

**INTELLECTUAL PROPERTY RIGHTS
THE LEGAL IMPLICATIONS OF THE AGREEMENT
ON TRADE AND INTELLECTUAL PROPERTY RIGHTS
ARISING FROM THE CONCLUSION
OF THE URUGUAY ROUND**

LEGAL ISSUES ARISING FROM THE URUGUAY ROUND AGREEMENTS

A Paper by the Commonwealth Secretariat

I. INTRODUCTION

PURPOSE AND SCOPE OF THE PAPER

1. The purpose of this paper is to inquire whether Commonwealth states need any assistance, and if so what kind of assistance, in addressing the legal issues presented by the collection of multilateral and plurilateral agreements which comprises the results of the Uruguay Round (UR).

2. This need is likely to vary from state to state. For some, it seems clear that no assistance at all is needed. However, there is a perception that for many others, the UR Agreements - which fill several hundred pages of carefully drafted text and cover a diverse range of highly technical subject matter - may present considerable legal problems. This paper tests that perception.

3. To assist Ministers in their deliberations, two objectives are pursued here. The first is to identify the types of legal issues and problems which the Agreements, taken as a whole, appear to present. These are outlined in paragraph 5 below and returned to in more detail in Part IV of the paper. The second objective - necessarily modest in light of the subject matter - is to alert Ministers to the scope and nature of these agreements by outlining, in a highly selective manner, *some of* the key obligations imposed by *some of* the agreements. This is addressed in Parts II and III. (It is important to emphasise that states wishing to assess with precision their legal rights and obligations under the Agreements covered should not rely on these outlines).

THE URUGUAY ROUND AGREEMENTS: OVERVIEW

4. The UR Agreements are a collection of multilateral conventions concluded between states. They are the fruit of seven years of negotiations which have transformed the international trading system and the framework of public international law which underlies it. A new body, the World Trade Organisation (WTO), has replaced the regime which had lasted since 1948 under the aegis of the General Agreement on Tariffs and Trade (the GATT, which had come to refer both to the Agreement concluded in 1947 and to the

informally-constituted body which administered it). Further, the UR Agreements expand the regulation of international trade far beyond trade in goods. Thus, obligations and rights of various kinds are now created for states in respect of certain trade-related aspects of intellectual property rights, services and investment.

THE LEGAL ISSUES: INTRODUCTORY NOTE

5. The UR Agreements comprise therefore a revolution in the legal framework regulating international trade which legal advisers in the public and private sectors cannot afford to ignore. The implications for Law Ministers are very significant because the agreements:

- are the source of numerous binding commitments in international law, compliance with which will require a wide range of actions at the national level;
- are likely in many cases to require revision and redrafting of national laws as one aspect of that compliance;
- are of a length and complexity which will require, on occasion, specialist legal advice in the interpretation of a state's exact rights and obligations. These skills will also be an essential component of:
- effective representation in the ongoing negotiation of trade issues
- the proactive use of the trade opportunities which the Agreements present; and
- provide for a greatly improved dispute resolution procedure. States which are unable to exploit these improvements effectively, both as a sword and as a shield, will suffer a severe disadvantage in access to justice.

6. These points are elaborated upon in Part IV, after Ministers have had the chance to consider the outline of key agreements which is provided in Parts II and III.

TO WHOM SHOULD THIS PAPER BE ADDRESSED?

7. A response is also sought to a very important practical question: is this an area which comes within the ambit of the Office of the

Attorney-General/Ministry of Justice in each State?
If not, to whom should this inquiry be directed?

STRUCTURE OF THE PAPER

8. The remainder of the paper will:

- In Part II, outline the content of the Marrakesh Agreement Establishing the World Trade Organisation (more commonly referred to as the WTO Agreement). This will summarise the WTO's structure and functions and help to provide an overview of the UR Agreements as a whole.
- In Part III, list the UR Agreements and provide a brief introduction to the background and content of a selection of these agreements. A more detailed analysis of each agreement in this selection is contained in Appendices IV-IX.
- In Part IV, discuss in more depth the legal issues presented by the UR agreements, touched on in paragraph 5 above.
- In Part V, note some of the evolving trade issues which will continue to be on the negotiating agenda, in particular issues concerning trade and the environment.
- In Part VI, suggest tentatively some of the ways in which legal assistance could be provided to member states.

II. MARRAKESH AGREEMENT ESTABLISHING THE WORLD TRADE ORGANISATION

OVERVIEW

9. Article II of the Marrakesh Agreement Establishing the World Trade Organisation (the WTO Agreement) states that the WTO "shall provide the common institutional framework for the conduct of trade relations among its Members in matters related to the agreements and associated legal instruments included in the [four] Annexes to this Agreement."

10. The agreements and associated legal instruments ("the agreements") located under these four Annexes, listed (minus most of the associated legal instruments) at paragraph 26 below, run to several hundred pages. Article II deems the first three Annexes, which comprise the multilateral agreements, to be integral parts of the WTO Agreement and states that these agreements are to

bind all members. Thus it is not possible to accede to the WTO Agreement and then to pick and choose between the multilateral agreements - they are a unity. However this is not the case regarding the plurilateral trade agreements, listed under the fourth Annex, which will only be part of the WTO Agreement and create rights or obligations for those members who accept them.

11. The entire bundle of agreements is sometimes referred to, incorrectly, as "the GATT 1994". However, this conceals their scope and diversity. In fact, as can be seen from paragraph 26, the GATT 1994 (comprising the GATT 1947 as elaborated upon by several understandings and agreements reached in the Uruguay Round) is only one of many agreements. For the purposes of this paper, the collection of agreements will continue to be referred to as "the UR Agreements".¹

FUNCTIONS AND STRUCTURE OF THE WTO

Functions

12. Article III of the WTO Agreement defines five functions for the WTO:

- to facilitate the implementation, administration and operation of the Multilateral Trade Agreements and the Plurilateral Trade Agreements;
- to provide a forum for negotiations among Members concerning their multilateral trade relations;
- to administer the Dispute Settlement Understanding (the DSU);
- to administer the Trade Policy Review Mechanism;
- to co-operate, as appropriate, with the International Monetary Fund (IMF) and with the World Bank and its affiliated agencies.

1. These agreements are collated in *The Results of the Uruguay Round of Multilateral Trade Negotiations: The Legal Texts*, GATT Secretariat, Geneva, 1994; viii + 558pp. Publications produced by the GATT or its successor the WTO can be obtained from: World Trade Organisation, Publications Services, Centre William Rappard, Rue de Lausanne 154, CH-1211 Geneva, SWITZERLAND, Fax: (022) 739 54 58, Tel: (022) 739 52 08.

The last three of these functions are elaborated upon in paragraphs 13-18.

Dispute settlement understanding

13. The Understanding on Rules and Procedures Governing the Settlement of Disputes (or the DSU as it is more conveniently known), contained in Annex 2 to the WTO Agreement, builds on and fundamentally improves dispute resolution procedures contained in the GATT 1947. Appendix I outlines the scope and procedures of the DSU.²

14. The strengthening of the dispute resolution procedures is probably good news for countries which lack the "muscle" to bring pressure to bear in other ways. However, developing countries will continue to face some basic limitations. For example, it is necessary to collect extensive information to support complex legal arguments and, in the event of a favourable outcome for the complainant, authorised retaliatory measures are unlikely in some cases to do the complainant much good.³

Trade Policy Review Mechanism

15. The Trade Policy Review Mechanism (TPRM) is contained in Annex 3 to the WTO Agreement. Its objectives are to contribute to improved adherence to WTO rules through greater transparency and to examine the impact of trade practices and policies of members on the multilateral trading system.

16. To fulfil these objectives, the Trade Policy Review Body (TPRB) will carry out periodic reviews of the trade policies and practices of members and to this end a member is required to prepare a report (with technical assistance from the WTO Secretariat available to developing and least-developed countries). The Secretariat will also

produce its own report. When the review is completed, both reports are to be published along with the minutes of the TPRB meeting which convenes to consider them (TPRM paragraphs C and D).

17. The TPRM emphasises that its purpose is *not* to serve as a basis to enforce legal obligations (TPRM paragraph A) and the TPRM does not explicitly require scrutiny of a member's trade practice and policy for compliance with those obligations. However, nor is the legal dimension excluded and legal skills may be of use when a state is assessing compliance with WTO rules.

Co-operation with the IMF and World Bank

18. The IMF's mandate is to provide short-term financing to countries which are confronting balance of payments problems, while the World Bank attempts to mobilise resources to alleviate poverty in, and to assist the sustainable development of, low-income countries. Trade and financial or macroeconomic policies are often linked. For example, protectionist trade measures might be tempting to alleviate balance of payment problems. Enhanced co-operation between the IMF, World Bank and the WTO is therefore important to ensure the greater consistency and compatibility of their activities.⁴ It suffices here to note the overlap in functions and to suggest that a basic understanding of the legal obligations imposed and rights conferred by membership of the IMF and the World Bank may on occasion be an important component of comprehensive legal advice on trade issues.

STRUCTURE AND VOTING

19. In contrast to the GATT, which had come to refer both to the General Agreement itself and to the Secretariat which had administered it, the WTO will have legal personality and the formal structure reproduced in diagram form as Appendix II. The WTO Agreement accords privileges and immunities to the WTO, its officials and representatives of the members similar to those stipulated in the United Nations Convention on the Privileges and Immunities of the Specialised Agencies 1947 (Article VIII), which may require enabling legislation in some states.

2 The DSU, and the various dispute resolution provisions to be found distributed throughout the agreements, are collated in *The WTO Dispute Settlement Procedures: A Collection of the Legal Texts*, WTO, Geneva 1995; xxi + 95pp.

3 Jackson, J.H., Davey, W.J., and Sykes, A.O., *Legal Problems of International Economic Relations: Cases, Materials and Text* 3ed, West Publishing Co., St Paul 1995; lvii + 1248pp; 346-348.

4 Hoekman, B. & Kosteci M., *The Political Economy of the World Trading System: From GATT to WTO* Oxford University Press, Oxford 1995; xvii + 301pp; 51-52.

20. Most decision-making in the WTO will continue to be by consensus, with recourse to voting as a fall-back measure. Each member has one vote. However, majorities ranging from two-thirds to unanimity are required for certain decisions (WTO Agreement Articles IX, X). One commentator suggests that the consensus approach may enhance the negotiating leverage of smaller countries, and that their efficacy will depend on the quality of their delegation. "Bargaining to achieve consensus lies at the heart of both multilateral trade negotiations and the functioning of the system."⁵

MEMBERSHIP AND ACCESSION

Original members

21. Article XI of the WTO Agreement states that the contracting parties to GATT 1947 as of the date of entry into force of the WTO Agreement, and the European Communities, can become "original Members" of the WTO by:

- accepting the WTO Agreement and the Multilateral Trade Agreements; and
- annexing Schedules of Commitments required under GATT 1994 and the General Agreement on Trade in Services.

Accession

22. Any state or separate customs union territory possessing full autonomy in commercial relations (and which cannot become an "original member" on the terms explained above) may accede to the WTO Agreement (and thus the multilateral trade agreements) on terms to be agreed between it and the WTO. The Ministerial Conference is given the power to approve accession by a two-thirds majority of the existing WTO members. Accession to a Plurilateral Trade agreement, in contrast, will be on the terms provided for in that Agreement (Article XII).

23. In practical terms Article XII means that countries wishing to join the WTO must negotiate their membership with existing WTO members through the accession procedure.

24. Appendix III records membership of the WTO as of 17 November 1995.

5 *ibid.*, pp 40-41.

SPECIAL POSITION OF LEAST-DEVELOPED COUNTRIES

25. Least-developed countries recognised as such by the United Nations "will only be required to undertake commitments and concessions to the extent consistent with their individual development, financial and trade needs or their administrative and institutional capabilities." (Article XI:2).

III. THE MULTILATERAL TRADE AGREEMENTS

OVERVIEW

26. The following lists the agreements found under Annexes 1-4 of the WTO Agreement (referred to in paragraphs 9 to 11 above) to give some idea of their scope and diversity:

Multilateral Trade Agreements

- General Agreement on Tariffs and Trade 1994
- Agreement on Agriculture
- Agreement on the Application of Sanitary and Phyto-Sanitary Measures
- Agreement on Textiles and Clothing
- Agreement on Technical Barriers to Trade
- Agreement on Trade-Related Investment Measures
- Agreement on Implementation of Article VI of the GATT 1994
- Agreement on Implementation of Article VII of the GATT 1994
- Agreement on Pre-shipment Inspection
- Agreement on Rules of Origin
- Agreement on Import Licensing Procedures
- Agreement on Subsidies and Countervailing Measures
- Agreement on Safeguards
- General Agreement on Trade in Services
- Agreement on Trade-Related Aspects of Intellectual Property Rights
- Understanding on Rules and Procedures Governing the Settling of Disputes
- Trade Policy Review Mechanism

Plurilateral Trade Agreements

- Agreement on Trade in Civil Aircraft
- Agreement on Government Procurement
- International Dairy Agreements
- International Bovine Meat Agreement

27. Omitted from these lists are a series of "understandings" reached in respect of various articles of the GATT 1994, which come within the

multilateral framework and have the same legal standing as the agreements so called. The plurilateral trade agreements are noted for completeness only and receive no further consideration in this paper.

BRIEF INTRODUCTION TO SELECTED MULTILATERAL AGREEMENTS

28. Paragraphs 30 to 40 provide a brief introduction to key agreements selected from the multilateral agreements listed above. These are the GATT 1994, the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), the General Agreement on Trade in Services (GATS), the Agreement on Textiles and Clothing, the Agreement on Agriculture, and the Agreement on Trade Related Investment Measures (TRIMs).

29. Fuller core information, under the headings "application" and "obligations", is given in respect of each of these agreements in Appendices IV - IX. (A little more detail is given in respect of the GATT 1994 and TRIPS). Each agreement covered below refers to the relevant Appendix which elaborates upon it. The purpose of this format is to make the paper, which covers a lot of ground, more readable.

GENERAL AGREEMENT ON TARIFFS AND TRADE 1994 (APPENDIX IV)

30. The purposes of the GATT 1994, which comprises the GATT 1947 as elaborated upon by several understandings and agreements reached in the Uruguay Round, are to liberalise world trade and to place this trade on a stable rule-based footing.⁶ Key obligations include the following:

- to impose tariffs on goods no higher than those agreed to and recorded in tariff schedules;
- to treat other WTO members no less favourably than it treats any other country with respect to any regulation of imports and exports ("most-favoured-nation (MFN)" treatment);
- to treat foreign goods no worse than domestic goods once the goods have cleared customs ("national treatment"); and

6 A primary reference text for the practitioner is *Analytical Index: Guide to GATT Law and Practice* GATT Secretariat, Geneva, 1994.

- not to impose "quantitative restrictions", in other words prohibitions or restrictions on imports or exports other than duties, taxes, or other charges.

AGREEMENT ON TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS (APPENDIX V)

31. The particular concern which has been expressed in relation to TRIPS merits a more detailed introduction than that received by other agreements in this section.

Background

32. To a large extent intellectual property rights (IPRs) - patents, trade marks, copyright, know how, plant breeders' rights etc. - have, in the industrialised countries, replaced fixed assets as the real economic value of companies. IPRs have become a *trade* issue because trade in goods containing an IP element has increased substantially in recent years, and a number of industrialised countries have felt that inadequate protection of IP in technology importing countries has eroded their competitive advantage.⁷ Developing countries, on the other hand, have been keenly aware of the increased costs which could arise from greater IP protection - not just in relation to (for example) computer software, but also to basics such as food and medicine. TRIPS greatly enhances global IP protection and appears to be a major achievement for industrialised countries, but should also be seen in the context of trade-offs and bargaining across the full range of the UR Agreements. There is also an argument that foreign companies will be happier to invest in countries which confer stronger IP protection.

Key obligations

33. TRIPS imposes three general obligations:

- minimum standards: to give effect to the level of IP protection provided for in the agreement as a minimum level - it is open to any country to provide greater protection;
- national treatment: countries must, with regard to the protection of IP, protect nationals of other countries by treating them no less favourably than they treat their own nationals; and

7 Hoekman & Kostecki, above note 4, p 146.

- most-favoured-nation treatment: with regard to the protection of IP, any advantage granted by a Member to the nationals of any other country must be accorded immediately and unconditionally to the nationals of all other Members.

Legal issues: the experience of one developing Commonwealth state

34. The principal legal task will be to review and assess existing national legislation and, if necessary, to amend intellectual property law and enforcement procedures to comply with the new standards. In this context it is worth noting the experience of one Commonwealth state, a developing country, which is in the middle of this exercise. Its intellectual property statute law has been based chiefly on United Kingdom legislation enacted around the middle of the century (the Copyright Act 1956, Trade Marks Act 1938, Patents Act 1949, Registered Designs Act 1949) but has tended not to keep pace with the UK reforms of that legislation. For example, it appears that there has been no protection granted for plant breeders' rights, seed varieties, or semi-conductor chips. As regards the common law, actions such as injurious falsehood and passing continue to be available.

35. Having acceded to the Berne Convention and the Paris Convention, this state was entitled to technical assistance from the World Intellectual Property Organisation (WIPO). The Draft Industrial Property Act prepared by WIPO envisaged a wholesale replacement of the state's law in this area. A consultant's report on this Draft, commissioned by the Secretariat, questioned the necessity for this in respect of a state which already had in place a legal regime which, though in need of improvement, was adequate and effective. It was suggested that provisions taken from a civil law system may be inappropriate and difficult to apply in the context of a legal system based in the common law tradition. States may wish to consider whether it would be useful to draft a Model Law rooted in the common law system.

36. Member states in the Caribbean region may also, in the context of possible accession to or partial membership of the North American Free Trade Agreement (NAFTA), be requested to observe and implement certain IPRs. Care should be taken. Any rights granted in excess of those required by TRIPS will have to be extended, under the MFN principle in TRIPS, to all other WTO members. Further, there is a danger of incorporating, wholesale, provisions which have

been drafted from a different legal conceptual basis (in this case, United States law).

GENERAL AGREEMENT ON TRADE IN SERVICES (APPENDIX VI)

37. "Modern economies are service economies...An efficient service sector is a precondition for economic development".⁸ The services sector, which includes such diverse activities as tourism, telecommunications, education and banking, accounts for over sixty percent of GDP in OECD countries and in 1993 accounted for 22.2 percent of global trade (\$US930 billion).⁹ The GATS provides, for the first time, a framework of multilateral rules to regulate certain international trade aspects of this sector. Key obligations include the following:

- with respect to any measure covered by the agreement, to accord MFN treatment immediately and unconditionally to services and service suppliers of any other Member;
- to specify in a schedule its "market access commitments" - i.e. the market sectors to which access will be permitted in respect of services supplied from the territory of another Member - and the terms of this access; and
- to accord national treatment to services and service suppliers of any other Members in respect to all measures affecting the supply of services.

AGREEMENT ON TEXTILES AND CLOTHING (APPENDIX VII)

38. Along with agriculture, textiles and clothing has been a major sector which in practice has fallen outside of the GATT. Instead, four successive Multifibre Arrangements (MFAs) have since 1974 regulated bilaterally agreed quantitative restrictions or unilaterally imposed restraints on the export of a growing range of fabrics and textiles. The Agreement on Textiles and Clothing will phase out MFA-IV and gradually bring trade in this area within the GATT 1994 over a ten year period (1995-2004). Key obligations include the following:

- to remove all quantitative restrictions provided for in bilateral agreements under the MFA on fixed percentages of the 1990 total volume of

8 *ibid* p 127.

9 *idem*.

imports in accordance with a graduated schedule over a ten year period; and

- to increase quotas over the same period, again in graduated fashion.

AGREEMENT ON AGRICULTURE (APPENDIX VIII)

39. Agriculture has remained one of the most heavily protected areas of trade since the inception of the GATT 1947. The application of GATT disciplines comprises a considerable achievement, though their initial effect is likely to be modest. Key obligations include the following:

- to change non-tariff border measures into tariffs;
- to reduce tariffs by an average of 36 per cent (developed countries) and 24 per cent (developing countries) over 5 years. All existing and new tariffs are bound;
- to reduce domestic production support to agriculture; and
- to reduce export subsidies by 36 per cent in value and 21 per cent in volume from a 1986-90 base period average. Export subsidies are bound, as are tariffs.

AGREEMENT ON TRADE-RELATED INVESTMENT MEASURES (APPENDIX IX)

40. One commentator describes the TRIMs Agreement as “a modest first step” towards developing an integrated framework addressing policies affecting both trade and investment in goods and services.¹⁰ A TRIM is an attempt by a government to place conditions on a company that wishes to operate within its borders. These may be positive, including investment incentives to move to the country in question, or negative, for example a requirement that an investor use locally produced goods in its manufacturing process or a restriction on access to foreign exchange for the purchase of imports.¹¹ Key obligations include the following:

- not to apply any TRIM inconsistent with the national treatment and quantitative restriction obligations in the GATT 1994; and

10 Hoekman & Kostecki, above note 4, p 121.

11 Evans P & Walsh J., *The EU Guide to the New GATT*, The Economist Intelligence Unit, London 1994; v + 136pp; 32.

- to eliminate all TRIMs inconsistent with the agreement within 2 years of the entry into force of the WTO Agreement (developed countries), 5 years (developing country) or 7 years (least developed countries).

IV. LEGAL ISSUES

41. The following elaborates upon the outline of legal issues provided in paragraph 5, above, by identifying a need for legal skills in respect of six separate types of activities.

(a) Legal interpretation

42. Competent application of legal skills will often be essential to a state wishing to ascertain its precise legal rights and duties under the agreements. The complexity, length and interrelationship of many of these agreements mandates the same careful, thorough and precise analysis which the lawyer applies to national legislation. Generally worded obligations are frequently honey-combed with exceptions and qualifications. Key phrases are frequently ambiguous and have been interpreted, in the case of the GATT 1994 itself, by a series of panel decisions which comprises an authoritative (though not binding) body of jurisprudence.¹² The international lawyer will also be aware of relevant sources of law existing outside of the agreements themselves, for example other international conventions (including the Vienna Convention on the Law of Treaties 1969) and customary international law.¹³

(b) Legislative drafting

43. Implementation of many of the obligations imposed by the agreements will require revision of and amendment to national legislation, as required by Article XVI:4 of the WTO Agreement. (This is one reason why a precise determination of what these obligations are is regarded as essential).

(c) Exploiting the agreements

12 These are usefully summarised in Pescatore, Davey and Lowenfeld *Handbook of GATT/WTO Dispute Settlement* Kluwer, 1991 (looseleaf).

13 See for example Seidl-Hohenveldern, I., *International Economic Law* 2ed., Martinus Nijhoff Publishers, Dordrecht 1992 xii + 286pp.

44. Legal advice could play a key role in exploiting fully the trading advantages and opportunities which various of the agreements offer to those states which understand them thoroughly and in detail.

(d) Dispute settlement and access to justice

45. As noted at paragraphs 13 to 14 above, the rules governing the settlement of disputes have been greatly improved and can be invoked in a range of circumstances under each of the agreements. Legal skills may be essential both to detect violations and to challenge them through a skilled use of the dispute procedures. States may also on occasion need to defend themselves against challenges of a similar nature.

(e) Participation in the WTO and trade negotiation

46. Negotiation within the WTO framework will be ongoing in respect of international trade issues yet to be resolved. Some of these issues are discussed in Part V. Legal advisers may have a role to play in the formulation of, and commentary on, new rules. An understanding of the detail, interrelationship and purpose of the agreements will be integral to competent advice on the effect and desirability of a reform (though here as elsewhere the lawyer's role overlaps with that of other advisers). Legal advice may also have a contribution to make in relation to participation in the WTO voting/consensus system, noted above at paragraphs 19 to 20.

(f) Compliance with transparency requirements

47. Many of the agreements require notification and publication by members of the national laws, regulations, and judicial and administrative decisions relevant to the subject matter of those agreements. There may be a call for legal skills in the necessary editing and compilation, and in the interpretation of the compliance requirements themselves.

V. EVOLVING ISSUES

GENERAL

48. Ongoing review and negotiation is built into most of the agreements. Further, there are many multilateral trade issues which the agreements have only begun to address or have not addressed at all, and which are likely to be the subject of future negotiation. Examples are the multilateral

regulation of competition policy, anti-dumping policy, labour standards and environmental protection¹⁴ (the last of which merits separate discussion, under the next heading).

ENVIRONMENT

Environmental conditionality for joining the WTO?

49. While the WTO Agreement preamble includes sustainable development and environmental protection among its objectives, the agreement does not explicitly impose any environmental conditionality for states wishing to join the WTO. Instead, there is an implicit recognition within the WTO Agreements that national environmental policies are matters that fall within the discretion of governments, as long as these policies are applied in a way that does not infringe these agreements. Thus, Article XX(b) of the GATT 1994 exempts from the GATT obligations those measures necessary to protect human, animal or plant life or health, so long as they are applied in a non-discriminatory way.

The relationship between the WTO Agreements and Environmental Conventions

50. The growing nexus between international trade and environmental protection has created tension between the goals and objectives of those concerned with environmental protection and those interested in preserving free trade.

51. The environmental community believes that the use of trade restrictions in environmental conventions is a necessary ingredient in protecting the environment, while free-traders see the imposition of environmental requirements in trade agreements merely as "green barriers" which are disruptive to the liberalisation of global trade.

52. Trade restrictions have long been used to promote domestic environmental interests and have appeared in recent years in international agreements. Of the 127 multilateral agreements in the area of the environment, 17 contain a variety of restrictive trade provisions.¹⁵

¹⁴ Hoekman & Kosteci, above note 4, Ch 11.

¹⁵ Caldwell, D.J., "International Environmental Agreements and the GATT: An Analysis of the Potential Conflict and the Role of the GATT "Waiver" Resolution" 18 *Journal of*

53. Examples of such global environmental conventions include the Basel Convention on the Control and Transboundary Movements of Hazardous Wastes and Their Disposal 1989, The Montreal Protocol on Substances that Deplete the Ozone Layer 1987, and The Convention on the International Trade in Endangered Species of Wild Fauna and Flora (CITES) 1973. These conventions specify different trade measures affecting parties and non-parties - they require parties to apply more restrictive trade provisions to non-parties than to parties. Such environmental agreements would appear to run counter to the underlying principle of non-discrimination in the WTO Agreements.

54. This raises a number of significant questions. How can states continue to implement their international obligations under multilateral environmental agreements (which contain restrictive trade measures) and at the same time comply with the WTO trade rules? This inquiry needs to be distinguished from the closely related (and more frequently discussed) issue of how the WTO will regard efforts by individual states or unilateral action to enforce domestic environmental standards against other members of the international community.¹⁶

55. Obviously there is a need to ensure the compatibility of the principles of free trade espoused under the WTO trade agreements with the national environmental standards adopted by states in implementation of environmental conventions. These are questions which are becoming more and more prominent and must be addressed sooner or later, whether or not states are considering membership of the WTO. In this context, it is worth noting that Ministers agreed in the course of the UR to establish a committee on Trade and Environment to consider the types of issues which have been touched on above (Decision on Trade and the Environment, Marrakesh April 1994). This committee is open to all members of the WTO.

International Law and Trade (1994) 177.

¹⁶ The unilateral action by the United States in banning the import of Mexican tuna to the United States on the grounds that the production methods used by Mexico did not comply with the environmental standards of the United States, which lead to the famous *Tuna/Dolphin* case (*United States: Restrictions on Imports of Tuna from Mexico* 39th Supp. BISD (1993)), is a classic example.

VI. LEGAL ASSISTANCE

56. Ministers are requested to consider what kind of legal assistance they need (if any), and in what particular areas. Modes of assistance which the Secretariat could promote and co-ordinate include the following:

(a) Educational workshops

57. Regional workshops could be convened for the purpose of capacity-building in areas of specialist legal knowledge. Due to the scope of the UR Agreements, it is likely that a given workshop would need to focus on one area or on a small number of areas. Thus there may be a particular demand for a workshop outlining the precise obligations imposed by the TRIPS agreement, for the purpose of assisting legal advisers to review national IP laws. An alternative or additional approach - one which would require considerable resources - would be to prepare a draft model law for Commonwealth states in this area.

(b) Technical assistance

58. There may be a need for specialist relatively long term legal assistance to individual members. This could arise in relation to any of the six areas discussed in Part IV.

(c) Newsletter/bulletin

59. A bulletin keeping members up to date with relevant developments could be very useful. This could complement the role played by *WTO Focus*, the official newsletter produced by the WTO ten times a year.

(e) Co-ordination and liaison with international organisations

60. The Secretariat is currently developing the necessary links with the large number of international organisations working in the field and is exploring actively the possibilities of offering joint and co-ordinated assistance. For example, there is a possibility that the Secretariat could work with the African Regional Industrial Property Organisation in bringing education and assistance to the African region.

March 1996

DISPUTE SETTLEMENT UNDERSTANDING

APPLICATION

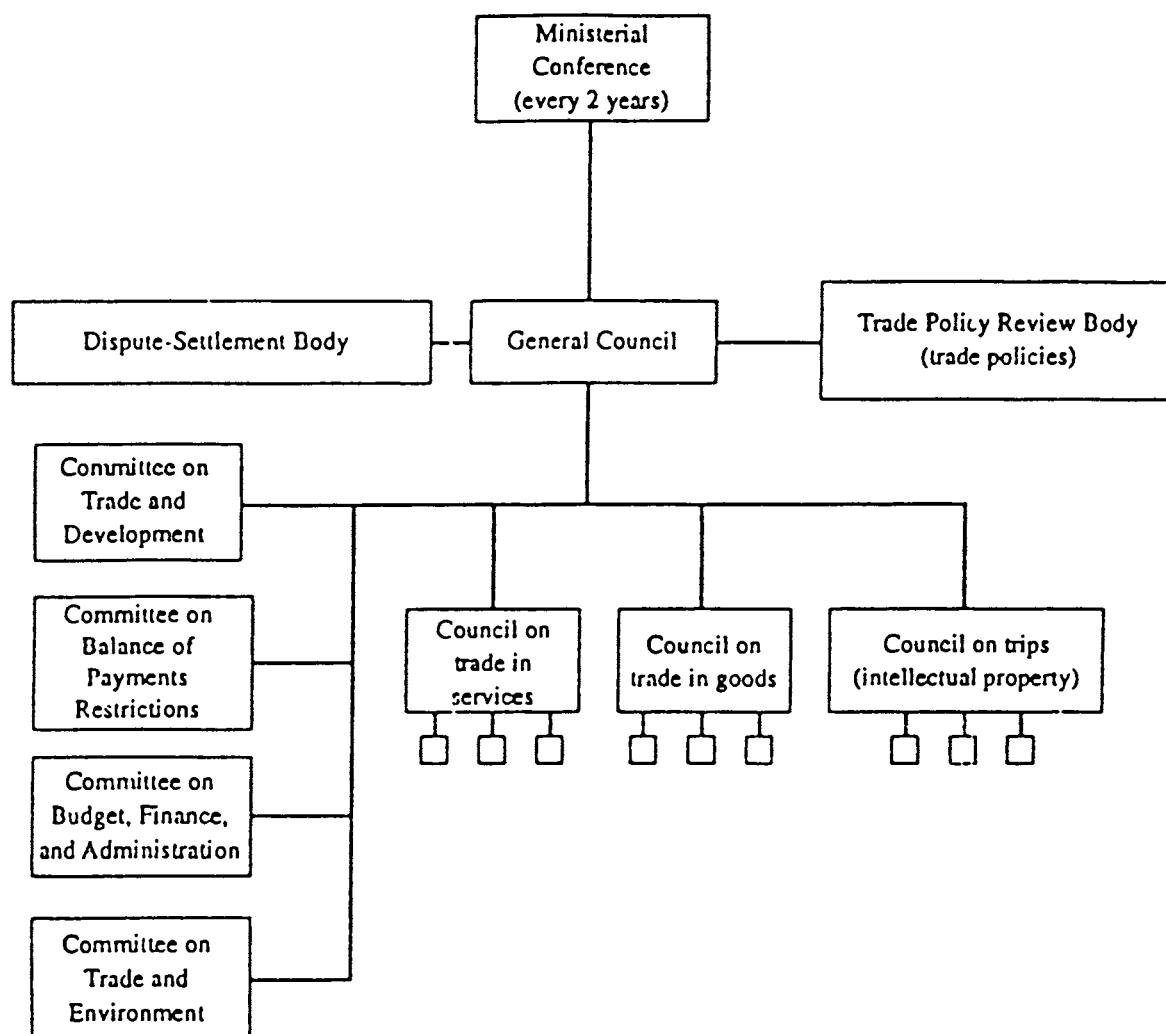
- to all the multilateral and plurilateral trade agreements (DSU Appendix, Appendix 2 lists those of the covered agreements which contain additional rules and procedures). It will no longer be possible for Members to choose between a number of alternative forums.

KEY STAGES IN A GATT/WTO DISPUTE SETTLEMENT PROCEEDING

A leading commentary summarises the following key stages and procedures¹⁷:

1. As a first step, *consultation* is required under Article XXIII of the GATT 1994 itself. The DSU provides rules for consultations and entitles the complaining party to request a panel if no settlement is reached within 60 days (DSU Article 4);
2. A parallel option of *good offices, conciliation and mediation* offered by the Director-General of the WTO is provided for (DSU Article 5);
3. If consultation fails, a complaining party is given the *right to have a panel established* and the Dispute Settlement Body (the DSB) is obliged to establish a panel unless there is a consensus to the contrary (which, of course, the complaining party can prevent) (DSU Article 6);
4. The WTO Director-General may then *appoint the panel members* if the parties cannot agree over their identity (DSU Article 8);
5. Standard *terms of reference* for the dispute are provided (DSU Article 7);
6. *Procedures for the hearing* regulate inter alia who may be heard, time limits for the various panel stages, and submission of the panel's draft report (including its legal analysis) for comment by the parties (DSU Article 15);
7. The DSB *shall adopt a panel report* unless there is a consensus not to adopt it or a party notifies its intention to appeal (DSU Article 16);
8. On notification of intention to appeal, the DSB creates a *standing Appellate Body* which is limited to considering issues of law covered in the panel report. The appellate proceedings are not to exceed 90 days and its report shall be adopted in the absence of consensus to the contrary (DSU Article 17);
9. The losing respondent must indicate what action it plans to take to implement a panel recommendation, and the DSB will monitor whether it carries out this action. While the DSU provides that withdrawal of a measure inconsistent with the party's GATT obligations is preferable, compensation and suspension of concessions remain available as remedies if the panel recommendations are not implemented. The DSB will authorise suspension automatically (absent a consensus to the contrary) if there has been no implementation or compensation (DSU Article 21).

STRUCTURE OF THE WTO



Source: WTO

MEMBERSHIP OF THE WORLD TRADE ORGANISATION

The following 112 Governments have accepted the Marrakesh Agreement Establishing the World Trade Organisation. Their membership in the World Trade Organisation is effective as of the dates indicated.

<u>Government</u>	<u>Entry into Force/ Membership</u>
Antigua and Barbuda	1 January 1995
Argentina	1 January 1995
Australia	1 January 1995
Austria	1 January 1995
Bahrain	1 January 1995
Bangladesh	1 January 1995
Barbados	1 January 1995
Belgium	1 January 1995
Belize	1 January 1995
Bolivia	13 September 1995
Botswana	31 May 1995—
Brazil	1 January 1995
Brunei Darussalam	1 January 1995
Burkina Faso	3 June 1995
Burundi	23 July 1995
Cameroon	13 December 1995
Canada	1 January 1995
Central African Republic	31 May 1995
Chile	1 January 1995
Colombia	30 April 1995
Costa Rica	1 January 1995
Côte d'Ivoire	1 January 1995
Cuba	20 April 1995
Cyprus	30 July 1995
Czech Republic	1 January 1995
Denmark	1 January 1995
Djibouti	31 May 1995
Dominica	1 January 1995
Dominican Republic	9 March 1995
Egypt	30 June 1995
El Salvador	7 May 1995
European Community	1 January 1995
Finland	1 January 1995
France	1 January 1995
Gabon	1 January 1995
Germany	1 January 1995

GovernmentEntry into Force/
Membership

Ghana	1 January 1995
Greece	1 January 1995
Guatemala	21 July 1995
Guinea Bissau	31 May 1995
Guinea, Rep. of	25 October 1995
Guyana	1 January 1995
Honduras	1 January 1995
Hong Kong	1 January 1995
Hungary	1 January 1995
Iceland	1 January 1995
India	1 January 1995
Indonesia	1 January 1995
Ireland	1 January 1995
Israel	21 April 1995
Italy	1 January 1995
Jamaica	9 March 1995
Japan	1 January 1995
Kenya	1 January 1995
Korea	1 January 1995
Kuwait	1 January 1995
Lesotho	31 May 1995
Liechtenstein	1 September 1995
Luxembourg	1 January 1995
Macau	1 January 1995
Madagascar	17 November 1995
Malawi	31 May 1995
Malaysia	1 January 1995
Maldives	31 May 1995
Mali	31 May 1995
Malta	1 January 1995
Mauritania	31 May 1995
Mauritius	1 January 1995
Mexico	1 January 1995
Morocco	1 January 1995
Mozambique	26 August 1995
Myanmar	1 January 1995
Namibia	1 January 1995
Netherlands - For the Kingdom in Europe and for the Netherlands Antilles	1 January 1995
New Zealand	1 January 1995
Nicaragua	3 September 1995
Nigeria	1 January 1995
Norway	1 January 1995
Pakistan	1 January 1995
Paraguay	1 January 1995
Peru	1 January 1995
Philippines	1 January 1995
Poland	1 July 1995
Portugal	1 January 1995

GovernmentEntry into Force/
Membership

Romania	1 January 1995
Saint Lucia	1 January 1995
Saint Vincent & the Grenadines	1 January 1995
Senegal	1 January 1995
Sierra Leone	23 July 1995
Singapore	1 January 1995
Slovak Republic	1 January 1995
Slovenia	30 July 1995
South Africa	1 January 1995
Spain	1 January 1995
Sri Lanka	1 January 1995
Suriname	1 January 1995
Swaziland	1 January 1995
Sweden	1 January 1995
Switzerland	1 July 1995
Tanzania	1 January 1995
Thailand	1 January 1995
Togo	31 May 1995
Trinidad and Tobago	1 March 1995
Tunisia	29 March 1995
Turkey	26 March 1995
Uganda	1 January 1995
United Kingdom	1 January 1995
United States	1 January 1995
Uruguay	1 January 1995
Venezuela	1 January 1995
Zambia	1 January 1995
Zimbabwe	3 March 1995

Source: WTO

GENERAL AGREEMENT ON TARIFFS AND TRADE 1994

APPLICATION

- to trade in *goods*.

OBLIGATIONS

- to observe limits which have been agreed on the tariffs which may be imposed on imported products (Article II; a condition of WTO membership is to submit an Article II Schedule: WTO Agreement Articles XI and XIV);
- not to discriminate against the trade of other parties. This has two aspects:
 - each member must grant to every other member the most favourable treatment which it grants to any country with respect to any regulation of imports and exports (the MFN obligation in Article I). "Regulation" would include the levying of customs duties;
 - once the goods have cleared customs, each party must treat foreign goods equally to domestic goods ("national treatment" - Article III);
 - to implement prescribed valuation principles in respect of all products subject to restriction by reference to value (e.g. ad valorem customs duties) (Article VII; see also Agreement on Implementation of Article VII of the GATT 1994);
 - to accord to other parties, in respect of marks of origin marking requirements, treatment no less favourable than that accorded to like products of any third country (Article IX; see also Agreement on Rules of Origin);
 - to limit fees and expenses (other than domestic taxes and import and export duties) imposed in connection with export and import to the level of services rendered (Article VIII);
 - not to impose "quantitative restrictions", in other words prohibitions or restrictions on imports or exports other

than duties, taxes, or other charges. Examples of prohibited "quantitative restrictions" would be quotas or import licenses (Article XI; the Agreement on Import Licensing Procedures is relevant in this regard). There are substantial exceptions to this rule, but in taking advantage of them a party may not apply quantitative restrictions in a discriminatory fashion (Article XIII). However, there are exceptions even to this!; and

- to publish trade regulations and judicial and administrative decisions pertaining to specified trade related matters; to administer these regulations and decisions in a uniform, impartial and reasonable manner; to maintain or institute independent judicial, arbitral or administrative tribunals for the purpose of the prompt review of administrative action relating to customs matters (Article X).

The foundational nature of the GATT merits consideration, in addition to the above, of some of the rights created by this agreement and of some of the many exceptions to the obligations imposed by it. (This analysis is not given in respect of other agreements discussed elsewhere. This does not mean that these agreements do not create rights and exceptions, but rather that these important aspects have been omitted for the sake of brevity).

RIGHTS

- to levy on "dumped" products - namely, those products introduced into the commerce of the importing country at less than their normal value - an anti-dumping duty not greater than the margin of dumping (Article VI);
- alternatively to levy a "countervailing duty" to offset the estimated subsidy granted on the manufacture or export of a product in the country of origin or export (Article VI). However, before it can impose a duty, a country must determine that the dumping or subsidy will cause or threaten "material injury" to an established domestic industry (the "injury test"). Dumping and subsidies are the subject of two further agreements, respectively the Agreement on Implementation of Article VI of the GATT 1994 and the Agreement on Subsidies and Countervailing

Measures. While subsidies are not prohibited per se by the GATT itself (Article XVI), the latter agreement does define certain prohibited subsidies and provides specific remedies.

EXCEPTIONS

Exceptions to various of these obligations are numerous: waivers voted under Article XXV, balance of payments exceptions allowing use of quotas (Articles XII-XV), exemption from the MFN obligation for customs unions and free trade areas (Article XXIV), general exemption when emergency action is required to protect a domestic producer (Article XIX), general exceptions (Article XX), national security (Article XXI), the renegotiation procedures for tariff concessions (Article XXVIII), and the provision which permits a prior member or a new member to "opt-out" of a GATT relationship with the other when the new member enters the GATT (Article XXXV). Various of the Understandings found in Annex 1A to the WTO Agreement are relevant to various of these exceptions.

There are also specific provisions throughout the GATT which relax certain obligations for developing countries under particular circumstances (including Article XVIII and Part IV). More generally, the preferential trading regimes devised under the General System of Preferences (GSP) - for example the Lomé Conventions - comprise crucial exceptions from the strictures of the GATT for many Commonwealth states. The legal basis of the GSP continues to be the Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries, assented to by the contracting parties of the GATT in 1979. There is no set expiry date to this Decision. Members do however commit themselves to "collaborate in arrangements for review of the operation of [the Decision]" (Decision, paragraph 9). The legal force of this Decision continues under the GATT 1994 (see Annex 1A to the WTO Agreement, GATT 1994 paragraph 1(b)(iv)). Members, in the Decision on Measures in Favour of Least-Developed Countries (agreed on as part of the UR), reaffirm their commitment to implement fully certain provisions of the 1979 Decision concerning least-developed countries.

TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS

APPLICATION

- to all categories of intellectual property that are the subject of Sections 1 to 7 of Part II of the agreement (see below under the heading “Rights”) (Article 1:2); and
- members must accord the protection provided for in the agreement to the “nationals” of other Members, i.e. those legal or natural persons who would be eligible for protection under the Paris Convention (1967), Berne Convention (1971), the Rome Convention and the Treaty on Intellectual Property in Respect of Integrated Circuits (Article 1:3).

OBLIGATIONS

General

To comply with three general obligations:

- **minimum standards:** to give effect to the level of IP protection provided for in the agreement as a minimum level; it is open to any country to provide greater protection (Article 1);
- **national treatment:** countries must, with regard to the protection of IP, protect nationals (carefully defined in Article 1:3) of other countries by treating them no less favourably than they treat their own nationals (Article 3); and
- **most-favoured-nation treatment:** with regard to the protection of IP, any advantage granted by a Member to the nationals of any other country must be accorded immediately and unconditionally to the nationals of all other Members (Article 4).

Rights

Copyright

- to comply with the Berne Convention for the Protection of Literary and Artistic Works in its latest version (Paris 1971). However, parties are not obliged to protect moral rights as required by Article 6*bis* of the Berne Convention (Article 9);

- to protect computer programmes as literary works under the Berne Convention 1971 (Article 10:1);
- to protect databases by copyright (subject to certain conditions) (Article 10:2);
- to provide a rental right for the owners of rights in films, sound recordings, phonograms and computer programmes; thus going beyond what is required in the Berne Convention (Articles 11 and 14);
- to protect performers from unauthorised recordings and broadcasting of live performances (bootlegging) (Article 14);
- to provide a minimum term of 50 years for performers’ rights and rights in sound recordings (Article 14); and
- to give broadcasting organisations control over the use of broadcast signals for a minimum of 20 years (Article 14).

Trade Marks and Service Marks

- to confer on registered trade mark owners exclusive rights to the use in the course of trade of similar or identical signs, where this would result in a likelihood of confusion. Well-known marks should be given additional protection.(Article 16). Protectable subject matter capable of constituting a trademark is defined in Article 15;
- to confer a term of protection on initial registration of a minimum of seven years, renewable indefinitely (Article 18); and
- to regulate the use of trade marks and their licensing and assignment in accordance with Articles 19-21;

Geographical Indications

- to accord protection to geographical indications to prevent (i) deception of the public as to place of origin and (ii) unfair competition (Article 22).

Industrial Designs

- to provide for the protection of independently created industrial designs that are new or original (as defined) (Article 25). More specifically, the owner of a protected industrial

design shall have the right for a minimum of ten years to protect designs against manufacture, sale or importation of articles bearing or embodying a copy of that design, when such acts are undertaken for commercial purposes (Articles 25-26).

Patents

- to make patents available for any inventions, whether products or processes, in all fields of technology, provided that they are new, involve an inventive step and are capable of industrial application. Plant varieties are to be patentable or protected by an effective sui generis system, or a combination (Article 27);
- to confer on the patent owner the exclusive rights to prevent third parties not having the owner's consent from making, using, offering for sale, selling or importing for these purposes a product or, where the subject matter is a process, the product obtained directly by that process (Article 28). The term of protection is 20 years (Article 33);
- to permit the following exclusions from patentability (Article 27):
 - diagnostic and therapeutic methods for the treatment of humans or animals;
 - plants and animals (other than micro-organisms); and
 - biological processes for the production of plants and animals
- to comply with detailed provisions laid down for compulsory licensing (Article 31); and
- to provide for judicial review of a decision to revoke or forfeit a patent (Article 32).

Layout Designs (Topographies) of Integrated Circuits

- to provide protection to the layout-designs (topographies) of integrated circuits, in accordance inter alia with certain provisions of the Washington Treaty on Intellectual Property in respect of Integrated Circuits (Article 35);
- to confer protection for a minimum of ten years from date of registration or first commercial exploitation (Article 38);
- to render unlawful the importing, selling, or distribution for commercial purposes of a protected layout-design, or an integrated

circuit in which a protected layout-design is incorporated (Article 36);

- to permit innocent infringers to use or sell stock obtained or ordered before learning of infringement, upon payment of a suitable royalty (Article 37); and
- to permit compulsory licensing on the basis of adequate remuneration for parties (Article 37, incorporating Article 31);

Trade Secrets

- to protect trade secrets and know-how which has a commercial value against breach of confidence and other acts contrary to honest commercial practices (Article 39); and
- to protect test data concerning marketing approvals for pharmaceutical or agricultural chemicals against unfair commercial use (Article 39).

Anti-Competitive Practices in Contractual Licenses

- to consult on request with any other Member which has cause to believe that a national or domiciliary of the requested Member is violating the requesting Member's laws regulating anti-competitive aspects of contractual licensing practices or conditions pertaining to IPRs (Article 40).

ENFORCEMENT

- to provide procedures and remedies to ensure intellectual property rights are effectively enforced. These should be fair and equitable, not unnecessarily complicated or costly, and should not entail unreasonable time limits or unwarranted delays. Judicial review of administrative decisions should also be provided (Article 41);
- to confer on judicial authorities the authority to, inter alia (Articles 44-50):
 - order injunctions;
 - award damages and expenses;
 - order the disposal or destruction of infringing goods; and
 - order prompt and effective provisional measures, in particular where any delay is likely to cause irreparable harm to the right holder, or where evidence is likely to be destroyed;

- to provide for measures which can be taken at the border by customs authorities to suspend release into domestic circulation of counterfeit and pirated goods (Article 51); and
- to provide criminal procedures and penalties in cases of (at the least) wilful counterfeiting or piracy on a commercial scale. Remedies should be effective deterrents (Article 61).

DISPUTE PREVENTION AND SETTLEMENT

- to publish, or make publicly available, national laws, regulations, final judicial decisions and administrative rulings pertaining to the subject matter of the agreement, and to notify the same to the Council for TRIPS (Article 63); and
- to comply with the Dispute Settlement Understanding procedures as applied to this agreement (Article 64).

TIME SCALE FOR IMPLEMENTATION OF THE AGREEMENT

An extended transition period (five years for developing countries, ten for least developed countries) is provided to implement the agreement. Developing countries have an additional five years to extend the agreed level of patent protection to areas of technology not so protectable after the first five years (Article 65). However, developing and least developed countries:

- must accept the filing of pharmaceutical and agrochemical applications for patents from the beginning of the transitional period. The invention is protected from the date of filing, though the patent need not be granted until the end of this period (Article 70); and
- may not delay implementation of Articles 3, 4 and 5 more than one year following the date of entry into force of the Agreement Establishing the World Trade Organisation (WTO). These three provisions provide for national treatment, most favoured nation treatment and multilateral agreements on the acquisition of intellectual property concluded under the auspices of the World Intellectual Property Organisation (Article 65).

GENERAL AGREEMENT ON TRADE IN SERVICES

APPLICATION

- to measures by Members affecting “trade in services”, defined in Article I as the supply of a service;
- from the territory of one Member into the territory of another Member;
- in the territory of one Member to the service consumer of any other Member (e.g. tourism);
- by a service supplier of one Member, through commercial presence in the territory of any other Member (e.g. banking); or
- by a service supplier of one Member, through presence of natural persons of a Member in the territory of any other Member

OBLIGATIONS

Part II defines general obligations and disciplines, which include the following:

- with respect to any measure covered by the agreement, to accord MFN treatment immediately and unconditionally to services and service suppliers of any other Member. However, a Member may maintain a measure inconsistent with this obligation if it is listed in a specified Schedule. Measures of this kind are expected to contain a built-in termination date. Those which are to last more than 5 years are reviewable by the Council for Trade in Services (Article II, Annex on Article II Exemptions);
- to publish all measures relevant to the operation of the agreement, including international agreements to which the Member is a signatory, to report the same to the Council for Trade in Services, to respond to requests for information by other Members and to establish inquiry points for this latter purpose (Article III);
- where specific commitments are undertaken (Part III), to administer fairly measures which affect trade in services (Article VI.1);
- to provide judicial, arbitral or administrative tribunals or procedures which provide for

prompt review and appropriate remedies in respect of administrative decisions affecting trade in services (Article VI.2);

- to report to the Council for Trade in Services on the taking of certain measures mandated or permitted under the agreement (e.g. under Articles VII, VIII, X);
- to ensure that a monopoly supplier of a service in its territory does not act in a manner inconsistent with the Member’s obligations under Article II (MFN treatment, above) and with its specific commitments (Article XVI, below); and
- except in limited circumstances, not to restrict international payments and transfers for current transactions relating to specific commitments (Article XII).

Part III defines the following “specific commitments”:

- to specify in a schedule its “market access commitments” - i.e. the market sectors to which access will be permitted through the modes of supply defined in Article I (see above), and the terms of this access. A Member has a very wide discretion to define these commitments, but must accord to services and service suppliers of any other Member treatment no less favourable than these commitments once they are placed in the Schedule (Article XVI). Article XX lists those matters which a Schedule must specify. A Member which modifies or withdraws a commitment may be liable to pay compensation to an affected Member or Members (Article XXI); and
- to accord national treatment to services and service suppliers of any other Members in respect of all measures affecting the supply of services. This is limited to the sectors inscribed in the Schedule (as compiled pursuant to Article XVI) and is subject to any conditions and qualifications contained therein (Article XVII).

Part IV commits Members to successive rounds of negotiations to achieve a progressively higher level of liberalisation. These rounds are to begin within the next four years.

These obligations must be read in the context of the numerous exceptions and qualifications found in the main body of the agreement and in the 5 sector-specific annexes (covering movement of natural persons, air transport services, financial services, maritime transport services and telecommunications). For example, the MFN, market access and national treatment obligations do not apply to regulations governing the procurement by government agencies of services purchased for governmental purposes and not with a view to commercial use (Article XIII).

AGREEMENT ON TEXTILES AND CLOTHING

APPLICATION

- to the textiles and clothing products set out in the Annex to the Agreement, which is lengthy and highly detailed. Products falling outside of the Annex will be regulated by the GATT 1994, under which bound MFN tariff rates remain substantially higher than the average for industrial products generally.¹⁸

OBLIGATIONS

- to notify all restrictions provided for in bilateral agreements under the MFA to the Textiles Monitoring Board and to remove them on fixed percentages of the 1990 total volume of imports in accordance with a graduated schedule: 16% when the Agreement comes into force, 17% within 3 years, and so on until all products specified in the Annex are fully integrated into the GATT 1994 (Article 2);
- to increase quotas over the same ten year period, again in graduated fashion (Article 2); and
- to establish the necessary legal provisions and administrative procedures to address circumvention of the Agreement by means of transshipment, re-routing, false declaration concerning country or place of origin, falsification of official documents (Article 5).

¹⁸ Trebilcock, M.J., and Howse, R. The Regulation of International Trade, Routledge, London 1995; 510pp; 325.

AGREEMENT ON AGRICULTURE

APPLICATION

- to the agricultural products listed in Annex I of the Agreement.

OBLIGATIONS

Market Access

- to tariff non-tariff border measures (NTBMs) (Article 4); and
- to reduce tariffs by an average of 36% (developed countries) and 24% (developing countries) over 5 years. All existing and new tariffs are bound.

Domestic Support

- to reduce domestic production support to agriculture (as measured by an Aggregate Measure of Support - (the AMS), defined in Article 1) by 20% by the year 2000 (relative to a 1986-88 base period) (Article 6, Annex 3); and

- to list the base-period AMS and the Final Bound Commitment Level in a Schedule. All these levels are bound (Articles 6, Annex 3).

Export Subsidies

- to reduce export subsidies by 36% in value and 21% in volume from a 1986-90 base period average. Export subsidies are bound, as are tariffs (Article 9); and
- not to use export subsidies at all except for agricultural goods subject to reduction commitments. (Article 8).

General

- to give effect to the Agreement on the Application of Sanitary and Phytosanitary Measures (Article 14).

The Agreement is quite complex and these obligations are subject to a range of exceptions and qualifications. The regime is more lenient for developing countries. For example, they need only reduce tariffs, support and export subsidies by two-thirds of the levels above, and have ten years to implement the Agreement.

AGREEMENT ON TRADE-RELATED INVESTMENT MEASURES**APPLICATION**

- to investment measures related to trade in goods (Article 1).

OBLIGATIONS

- not to apply any TRIM inconsistent with the national treatment and quantitative restriction obligations in Articles III and XI respectively of the GATT 1994 (Article 2; the Annex provides an “illustrative list” of inconsistent TRIMs). All relevant exceptions under the GATT 1994 will apply to these obligations. In particular, developing countries shall be free to deviate temporarily from the provisions of Article 2 to the extent permitted by, *inter alia*, Article XVIII of the GATT 1994 (Articles 3 and 4);
- to notify the Council for Trade in Goods of all TRIMs inconsistent with this Agreement within 90 days of the entry into force of the WTO Agreement, and to eliminate the same within 2 years of the same date (developed countries), 5 years (developing country) or 7 years (least developed countries). During the transition period, a Member may not increase the degree of inconsistency of any notified TRIM, but may apply it to a new investment under defined circumstances (Article 5); and
- to notify the WTO of the publications in which TRIMs may be found (Article 6).

Again, these obligations must be read carefully in the context of a range of qualifications and exceptions.