a working party on professional services has been set up. It is tackling the **accountancy sector** first, a priority set by ministers, but eventually all professional services should be covered. The first result of these discussions emerged in May 1997 when the Services Council adopted new guidelines for countries to use when negotiating agreements to recognize each others’ professional qualifications in accountancy. The guidelines are not binding.



## 6. Intellectual property: protection and enforcement

Ideas and knowledge are an increasingly important part of trade. Most of the value of new medicines and other high technology products lies in the amount of invention, innovation, research, design and testing involved. Films, music recordings, books, computer software and on-line services are bought and sold because of the information and creativity they contain, not usually because of the plastic, metal or paper used to make them. Many products that used to be traded as low-technology goods or commodities now contain a higher proportion of invention and design in their value — for example brand-named clothing or new varieties of plants.

Creators can be given the right to prevent others from using their inventions, designs or other creations. These rights are known as “intellectual property rights”. They take a number of forms. For example books, paintings and films come under copyright; inventions can be patented; brandnames and product logos can be registered as trademarks; and so on.

### Origins: into the rule-based trade system

The extent of protection and enforcement of these rights varied widely around the world; and as intellectual property became more important in trade, these differences became a source of tension in international economic relations. New internationally-agreed trade rules for intellectual property rights were seen as a way to introduce more order and predictability, and for disputes to be settled more systematically.

The 1986-94 Uruguay Round achieved that. The WTO’s Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) is an attempt to narrow the gaps in the way these rights are protected around the world, and to bring them under common international rules. When there are trade disputes over intellectual property rights, the WTO’s dispute settlement system is now available.

The agreement covers five broad issues:

- how basic **principles** of the trading system and other international intellectual property agreements should be applied
- how to give adequate **protection** to intellectual property rights
- how countries should **enforce** those rights adequately in their own territories
- how to **settle disputes** on intellectual property between members of the WTO
- **special transitional arrangements** during the period when the new system is being introduced.

### Types of intellectual property

The areas covered by the TRIPS agreement

Copyright and related rights  
Trademarks, including service marks  
Geographical indications  
Industrial designs  
Patents  
Layout-designs (topographies) of integrated circuits  
Undisclosed information, including trade secrets

### **Basic principles: national treatment, MFN, and technology transfer**

As in GATT and GATS, the starting point of the intellectual property agreement is basic principles. And as in the two other agreements, non-discrimination features prominently: national treatment (treating one's own nationals and foreigners equally), and most-favoured-nation treatment (equal treatment for nationals of all trading partners in the WTO). National treatment is also a key principle in other intellectual property agreements outside the WTO.

When an inventor or creator is granted patent or copyright protection, he obtains the right to stop other people making unauthorized copies. Society at large sees this temporary intellectual property protection as an incentive to encourage the development of new technology and creations which will eventually be available to all. The TRIPS Agreement recognizes the need to strike a balance. It says intellectual property protection should contribute to technical innovation and the transfer of technology. Both producers and users should benefit, and economic and social welfare should be enhanced, the agreement says.

### **How to protect intellectual property: common ground-rules**

The second part of the TRIPS agreement looks at different kinds of intellectual property rights and how to protect them. The purpose is to ensure that adequate standards of protection exist in all member countries. Here the starting point is the obligations of the main international agreements of the World Intellectual Property Organization (WIPO) that already existed before the WTO was created:

- the Paris Convention for the Protection of Industrial Property (patents, industrial designs, etc)
- the Berne Convention for the Protection of Literary and Artistic Works (copyright).

Some areas are not covered by these conventions. In some cases, the standards of protection prescribed were thought inadequate. So the TRIPS agreement adds a significant number of new or higher standards.

#### *Copyright*

The TRIPS agreement ensures that computer programmes will be protected as literary works under the Berne Convention and outlines how databases should be protected.

It also expands international copyright rules to cover rental rights. Authors of computer programmes and producers of sound recordings must have the right to prohibit the commercial rental of their works to the public. A similar exclusive right applies to films where commercial rental has led to widespread copying, affecting copyright-owners' potential earnings from their films.

The agreement says performers must also have the right to prevent unauthorized recording, reproduction and broadcast of live performances (bootlegging) for no less than 50 years. Producers of sound recordings must have the right to prevent the unauthorized reproduction of recordings for a period of 50 years.

#### *Trademarks*

The agreement defines what types of signs must be eligible for protection as trademarks, and what the minimum rights conferred on their owners must be. It says that service marks must be protected in the same way as trademarks used for goods. Marks that have become well-known in a particular country enjoy additional protection.

#### *Geographical indications*

Place names are sometimes used to identify a product. Well-known examples include "Champagne", "Scotch", "Tequila", and "Roquefort" cheese. Wine and spirits makers are particularly concerned about the use of place-names to identify products, and the TRIPS agreement contains special provisions for these products. But the issue is also important for other types of goods.

### What's the difference?

Obviously, copyrights, patents, trademarks, etc apply to different types of creations or inventions. They are also treated differently.

Patents, industrial designs, integrated circuit designs, geographical indications and trademarks have to be registered in order to receive protection. The registration includes a description of what is being protected — the invention, design, brand-name, logo, etc — and this description is public information.

Copyright and trade secrets are protected automatically according to specified conditions. They do not have to be registered, and therefore there is no need to disclose, for example, how copyrighted computer software is constructed.

Other conditions may also differ, for example the length of time that each type of protection remains in force.

The use of a place name to describe a product in this way — a “geographical indication” — usually identifies both its geographical origin and its characteristics. Therefore, using the place name when the product was made elsewhere or when it does not have the usual characteristics can mislead consumers, and it can lead to unfair competition. The TRIPS agreement says countries have to prevent the misuse of place names.

For wines and spirits, the agreement provides higher levels of protection, i.e. even where there is no danger of the public being misled.

Some exceptions are allowed, for example if the name is already protected as a trademark or if it has become a generic term. For example, “cheddar” now refers to a particular type of cheese not necessarily made in Cheddar. But any country wanting to make an exception for these reasons must be willing to negotiate with the country which wants to protect the geographical indication in question. The agreement provides for further negotiations in the WTO to establish a multilateral system of notification and registration of geographical indications for wines.

### *Industrial designs*

Under the TRIPS agreement, industrial designs must be protected for at least 10 years. Owners of protected designs must be able to prevent the manufacture, sale or importation of articles bearing or embodying a design which is a copy of the protected design.

### *Patents*

The agreement says patent protection must be available for inventions for at least 20 years. Patent protection must be available for both products and processes, in almost all fields of technology. Governments can refuse to issue a patent for an invention if its commercial exploitation is prohibited for reasons of public order or morality. They can also exclude diagnostic, therapeutic and surgical methods, plants and animals (other than microorganisms), and biological processes for the production of plants or animals (other than microbiological processes).

Plant varieties, however, must be protectable by patents or by a special system (such as the breeder's rights provided in the conventions of UPOV — the International Union for the Protection of New Varieties of Plants).

The agreement describes the minimum rights that a patent owner must enjoy. But it also allows certain exceptions. A patent-owner could abuse his rights, for example by failing to supply the product on the market. To deal with that possibility, the agreement says governments can issue “compulsory licences”, allowing a competitor to produce the product or use the process under licence. But this can only be done under certain conditions aimed at safeguarding the legitimate interests of the patent-holder.

If a patent is issued for a production process, then the rights must extend to the product directly obtained from the process. Under certain conditions alleged infringers may be ordered by a court to prove that they have not used the patented process.

### *Integrated circuits layout designs*

The basis for protecting integrated circuit designs (“topographies”) in the TRIPS agreement is the Washington Treaty on Intellectual Property in Respect of Integrated Circuits, which comes under the World Intellectual Property Organization. This was adopted in 1989 but has not yet entered into force. The TRIPS agreement adds a number of provisions: for example, protection must be available for at least 10 years.

### *Undisclosed information and trade secrets*

Trade secrets and other types of “undisclosed information” which have commercial value must be protected against breach of confidence and other acts contrary to honest commercial practices. But reasonable steps must have been taken to keep the information secret. Test data submitted to governments in order to obtain marketing approval for new pharmaceutical or agricultural chemicals must also be protected against unfair commercial use.

### *Curbing anti-competitive licensing contracts*

The owner of a copyright, patent or other form of intellectual property right can issue a licence for someone else to produce or copy the protected trademark, work, invention, design, etc. The agreement recognizes that the terms of a licensing contract could restrict competition or impede technology transfer. It says that under certain conditions, governments have the right to take action to prevent anti-competitive licensing that abuses intellectual property rights. It also says governments must be prepared to consult each other on controlling anti-competitive licensing.

### **Enforcement: tough but fair**

Having intellectual property laws is not enough. They have to be enforced. This is covered in Part 3 of TRIPS. The agreement says governments have to ensure that intellectual property rights can be enforced under their laws, and that the penalties for infringement are tough enough to deter further violations. The procedures must be fair and equitable, and not unnecessarily complicated or costly. They should not entail unreasonable time-limits or unwarranted delays. People involved should be able to ask a court to review an administrative decision or to appeal a lower court’s ruling.

The agreement describes in some detail how enforcement should be handled, including rules for obtaining evidence, provisional measures, injunctions, damages and other penalties. It says courts should have the right, under certain conditions, to order the disposal or destruction of pirated or counterfeit goods. Wilful trademark counterfeiting or copyright piracy on a commercial scale should be criminal offences. Governments should make sure that intellectual property rights owners can receive the assistance of customs authorities to prevent imports of counterfeit and pirated goods.

### **Transition arrangements: 1, 5 or 11 years to fall into line**

When the WTO agreements took effect on 1 January 1995, developed countries were given one year to ensure that their laws and practices conform with the TRIPS agreement. Developing countries and (under certain conditions) transition economies are given five years. Least developed countries have 11 years.

If a developing country did not provide product patent protection in a particular area of technology when the TRIPS Agreement came into force (1 January 1995), it has up to 10 years to introduce the protection. But for pharmaceutical and agricultural chemical products, the country must accept the filing of patent applications

from the beginning of the transitional period, though the patent need not be granted until the end of this period. If the government allows the relevant pharmaceutical or agricultural chemical to be marketed during the transition period, it must — subject to certain conditions — provide an exclusive marketing right for the product for five years, or until a product patent is granted, whichever is shorter.

Subject to certain exceptions, the general rule is that obligations in the agreement apply to intellectual property rights that existed at the end of a country’s transition period as well as to new ones.

A Council for Trade-Related Aspects of Intellectual Property Rights monitors the working of the agreement and governments’ compliance with it.

## 7. Anti-dumping, subsidies, safeguards: contingencies, etc

Binding tariffs, and applying them equally to all trading partners (MFN) are key to the smooth flow of trade in goods. The WTO agreements uphold the principles, but they also allow exceptions — in some circumstances. Three issues are important:

- actions taken against dumping (selling at an unfairly low price)
- subsidies and special “countervailing” duties to offset the subsidies
- emergency measures to limit imports temporarily, designed to “safeguard” domestic industries.

### Anti-dumping actions

If a company exports a product at a price lower than the price it normally charges on its own home market, it is said to be “dumping” the product. Is this unfair competition? Opinions differ, but many governments take action against dumping in order to defend their domestic industries. The WTO agreement does not pass judgement. Its focus is on how governments can or cannot react to dumping — it disciplines anti-dumping actions, and it is often called the “Anti-Dumping Agreement”. (This focus only on the reaction to dumping contrasts with the approach of the Subsidies and Countervailing Measures Agreement.)

The legal definitions are more precise, but broadly speaking the WTO agreement allows governments to act against dumping where there is genuine (“material”) injury to the competing domestic industry. In order to do that the government has to be able to show that dumping is taking place, calculate the extent of dumping (how much lower the export price is compared to the exporter’s home market price), and show that the dumping is causing injury.

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*What is this agreement called? Agreement on the implementation of Article VI of the General Agreement on Tariffs and Trade 1994*

GATT (Article 6) allows countries to take action against dumping. The Anti-Dumping Agreement clarifies and expands Article 6, and the two operate together. They allow countries to act in a way that would normally break the GATT principles of binding a tariff and not discriminating between trading partners — typically anti-dumping action means charging extra import duty on the particular product from the particular exporting country in order to bring its price closer to the “normal value” or to remove the injury to domestic industry in the importing country.

There are many different ways of calculating whether a particular product is being dumped heavily or only lightly. The agreement narrows down the range of possible options. It provides three methods to calculate a product’s “normal value”. The main one is based on the price in the exporter’s domestic market. When this cannot be used, two alternatives are available — the price charged by the exporter in another country, or a calculation based on the combination of the exporter’s production costs, other expenses and normal profit margins. And the agreement also specifies how a fair comparison can be made between the export price and what would be a normal price.

Calculating the extent of dumping on a product is not enough. Anti-dumping measures can only be applied if the dumping is hurting the industry in the importing country. Therefore, a detailed investigation has to be conducted according to specified rules first. The investigation must evaluate all relevant economic factors that have a bearing on the state of the industry in question. If the investigation shows dumping is taking place and domestic industry is being hurt, the exporting company can undertake to raise its price to an agreed level in order to avoid anti-dumping import duty.

## 'AD-CVD'?

### Yes, but there are fundamental differences

Dumping and subsidies — together with anti-dumping (AD) measures and countervailing duties (CVD) — are often linked. Experts speak of "AD-CVD" in one breath. Many countries handle the two issues under a single law, apply similar process to deal with them and give a single authority responsibility for investigations. Occasionally, the two WTO committees responsible for these issues meet jointly.

There are a number of similarities. The reaction to dumping and subsidies is often a special offsetting import tax (countervailing duty in the case of a subsidy). Like anti-dumping duty, countervailing duty is charged on products from specific countries and therefore it breaks the GATT principles of binding a tariff and treating trading partners equally (MFN). The agreements provide an escape clause, but they both also say that before imposing a duty, the importing country must conduct a detailed investigation that shows properly that domestic industry is hurt.

But there are also fundamental differences, and these are reflected in the agreements.

Dumping is an action by a company. With subsidies, it is the government or a government agency that acts, either by paying out subsidies directly or by requiring companies to subsidize certain customers.

But the WTO is an organization of countries and their governments. The WTO does not deal with companies and cannot regulate companies' actions such as dumping. Therefore the Anti-Dumping Agreement only concerns the actions governments may take against dumping. With subsidies, governments act on both sides: they subsidize and they act against each others' subsidies. Therefore the subsidies agreement disciplines both the subsidies and the reactions.

The present rules revise the Tokyo Round (1973-79) code on anti-dumping measures and are a result of the Uruguay Round (1986-94) negotiations. The Tokyo Round code was not signed by all GATT members; the Uruguay Round version is part of the WTO agreement and applies to all members.

The WTO Anti-Dumping Agreement introduced these modifications:

- more detailed rules for calculating the amount of dumping,
- more detailed procedures for initiating and conducting anti-dumping investigations,
- rules on the implementation and duration (normally five years) of anti-dumping measures,
- particular standards for dispute settlement panels to apply in anti-dumping disputes.

Detailed procedures are set out on how anti-dumping cases are to be initiated, how the investigations are to be conducted, and the conditions for ensuring that all interested parties are given an opportunity to present evidence. Anti-dumping measures must expire five years after the date of imposition, unless an investigation shows that ending the measure would lead to injury.

Anti-dumping investigations are to end immediately in cases where the authorities determine that the margin of dumping is insignificantly small (defined as less than 2% of the export price of the product). Other conditions are also set. For example, the investigations also have to end if the volume of dumped imports is negligible (i.e. if the volume from one country is less than 3% of total imports of that product — although investigations can proceed if several countries, each supplying less than 3% of the imports, together account for 7% or more of total imports).

The agreement says member countries must inform the Committee on Anti-Dumping Practices about all preliminary and final anti-dumping actions, promptly and in detail. They must also report on all investigations twice a year. When differences arise, members are encouraged to consult each other. They can also use the WTO's dispute settlement procedure.

### Subsidies and countervailing measures

This agreement does two things: it disciplines the use of subsidies, and it regulates the actions countries can take to counter the effects of subsidies. It says a country can use the WTO's dispute settlement procedure to seek the withdrawal of the subsidy or the removal of its adverse effects. Or the country can launch its own investigation and ultimately charge extra duty (known as "countervailing duty") on subsidized imports that are found to be hurting domestic producers.

The agreement builds on the Tokyo Round Subsidy Code. Unlike its predecessor, the present agreement contains a definition of subsidy. It also introduces the concept of a "specific" subsidy — i.e. a subsidy available only to an enterprise, industry, group of enterprises, or group of industries in the country (or state, etc) that gives the subsidy. The disciplines set out in the agreement only apply to specific subsidies. They can be domestic or export subsidies.

As with anti-dumping, the subsidy agreement is part of the package of WTO agreements that is signed by all members — the Tokyo Round "code" was only signed by some GATT members.

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*What is this agreement called? Agreement on Subsidies and Countervailing Measures*

The agreement defines three categories of subsidies: prohibited, actionable and non-actionable. It applies to agricultural goods as well as industrial products, except when the subsidies conform with the Agriculture Agreement.

- **Prohibited subsidies:** subsidies that require recipients to meet certain export targets, or to use domestic goods instead of imported goods. They are prohibited because they are specifically designed to distort international trade, and are therefore likely to hurt other countries' trade. They can be challenged in the WTO dispute settlement procedure where they are handled under an accelerated timetable. If the dispute settlement procedure confirms that the subsidy is prohibited, it must be withdrawn immediately. Otherwise, the complaining country can take counter measures. If domestic producers are hurt by imports of subsidized products, countervailing duty can be imposed.

- **Actionable subsidies:** in this category the complaining country has to show that the subsidy has an adverse effect on its interests. Otherwise the subsidy is permitted. The agreement defines three types of damage they can cause. One country's subsidies can hurt a domestic industry in an importing country. They can hurt rival exporters from another country when the two compete in third markets. And domestic subsidies in one country can hurt exporters trying to compete in the subsidizing country's domestic market. If the Dispute Settlement Body rules that the subsidy does have an adverse effect, the subsidy must be withdrawn or its adverse effect must be removed. Again, if domestic producers are hurt by imports of subsidized products, countervailing duty can be imposed.

- **Non-actionable subsidies:** these can either be non-specific subsidies, or specific subsidies for industrial research and pre-competitive development activity, assistance to disadvantaged regions, or certain types of assistance for adapting existing facilities to new environmental laws or regulations. Non-actionable subsidies cannot be challenged in the WTO's dispute settlement procedure, and countervailing duty cannot be used on subsidized imports. But the subsidies have to meet strict conditions.

Some of the disciplines are similar to those of the Anti-Dumping Agreement. Countervailing duty (the parallel of anti-dumping duty) can only be charged after the importing country has conducted a detailed investigation similar to that required for anti-dumping action. There are detailed rules for deciding whether a product is being subsidized (not always an easy calculation), criteria for determining whether imports of subsidized products are hurting ("causing injury to") domestic industry, procedures for initiating and conducting investigations, and rules on the implementation and duration (normally five years) of countervailing measures. The subsidized exporter can also agree to raise its export prices as an alternative to its exports being charged countervailing duty.

Subsidies may play an important role in developing countries and in the transformation of centrally-planned economies to market economies. Least-developed countries and developing countries with less than \$1,000 per capita GNP are exempted from disciplines on prohibited export subsidies. Other developing countries are given until 2003 to get rid of their export subsidies. Least-developed countries must eliminate import-substitution subsidies (i.e. subsidies designed to help domestic production and avoid importing) by 2003 — for other developing countries the deadline is 2000. Developing countries also receive preferential treatment if their exports are subject to countervailing duty investigations. For transition economies, prohibited subsidies must be phased out by 2002.

### **Safeguards: emergency protection from imports**

A WTO member may restrict imports of a product temporarily (take "safeguard" actions) if its domestic industry is injured or threatened with injury caused by a surge in imports. Here, the injury has to be serious. Safeguard measures were always available under GATT (Article 19). However, they were infrequently used, some governments preferring to protect their domestic industries through "grey area" measures — using bilateral negotiations outside GATT's auspices they persuaded exporting countries to restrain exports "voluntarily" or to agree to other means of sharing markets. Agreements of this kind were reached for a wide range of products: automobiles, steel, and semiconductors, for example.

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*What is this agreement called? Agreement on Safeguards*

The WTO agreement broke new ground. It prohibits “grey area” measures, and it sets time limits (a “sunset clause”) on all safeguard actions. The agreement says members must not seek, take or maintain any voluntary export restraints, orderly marketing arrangements or any other similar measures on the export or the import side. The bilateral measures that were not modified to conform with the agreement were phased out at the end of 1998. Countries were allowed to keep one of these measures an extra year (until the end of 1999), but only the European Union—with respect to its restrictions on imports of cars from Japan—availed of this provision. Safeguard measures already taken before the WTO came into being—under Article 19 of GATT 1947—must end eight years after the date on which they were first applied or by the end of 1999, whichever comes later.

An import “surge” justifying safeguard action can be a real increase in imports (an *absolute increase*); or it can be an increase in the imports’ share of a shrinking market, even if the import quantity has not increased (*relative increase*).

Industries or companies may request safeguard action by their government. The WTO agreement sets out requirements for safeguard investigations by national authorities. The emphasis is on transparency and on following established rules and practices — avoiding arbitrary methods. The authorities conducting investigations have to announce publicly when hearings are to take place and provide other appropriate means for interested parties to present evidence. The evidence must include arguments on whether a measure is in the public interest.

The agreement sets out criteria for assessing whether “serious injury” is being caused or threatened, and the factors which must be considered in determining the impact of imports on the domestic industry. When imposed, a safeguard measure should be applied only to the extent necessary to prevent or remedy serious injury and to help the industry concerned to adjust. Where quantitative restrictions (quotas) are imposed, they normally should not reduce the quantities of imports below the annual average for the last three representative years for which statistics are available, unless clear justification is given that a different level is necessary to prevent or remedy serious injury.

In principle, safeguard measures cannot be targeted at imports from a particular country. However, the agreement does describe how quotas can be allocated among supplying countries, including in the exceptional circumstance where

imports from certain countries have increased disproportionately quickly. A safeguard measure should not last more than four years, although this can be extended up to eight years, subject to a determination by competent national authorities that the measure is needed and that there is evidence the industry is adjusting. Measures imposed for more than a year must be progressively liberalized.

When a country restricts imports in order to safeguard its domestic producers, in principle it must give something in return. The agreement says the exporting country (or exporting countries) can seek compensation through consultations. If no agreement is reached the exporting country can retaliate by taking equivalent action — for instance, it can raise tariffs on exports from the country that is enforcing the safeguard measure. In some circumstances, the exporting country has to wait for three years after the safeguard measure was introduced before it can retaliate in this way — i.e. if the measure conforms with the provisions of the agreement and if it is taken as a result of an absolute increase in the quantity of imports from the exporting country.

To some extent developing countries’ exports are shielded from safeguard actions. An importing country can only apply a safeguard measure to a product from a developing country if the developing country is supplying more than 3% of the imports of the that product, or if developing country members with less than 3% import share collectively account for more than 9% of total imports of the product concerned.

The WTO’s Safeguards Committee oversees the operation of the agreement and is responsible for the surveillance of members’ commitments. Governments have to report each phase of a safeguard investigation and related decision-making, and the committee reviews these reports.



## 8. Non-tariff barriers: technicalities, red tape, etc

Finally, a number of agreements deal with various technical, bureaucratic or legal issues that could involve hindrances to trade.

- technical regulations and standards
- import licensing
- rules for the valuation of goods at customs
- pre-shipment inspection: further checks on imports
- rules of origin: made in ... where?
- investment measures

### Technical regulations and standards

Technical regulations and industrial standards are important, but they vary from country to country. Having too many different standards makes life difficult for producers and exporters. If the standards are set arbitrarily, they could be used as an excuse for protectionism. Standards can become obstacles to trade.

The Agreement on Technical Barriers to Trade tries to ensure that regulations, standards, testing and certification procedures do not create unnecessary obstacles. The WTO's version is a modification of the code negotiated in the 1973-79 Tokyo Round.

The agreement recognizes countries' rights to adopt the standards they consider appropriate — for example, for human, animal or plant life or health, for the protection of the environment or to meet other consumer interests. Moreover, members are not prevented from taking measures necessary to ensure their standards are met. In order to prevent too much diversity, the agreement encourages countries to use international standards where these are appropriate, but it does not require them to change their levels of protection as a result.

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*What is this agreement called? Agreement on Technical Barriers to Trade*

The agreement sets out a code of good practice for the preparation, adoption and application of standards by central government bodies. It also includes provisions describing how local government and non-governmental bodies should apply their own regulations — normally they should use the same principles as apply to central governments.

The agreement says the procedures used to decide whether a product conforms with national standards have to be fair and equitable. It discourages any methods that would give domestically produced goods an unfair advantage. The agreement also encourages countries to recognize each other's testing procedures. That way, a product can be assessed to see if it meets the importing country's standards through testing in the country where it is made.

Manufacturers and exporters need to know what the latest standards are in their prospective markets. To help ensure that this information is made available conveniently, all WTO member governments are required to establish national enquiry points.

### Import licensing: keeping procedures clear

Although less widely used now than in the past, import licensing systems are subject to disciplines in the WTO. The Agreement on Import Licensing Procedures says import licensing should be simple, transparent and predictable. For example, the agreement requires governments to publish sufficient information for traders to know how and why the licences are granted. It also describes how countries should

notify the WTO when they introduce new import licensing procedures or change existing procedures. The agreement offers guidance on how governments should assess applications for licences.

Some licences are issued automatically if certain conditions are met. The agreement sets criteria for automatic licensing so that the procedures used do not restrict trade.

Other licences are not issued automatically. Here, the agreement tries to minimise the importers' burden in applying for licences, so that the administrative work does not in itself restrict or distort imports. The agreement says the agencies handling licensing should not normally take more than 30 days to deal with an application — 60 days when all applications are considered at the same time.

The present agreement is a modification of the "code" (i.e. agreement signed by only some GATT signatories) negotiated in the 1973-79 Tokyo Round. It is now part of the WTO package signed by all WTO members.

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*What is this agreement called? Agreement on Import Licensing Procedures*

## Rules for the valuation of goods at customs

For importers, the process of estimating the value of a product at customs presents problems that can be just as serious as the actual duty rate charged. The WTO agreement on customs valuation aims for a fair, uniform and neutral system for the valuation of goods for customs purposes — a system that conforms to commercial realities, and which outlaws the use of arbitrary or fictitious customs values. The agreement provides a set of valuation rules, expanding and giving greater precision to the provisions on customs valuation in the original GATT.

A related Uruguay Round ministerial decision gives customs administrations the right to request further information in cases where they have reason to doubt the accuracy of the declared value of imported goods. If the administration maintains a reasonable doubt, despite any additional information, it may be deemed that the customs value of the imported goods cannot be determined on the basis of the declared value.

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**What is this agreement called?** *Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994; and related ministerial decisions: "Decision Regarding Cases Where Customs Administrations Have Reasons to Doubt the Truth or Accuracy of the Declared Value" and "Decisions on Texts Relating to Minimum Values and Imports by Sole Agents, Sole Distributors and Sole Concessionaires".*

## Preshipment inspection: a further check on imports

Preshipment inspection is the practice of employing specialized private companies (or "independent entities") to check shipment details — essentially price, quantity and quality — of goods ordered overseas. Used by governments of developing countries, the purpose is to safeguard national financial interests (prevention of capital flight and commercial fraud as well as customs duty evasion, for instance) and to compensate for inadequacies in administrative infrastructures.

The agreement recognizes that GATT principles and obligations apply to the activities of preshipment inspection agencies mandated by governments. The obligations placed on governments which use preshipment inspections include non-discrimination, transparency, protection of confidential business information, avoidance of unreasonable delay, the use of specific guidelines for conducting price verification and the avoidance of conflicts of interest by the inspection agencies. The obligations of exporting members towards countries using preshipment

inspection include non-discrimination in the application of domestic laws and regulations, prompt publication of those laws and regulations and the provision of technical assistance where requested.

The agreement establishes an independent review procedure. It is administered jointly by an organization representing inspection agencies and an organization representing exporters. Its purpose is to resolve disputes between an exporter and an inspection agency.

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**What is this agreement called?** *Agreement on Preshipment Inspection*

### Rules of origin: made in ... where?

"Rules of origin" are the criteria used to define where a product was made. They are an essential part of trade rules because a number of policies discriminate between exporting countries: quotas, preferential tariffs, anti-dumping actions, countervailing duty (charged to counter export subsidies), and more. Rules of origin are also used to compile trade statistics, and for "made in ..." labels that are attached to products.

This first-ever agreement on the subject requires WTO members to ensure that their rules of origin are transparent; that they do not have restricting, distorting or disruptive effects on international trade; that they are administered in a consistent, uniform, impartial and reasonable manner; and that they are based on a positive standard (in other words, they should state what *does confer origin rather than what does not*).

For the longer term, the agreement aims for common ("harmonized") rules of origin among all WTO members, except in some kinds of preferential trade — for example, countries setting up a free trade area are allowed to use different rules of origin for products traded under their free trade agreement. The agreement establishes a harmonization work programme, to be completed by July 1998, based upon a set of principles, including making rules of origin objective, understandable and predictable. The work is being conducted by a Committee on Rules of Origin in the WTO and a Technical Committee

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**What is this agreement called?** *Agreement on Rules of Origin*

under the auspices of the World Customs Organization in Brussels. The outcome will be a single set of rules of origin to be applied under non-preferential trading conditions by all WTO members in all circumstances.

An annex to the agreement sets out a "common declaration" dealing with the operation of rules of origin on goods which qualify for preferential treatment.

### Investment measures: reducing trade distortions

The Agreement on Trade-Related Investment Measures (TRIMS) applies only to measures that affect trade in goods. It recognizes that certain measures can restrict and distort trade, and states that no member shall apply any measure that discriminates against foreigners or foreign products (i.e. violates "national treatment" principles in GATT). It also outlaws investment measures that lead to restrictions in quantities (violating another principle in GATT). An illustrative list of TRIMS agreed to be inconsistent with these GATT articles is appended to the agreement. The list includes measures which require particular levels of local procurement by an enterprise ("local content requirements"). It also discourages measures which limit a company's imports or set targets for the company to export ("trade balancing requirements").

Under the agreement, countries must inform the WTO and fellow-members of all investment measures that do not conform with the agreement. Developed countries have to eliminate these in two years (by the end of 1996); developing countries have five years (to end of 1999); and least developed countries seven.

The agreement establishes a Committee on TRIMS to monitor the implementation of these commitments. The agreement also says that WTO members should consider, by 1 January 2000, whether there should also be provisions on investment policy and competition policy.

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**What is this agreement called?** *Agreement on Trade-Related Investment Measures*

## 9. Plurilaterals: of minority interest

For the most part, all WTO members subscribe to all WTO agreements. After the Uruguay Round, however, there remained four agreements, originally negotiated in the Tokyo Round, which have a narrower group of signatories and are known as “plurilateral agreements”. All other Tokyo Round agreements became multi-lateral obligations (i.e. obligations for all WTO members) when the World Trade Organization was established in 1995. The four were:

- trade in civil aircraft
- government procurement
- dairy products
- bovine meat.

The bovine meat and dairy agreements were terminated in 1997.

### Fair trade in civil aircraft

The **Agreement on Trade in Civil Aircraft** entered into force on 1 January 1980. It now has 27 signatories. The agreement eliminates import duties on all aircraft, other than military aircraft, as well as on all other products covered by the agreement — civil aircraft engines and their parts and components, all components and sub-assemblies of civil aircraft, and flight simulators and their parts and components. It contains disciplines on government-directed procurement of civil aircraft and inducements to purchase, as well as on government financial support for the civil aircraft sector.

### Government procurement: opening up for competition

In most countries the government, and the agencies it controls are, together, the biggest purchasers of goods of all kinds, ranging from basic commodities to high-technology equipment. At the same time, the political pressure to favour domestic suppliers over their foreign competitors can be very strong.

An **Agreement on Government Procurement** was first negotiated during the Tokyo Round and entered into force on 1 January 1981. Its purpose is to open up as much of this business as possible to international competition. It is designed to make laws, regulations, procedures and practices regarding government procurement more transparent and to ensure they do not protect domestic products or suppliers, or discriminate against foreign products or suppliers.

The agreement has 27 members. It has two elements — general rules and obligations, and schedules of national entities in each member country whose procurement is subject to the agreement. A large part of the general rules and obligations concern tendering procedures.

The present agreement and commitments were negotiated in the Uruguay Round. These negotiations achieved a 10-fold expansion of coverage, extending international competition to include national and local government entities whose collective purchases are worth several hundred billion dollars each year. The new agreement also extends coverage to services (including construction services), procurement at the sub-central level (for example, states, provinces, departments and prefectures), and procurement by public utilities. The new agreement took effect on 1 January 1996.

It also reinforces rules guaranteeing fair and non-discriminatory conditions of international competition. For example, governments will be required to put in place domestic procedures by which aggrieved private bidders can challenge procurement decisions and obtain redress in the event such decisions were made inconsistently with the rules of the agreement.

The agreement applies to contracts worth more than specified threshold values. For central government purchases of goods and services, the threshold is SDR 130,000 (some \$178,000 in May 1997). For purchases of goods and services by sub-central government entities the threshold varies but is generally in the region of SDR 200,000. For utilities, thresholds for goods and services is generally in the area of SDR 400,000 and for construction contracts, in general the threshold value is SDR 5,000,000.

### Dairy and bovine meat agreements: ended in 1997

The **International Dairy Agreement** and **International Bovine Meat Agreement** were scrapped at the end of 1997. Countries that had signed the agreements decided that the sectors were better handled under the Agriculture and Sanitary and Phytosanitary agreements. Some aspects of their work had been handicapped by the small number of signatories. For example, some major exporters of dairy products did not sign the Dairy Agreement, and the attempt to cooperate on minimum prices therefore failed – minimum pricing was suspended in 1995.

## 10. Trade policy reviews: ensuring transparency

Individuals and companies involved in trade have to know as much as possible about the conditions of trade. It is therefore fundamentally important that regulations and policies are transparent. In the WTO, this is achieved in two ways: governments have to inform the WTO and fellow-members of specific measures, policies or laws through regular “notifications”; and the WTO conducts regular reviews of individual countries’ trade policies — the trade policy reviews. These reviews are part of the Uruguay Round agreement, but they began several years before the round ended — they were an early result of the negotiations. Participants agreed to set up the reviews at the December 1988 ministerial meeting that was intended to be the mid-way assessment of the Uruguay Round. The first review took place the following year. Initially they operated under GATT and, like GATT, they focused on goods trade. With the creation of the WTO in 1995, their scope was extended, like the WTO, to include services and intellectual property.

The importance countries attach to the process is reflected in the seniority of the Trade Policy Review Body — it is the WTO General Council in another guise.

The objectives are:

- to increase the transparency and understanding of countries’ trade policies and practices, through regular monitoring
- to improve the quality of public and intergovernmental debate on the issues
- to enable a multilateral assessment of the effects of policies on the world trading system.

The reviews focus on members’ own trade policies and practices. But they also take into account the countries’ wider economic and developmental needs, their policies and objectives, and the external economic environment that they face. These “peer reviews” by other WTO members encourage governments to follow more closely the WTO rules and disciplines and to fulfil their commitments. In practice the reviews have two broad results: they enable outsiders to understand a country’s policies and circumstances, and they provide feedback to the reviewed country on its performance in the system.

Over a period of time, all WTO members are to come under scrutiny. The frequency of the reviews depends on the country’s size:

- The four biggest traders — the European Union, the United States, Japan and Canada (the “Quad”) — are examined approximately once every two years.
- The next 16 countries (in terms of their share of world trade) are reviewed every four years.
- The remaining countries are reviewed every six years, with the possibility of a longer interim period for the least-developed countries.

For each review, two documents are prepared: a policy statement by the government under review, and a detailed report written independently by the WTO Secretariat. These two reports, together with the proceedings of the Trade Policy Review Body’s meetings are published shortly afterwards.

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*What is this agreement called? Trade Policy Review Mechanism*

# Settling disputes

## The WTO's 'most individual contribution'

**"No review of the achievements of the WTO would be complete without mentioning the Dispute Settlement system, in many ways the central pillar of the multilateral trading system and the WTO's most individual contribution to the stability of the global economy. The new WTO system is at once stronger, more automatic and more credible than its GATT predecessor. This is reflected in the increased diversity of countries using it and in the tendency to resolve cases 'out of court' before they get to the final decision — 19 out of 71 cases so far. The system is working as intended — as a means above all for conciliation and for encouraging resolution of disputes, rather than just for making judgements. By reducing the scope for unilateral actions, it is also an important guarantee of fair trade for [less powerful countries]."**

*Renato Ruggiero  
17 April 1997*

## 1. The WTO's 'most individual contribution'

Without a means of settling disputes, the rules-based system would be worthless because the rules could not be enforced. The WTO's procedure underscores the rule of law, and it makes the trading system more secure and predictable. The system is based on clearly-defined rules, with timetables for completing a case. First rulings are made by a panel and endorsed (or rejected) by the WTO's full membership. Appeals based on points of law are possible.

However, the point is not to make rulings. The priority is to settle disputes, through consultations if possible. By mid-March 2001, 38 out of 228 cases had been settled "out of court", without going through the full panel process.

### Principles: equitable, fast, effective, mutually acceptable

WTO members have agreed that if they believe fellow-members are violating trade rules, they will use the multilateral system of settling disputes instead of taking action unilaterally. That means abiding by the agreed procedures, and respecting judgements.

*What is this agreement called? Understanding on Rules and Procedures Governing the Settlement of Disputes*

Typically, a dispute arises when one country adopts a trade policy measure or takes some action that one or more fellow-WTO members considers to be breaking the WTO agreements, or to be a failure to live up to obligations. A third group of countries can declare that they have an interest in the case and enjoy some rights.

A procedure for settling disputes existed under the old GATT, but it had no fixed timetables, rulings were easier to block, and many cases dragged on for a long time inconclusively. The Uruguay Round agreement introduced a more structured process with more clearly defined stages in the procedure. It introduced greater discipline for the length of time a case should take to be settled, with flexible deadlines set in various stages of the procedure. The agreement emphasizes that prompt settlement is essential if the WTO is to function effectively. It sets out in considerable detail the procedures and the timetable to be followed in resolving disputes. If a case runs its full course to a first ruling, it should not normally take more than about one year — 15 months if the case is appealed. The agreed time limits are flexible, and if the case is considered urgent (e.g. if perishable goods are involved), then the case should take three months less.

The Uruguay Round agreement also made it impossible for the country losing a case to block the adoption of the ruling. Under the previous

### More cases can be good news

If the courts find themselves handling an increasing number of criminal cases, does that mean law and order is breaking down? Not necessarily. Sometimes it means that people have more faith in the courts and the rule of law. They are turning to the courts instead of taking the law into their own hands.

For the most part, that is what is happening in the WTO. No one likes to see countries quarrel. But if there are going to be trade disputes anyway, it is healthier that the cases are handled according to internationally agreed rules. There are strong grounds for arguing that the increasing number of disputes is simply the result of expanding world trade and the stricter rules negotiated in the Uruguay Round; and that the fact that more are coming to the WTO reflects a growing faith in the system.

GATT procedure, rulings could only be adopted by consensus, meaning that a single objection could block the ruling. Now, rulings are automatically adopted unless there is a consensus to reject a ruling — any country wanting to block a ruling has to persuade all other WTO members (including its adversary in the case) to share its view.

Although much of the procedure does resemble a court or tribunal, the preferred solution is for the countries concerned to discuss their problems and settle the dispute by themselves. The first stage is therefore consultations between the governments concerned, and even when the case has progressed to other stages, consultation and mediation are still always possible.

### How are disputes settled?

Settling disputes is the responsibility of the Dispute Settlement Body (the General Council in another guise). The Dispute Settlement Body has the sole authority to establish “panels” of experts to consider the case, and to accept or reject the panels’ findings or the results of an appeal. It monitors the implementation of the rulings and recommendations, and has the power to authorize retaliation when a country does not comply with a ruling.

• **First stage: consultation** (up to **60 days**). Before taking any other actions the countries in dispute have to talk to each other to see if they can settle their differences by themselves. If that fails, they can also ask the WTO director general to mediate or try to help in any other way.

• **Second stage: the panel** (up to **45 days** for a panel to be appointed, plus **6 months** for the panel to conclude). If consultations fail, the complaining country can ask for a panel to be appointed. The country “in the dock” can block the creation of a panel once, but when the Dispute Settlement Body meets for a second time, the appointment can no longer be blocked (unless there is a consensus against appointing the panel). Officially, the panel is helping the Dispute Settlement Body make rulings or recommendations. But because the panel’s report can only be rejected by consensus in the Dispute Settlement Body, its conclusions are difficult to overturn. The panel’s findings have to be based on the agreements cited.

The panel’s final report should normally be given to the parties to the dispute within six months. In cases of urgency, including those concerning perishable goods, the deadline is shortened to three months.

The agreement describes in some detail how the panels are to work. The main stages are:

- **Before the first hearing:** each side in the dispute presents its case in writing to the panel.
- **First hearing: the case for the complaining country and defence:** the complaining country (or countries), the responding country, and those that have announced they have an interest in the dispute, make their case at the panel’s first hearing.

### Panels

**Panels are like tribunals. But unlike in a normal tribunal, the panelists are usually chosen in consultation with the countries in dispute. Only if the two sides cannot agree does the WTO director general appoint them. This only happens rarely.**

**Panels consist of three (occasionally five) experts from different countries who examine the evidence and decide who is right and who is wrong. The panel’s report is passed to the Dispute Settlement Body, which can only reject the report by consensus.**

**Panellists for each case can be chosen from a permanent list of well-qualified candidates, or from elsewhere. They serve in their individual capacities. They cannot receive instructions from any government.**

### How long to settle a dispute?

These approximate periods for each stage of a dispute settlement procedure are target figures — the agreement is flexible. In addition, the countries can settle their dispute themselves at any stage. Totals are also approximate.

60 days	Consultations, mediation, etc
45 days	Panel set up and panelists appointment
6 months	Final panel report to parties
3 weeks	Final panel report to WTO members
60 days	Dispute Settlement Body adopts report (if no appeal)

**Total = 1 year** (without appeal)

60-90 days	Appeals report
30 days	Dispute Settlement Body adopts appeals report

**Total = 1y 3m** (with appeal)

- **Rebuttals:** the countries involved submit written rebuttals and present oral arguments at the panel's second meeting.
- **Experts:** if one side raises scientific or other technical matters, the panel may consult experts or appoint an expert review group to prepare an advisory report.
- **First draft:** the panel submits the descriptive (factual and argument) sections of its report to the two sides, giving them two weeks to comment. This report does not include findings and conclusions.
- **Interim report:** The panel then submits an interim report, including its findings and conclusions, to the two sides, giving them one week to ask for a review.
- **Review:** The period of review must not exceed two weeks. During that time, the panel may hold additional meetings with the two sides.
- **Final report:** A final report is submitted to the two sides and three weeks later, it is circulated to all WTO members. If the panel decides that the disputed trade measure does break a WTO agreement or an obligation, it recommends that the measure be made to conform with WTO rules. The panel may suggest how this could be done.
- **The report becomes a ruling:** The report becomes the Dispute Settlement Body's ruling or recommendation within 60 days unless a consensus rejects it. Both sides can appeal the report (and in some cases both sides do).

## Appeals

Either side can appeal a panel's ruling. Sometimes both sides do so. Appeals have to be based on points of law such as legal interpretation — they cannot reexamine existing evidence or examine new evidence.

Each appeal is heard by three members of a permanent seven-member Appellate Body set up by the Dispute Settlement Body and broadly representing the range of WTO membership. Members of the Appellate Body have four-year terms. They have to be individuals with recognized standing in the field of law and international trade, not affiliated with any government.

The appeal can uphold, modify or reverse the panel's legal findings and conclusions. Normally appeals should not last more than 60 days, with an absolute maximum of 90 days.

The Dispute Settlement Body has to accept or reject the appeals report within 30 days — and rejection is only possible by consensus.

### The case has been decided: what next?

Go directly to jail. Do not pass Go, do not collect ... Well, not exactly. But the sentiments apply. If a country has done something wrong, it should swiftly correct its fault. And if it continues to break an agreement, it should offer compensation or suffer a suitable penalty that has some bite.

Even once the case has been decided, there is more to do before trade sanctions (the conventional form of penalty) are imposed. The priority at this stage is for the losing "defendant" to bring its policy into line with the ruling or recommendations. The dispute settlement agreement stresses that "prompt compliance with recommendations or rulings of the DSB [Dispute Settlement Body] is essential in order to ensure effective resolution of disputes to the benefit of all Members".

If the country that is the target of the complaint loses, it must follow the recommendations of the panel report or the appeals report. It must state its intention to do so at a Dispute Settlement Body meeting held within 30 days of the report's adoption. If complying with the recommendation immediately proves impractical, the member will be given

a "reasonable period of time" to do so. If it fails to act within this period, it has to enter into negotiations with the complaining country (or countries) in order to determine mutually-acceptable compensation — for instance, tariff reductions in areas of particular interest to the complaining side.

If after 20 days, no satisfactory compensation is agreed, the complaining side may ask the Dispute Settlement Body for permission to impose limited trade sanctions ("suspend concessions or obligations") against the other side. The Dispute Settlement Body must grant this authorization within 30 days of the expiry of the "reasonable period of time" unless there is a consensus against the request.

In principle, the sanctions should be imposed in the same sector as the dispute. If this is not practical or if it would not be effective, the sanctions can be imposed in a different sector of the same agreement. In turn, if this is not effective or practicable and if the circumstances are serious enough, the action can be taken under another agreement. The objective is to minimize the chances of actions spilling over into unrelated sectors while at the same time allowing the actions to be effective.

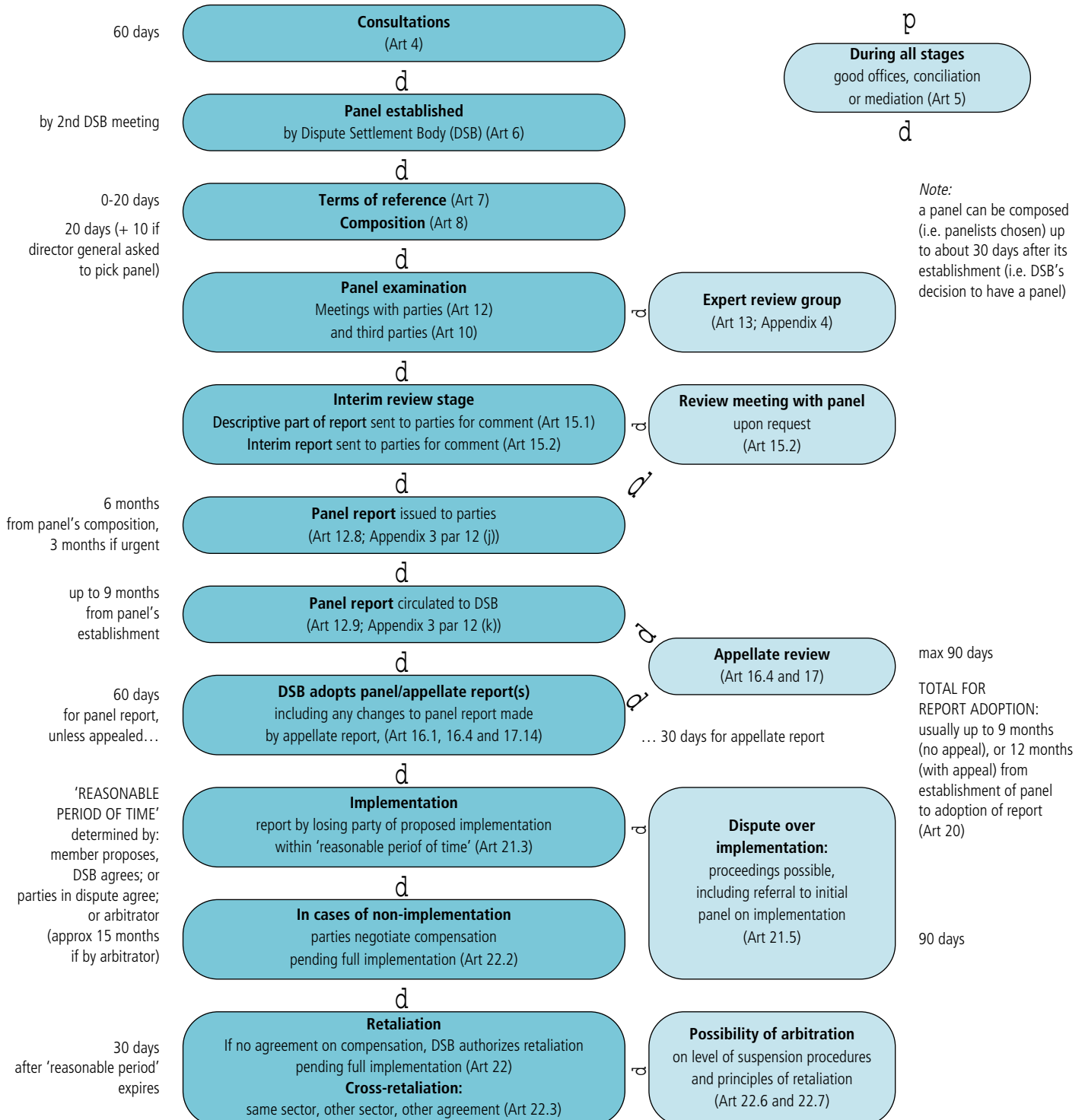
In any case, the Dispute Settlement Body monitors how adopted rulings are implemented. Any outstanding case remains on its agenda until the issue is resolved.



## 2. The panel process

The various stages a dispute can go through in the WTO. At all stages, countries in dispute are encouraged to consult each other in order to settle 'out of court'. At all stages, the WTO director general is available to offer his good offices, to mediate or to help achieve a conciliation.

Note: some specified times are maximums, some are minimums, some binding, some not



### 3. Case study: the timetable in practice

On 23 January 1995, Venezuela complained to the Dispute Settlement Body that the United States was applying rules that discriminated against gasoline imports, and formally requested consultations with the United States. Just over a year later (on 29 January 1996) the dispute

panel completed its final report. (By then, Brazil had joined the case, lodging its own complaint in April 1996. The same panel considered both complaints.) The United States appealed. The Appellate Body completed its report, and the Dispute Settlement Body adopted the report on 20 May 1996, one year and four months after the complaint was first lodged.

The United States and Venezuela then took six and a half months to agree on what the United States should do. The agreed period for implementing the solution was 15 months from the date the appeal was concluded (20 May 1996 to 20 August 1997). The Dispute Settlement Body has been monitoring progress — the United States submitted “status reports” on 9 January and 13 February 1997, for example.

The case arose because the United States applied stricter rules on the chemical characteristics of imported gasoline than it did for domestically-refined gasoline. Venezuela (and later Brazil) said this was unfair because US gasoline did not have to meet the same standards — it violated the “national treatment” principle and could not be justified under exceptions to normal WTO rules for health and environmental conservation measures. The dispute panel agreed with Venezuela and Brazil. The appeal report upheld the panel’s conclusions (making some changes to the panel’s legal interpretation. The United States agreed with Venezuela that it would amend its regulations within 15 months and on 26 August 1997 it reported to the Dispute Settlement Body that a new regulation had been signed on 19 August.

Time (0 = start of case)	Target/ actual period	Date	Action
-5years -4 months		1990 September 1994	US Clean Air Act amended US restricts gasoline imports under Clean Air Act
0	“60 days”	23 January 1995	Venezuela complains to Dispute Settlement Body, asks for consultation with US
+1 month		24 February 1995	Consultations take place. Fail
+2 months		25 March 1995	Venezuela asks Dispute Settlement Body for a panel
+2 1/2 months	“30 days”	10 April 1995	Dispute Settlement Body agrees to appoint panel. US does not block.  (Brazil starts complaint, requests consultation with US.)
+3 months		28 April 1995	Panel appointed. (31 May, panel assigned to Brazilian complaint as well)
+6 months	9 months (target is 6-9)	10-12 July and 13-15 July 1995	Panel meets
+11 months		11 December 1995	Panel gives interim report to US, Venezuela and Brazil for comment
+1 year		29 January 1996	Panel circulates final report to Dispute Settlement Body
+1 year, 1 month		21 February 1996	US appeals
+1 year, 3 months	“60 days”	29 April 1996	Appellate Body submits report
+1 year, 4 months	“30 days”	20 May 1996	Dispute Settlement Body adopts panel and appeal reports
+1 year, 10 1/2 months		3 December 1996	US and Venezuela agree on what US should do (implementation period is 15 months from 20 May)
1 year, 11 1/2 months		9 January 1997	US makes first of monthly reports to Dispute Settlement Body on status of implementation
+2 years, 7 months		19-20 August 1997	US signs new regulation (19th). End of agreed implementation period (20th)

# Beyond the Agreements

## 1. Overview

Work in the coming years in the WTO has two main components. One is the “built-in agenda” of the Uruguay Round agreements. This deals with the programme for applying the various agreements and commitments, and in particular the schedule for new or renewed negotiations in various subjects. The other component is a range of other issues, some old, some new to the GATT-WTO system, that are being discussed.

There is no commitment to resume tariff negotiations, but their central place in the system means that they are likely to take place at some stage. Issues not covered in any depth in the present agreements, that have been dis-

cussed recently, are now under discussion, or are likely to be discussed in the coming years, include:

- regional economic groupings
- trade and the environment
- trade and investment
- competition policy
- transparency in government procurement
- trade “facilitation” (simplifying trade procedures, making trade flow more smoothly through means that go beyond the removal of tariff and non-tariff barriers)
- electronic commerce

One other topic has been discussed a lot in the WTO recently. It is:

- trade and labour rights

This is not on the WTO’s work agenda, but because of the amount of recent discussion it is included here to clarify the situation.

## 2. Already committed: the 'built-in agenda'

Many of the Uruguay Round agreements set timetables for future work. Some additions and modifications have been made since then. This "built-in agenda" includes new negotiations in some areas, and assessments of the situation at the specified times in others. Part of the programme has already been completed (for example the market access negotiations in basic telecommunications ended in February 1997). Here is a selection of the schedule, starting from 1995 when the WTO came into being.

### The 'built-in agenda'

#### 1995

- WTO created, new agreements come into force (1 January 1995)
- Movement of natural persons: end of negotiations (by 28 July 1995)

#### 1996

- Government Procurement Agreement comes into force (1 January 1996)
- Subsidies: review of use of provisions on R&D subsidies (by 1 July 1996)
- Maritime services: market access negotiations end (30 June 1996, suspended to 2000)
- Net food importing countries: Singapore ministerial meeting reviews possible negative effect of farm trade reform on least developed countries and net food importers (December 1996)
- Services and environment: deadline for working party report on modifications of GATS article 14 (on general exceptions) (ministerial conference, December 1996)
- Intellectual property: first review of application of provisions on geographical indications (by end of 1996)
- Preshipment inspection: first of three-yearly reviews (by the ministerial conference) of the operation and implementation of the agreement (by end of 1996)
- Government procurement of services: negotiations start (by end of 1996)

#### 1997

- Basic telecoms: negotiations end (15 February, postponed from 1996)
- Financial services: negotiations end (30 December, postponed from 1996)
- Technical barriers to trade: first of three-yearly reviews of the operation and implementation of the agreement (by end of 1997)
- Intellectual property: negotiations on creating a multilateral system of notification and registration of geographical indications for wines (start in 1997)
- Textiles and clothing: Goods Council to review implementation of the agreement (by end of 1997, new phase begins 1 January 1998. Textiles Monitoring Body to report to Goods Council by end of July 1997)

#### 1998

- Services (emergency safeguards): results of negotiations on emergency safeguards to take effect (by 1 January 1998)
- Anti-dumping: examine standard of review, consider application to countervail cases (1 January 1998 or after)
- Rules of Origin: Work programme on harmonization of rules of origin to be completed (20 July 1998)
- Sanitary and phytosanitary measures: first review of the operation and implementation of the agreement (in 1998)
- Government procurement: further negotiations start, for improving rules and procedures (by end of 1998)
- Dispute settlement: full review of rules and procedures (by end of 1998)

#### 1999

- Intellectual property: review of certain exceptions to patentability and protection of plant varieties (1 January 1999 or after)
- Intellectual property: examination of scope and methods for complaints where action has been taken that has not violated agreements but could still impair the rights of the complaining country ("non-violation") (by end of 1999)
- Agriculture: negotiations initiated (one year before end of six-year implementation period)

#### 2000

- Services: new round of negotiations start (by 1 January 2000)
- Services MFN exemptions: first review (by 1 January 2000)
- Trade Policy Review Body: appraisal of operation of the review mechanism (by 1 January 2000)
- Trade-related investment measures: review of the operation of the agreement and discussion on whether provisions on investment policy and competition policy should be included in the agreement (by 1 January 2000, but working parties set up 1997)
- Tariff bindings: review of definition of "principle supplier" having negotiating rights under GATT Art 28 on modifying bindings (1 January 2000)
- Intellectual property: first of two-yearly reviews of the implementation of the agreement (1 January 2000 or after)

#### 2001

- Textiles and clothing: Goods Council to review implementation of the agreement (by end of 2001, new phase begins 1 January 2002. Textiles Monitoring Body to report to Goods Council by end of July 2001)

#### 2004

- Textiles and clothing: Goods Council to review implementation of the agreement (by end of 2004, full integration into GATT and agreement expires 1 January 2005. Textiles Monitoring Body to report to Goods Council by end of July 2004)

#### Sometime in the future: date note set

- Intellectual property: negotiations on increasing protection for individual geographical indications for wines and spirits
- Services subsidies: negotiations

### 3. Regionalism: friends or rivals?

The European Union, the North American Free Trade Agreement, the Association of Southeast Asian Nations, the South Asian Association for Regional Cooperation, the Common Market of the South (Mercosur), the Australia-New Zealand Closer Economic Relations Agreement, etc. From 1947 to early 1995, GATT and the WTO had been informed of the creation of more than 100 regional economic agreements (although some no longer exist or they remain insubstantial).

One of the most frequently asked questions is whether these regional groups help or hinder the multilateral trading system of the WTO. A new committee is keeping an eye on developments.

#### Regional trading arrangements

"... To a much greater extent than is often acknowledged, regional and multilateral integration initiatives are complements rather than alternatives in the pursuit of more open trade."

That is the conclusion of a 1995 study by the WTO Secretariat. The report observes that regional agreements have allowed groups of countries to negotiate rules and commitments that go beyond what was possible at the time multilaterally. In turn, some of these rules — for example in services and intellectual property protection — paved the way for the Uruguay Round agreements. Some regional groups have agreements on environmental standards, investment and competition policies; all three issues are mentioned in the final Uruguay Round agreement and are being discussed in the WTO.

The groupings that are important for the WTO are those involving the abolition or reduction of barriers on trade within the group. The WTO agreements recognize that regional arrangements and closer economic integration can benefit countries. It also recognizes that under some circumstances regional trading arrangements could hurt the trade interests of other countries. Normally, setting up a customs union or free trade area would violate the WTO's principle of equal treatment for all trading partners ("most-favoured-nation"). But Article 24 of GATT allows regional trading arrangements to be set up as a special exception, provided certain strict criteria are met. In particular, the arrangements should help trade flow more freely among the countries in the group without barriers being raised on trade with the outside world. In other words, regional integration should complement the multilateral trading system and not threaten it.

Article 24 says if a free trade area or customs union is created, duties and other trade barriers should be reduced or removed on substantially all sectors of trade in the group. Non-members should not find trade with the group any more restrictive than before the group was set up.

Similarly, Article 5 of the General Agreement on Trade in Services provides for economic integration agreements in services. Other provisions in the WTO agreements allow developing countries to enter into regional or global agreements that include the reduction or elimination of tariffs and non-tariff barriers on trade among themselves.

On 6 February 1996, the WTO General Council created the Committee on Regional Trade Agreements. Its purpose is to examine regional groups and to assess whether they are consistent with WTO rules. The committee is also examining how regional arrangements might affect the multilateral trading system, and what the relationship between regional and multilateral arrangements might be.

#### Customs unions and free trade areas

Customs union: all members charge the same set of customs duty rates on imports from non-members (e.g. European Union)

Free trade area: trade within the group is duty free, but each member can set its own duty rates on imports from non-members (e.g. North American Free Trade Agreement, ASEAN Free Trade Area)

## 4. The environment: a new high profile

The WTO has no specific agreement dealing with the environment. However, a number of the WTO agreements include provisions dealing with environmental concerns. The objectives of sustainable development and environmental protection are stated in the preamble to the Agreement Establishing the WTO.

The increased emphasis on environmental policies is relatively recent. At the end of the Uruguay Round in 1994, trade ministers from participating countries decided to begin a comprehensive work programme on trade and environment in the WTO. They created the WTO Committee on Trade and Environment. This has brought environmental and sustainable development issues into the mainstream of WTO work.

### The committee: broad-based responsibility

The committee has a broad-based responsibility covering all areas of the multilateral trading system — goods, services and intellectual property. Its duties are to study the relationship between trade and the environment, and to make recommendations about any changes that might be needed in the trade agreements.

The committee's work is based on two important principles:

- The WTO is only competent to deal with trade. In other words, in environmental issues its only task is to study questions that arise when environmental policies have a significant impact on trade. The WTO is not an environmental agency. Its members do not want it to intervene in national or international environmental policies or to set environmental standards. Other agencies that specialize in environmental issues are better qualified to undertake those tasks.
- If the committee does identify problems, the solutions must continue to uphold the principles of the WTO trading system.

More generally — and this was recognized in the results of the UN Conference on Environment and Development in Rio in 1992 (the "Earth Summit") — WTO members are con-

vinced that an open, equitable and non-discriminatory multilateral trading system has a key contribution to make to national and international efforts to better protect and conserve environmental resources and promote sustainable development.

The committee's work programme focuses on 10 areas. Its agenda is driven by proposals from individual WTO members on issues of importance to them. The following sections outline some of the issues, and what the committee has concluded so far:

### WTO and environmental agreements: how are they related?

How do the WTO trading system and "green" trade measures relate to each other? What is the relationship between the WTO agreements and various international environmental agreements and conventions.

There are about 200 international agreements (outside the WTO) dealing with various environmental issues currently in force. They are called multilateral environmental agreements (MEAs).

About 20 of these include provisions that can affect trade: for example they ban trade in certain products, or allow countries to restrict trade in certain circumstances. Among them are

the Montreal Protocol for the protection of the ozone layer, the Basel Convention on the trade or transportation of hazardous waste across international borders, and the Convention on International Trade in Endangered Species (CITES).

Briefly, the WTO's committee says the basic WTO principles of non-discrimination and transparency do not conflict with trade measures needed to protect the environment, including actions taken under the environmental agreements. It also notes that clauses in the agreements on goods, services and intellectual property allow governments to give priority to their domestic environmental policies.

The WTO's committee says the most effective way to deal with international environmental problems is through the environmental agreements. It says this approach complements the WTO's work in seeking internationally agreed solutions for trade problems. In other words, using the provisions of an international environmental agreement is better than one country trying on its own to change other countries' environmental policies (*see dolphin-tuna case study*).

### 'Green' provisions

Examples of provisions in the WTO agreements dealing with environmental issues

- GATT Article 20: policies affecting trade in goods for protecting human, animal or plant life or health are exempt from normal GATT disciplines under certain conditions.
- Technical Barriers to Trade (i.e. product and industrial standards), and Sanitary and Phytosanitary Measures (animal and plant health and hygiene): explicit recognition of environmental objectives.
- Agriculture: environmental programmes exempt from cuts in subsidies
- Subsidies and Countervail: allows subsidies, up to 20% of firms' costs, for adapting to new environmental laws.
- Intellectual property: governments can refuse to issue patents that threaten human, animal or plant life or health, or risk serious damage to the environment (TRIPS Article 27).
- GATS Article 14: policies affecting trade in services for protecting human, animal or plant life or health are exempt from normal GATS disciplines under certain conditions.

The committee notes that actions taken to protect the environment and having an impact on trade can play an important role in some environmental agreements, particularly when trade is a direct cause of the environmental problems. But it also points out that trade restrictions are not the only actions that can be taken, and they are not necessarily the most effective. Alternatives include: helping countries acquire environmentally-friendly technology, giving them financial assistance, providing training, etc.

The problem should not be exaggerated. So far, no action affecting trade and taken under an international agreement has been challenged in the GATT-WTO system. There is also a widely held view that actions taken under an environ-

mental agreement are unlikely to become a problem in the WTO if the countries concerned have signed the environmental agreement, although the question is not settled completely. The Trade and Environment Committee is more concerned about what happens when one country invokes an environmental agreement to take action against another country that has not signed the environmental agreement.

### Disputes: where should they be handled?

Suppose a trade dispute arises because a country has taken action on trade (for example imposed a tax or restricted imports) under an environmental agreement outside the WTO and another country objects. Should the dispute be handled under the WTO or under the other agreement? The

Trade and Environment Committee says that if a dispute arises over a trade action taken under an environmental agreement, and if both sides to the dispute have signed that agreement, then they should try to use the environmental agreement to settle the dispute. But if one side in the dispute has not signed the environmental agreement, then the WTO would provide the only possible forum for settling the dispute. The preference for handling disputes under the environmental agreements does not mean environmental issues would be ignored in WTO disputes. The WTO agreements allow panels examining a dispute to seek expert advice on environmental issues.

### Eco-labelling: good, if it doesn't discriminate

Labelling environmentally-friendly products is an important environmental policy instrument. For the WTO, the key point is that labelling requirements and practices should not discriminate — either between trading partners (most-favoured nation treatment should apply), or between domestically-produced goods or services and imports (national treatment).

One area where the Trade and Environment Committee needs further discussion is how to handle — under the rules of the WTO agreement on Technical Barriers to Trade — labelling used to describe whether for *the way a product is produced* (as distinct from the product itself) is environmentally-friendly.

### A key question

If one country believes another country's trade damages the environment, what can it do? Can it restrict the other country's trade? If it can, under what circumstances? At the moment, there are no definitive legal interpretations, largely because the questions have not yet been tested in a legal dispute either inside or outside the WTO. But the combined result of the WTO's trade agreements and environmental agreements outside the WTO suggest:

1. **First, cooperate:** The countries concerned should try to cooperate to prevent environmental damage.
2. **The complaining country can act (e.g. on imports) to protect its own domestic environment, but it cannot discriminate.** Under the WTO agreements, standards, taxes or other measures applied to imports from the other country must also apply equally to the complaining country's own products ("national treatment") and imports from all other countries ("most-favoured-nation").
3. **If the other country is also a signatory,** then whatever action the complaining country takes is probably not the WTO's concern.
4. **What if the other country has not signed?** Here the situation is unclear and the subject of debate. Some environmental agreements say countries that have signed the agreement should apply the agreement even to goods and services from countries that have not. Whether this would break the WTO agreements remains untested because so far no dispute of this kind has been brought to the WTO. One proposed way to clarify the situation would be to rewrite the rules to make clear that countries can, in some circumstances, cite an environmental agreement when they take action affecting the trade of a country that has not signed. Critics say this would allow some countries to force their environmental standards on others.
5. **When the issue is not covered by an environmental agreement, WTO rules apply.** The WTO agreements are interpreted to say two important things. *First*, trade restrictions cannot be imposed on a product purely because of the way it has been produced. *Second*, one country cannot reach out beyond its own territory to impose its standards on another country.

### **Transparency: information without too much paperwork**

Like non-discrimination, this is an important WTO principle. Here, WTO members should provide as much information as possible about the environmental policies they have adopted or actions they may take, when these can have a significant impact on trade. They should do this by notifying the WTO, but the task should not be more of a burden than is normally required for other policies affecting trade.

The Trade and Environment Committee says WTO rules do not need changing for this purpose. The WTO Secretariat is to compile from its Central Registry of Notifications all information on trade-related environmental measures that members have submitted. These are to be put in a single database which all WTO members can access

### **Domestically prohibited goods: dangerous chemicals, etc**

This is one of the more contentious issues in the Trade and Environment Committee. It is a concern of a number of developing countries which are worried that certain hazardous or toxic products are being exported to their markets without them being fully informed about the environmental or public health dangers the products may pose. Developing countries want to be fully informed so as to be in a position to decide whether or not to import them.

A number of international agreements now exist (e.g. the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, and the London Guidelines for Exchange of Information on Chemicals in International Trade). The WTO's Trade and Environment Committee does not intend to duplicate their work but it also notes that the WTO could play a complementary role.

### **Liberalization and sustainable development: good for each other**

Does freer trade help or hinder environmental protection? The Trade and Environment Committee is analysing the relationship between trade liberalization (including the Uruguay Round commitments) and the protection of the environment. Members say the removal of trade restrictions and distortions can yield benefits both for the multilateral trading system and the environment. Further work is scheduled.

### **Intellectual property, services: some scope for study**

Discussions in the Trade and Environment Committee on these two issues have broken new ground since there was very little understanding of how the rules of the trading system might affect or be affected by environmental policies in these areas.

On services, the committee says further work is needed to examine the relationship between the General Agreement on Trade in Services (GATS) and environmental protection policies in the sector.

The committee says that the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) helps countries obtain environmentally-sound technology and products. More work is scheduled on this, including on the relationship between the TRIPS Agreement and the Convention of Biological Diversity. More work is scheduled on this.



## The tuna-dolphin dispute

This case still attracts a lot of attention because of its implications for environmental disputes. It was handled under the old GATT dispute settlement procedure. Key questions are:

- can one country tell another what its environmental regulations should be? and
- do trade rules permit action to be taken against the method used to produce goods (rather than the quality of the goods themselves)?

### What was it all about?

In eastern tropical areas of the Pacific Ocean, schools of yellowfin tuna often swim beneath schools of dolphins. When tuna is harvested with purse seine nets, dolphins are trapped in the nets. They often die unless they are released.

The US Marine Mammal Protection Act sets dolphin protection standards for the domestic American fishing fleet and for countries whose fishing boats catch yellowfin tuna in that part of the Pacific Ocean. If a country exporting tuna to the United States cannot prove to US authorities that it meets the dolphin protection standards set out in US law, the US government must embargo all imports of the fish from that country. In this dispute, Mexico was the exporting country concerned. Its exports of tuna to the US were banned. Mexico complained in 1991 under the GATT dispute settlement procedure.

The embargo also applies to “intermediary” countries handling the tuna en route from Mexico to the United States. Often the tuna is processed and canned in one of these countries. In this dispute, the “intermediary” countries facing the embargo were Costa Rica, Italy, Japan and Spain, and earlier France, the Netherlands Antilles, and the United Kingdom. Others, including Canada, Colombia, the Republic of Korea, and members of the Association of Southeast Asian Nations, were also named as “intermediaries”.

### The panel

Mexico asked for a panel in February 1991. A number of “intermediary” countries also expressed an interest. The panel reported to GATT members in September 1991. It concluded:

- that the US could not embargo imports of tuna products from Mexico simply because Mexican regulations on the way tuna was produced did not satisfy US regulations. (But the US could apply its regulations on the quality or content of the tuna imported.) This has become known as a “product” versus “process” issue.
- that GATT rules did not allow one country to take trade action for the purpose of attempting to enforce its own domestic laws in another country — even to protect animal health or exhaustible natural resources. The term used here is “extra-territoriality”.

What was the reasoning behind this ruling? If the US arguments were accepted, then any country could ban imports of a product from another country merely because the exporting country has different environmental, health and social policies from its own. This would create a virtually open-ended route for any country to apply trade restrictions unilaterally — and to do so not just to enforce its own laws domestically, but to impose its own standards on other countries. The door would be opened to a possible flood of protectionist abuses. This would conflict with the main purpose of the multilateral trading system — to achieve predictability through trade rules.

The panel’s task was restricted to examining how GATT rules applied to the issue. It was not asked whether the policy was environmentally correct or not. It suggested that the US policy could be made compatible with GATT rules if members agreed on amendments or reached a decision to waive the rules specially for this issue. That way, the members could negotiate the specific issues, and could set limits that would prevent protectionist abuse.

The panel was also asked to judge the US policy of requiring tuna products to be labelled “dolphin-safe” (leaving to consumers the choice of whether or not to buy the product). It concluded that this did not violate GATT rules because it was designed to prevent deceptive advertising practices on all tuna products, whether imported or domestically produced.

### PS. The report was never adopted

Under the present WTO system, if WTO members (meeting as the Dispute Settlement Body) do not by consensus reject a panel report after 60 days, it is automatically accepted (“adopted”). That was not the case under the old GATT. Mexico decided not to pursue the case and the panel report was never adopted even though some of the “intermediary” countries pressed for its adoption. Mexico and the United States held their own bilateral consultations aimed at reaching agreement outside GATT.

In 1992, the European Union lodged its own complaint. This led to a second panel report circulated to GATT members in mid 1994. The report upheld some of the findings of the first panel and modified others. Although the European Union and other countries pressed for the report to be adopted, the United States told a series of meetings of the GATT Council and the final meeting of GATT Contracting Parties (i.e. members) that it had not had time to complete its studies of the report. There was therefore no consensus to adopt the report, a requirement under the old GATT system. On 1 January 1995, GATT made way for the WTO.

## 5. Investment, competition, procurement, simpler procedures

Ministers from WTO member-countries decided at the 1996 Singapore ministerial conference to set up three new working groups: on trade and investment, on competition policy, and on transparency in government procurement. They also instructed the WTO Goods Council to look at possible ways of simplifying trade procedures, an issue sometimes known as “trade facilitation”.

### **Investment and competition: what role for the WTO?**

Work in the WTO on investment and competition policy issues so far has largely taken the form of specific responses to specific trade policy issues, rather than a look at the broad picture.

New decisions reached at the 1996 ministerial conference in Singapore change the perspective. The ministers decided to set up two working groups to look more generally at the relationships between trade, on the one hand, and investment and competition policies, on the other.

The working groups’ tasks are analytical and exploratory. They will not negotiate new rules or commitments. The ministers made clear that no decision has been reached on whether there will be negotiations in the future, and that any discussions cannot develop into negotiations without a clear consensus decision. Both working groups must report to the General Council which will decide at the end of 1998 what should happen next.

The ministers also recognized the work underway in the UN Conference on Trade and Development (UNCTAD) and other international organizations. The working groups are to cooperate with these organizations so as to make best use of available resources and to ensure that development issues are fully taken into account.

An indication of how closely trade is linked with investment is the fact that about one-third of the \$6.1 trillion total for world trade in goods and services in 1995 was trade within companies — for example between subsidiaries in different countries or between a subsidiary and its headquarters.

The close relationships between trade and investment and competition policy have long been recognized. One of the intentions, when GATT was drafted in the late 1940s, was for rules on investment and competition policy to exist alongside those for trade in goods. (The other two agreements were not completed because the attempt to create an International Trade Organization failed.)

Over the years, GATT and the WTO have increasingly dealt with specific aspects of the relationships. For example, one type of trade covered by the General Agreement on Trade in Services (GATS) is the supply of services by a foreign company setting up operations in a host country — i.e. through foreign investment. The Trade-Related Investment Measures Agreement says investors’ right to use imported goods as inputs should not depend on their export performance.

The same goes for competition policy. GATT and GATS contain rules on monopolies and exclusive service suppliers. The principles have been elaborated considerably in the rules and commitments on telecommunications. The agreements on intellectual property and services both recognize governments’ rights to act against anti-competitive practices, and their rights to work together to limit these practices.

### **Transparency in government purchases: towards multilateral rules**

The WTO already has an Agreement on Government Procurement. It is plurilateral — only some WTO members have signed it so far. The agreement covers such issues as transparency and non-discrimination.

The decision by WTO ministers at the 1996 Singapore conference does two things. It sets up a working group that is multilateral — it includes all WTO members. And it focuses the group’s work on transparency in government procurement practices. The group will not look at preferential treatment for local suppliers, so long as the preferences are not hidden.

The first phase of the group’s work is to study transparency in government procurement practices, taking into account national policies. The second phase is to develop elements for inclusion in an agreement.

### **Trade facilitation: a new high profile**

Once formal trade barriers come down, other issues become more important. For example, companies need to be able to acquire information on other countries’ importing and exporting regulations and how customs procedures are handled. Cutting red-tape at the point where goods enter a country and providing easier access to this kind of information are two ways of “facilitating” trade.

The 1996 Singapore ministerial conference instructed the WTO Goods Council to start exploratory and analytical work “on the simplification of trade procedures in order to assess the scope for WTO rules in this area”.

## 6. Electronic commerce

A new area of trade involves goods crossing borders electronically. Broadly speaking, this is the production, advertising, sale and distribution of products via telecommunications networks. The most obvious examples of products distributed electronically are books, music and videos transmitted down telephone lines or through the Internet.

At the 1998 ministerial meeting in Geneva, WTO members agreed to study trade issues arising from global electronic commerce. The work will take into account the economic, financial, and development needs of developing countries, and recognizes that work is also being undertaken in other international bodies. A report, possibly with recommendations, will be submitted to the third ministerial meeting, which is scheduled to be held in the United States in 1999.

In the meantime, WTO members also agreed to continue their current practice of not imposing customs duties on electronic transmissions.

## 7. Labour standards: not on the agenda

Strictly speaking, this should not be mentioned here at all because there is no work on the subject in the WTO, and it would be wrong to assume that it is a subject that “lies ahead”. But it has been discussed so extensively, that some clarification is needed. The key phrase is “core labour standards” — essential standards applied to the way workers are treated. The term covers a wide range of things: from use of child labour and forced labour, to the right to organize trade unions and to strike.

### Trade and labour rights: deferred to the ILO

Trade and labour standards is a highly controversial issue. At the 1996 Singapore Ministerial Conference, WTO members defined the organization’s role more clearly, identifying the International Labour Organization (ILO) as the competent body to deal with labour standards. There is currently no work on the subject in the WTO.

The debate outside the WTO has raised three broad questions.

- **The legal question:** should trade action be permitted as a means of putting pressure on countries considered to be severely violating core labour rights?
- **The analytical question:** if a country has lower standards for labour rights, do its exports gain an unfair advantage?
- **The institutional question:** is the WTO the proper place to discuss labour?

All three questions have a political angle: whether trade actions should be used to impose labour standards, or whether this would simply be an excuse for protectionism.

The WTO agreements do not deal with any core labour standards. But some industrial nations believe the issue should be studied by the WTO as a first step toward bringing the matter of core labour standards into the organization. WTO rules and disciplines, they argue, would provide a powerful incentive for member nations to improve workplace conditions.

Many developing and some developed nations believe the issue has no place in the

### The official answer

#### What the 1996 Singapore ministerial declaration says on core labour standards

“We renew our commitment to the observance of internationally recognized core labour standards. The International Labour Organization (ILO) is the competent body to set and deal with these standards, and we affirm our support for its work in promoting them. We believe that economic growth and development fostered by increased trade and further trade liberalization contribute to the promotion of these standards. We reject the use of labour standards for protectionist purposes, and agree that the comparative advantage of countries, particularly low-wage developing countries, must in no way be put into question. In this regard, we note that the WTO and ILO Secretariats will continue their existing collaboration.”

WTO framework. These nations argue that efforts to bring labour standards into the arena of multilateral trade negotiations are little more than a smokescreen for protectionism. Many officials in developing countries believe the campaign to bring labour issues into the WTO is actually a bid by industrial nations to undermine the comparative advantage of lower wage trading partners.

In the weeks leading up to the 1996 Singapore Ministerial Conference, and during the meeting itself, this was a hard-fought battle. In the end, WTO members said they were committed to recognized core labour standards, and that these standards should not be used for protectionism. The economic advantage of low-wage countries should not be questioned, but the WTO and ILO secretariats would continue their existing collaboration, the declaration said. The concluding remarks of the chairman, Singapore’s trade and industry minister, Mr Yeo Cheow Tong added that the declaration does not put labour on the WTO’s agenda. The countries concerned might continue their pressure for more work to be done in the WTO, but for the time being there are no committees or working parties dealing with the issue.

# Developing countries

## 1. Overview

About two thirds of the WTO's around 140 members are developing countries. They are expected to play an increasingly important role in the WTO because of their numbers and because they are becoming more important in the global economy. The WTO deals with the special needs of developing countries in three ways:

- the WTO agreements contain special provisions on developing countries
- the Committee on Trade and Development oversees work in this area in the WTO
- the WTO Secretariat provides technical assistance (mainly training of various kinds) for developing countries.

### **In the agreements: more time, better terms**

The WTO agreements include numerous provisions dealing with developing and least-developed countries.

The General Agreement on Tariffs and Trade (GATT, which deals with trade in goods) has a special section (Part 4) on Trade and Development which includes provisions on the concept of non-reciprocity in trade negotiations between developed and developing countries — when developed countries grant trade concessions to developing countries they should not expect the developing countries to make matching offers in return.

GATT also enables countries to grant special concessions to developing countries without having to do the same for the entire membership, known as “special and differential treatment”. The General Agreement on Trade in Services (GATS) similarly allows developing countries some preferential treatment under the heading “Economic Integration” (Part 5 of GATS).

Other measures concerning developing countries in the WTO agreements include:

- extra time for developing countries to fulfil their commitments (in most of the WTO agreements)
- provisions designed to increase developing countries' trading opportunities through greater market access (e.g. in textiles, services, technical barriers to trade)
- provisions requiring WTO members to safeguard the interests of developing countries when adopting some domestic or international measures (e.g. in anti-dumping, safeguards, technical barriers to trade)
- provisions for various means of supporting developing countries (e.g. in helping them deal with commitments on animal and plant health standards, technical standards, and assisting them in strengthening their domestic telecommunications sectors).

### **Legal assistance: a secretariat service**

The WTO Secretariat has special legal advisers for assisting developing countries in any WTO dispute and for giving them legal counsel. The service is offered by the WTO's Technical Cooperation Division, and a number of developing countries have already made use of it.

### **Least-developed countries: special focus**

The least-developed countries receive extra attention in the WTO. When the Uruguay Round ended in Marrakesh in 1994, ministers suggested that the lower tariffs and lower non-tariff barriers committed on products of interest to this group of countries could be introduced ahead of schedule. They recognized concern that some of the commitments could have a negative impact on some least-developed countries — for example reducing agricultural export subsidies could raise the prices of some foods that these countries import. The ministers therefore issued a “decision” (which also applies to any developing country that is a net importer of food) stating that the situation should be monitored in the Agriculture Committee. The decision also states that these are eligible for aid to help them adjust, from other WTO members and from international financial institutions such as the World Bank and International Monetary Fund.

Two years later at their first ministerial conference in Singapore in 1996, WTO members agreed on a Plan of Action for Least-Developed Countries. This envisages special efforts to assist the world’s poorest countries, including help to improve their ability to participate in the multilateral system. Developed countries promised to examine how they could improve access to their markets for imports from the least-developed countries, including the possibility of removing tariffs completely.

In addition, a least-developed country involved in a dispute can ask the WTO director general or the chairman of the Dispute Settlement Body to help settle the dispute through conciliation, mediation or other means (known as providing “good offices”). This route to settling a dispute is available in all cases, but normally both sides have to agree. But if a least developed country makes the request after the first stage (i.e. the stage of consultations between the two sides) has failed to produce a solution then the director general or Dispute Settlement Body chairman have to offer their services to try to help settle the dispute before a request for a panel is made.

### **1997 event: high-level meeting of least-developed countries**

One result of the action plan has been a ministerial meeting of least-developed countries held in Geneva in October 1997. The WTO organized the meeting jointly with the UN Conference on Trade and Development (UNCTAD) and the International Trade Centre (ITC). Also participating were a number of international economic and financial institutions such as the World Bank, International Monetary Fund and UN Development Programme. The meeting developed a common, integrated approach for assisting these countries make more effective use of the trading system. It also provided an opportunity for more developed countries to improve least-developed countries’ access to their markets.

### **A ‘maison’ in Geneva: being present is important, but not easy for all**

The WTO’s official business takes place mainly in Geneva. So do the unofficial contacts that can be equally important. But having a permanent office of representatives in Geneva can be expensive. Only about one-third of the 30 or so least-developed countries in the WTO have permanent offices in Geneva, and they cover all United Nations activities as well as the WTO.

As a result of the negotiations to locate the WTO head quarters in Geneva, the Swiss government has agreed to provide free office space for delegations from least-developed countries. Eventually this will take the form of a “Maison Universelle” (universal house), but before that is completed the Swiss government is already making rent-free space available.

A number of WTO members also provided financial support for ministers and accompanying officials from least-developed countries to help them attend the ministerial conferences in Singapore (1996) and Geneva (1998).

## 2. Committees

Work specifically on developing countries within the WTO itself can be divided into two broad areas: (i) work of the WTO Committee on Trade and Development and its Subcommittee on Least Developed Countries (this heading), and (ii) training for government officials (and others) by the WTO Secretariat as mandated by the committee (next heading)

### Trade and Development Committee

The WTO Committee on Trade and Development has a wide-ranging mandate. Among the broad areas of topics it has tackled as priorities are: how provisions favouring developing countries are being implemented, guidelines for technical cooperation, increased participation of developing countries in the trading system, and the position of least developed countries.

Member-countries also have to inform the WTO about special programmes involving trade concessions for products from developing countries, and about regional arrangements among developing countries. The Trade and Development Committee has handled notifications of:

- Generalised System of Preferences programmes (in which developed countries lower their trade barriers preferentially for products from developing countries)
- preferential arrangements among developing countries such as MERCOSUR (the Southern Common Market in Latin America), the Common Market for Eastern and Southern Africa (COMESA), and the ASEAN Free Trade Area (AFTA)

### Subcommittee on Least Developed Countries

The Subcommittee on Least Developed Countries reports to the Trade and Development Committee, but it is an important body in its own right. Its work has focused on two related issues:

- ways of integrating least developed countries into the multilateral trading system
- technical cooperation.

The subcommittee also examines periodically how special provisions favouring least developed countries in the WTO agreements are being implemented. It has identified two main contributions that the WTO could make to help least developed countries integrate better into the multilateral trading system:

- to ensure least developed countries are the priority for technical cooperation provided by the WTO and that this focuses on helping least developed countries create the capacity to build the necessary institutions and on training the people whose expertise is needed
- preparing a WTO Plan of Action for Least-Developed Countries.

In 1997, the subcommittee's work focused largely on the High-Level Meeting on Least-Developed Countries.

### Analysis: the 1996 secretariat paper

The task of monitoring developing-country issues includes economic analysis. In 1996 the Trade and Development Committee asked the WTO Secretariat to prepare a paper on *Participation of Developing Countries in World Trade: Overview of Major Trends and Underlying Factors*. The paper focuses on the reasons why most developing countries in Asia have a "very positive" performance in international trade, while a number of the poorest countries around the world have a "very disappointing" performance.

The developing countries' share of world goods trade peaked in 1980 at 28% and then declined until the second half of the 1980s, the paper observes. After that, petroleum prices bottomed out and the developing countries' share of goods trade started to grow again. At the same time, developing countries as a whole have enjoyed above average rates of economic growth and they have seen an increase in the proportion of manufactured goods in their exports — they are becoming less dependent on exports of primary products such as mining.

The paper also notes that evidence from least developed countries since 1980 shows that countries with strong export performance also tend to have a larger share of manufactured goods among their merchandise exports, a larger share of manufacturing in their economies (gross domestic product), and a larger share of investment in GDP.

This paper looks at some factors which are generally believed to play a role in explaining the degree of participation in world trade. Important externally are: access to foreign markets and to capital inflows, for example. Important domestically can be: trade policies, participation in the WTO, whether a country's exports are concentrated in a few products or a few markets, and macroeconomic policies such as the government budget, interest rates and exchange rates. All of these factors interact in complex ways, the paper says.

The committee's reactions on the policy implications fell broadly into two groups: some countries said different domestic economic policies were more important reasons for different growth rates among developing countries; others said trade barriers and other external factors were more important.

### 3. WTO technical cooperation

Technical cooperation is an area of WTO work that is devoted entirely to helping developing countries (and countries in transition from centrally-planned economies) operate successfully in the multilateral trading system. The objective is to help build the necessary institutions and to train officials. The subjects covered deal both with trade policies and with effective negotiation.

#### **Training, seminars and workshops**

The WTO holds regular training sessions on trade policy in Geneva. In addition, until early 1999, the WTO organized almost 300 technical cooperation activities, including seminars and workshops in various countries and courses in Geneva.

Targeted are developing countries and countries in transition from former socialist or communist systems, with a special emphasis on African countries. Seminars have also been organised in Asia, Latin America, the Caribbean, Middle East and Pacific.

Funding for technical cooperation and training comes from three sources: the WTO's regular budget, voluntary contributions from WTO members, and cost-sharing either by the host country of an event or by other countries.

The present regular WTO budget for technical cooperation is 636,000 Swiss francs and for training 1.5 million Swiss francs.

Funding contributed by member countries take many forms and can be administered by the WTO Secretariat or the donor country. They are mostly earmarked for specific activities under the joint decision of the WTO Secretariat and the donors (*see also Organization: Special Policies*).

The WTO Reference Center programme was initiated in 1997 with the objective of creating a network of computerized information centers in least-developed and developing countries. The Centers provide access to WTO information and documents through a print library, a CD-ROM collection and through the Internet to WTO websites and databases. The Centers are located mainly in trade ministries and in the headquarters of regional coordination organizations. There are currently over 100 Reference Centers.

## 4. Issues

The Uruguay Round (1986-94) saw a shift in North-South politics in the GATT-WTO system. Previously, developed and developing countries had tended to be in opposite groups, although even then there were exceptions. In the run up to the Uruguay Round, the line between the two became less rigid, and during the round different alliances developed, depending on the issues.

In some issues, the divide still appears clear — in textiles and clothing, and some of the newer issues debated in the WTO, for example. In many others, the developing countries do not necessarily share common interests and they may not adopt common positions.

Around the world, the issues are hotly debated: this is a summary of some of the issues discussed.

### Participation in the system: opportunities and concerns

The WTO agreements, which were the outcome of the 1986-94 Uruguay Round of trade negotiations, provide numerous opportunities for developing countries to make gains. But a number of problems will remain.

Among the gains are export opportunities. They include:

- fundamental reforms in agricultural trade
- the decision to phase out quotas on developing countries' exports of textiles and clothing
- reductions in customs duties on industrial products
- expanding the number of products whose customs duty rates are "bound" under the WTO, making the rates difficult to raise
- phasing out bilateral agreements to restrict traded quantities of certain goods — these "grey area" measures are not really recognized under GATT-WTO.

In addition, the Uruguay Round agreements will boost global GDP and stimulate world demand for developing countries' exports. The market access (reduced tariffs) part of the Uruguay Round agreements for goods alone is estimated to give a lift to world GDP of \$120 billion to \$315 billion (measured in 1992 dollars) by the time the agreements are fully implemented. Part of this increase will be spent on goods and services exported by developing countries.

But concern has been expressed about exceptionally high tariffs on selected products ("tariff peaks") in important markets will continue to obstruct exports "of critical interest to" developing countries. Examples include tariff peaks on textiles, clothing, and fish and fish products. The result is that on average industrial countries made slightly smaller reductions in their tariffs on products which are mainly exported by developing countries (37%), than on imports from all countries (40%). At the same time, the potential for developing countries to trade with each other is also hampered by the fact that the highest tariffs are sometimes in developing countries themselves. But the increased proportion of trade covered by "bindings" (committed ceilings that are difficult to remove) will add security to developing country exports.

A related issue is "tariff escalation", where an importing country protects its processing or manufacturing industry by setting lower duties on materials imports and higher duties on finished products. The situation is improving. Tariff escalation remains after the Uruguay Round, but it is less severe, with a number of developed countries eliminating escalation on selected products.

"[The political message from the Singapore ministerial conference] should be a message of unity among industrial and developing countries, and one of determination to help the least-developed countries come in from the margins through bold and specific measures. This ... is a particularly urgent need. An interdependent world means that we are all in the same boat together, and no one can watch with equanimity while the other end of the boat sinks."

Renato Ruggiero,  
Director general, World Trade Organization

"The GATT Uruguay Round deal produced losers as well as winners, and the losers — mostly in Africa and the Caribbean — are some of the poorest countries in the world.

As a result of the deal, the losers will face higher costs to feed their people as the price of cereals increases on world markets, they will face declining terms of trade and they will see the value of their current trading preferences with Europe undermined."

Peter Madden  
The Poor Get Poorer, Christian Aid, 1994



At the same time, developing countries are increasing their contribution to the multilateral trading system. The UNCTAD/WTO report notes a dramatic increase in the binding of developing country tariffs from 13% to 61% of industrial product imports, offering the potential for developing countries to increase their exports to each other, particularly in Asia.

### **Erosion of preferences:**

An issue that has worried developing countries has been the erosion of preferences — special tariff concessions granted by developed countries on imports from certain developing countries become less meaningful if the normal tariff rates are cut because the difference between the normal and preferential rates is reduced.

Just how valuable these preferences are is a matter of debate. Unlike regular WTO tariff commitments, they are not “bound” under WTO agreements and therefore they can be changed easily. They are often given unilaterally, at the initiative of the importing country. This makes trade under preferential rates less predictable than under regular bound rates which cannot be increased easily. Ultimately countries stand to gain more from regular bound tariff rates.

But some countries and some companies have benefited from preferences. The gains vary from product to product, and they also depend on whether producers can use the opportunity to adjust so that they remain competitive after the preferences have been withdrawn.

### **The ability to adapt: the supply-side**

Can developing countries benefit from the changes? Yes, but only if their economies are capable of responding. This depends on a combination of actions: from improving policy-making and macroeconomic management, to boosting training and investment. The least developed countries are worst placed to make the adjustments because of lack of human and physical capital, poorly developed infrastructures, poorly functioning institutions, and political instability.

### **‘Peaks’ and ‘escalation’: what are they?**

**Tariff peaks:** Most import tariffs are now quite low, particularly in developed countries. But for a few products that governments consider to be sensitive — they want to protect their domestic producers — tariffs remain high. These are “tariff peaks”. Some affect exports from developing countries.

**Tariff escalation:** If a country wants to protect its processing or manufacturing industry, it can set low tariffs on imported materials used by the industry (cutting the industry’s costs) and set higher tariffs on finished products to protect the goods produced by the industry. This is “tariff escalation”. When importing countries escalate their tariffs in this way, they make it more difficult for countries producing raw materials to process and manufacture value-added products for export. Tariff escalation exists in both developed and developing countries. Slowly, it is being reduced.

“The industrialized countries, which make up only 20% of the membership of GATT, will appropriate 70% of the additional income to be generated by the implementation of the Uruguay Round.”

Luis Fernando Jaramillo  
Former chair, Group of 77, and Colombian ambassador

“... In many instances translating these multilateral trade rights into concrete trade advantages requires action by governments with active support of the business community. Many developing countries and countries in transition have found themselves poorly equipped in terms of institutions and human and financial resources dedicated to this objective.”

UNCTAD/WTO  
Strengthening the participation of developing countries in world trade and the multilateral trading system, 1996

## Some common themes

*Underlying many of these answers are a number of common themes:*

Trade rules are important for small and medium-size countries. The WTO provides a rules-based multilateral trading system. All members have both rights and obligations. The alternative is bilateral commercial relations based on economic and political power — small countries are then at the mercy of the larger trading powers. Differences in influence between individual countries remain, of course, but even the smallest WTO member has a wide range of rights which are enforceable under the WTO's impartial dispute settlement procedures.

Open, market oriented economies are more likely to be successful. Countries with heavy government intervention and high trade barriers are less likely to be successful in promoting economic development.

Obligations don't have to be a burden — they can be helpful. Every nation rightly wants to safeguard its economic sovereignty. Most would rather introduce economic reforms on their own, without outside pressure. But the reforms can be delayed or blocked by domestic special interest groups which put their own economic welfare ahead of that of the country as a whole. In such cases, the need to fulfil multilateral obligations can assist a government to promote economic growth and development through economic reform. In similar ways, the opportunity to engage in reciprocal trade negotiations with WTO partners — a country succeeding in obtaining lower trade barriers for some of its exports in return for lowering its own barriers on imports, for example — can also help a government overcome domestic special interest groups interested only in protecting their own privileged positions at the expense of the rest of the population.

If low-income countries gain, everyone gains. The developed countries and the more advanced developing countries have a stake in the future economic performance of the lower-income developing countries. It is therefore in their interest to open wider their markets for goods and services that the lower-income countries export or could export in the future. It is also in their interest to provide generous assistance to help the lower-income developing countries overcome domestic supply constraints and to participate more fully in WTO activities.

## Q&A A declaration of independence

### What do the lower-income developing countries really gain from the Uruguay Round?

A stronger rule-based system, more power when the WTO handles disputes, a strengthened hand in introducing domestic reforms, special provisions for developing countries in the WTO agreements. A declaration of economic and political independence.

### Is it true, as some claim, that Africa and the LDCs will be net losers from the Uruguay Round?

The claim simply does not stand up under close examination. Indeed, from some points of view, some of these countries may well end up among the principal gainers from the Uruguay Round. They are likely to gain from a strengthened multilateral trading system, from the phase-out of quantitative restriction on textiles and other products, and from the opportunities to use new WTO obligations to promote badly needed domestic economic reforms.

### What about the erosion of preference margins?

This is one of two main arguments behind the claim that the LDCs are losers. But the quantitative importance of preference erosion appears likely to be modest at most. This does not mean that preference erosion will have no effect. There will be particular products in particular markets where holding on to market share will be difficult. But the evidence simply does not support the view that preference erosion will lead to important overall losses for Africa and the LDCs.

### What about net food-importing countries?

This is the other basis for the claim that many lower-income developing countries may lose from the Uruguay Round. The argument is that the agricultural reforms will lead to increases in world market prices for certain food products, as producers in the OECD countries respond to reductions in support. This possibility is explicitly recognized in a ministerial decision which established, among other things, an annual review process by the Committee on Agriculture.

While there are differences of opinion as regards both the potential for important food price increases from the Agreement on Agriculture, and the extent to which some such increases may have already occurred, it is clear that the situation will be monitored closely by the WTO Committee on Agriculture.

### How can the lower income developing countries exploit the improved market access negotiated in the Uruguay Round, and how can they diversify their exports?

This is a genuine challenge. The answer lies in a combination of measures: from improving policy-making and macroeconomic management, to boosting training and investment. It is now widely accepted that the major obstacle to increased trade and growth in the lower-income developing countries is the inadequate response of domestic producers ("supply constraints") to market access opportunities abroad. Removing, or at least significantly reducing, domestic supply constraints in these countries must be a priority.

**Is it true that the intellectual property (TRIPS) Agreement protects mainly the intellectual property of large multinational firms — the big pharmaceutical companies, firms producing seeds and other agricultural inputs? Will the TRIPS Agreement worsen inequalities? After all, the developing countries did not want to negotiate intellectual property.**

Developing countries are not only users of foreign intellectual property. They are also producers and could gain from intellectual property protection. Many were already introducing intellectual property protection regimes before the end of the Uruguay Round.

Also, it is in the nature of GATT/WTO negotiations that all participants are expected to make contributions. Each country makes concessions in certain areas of the negotiations in order to obtain what it wants in other areas.

Developing countries were not demandeurs in the Trade-related Intellectual Property Rights (TRIPS) negotiations, but their acceptance of the TRIPS agreement was an important contribution to the success of the Uruguay Round and the creation of the WTO — which they clearly consider to be in their interests, given that most either already are full members or are seeking to join.

**According to the WHO millions of people in developing countries will die as a result of higher prices for new patent-protected vaccines. Some critics say the TRIPS agreement increases inequalities between countries at different stages of their development, and also that bio-technological developments could worsen the imbalance. Is WTO concerned?**

The TRIPS agreement itself will not have a major impact since pharmaceutical patent protection is now standard in most countries and only a few essential drugs will be affected. The

agreement does allow governments to take action against abuse of patent protection, and for seeds farmers' privilege cannot be prevented.

Most developing countries already provide patent protection for pharmaceutical products — at present only 11 WTO members have notified that they do not yet do so. Several have decided to introduce protection more rapidly than required by the TRIPS agreement. Therefore, the number of countries affected is quite limited and the impact in these countries will be gradual, only becoming fully applicable by 2015.

**How can lower-income countries make their voices heard, defend their interests and influence the evolution of the WTO?**

By participating actively. But that requires human and financial resources in capitals and in Geneva. The problem is seen as a priority in the WTO.

This is a major challenge because of the way the WTO functions. The WTO is "member-driven" because the member countries play an active role in the WTO's day-to-day activities. To operate effectively — to be heard and to defend the country's interests — in that working environment requires money and people. One step that can help is for groups of countries to coordinate their efforts and work out a division of labour.

**What is the WTO doing about it?**

Nearly 200 technical cooperation activities in two years, conferences, financial support from richer WTO members to help least developed countries participate.

Africa continues to be covered in large measure under two specific programmes: the Integrated Technical Assistance Programme in Selected Least-Developed and other African Countries, and the series of regional seminars organized jointly by the WTO, the ACP Secretariat and the European Union.

In 1995, Norway provided US\$2.5 million for the establishment of a WTO Trust Fund for the least developed countries. A number of high level conferences have also been organized.

An outcome of the 1996 Singapore Ministerial Conference was a decision to hold a high-level meeting in Geneva in early 1997, to foster an integrated approach to the trade-related aspects of the least-developed countries' economic development.

**What might the least developed countries do about it?**

Along with domestic adjustments, they might also treat as a priority their preparations for future negotiations.

The objective is for a country to express its point of view effectively, to defend its interests in the WTO, to influence the WTO's future evolution, and to influence future negotiations. Institution-building and human resource development in trade policy are the keys. This must be a priority goal of external financial assistance, technical cooperation and — most important of all — each country's own efforts.

Least developed countries should identify issues of particular importance to them. For example they could seek tariff negotiations aimed at:

- reducing remaining tariff peaks (exceptionally high tariffs protecting sensitive sectors) in the developed countries
- reducing the relatively high levels of protection in several of the more advanced developing countries
- reducing tariff escalation in all their actual and potential trading partners.

The Uruguay Round saw progress in each of these, but there is considerable scope for further progress in the next negotiating round.

# The Organization

## 1. Whose WTO is it anyway?

The WTO is run by its member governments. All major decisions are made by the membership as a whole, either by ministers (who meet at least once every two years) or by officials (who meet regularly in Geneva). Decisions are normally taken by consensus.

In this respect, the WTO is not like some other international organizations such as the World Bank and International Monetary Fund. In the WTO, power is not delegated to a board of directors, and the bureaucracy has no influence over individual countries' policies (although some analytical comments are made in the regular trade policy reviews).

When WTO rules impose disciplines on countries' policies, that is the outcome of negotiations among WTO members. The rules are enforced by the members themselves under agreed procedures that they negotiated. Sometimes enforcement includes the threat of trade sanctions. But those sanctions are imposed by member countries, not by the organization. This is quite different from other agencies which can, for example, withhold credit from a country.

Reaching decisions by consensus among 140 or more members can be difficult. Its main advantage is that decisions made this way are more acceptable to all members. And despite the difficulty, some remarkable agreements have been reached. Nevertheless, proposals for the creation of a smaller executive body — perhaps like a board of directors each representing different groups of countries — are heard periodically. But for now, the WTO is a member-driven, consensus-based organization.

### Highest authority: the Ministerial Conference

So, the WTO belongs to its members. The countries make their decisions through various councils and committees, whose membership consists of all WTO members. Topmost is the ministerial conference which has to meet at least once every two years. (Ministers met in Singapore in December 1996 and Switzerland in 1998.) The 1999 meeting will be in the United States. The ministerial conference can take decisions on all matters under any of the multilateral trade agreements.

### Second level: General Council in three guises

Day-to-day work in between the ministerial conferences is handled by three bodies:

- The General Council
- The Dispute Settlement Body
- The Trade Policy Review Body

All three are in fact the same — the Agreement Establishing the WTO states they are all the General Council, although they meet under different terms of reference. Again, all three consist of all WTO members. They report to the Ministerial Conference.

The General Council acts on behalf of the ministerial conference on all WTO affairs. It meets as the Dispute Settlement Body and the Trade Policy Review Body to oversee procedures for settling disputes between members and to analyze members' trade policies.

## Voting is possible, too

The WTO continues GATT's tradition of making decisions not by voting but by consensus. This allows all members to ensure their interests are properly considered even though, on occasion, they may decide to join a consensus in the overall interests of the multilateral trading system.

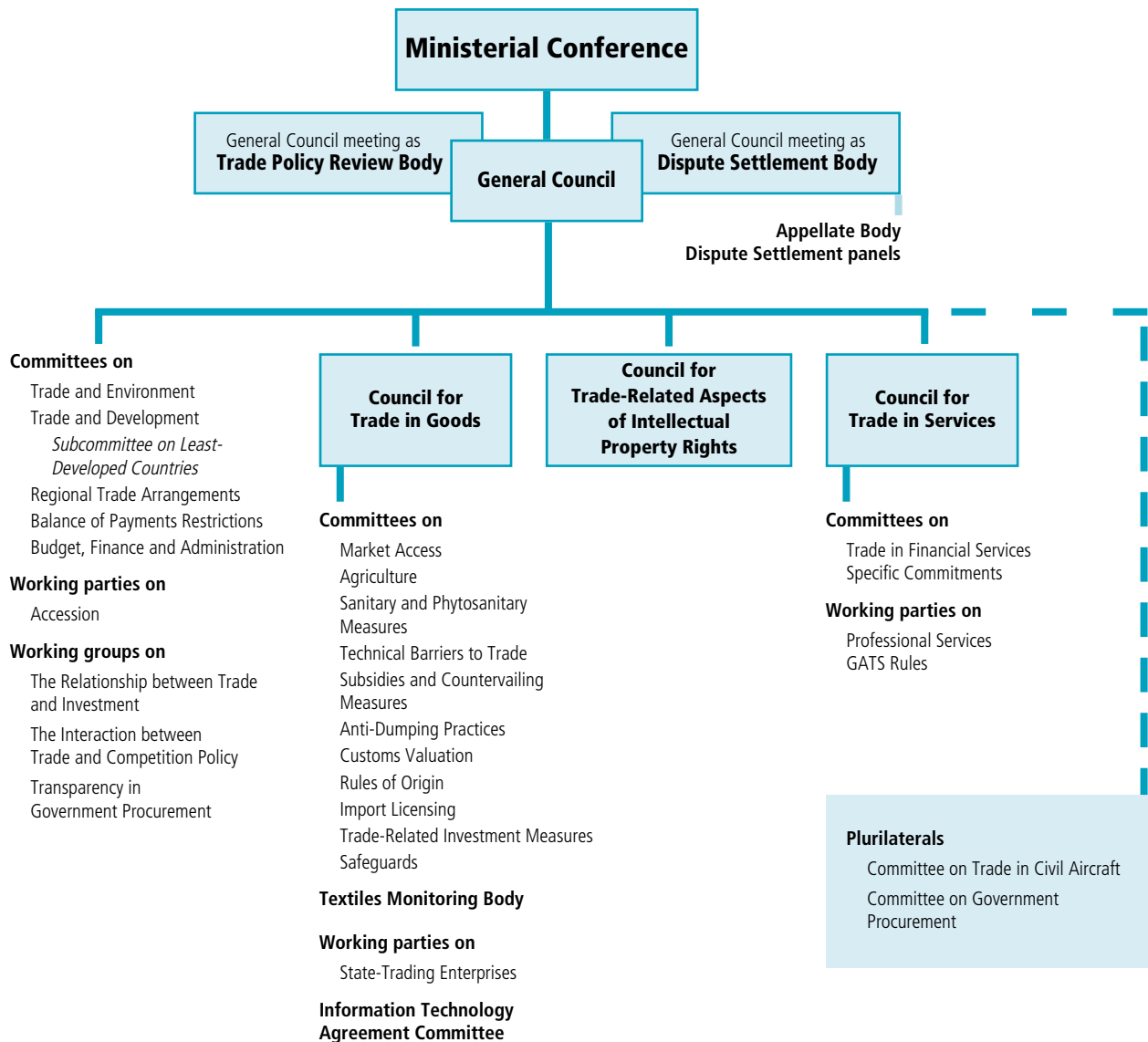
Where consensus is not possible, the WTO agreement allows for voting — a vote being won with a majority of the votes cast and on the basis of "one country, one vote".

The WTO Agreement envisages four specific situations involving voting:

- An interpretation of any of the multilateral trade agreements can be adopted by a majority of three-quarters of WTO members.
- The Ministerial Conference can waive an obligation imposed on a particular member by a multilateral agreement, also through a three-quarters majority.
- Decisions to amend provisions of the multilateral agreements can be adopted through approval either by all members or by a two-thirds majority depending on the nature of the provision concerned. But the amendments only take effect for those WTO members which accept them.
- A decision to admit a new member is taken by a two-thirds majority in the Ministerial Conference, or the General Council in between conferences.

## WTO Structure

All WTO members may participate in all councils, etc, except Appellate Body, Dispute Settlement panels, Textiles Monitoring Body, and plurilateral committees and councils.



### Key

- Reporting to General Council (or a subsidiary)
- Reporting to Dispute Settlement Body
- Plurilateral committees inform the General Council of their activities although these agreements are not signed by all WTO members

The General Council also meets as the Trade Policy Review Body and Dispute Settlement Body

## Alternative view

“The WTO will likely suffer from slow and cumbersome policy-making and management — an organization with more than 120 member countries cannot be run by a ‘committee of the whole’. Mass management simply does not lend itself to operational efficiency or serious policy discussion.

Both the IMF and the World Bank have an executive board to direct the executive officers of the organization, with permanent participation by the major industrial countries and weighted voting. The WTO will require a comparable structure to operate efficiently. ... [But] the political orientation of smaller ... members remains strongly opposed.”

Jeffrey J Schott  
Institute for International Economics,  
Washington

## Third level: councils for each broad area of trade, and more

Three more councils, each handling a different broad area of trade, report to the General Council:

- The Council for Trade in Goods (Goods Council)
- The Council for Trade in Services (Services Council)
- The Council for Trade-Related Aspects of Intellectual Property (TRIPS Council)

As their names indicate, the three are responsible for the workings of the WTO agreements dealing with their respective areas of trade. Again they consist of all WTO members. The three also have subsidiary bodies (*see below*).

Six other bodies report to the General Council. The scope of their coverage is smaller, so they are “committees”. But they still consist of all WTO members. They cover issues such as trade and development, the environment, regional trading arrangements, and administrative issues. The Singapore Ministerial Conference in December 1996 decided to create new working groups to look at investment and competition policy, transparency in government procurement, and trade facilitation.

Two more subsidiary bodies dealing with the plurilateral agreements (which are not signed by all WTO members) keep the General Council informed of their activities regularly.

## Fourth level: down to the nitty-gritty

Each of the higher level councils has subsidiary bodies. The **Goods Council** has 11 committees dealing with specific subjects (such as agriculture, market access, subsidies, anti-dumping measures and so on). Again, these consist of all member countries. Also reporting to the Goods Council is the Textiles Monitoring Body, which consists of a chairman and 10 members acting in their personal capacities, and groups dealing with notifications (governments informing the WTO about current and new policies or measures) and state trading enterprises.

The **Services Council** has seen some changes in its subsidiary bodies. The completion of the basic telecommunications negotiations in February 1997 meant the end of the negotiating group, at least until the new services negotiating round starts in 2000. The same could happen to the financial services negotiating group later in 1997. In theory, the negotiating group on maritime services still exists, but with the talks suspended until 2000, the group is unlikely to be active. Other subsidiaries deal with professional services, GATS rules and specific commitments.

At the General Council level, the **Dispute Settlement Body** also has two subsidiaries: the dispute settlement “panels” of experts appointed to adjudicate on unresolved disputes, and the Appellate Body that deals with appeals.

### Goods Council’s committees

Market access  
Agriculture  
Sanitary and phytosanitary measures  
Textiles Monitoring Body  
Technical barriers to trade  
Subsidies and countervail  
Anti-dumping  
Customs valuation  
Rules of origin  
Import licensing  
Investment measures  
Safeguards  
Notifications (working group)  
State trading (working party)  
Preshipment inspection (working party)

### **'HODs' and other bods: where the action is**

It could be said that important breakthroughs are rarely made in any of these formal bodies, least of all in the higher level councils. With consensus and without voting, informal consultations within the WTO — and even outside — play a vital role in bringing a vastly diverse membership round to an agreement.

One step away from the formal meetings are informal meetings that still include the full membership, such as those of the Heads of Delegations (HOD). More difficult issues have to be thrashed out in smaller groups. For much of the Uruguay Round, a system of so-called Green Room meetings was established, involving perhaps as many as 40 countries most interested in the particular issue under discussion.

Occasionally a deadlock can only be broken in a small group of two, three or four countries, sometimes at meetings they have organized themselves in their own countries. In a market access negotiation, where the final outcome is a multilateral package of individual countries' commitments, those commitments are the result of numerous bilateral, informal bargaining sessions. (Examples include the traditional tariff negotiations, and talks on basic telecommunications in services and on information technology products.)

To this day, informal consultations in various forms play a vital role in allowing consensus to be reached, but they never appear in organization charts. They are not separate from the formal meetings, however. They are necessary for making formal decisions in the councils and committees. Nor are the formal meetings unimportant. They are the forums for exchanging views, putting countries' positions on the record, and ultimately for confirming decisions. The art of achieving agreement among all WTO members is to strike an appropriate balance, so that a breakthrough achieved among only a few countries can be acceptable to the rest of the membership.

## **2. Membership, alliances and bureaucracy**

All members have joined the system as a result of negotiation and therefore membership means a balance of rights and obligations. They enjoy the privileges that other member-countries give to them and the security that the trading rules provide. In return, they had to make commitments to open their markets and to abide by the rules — those commitments were the result of the membership (or "accession") negotiations.

For most WTO members, the negotiations took place under the old GATT system. Most automatically became founder-members of the WTO when it was established on 1 January 1995 because they had signed the Uruguay Round agreement in Marrakesh in April 1994. Some joined GATT after April 1994 but before the WTO was set up and they also joined the WTO automatically. Another small group had participated in the Uruguay Round but did not complete their membership negotiations until 1995, when they, too, joined. All of these countries are considered "original" WTO members.

As new members join, new applicants approach the WTO. By March 2001, the WTO had 140 members with over 30 applicants negotiating membership (they are WTO "observers").

### **Same people, different hats?**

No, not exactly.

Formally, all of these councils and committees consist of the full membership of the WTO. But that does not mean they are the same, or that the distinctions are purely bureaucratic.

In practice the people participating in the various councils and committees are different because different levels of seniority and different areas of expertise are needed.

Heads of missions in Geneva (usually ambassadors) normally represent their countries at the General Council level. Some of the committees can be highly specialised and sometimes governments send expert officials from their capital cities to participate in these meetings.

Even at the level of the Goods, Services and TRIPS councils, many delegations assign different officials to cover the different meetings.

### How to join the WTO: the accession process

Any state or customs territory having full autonomy in the conduct of its trade policies may join ("accede to") the WTO, but WTO members must agree on the terms. Broadly speaking the application goes through four stages:

- **First, "tell us about yourself"**. The government applying for membership has to describe all aspects of its trade and economic policies that have a bearing on WTO agreements. This is submitted to the WTO in a memorandum which is examined by the working party dealing with the country's application. These working parties are open to all WTO members.
- **Second, "work out with us individually what you have to offer"**. When the working party has made sufficient progress on principles and policies, parallel bilateral talks begin between the prospective new member and individual countries. They are bilateral because different countries have different trading interests. These talks cover tariff rates and specific market access commitments, and other policies in goods and services. The new member's commitments are to apply equally to all WTO members under normal non-discrimination rules, even though they are negotiated bilaterally. In other words, the talks determine the benefits (in the form of export opportunities and guarantees) other WTO members can expect when the new member joins. (The talks can be highly complicated. It has been said that in some cases the negotiations are almost as large as an entire round of multilateral trade negotiations.)
- **Third, "let's draft membership terms"**. Once the working party has completed its examination of the applicant's trade regime, and the parallel bilateral market access negotiations are complete, the working party finalizes the terms of accession. These appear in a report, a draft membership treaty ("protocol of accession") and lists ("schedules") of the member-to-be's commitments.
- **Finally, "the decision"**. The final package, consisting of the report, protocol and lists of commitments, is presented to the WTO General Council or the Ministerial Conference. If a two-thirds majority of WTO members vote in favour, the applicant is free to sign the protocol and to accede to the organization. In some cases, the country's own parliament or legislature has to ratify the agreement before membership is complete.

### Representing us ...

The work of the WTO is undertaken by representatives of member governments but its roots lie in the everyday activity of industry and commerce. Trade policies and negotiating positions are prepared in capitals, usually taking into account advice from private firms, business organizations, farmers, consumers and other interest groups.

Most countries have a diplomatic mission in Geneva, sometimes headed by a special ambassador to the WTO. Officials from the missions attend meetings of the many councils, committees, working parties and negotiating groups at WTO headquarters. Sometimes expert representatives are sent directly from capitals to put forward their governments' views on specific questions.

With the expanding range of issues covered by the WTO and the increasing technicality of some subjects, many less developed countries face difficulty in assigning enough suitably qualified officials for WTO work. In the WTO this is considered a priority problem that needs to be tackled (*see section on Development*).



### Representing groups of countries ...

Increasingly, countries are getting together to form groups and alliances in the WTO. In some cases they even speak with one voice using a single spokesman or negotiating team.

This is partly the natural result of economic integration — more customs unions, free trade areas and common markets are being set up around the world. It is also seen as a means for smaller countries to increase their bargaining power in negotiations with their larger trading partners. Sometimes when groups of countries adopt common positions consensus can be reached more easily. Sometimes the groups are specifically created to compromise and break a deadlock rather than to stick to a common position. But there are no hard and fast rules about the impact of groupings in the WTO.

The largest and most comprehensive group is the **European Union** (for legal reasons known officially as the “**European Communities**” in WTO business) and its 15 member states. The EU is a customs union with a single external trade policy and tariff. While the member states coordinate their position in Brussels and Geneva, the European Commission alone speaks for the EU at almost all WTO meetings. The EU is a WTO member in its own right as are each of its member states.

A lesser degree of economic integration has so far been achieved by WTO members in the **Association of South East Asian Nations (ASEAN)** — Malaysia, Indonesia, Singapore, Philippines, Thailand and Brunei Darussalam. (The current seventh member, Vietnam, is applying to join the WTO.) Nevertheless, they have many common trade interests and are frequently able to coordinate positions and to speak with a single voice. The role of spokesman rotates among ASEAN members and can be shared out according to topic.

Among other groupings which occasionally present unified statements are the **Latin American Economic System (SELA)** and the **African, Caribbean and Pacific Group (ACP)**. More recent efforts at regional economic integration have not yet reached the point where their constituents frequently have a single spokesman on WTO issues. Examples include the **North American Free Trade Agreement: NAFTA** (Canada, US and Mexico) and **MERCOSUR: the Southern Common Market** (Brazil, Argentina, Paraguay and Uruguay).

A well-known alliance of a different kind is the **Cairns Group**. It was set up just before the Uruguay Round began in 1986 to argue for agricultural trade liberalization. The group became an important third force in the farm talks and remains in operation. Its members are diverse, but sharing a common objective — that agriculture has to be liberalized — and the common view that they lack the resources to compete with larger countries in domestic and export subsidies.

### The Quad

Some of the most difficult negotiations have needed an initial breakthrough in talks among the four largest members:

Canada  
European Union  
Japan  
United States

These are the “Quadrilaterals” or the “Quad”.

### The Cairns Group

From four continents, members ranging from OECD countries to the least developed

Argentina  
Australia  
Brazil  
Canada  
Chile  
Colombia  
Fiji  
Hungary  
Indonesia  
Malaysia  
New Zealand  
Paraguay (joined in 1997)  
Philippines  
Thailand  
Uruguay

### The WTO Secretariat and budget

The WTO Secretariat is located in Geneva. It has around 500 staff and is headed by a director general. Its responsibilities:

- Administrative and technical support for WTO delegate bodies (councils, committees, working parties, negotiating groups) for negotiations and the implementation of agreements.
- Technical support for developing countries, and especially the least-developed.
- Trade performance and trade policy analyses by WTO economists and statisticians.

- Assistance from legal staff in the resolution of trade disputes involving the interpretation of WTO rules and precedents.
- Dealing with accession negotiations for new members and providing advice to governments considering membership.

Some of the WTO's divisions are responsible for supporting particular committees: the Agriculture Division assists the committees on agriculture and on sanitary and phytosanitary measures, for example. Other divisions provide broader support for WTO activities: technical

cooperation, economic analysis, and information, for example.

The WTO budget is 116 million Swiss francs with individual contributions calculated on the basis of shares in the total trade conducted by WTO members. Part of the WTO budget also goes to the International Trade Centre.

## 3. The Secretariat

The WTO Secretariat is headed by a director general. Divisions come directly under the director general or one of his deputies.

### Director general

**Office of the director general:** administrative support for (disputes) Appellate Body, Textiles Monitoring Body  
**Information and Media Relations Division**

**Ministerial Sessions:** Substantive issues related to sessions of the Ministerial Conference and follow-up

**Secretariat Working Group on the Integrated Framework and LDC Issues:** Coordination of the Integrated Framework (IF) and other LDC-related activities with core Agencies and development partners.

### Deputy director general

A. Ouedraogo

**Development Division:** trade and development, least-developed countries, regionalism

**External Relations Division:** Relations with intergovernmental and non-governmental organizations

**Informatics Division**

**Textiles Division**

**Trade and Finance Division:** TRIMS, balance of payments, links with IMF and World Bank, etc

### Deputy director general

P.-H. Ravier

**Accessions Division**

**Intellectual Property Division:** TRIPS, competition and government procurement

**Language Services and Documentation Division**

**Statistics Division**

**Technical Cooperation Division**

**Trade and Environment Division:** Trade and environment, technical barriers to trade, etc

**Training Division**

### Deputy director general

A. Rodriguez Mendoza

**Agriculture and Commodities Division:** agriculture, sanitary and phytosanitary measures, etc

**Council Division:** General Council, Dispute Settlement Body, etc

**Economic Research and Analysis Division**

**Rules Division:** anti-dumping, subsidies, safeguards, state trading, civil aircraft, etc

**Trade Policy Review Division**

### Deputy director general

A. Stoler

**Administration and General Services Division:** budget, finance, administration and human resources matters

**Legal Affairs Division:** Dispute settlement, etc

**Market Access Division:** Goods Council, market access, customs valuation, non-tariff measures, import

licensing, rules of origin, preshipment inspection

**Trade in Services:** GATS etc.

## 4. Special policies

The WTO's main functions are to do with trade negotiations and the enforcement of negotiated multilateral trade rules (including dispute settlement). Special focus is given to four particular policies supporting these functions:

- Assisting developing and transition economies
- Specialized help for export promotion
- Cooperation in global economic policy-making
- Routine notification when members introduce new trade measures or alter old ones.

### **Assisting developing and transition economies**

Developing countries make up about three-quarters of the total WTO membership. Together with countries currently in the process of "transition" to market-based economies, they are expected to play an increasingly important role in the WTO as membership expands.

Therefore, much attention is paid to the special needs and problems of developing and transition economies. The WTO Secretariat organizes a number of programmes to explain how the system works and to help train government officials and negotiators. Some of the events are in Geneva, others are held in the countries concerned. A number of the programmes are organized jointly with other international organizations. Some take the form of training courses. In other cases individual assistance might be offered.

The subjects can be anything from help in dealing with negotiations to join the WTO and implementing WTO commitments to guidance in participating effectively in multilateral negotiations. Developing countries, especially the least-developed among them, are helped with trade and tariff data relating to their own export interests and to their participation in WTO bodies.

Training courses take place in Geneva three times a year for officials of developing countries. Since their inception under GATT in 1955 and up to March 2001, the courses have been attended by about 1,700 trade officials. In addition, since 1991, 190 officials from the economies in transition have been trained through special accession-oriented courses (*see also Developing countries*).

### **Specialized help for exporting: the International Trade Centre**

The International Trade Centre was established by GATT in 1964 at the request of the developing countries to help them promote their exports. It is jointly operated by the WTO and the United Nations, the latter acting through UNCTAD (the UN Conference on Trade and Development).

The centre responds to requests from developing countries for assistance in formulating and implementing export promotion programmes as well as import operations and techniques. It provides information and advice on export markets and marketing techniques. It assists in establishing export promotion and marketing services, and in training personnel required for these services. The Centre's help is freely available to the least-developed countries.

### **The WTO in global economic policy-making**

An important aspect of the WTO's mandate is to cooperate with the International Monetary Fund, the World Bank and other multilateral institutions to achieve greater coherence in global economic policy-making. A separate Ministerial Declaration was adopted at the Marrakesh Ministerial Meeting in April 1994 to underscore this objective.

The declaration envisages an increased contribution by the WTO to achieving greater coherence in global economic policy-making. It recognizes that different aspects of economic policy are linked, and it calls on the WTO to develop its cooperation with the international organizations responsible for monetary and financial matters — the World Bank and the International Monetary Fund.

The declaration also recognizes the contribution that trade liberalization makes to the growth and development of national economies. It says this is an increasingly important component in the success of the economic adjustment programmes which many WTO members are undertaking, even though it may often involve significant social costs during the transition.

**Transparency (1):  
keeping the WTO informed**

Often the only way to monitor whether commitments are being implemented fully is by requiring countries to notify the WTO promptly when they take relevant actions. Many WTO agreements say member governments have to notify the WTO Secretariat of new or modified trade measures. For example, details of any new anti-dumping or countervailing legislation, new technical standards affecting trade, changes to regulations affecting trade in services, and laws or regulations concerning the intellectual property agreement — they all have to be notified to the appropriate body of the WTO. Special groups are also established to examine new free-trade arrangements and the trade policies of countries joining as new members.

**Transparency (2):  
keeping the public informed**

On July 18, 1996 the WTO's General Council agreed to make more information about WTO activities available publicly and decided that public information, including derestricted WTO documents, would be accessible on-line. The General Council also agreed that efforts should be made to derestrict new documents more quickly. The objective is to make more information available to the public, including to non-governmental organizations interested in the WTO. Some documents, such as trade policy review reports and dispute settlement panel reports, are made public almost immediately. Others, including minutes of meetings, are considered for derestriction after about six months, but WTO members can decide that the information should remain confidential for longer. Many of these documents are now available on the WTO website.