Overview

This overview introduces the reader to the rules of the WTO system, briefly explains the progress achieved in trade liberalization and refers to the new trade-related subject areas on which WTO is currently carrying out analytical work in order to determine whether it would be desirable to develop WTO rules in those areas. The overview is divided into five sections.

The first section briefly traces the evolution of the multilateral trading system since the adoption of GATT in 1948 to the establishment of WTO in 1995 and describes its importance in today's rapidly globalizing economy. The second section provides a résumé of the principles and rules embodied in the legal instruments that now constitute the WTO system. The third gives a short description of the trade liberalization commitments undertaken by various countries in the Uruguay Round and in the negotiations that have taken place since then. The fourth section focuses on the work undertaken during the period 1995 to 1998, including the decisions taken at WTO's two Ministerial Conferences to add new subject areas to the WTO work programme for further study and the proposals that are under consideration for the possible launching of a comprehensive round of negotiations on a wide range of subjects. This is followed in the fifth section by an explanation of the implications for business of the WTO system. It stresses that governments negotiated the legal instruments and improvements in access to foreign markets primarily for the benefit of their industries, business enterprises and the trading community. The basic responsibility for taking advantage of the new trade opportunities that have been created as a result now falls on the business and trading communities. To assist them in converting these opportunities into business orders and in their overall efforts to develop trade, the legal system provides them with security of access and creates certain rights in their favour. Their ability, however, to derive full advantage from the system will greatly depend on their knowledge and understanding of its rules.

An illustrative listing of the benefits and rights which the various legal instruments confer on industry and the trading community is contained in annex I to this overview. An analytical summary of the provisions on the special and differential treatment of developing and least developed countries which have been incorporated in the various Agreements is provided in annex II.

The WTO system and the evolving global economy

The evolving multilateral trading system

The multilateral trading system can be broadly defined as the body of international rules by which countries are required to abide in their trade relations with one another. The basic aim of these rules is to encourage countries to pursue open and liberal trade policies. These rules are continuously evolving. The existing rules are being clarified and elaborated to meet the

changing conditions of world trade; at the same time rules covering new subjects are being added to deal with problems and issues that are being encountered.

Establishment of GATT

The first major effort to adopt rules to govern international trade relations was made by countries in the years immediately after the Second World War. These efforts resulted in the adoption in 1948 of the General Agreement on Tariffs and Trade (or GATT, as it is commonly known). Its rules apply to international trade in goods. Over the years, the text of GATT has been modified to include new provisions, particularly to deal with the trade problems of developing countries. In addition a number of associate Agreements which elaborate on some of the GATT's main provisions were adopted.

The Uruguay Round of Trade Negotiations

The rules of GATT and its associate agreements were further revised and updated to meet changing conditions of world trade in the Uruguay Round of Trade Negotiations which were held from 1986 to 1994. The text of GATT, along with the decisions taken under it over the years and several Understandings developed during the Uruguay Round, has come to be known as GATT 1994. Separate Agreements have been adopted in such areas as agriculture, textiles, subsidies, anti-dumping, safeguards and other matters; together with GATT 1994, they constitute the elements of the Multilateral Agreements on Trade in Goods. The Uruguay Round also resulted in the adoption of new set of rules governing trade in services and the trade-related aspects of intellectual property rights.

One of its other achievements is the establishment of WTO. GATT, under whose auspices these negotiations were launched, has ceased to be a separate organization and has been subsumed into WTO.

The WTO system

The WTO system as it has emerged from the Uruguay Round now consists of the following main substantive Agreements:

- Multilateral Agreements on Trade in Goods including the General Agreement on Tariffs and Trade (GATT 1994) and its associate Agreements;
- General Agreement on Trade in Services (GATS);
- Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

Box 1 lists the legal instruments that now form the WTO system.

The responsibility for overseeing the implementation of these Agreements rests with WTO. The organization also acts as a forum for negotiations among countries for the further liberalization of the trade in goods and service products. It provides a mechanism for settling trade disputes among member countries. Any member country which considers that its trade is adversely affected because of the failure of another country to comply with the rules can bring the matter to WTO for settlement, if it fails to find a satisfactory solution through bilateral consultations.

Decisions on all important matters falling under its competence are taken at the Ministerial Conference of member countries. The Conference must meet at least once every two years.

Box 1

The main legal instruments negotiated in the Uruguay Round

A. Marrakesh Agreement Establishing the World Trade Organization

B. Multilateral agreements

1. *Trade in goods*
   - *General Agreement on Tariffs and Trade (GATT 1994)*

     Associate Agreements

     Agreement on Implementation of Article VII of GATT 1994 (Customs Valuation)
     Agreement on Preshipment Inspection (PSI)
     Agreement on Technical Barriers to Trade (TBT)
     Agreement on the Application of Sanitary and Phytosanitary Measures (SPS)
     Agreement on Import Licensing Procedures
     Agreement on Safeguards
     Agreement on Subsidies and Countervailing Measures (SCM)
     Agreement on Implementation of Article VI of GATT 1994 (Anti-dumping) (ADP)
     Agreement on Trade-Related Investment Measures (TRIMs)
     Agreement on Textiles and Clothing (ATC)
     Agreement on Agriculture
     Agreement on Rules of Origin

   - *Understandings and Decisions*

     Understanding on Balance-of-Payments Provisions of GATT 1994
     Decision Regarding Cases where Customs Administrations Have Reasons to Doubt the Truth or Accuracy of the Declared Value (Decision on Shifting the Burden of Proof)
     Understanding on the Interpretation of Article XVII of GATT 1994 (State trading enterprises)
     Understanding on Rules and Procedures Governing the Settlement of Disputes
     Understanding on the Interpretation of Article II:1(b) of GATT 1994 (Binding of tariff concessions)
     Decision on Trade and Environment
     Trade Policy Review Mechanism

2. *Trade in services*
   - *General Agreement on Trade in Services (GATS)*

3. *Intellectual property rights (IPRs)*
   - *Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)*

C. Plurilateral trade agreements

Agreement on Trade in Civil Aircraft
Agreement on Government Procurement

WTO and the global economy

The pre-WTO system, which was embodied in GATT, was sometimes regarded as a rich man's club as it was felt that it was primarily of interest to affluent developed countries. At the time of the launching of the Uruguay Round of

trade negotiations (1986), only a comparatively small number of developing countries were showing active interest in the work of GATT by having permanent missions in Geneva. The situation, however, changed dramatically after the Round was launched. By the time the Round was completed and GATT was transformed into the World Trade Organization, a much larger number of these countries had been engaged and were continuing to engage in negotiations and discussions. The majority of them have now established permanent missions in Geneva. In addition, following the collapse of Communism, a number of transitional economies began applying for membership. At present, 134[1] countries are members of the WTO. In addition, 30 developing countries and transition economies are negotiating for accession. These include countries like China, the Russian Federation and Ukraine, which have a significant impact on international trade.

What has led to the change in the attitude towards membership of the WTO and why are countries showing greater interest in the rule-based system that has emerged from the Uruguay Round? The reasons for these are many but three of them are worth noting.

The first is related to the pace at which the world economy is globalizing through international trade and the flow of foreign direct investment. The revolutionary changes which have taken place in transport and communications now make it possible even for small manufacturers in developing countries to look for markets for their products in countries thousands of miles away. The facility with which goods can be transported from one country to another is, as some observers have stated, making the world a 'global village'.

Second, this process of globalization which has increased the dependence of countries on international trade is further accelerated by the shift in economic and trade policies noticeable in most countries. The collapse of communism has led to the gradual adoption of market-oriented policies in most countries where production and international trade had been State controlled. These countries, which in the past traded primarily among themselves, are increasingly trading on a worldwide basis. Many developing countries have discarded import substitution policies and are now pursuing export-oriented policies, under which they seek to promote economic growth by exporting more and more of their products.

Third, these liberal and open trade policies and the measures countries are taking to encourage foreign direct investment have prompted multinationals to obtain their components and intermediate products from countries where costs are lower and to establish production facilities there. Thus, increasingly, the products available on the market today – whether they are consumer items like ready-made garments, or consumer durables like refrigerators and air-conditioners, or capital goods – result from production processes undertaken in more than one country. Concrete evidence of the globalization of the world economy and the increasing dependence of countries on foreign trade is given in a recent advertisement from a multinational producing electrical household goods which proudly proclaims that its products are made up of components from as many as five or six countries.

This increasing dependence on foreign trade, both as exporters and as importers of goods and service products, has made governments and business enterprises aware of the vital role which the multilateral trading system can play in safeguarding their trade interests. The rule-based system assures them that the

1 On 21 May 1999, the General Council approved Estonia's entry into WTO. It will become the 135th WTO member 30 days after it notifies the Secretariat that it has completed its national ratification proceedings.

access which their products enjoy in foreign markets will not be suddenly disrupted by governmental measures such as the raising of tariffs or the imposition of prohibitions or restrictions on imports. The predictable and secured access which the system provides to foreign markets enables business enterprises to plan and develop production for export without fear that the foreign market may be lost as a result of restrictive government actions. Furthermore, what is often not widely known is that the system also provides certain rights to business enterprises. While most of these rights are available to them *vis-à-vis* their own governments, a few can be used against foreign governments.

The framework of rights and obligations which the WTO system has created therefore plays a crucial role in the development of trade in the fast globalizing world economy. The ability of governments and business enterprises to benefit from the system depends greatly on their knowledge and understanding of the rules of the system, the advantages they provide and the challenges they pose.

Main features of the WTO Agreements

Multilateral Agreements on Trade in Goods

Objective and principles

The basic objective of GATT, which lays down multilateral rules for trade in goods, is to create a liberal and open trading system under which business enterprises from member countries can trade with one another under conditions of fair competition. Even though the detailed rules which GATT and its associate agreements (*see* box 1) prescribe may appear complex and their legal terminology often bewildering, they are based on a few simple principles and rules. In effect, the entire framework of GATT is based on four basic rules. (*See* chapter 2.)

Four basic rules

Protection to domestic industry through tariffs

Even though GATT aims at the progressive liberalization of trade, it recognizes that its member countries may have to protect domestic production against foreign competition. However, it requires countries to provide such protection through tariffs. The use of quantitative restrictions is prohibited, except in a limited number of situations.

Binding of tariffs

Countries are urged to reduce and, where possible, eliminate protection to domestic production by reducing tariffs and removing other barriers to trade in multilateral trade negotiations. The tariffs so reduced are bound against further increases by being listed in each country's national schedule. The schedules are an integral part of the GATT legal system.

Most-favoured-nation (MFN) treatment

This important rule of GATT lays down the principle of non-discrimination. The rule requires that tariffs and other regulations should be applied to imported or exported goods without discrimination among countries. Thus it is not open to a country to levy customs duties on imports from one country at a rate higher than it applies to imports from other countries. There are, however,

some exceptions to the rule. Trade among members of regional trading arrangements, which is subject to preferential or duty-free rates, is one such exception. Another is provided by the Generalized System of Preferences. Under this system, developed countries apply preferential or duty-free rates to imports from developing countries, but apply MFN rates to imports from other countries.

National treatment rule

While the MFN rule prohibits countries from discriminating among goods originating in different countries, the national treatment rule prohibits them from discriminating between imported products and domestically produced like goods, both in the matter of the levy of internal taxes and in the application of internal regulations.

Thus, it is not open to a country, after a product has entered its market on payment of customs duties, to levy an internal tax [e.g. sales tax or value-added tax (VAT)] at rates higher than those payable on a product of national or domestic origin.

Rules of general application

The four basic rules described above are complemented by rules of general application governing goods entering the customs territory of an importing country. These include rules which countries must follow:

- In determining the dutiable value of imported goods where customs duties are collected on an *ad valorem* basis (*see* chapter 3);
- In applying mandatory product standards, and sanitary and phytosanitary regulations to imported products (*see* chapter 5);
- In issuing licences for imports (*see* chapter 6).

The detailed rules applicable in these and other areas are contained in the relevant associate Agreements. The main features of these rules are described in box 2.

Other rules

In addition to the rules of general application described above, the GATT multilateral system has rules governing:

- The grant of subsidies by governments;
- Measures which governments are ordinarily permitted to take if requested by industry; and
- Investment measures that could have adverse effects on trade.

Rules governing the use of subsidies

Governments grant subsidies for diverse policy objectives. Such subsidies could in practice distort conditions of competition in international trade. The basic aim of GATT rules, which have been further elaborated by the Agreement on Subsidies and Countervailing Measures (SCM), is to prohibit or restrict the use of subsidies that have trade-distorting effects.

The SCM Agreement divides subsidies granted by governments in the industrial sector into prohibited and permissible subsidies.

Prohibited subsidies include export subsidies and subsidies that aim at encouraging the use of domestic rather than imported goods. Prior to the Uruguay Round, the rule prohibiting the use of export subsidies was mandatory only for developed countries. It now applies in principle also to developing

Box 2

Summary of GATT rules applicable at the border

Determination of dutiable customs values. [See chapter 3.] The Agreement on Customs Valuation protects the interests of importers by stipulating that value for customs purposes should be determined on the basis of the price paid or payable by the importer in the transaction that is being cleared by Customs. However, Customs can reject the declared value when it has reasonable doubts about the truth or accuracy of the declared value. In all such cases, it has to give importers an opportunity to justify their declared value. Where Customs is not satisfied with the justification, the Agreement sets out a hierarchy of five alternative yardsticks which may be applied.

Application of mandatory standards. [See chapter 5.] Countries often require imported products to conform to the mandatory standards they have adopted to protect the health and safety of their people. The Agreement on Technical Barriers to Trade provides that such product standards should not be formulated and applied in a way as to cause unnecessary barriers to trade. Towards this end it calls on countries to use international standards where they exist and, where they do not, to base their mandatory standards on scientific information and evidence.

Application of sanitary and phytosanitary regulations. [See chapter 5.] Such regulations are applied by countries to protect their plant, animal and human life from the spread of pests or diseases that may be brought into the country by contaminated fruits, vegetables, meat and other food products. The Agreement on the Application of Sanitary and Phytosanitary Measures requires countries not to apply such regulations in a way that would cause unreasonable barriers to trade, urges them to base their regulations on scientific principles, and encourages them to adopt international standards and guidelines wherever possible.

Import licensing procedures. [See chapter 6.] The Agreement on Import Licensing Procedures sets out guidelines for licensing authorities to follow in issuing import licences with a view to ensuring that the procedures do not have additional trade restricting effects.

countries. The latter have, however, a transitional period of eight years (i.e. up to 1 January 2003) to modify their subsidy practices. Developing countries with a per capita gross national product (GNP) of less than US$ 1,000 which have been listed in the Agreement and least developed countries are exempted from the rule prohibiting export subsidies. (*See* chapter 8.)

Permissible subsidies are further divided into two categories: actionable and non-actionable. When imports of products receiving actionable subsidies cause *adverse* trade effects, the affected importing countries can have recourse to remedial measures. Such remedial measures can take the form of countervailing duties when the subsidized imports cause injury to the domestic industry (see below). However, importing countries cannot levy countervailing duties on products that have benefited from the limited number of subsidies that are considered non-actionable.

Measures which governments of importing countries can take if requested by domestic industry

The rules further stipulate that certain types of measures, which could have restrictive effects on imports, can ordinarily be imposed by governments of importing countries only if the domestic industry which is affected by increased imports petitions that such actions should be taken. These measures include:

- Safeguard actions. (*See* chapter 9.)
- Levy of anti-dumping and countervailing duties. (*See* chapters 8 and 11.)

Safeguard actions

The Agreement on Safeguards permits importing countries to restrict imports of a product for a temporary period by either increasing tariffs or imposing quantitative restrictions. Such safeguard actions can be resorted to only when it has been established through properly conducted investigations that a sudden increase in imports (both absolute and relative to domestic production) has caused or threatens to cause serious injury to the domestic industry. Safeguard actions cannot be taken if only one or two companies producing a product similar to the imported product are affected. They are permitted solely when it is established that increased imports are causing serious injury to the producers accounting for a major proportion of the total domestic production of a product similar to the imported product. (*See* chapter 9.)

The primary purpose of providing such temporary increased protection is to give the affected industry time to adjust to the increased competition that it will have to face after the restrictions are removed. The Agreement ensures that such restrictions are applied only for temporary periods by stipulating a maximum period of eight years for the imposition of a safeguard measure on a particular product.

Even though the initiative for the commencement of investigations can be taken by governments themselves, in most countries the practice is to initiate such investigations only on the basis of a petition from the affected industry.

Anti-dumping and countervailing duties

It is also open to governments to levy compensatory duties on imported products where it is alleged that foreign suppliers are resorting to unfair trade practices. The rules deal with two types of unfair practices that can distort conditions of competition in international trade.

The first is dumping of goods in foreign markets. The Agreement on Anti-dumping Practices (ADP) lays down strict criteria for the determination of dumping. It stipulates that a product should be treated as being dumped where its export price is less than the price at which it is offered for sale in the domestic market of the exporting country.

The second is unfair competition, which could result when a foreign company is able to charge low export prices because it has been subsidized by the government.

The ADP Agreement authorizes countries to levy anti-dumping duties on products that are being dumped. Likewise, the Agreement on SCM permits countries to levy countervailing duties on imported products that have benefited from subsidies.

The levy of such duties is, however, subject to two important conditions. First, the duties cannot be levied simply on the grounds that the product is being dumped or subsidized. It is essential for the importing country to establish, through investigations carried out at national level, that increased imports are causing material injury to the domestic industry. Second, as noted earlier, governments can initiate such investigations if a petition is submitted by or on behalf of the domestic industry claiming that dumped or subsidized imports are causing material injury to producers accounting for at least 25% of total domestic production. It should be noted that the standard for determining injury to industry in safeguard actions is much higher than that required for determining injury for the levy of countervailing duties. For safeguard actions, it must be established that the injury to the industry is serious, while for anti-dumping and countervailing measures, a lower standard of proof of material injury is adequate. The difference is due to the fact that in the case of the former, the problems of the domestic industry in the importing country are

caused by fair foreign competition; in the case of the latter the problems arise from the unfair trade practices of foreign suppliers. The two Agreements further lay down factors (such as fall in turnover or profits or decline in the labour force) which should be taken into account by the investigating authorities in determining whether industry is being injured by imports. (*See* chapter 11.)

Trade-related investment measures (TRIMs)

Countries often impose conditions on foreign investors to foster diversified industrialization. Where they affect trade, such conditions are known as trade-related investment measures.

The Agreement on TRIMs, which has been negotiated in the Uruguay Round, now prohibits countries from using five types of measures (such as local content and trade-balancing requirements) which are considered to be inconsistent with the GATT rule of national treatment and the rule which prohibits the application of quantitative restrictions to imported products. (*See* chapter 13.)

General Agreement on Trade in Services (GATS)

Four modes of international trade in services

Services cover economic activities ranging widely from banking, insurance and telecommunications to recreation, cultural and sporting services. WTO has identified over 150 service subsectors.

One of the main characteristics of services is that they are intangible and invisible; goods, by contrast, are tangible and visible. These differences also influence the modes in which international trade transactions take place. While international trade in goods involves the physical movement of goods from one country to another, only relatively few service transactions involve cross-border movements. For most service transactions, proximity between the service provider and the consumer is necessary. Such proximity can be obtained either by establishing a commercial presence in the importing country (e.g. opening a branch) or through the movement of natural persons for a temporary period (e.g. a lawyer or architect moving to another country). In the case of a few service activities, consumers may have to move to the country of importation (e.g. tourism, where tourists travel to another country). (*See* chapter 17.)

Trade in services is growing and currently accounts for over 20% of all international trade. The General Agreement on Trade in Services, which was negotiated in the Uruguay Round, has created a framework for bringing this trade under international discipline. Its provisions apply to all the modes in which international trade in services takes place, viz:

- Cross-border movement of service products;
- The establishment of a commercial presence in the country where the service is provided;
- Temporary movement of natural persons to another country to provide a service there; and
- The movement of consumers to the country of importation.

Main provisions of GATS

The Agreement consists of:

- A framework text which lays down a set of general principles that apply to measures affecting trade in services.

- Specific liberalization commitments that apply to the service industries and sub-industries listed in each country's schedule.

MFN and national treatment

These two basic principles, which apply to trade in goods, now also apply to trade in services. However, they have been modified to take into account the special characteristics of trade in services.

Thus the Agreement requires countries to apply MFN treatment by not discriminating between service products and service providers of different countries. However, it may be possible for a country to maintain for a transitional period of 10 years (i.e. up to 1 January 2005) measures that are not consistent with the MFN principle.

The national treatment principle visualizes that countries should not treat foreign service products and service providers less favourably than their own service products and service providers. The Agreement, however, does not as in the case of trade in goods, impose this as an obligation to be applied across the board in all service sectors but requires countries to indicate in their schedules of concessions the sectors in which, and the conditions subject to which, such treatment would be extended.

Transparency requirements

In order to ensure that foreign service providers are fully aware of the regulations which apply to trade in services, countries are required to publish all relevant laws and regulations. Each country is further required to establish an enquiry point from which other member countries can obtain information on laws and regulations in the service sector.

Developed countries are in addition required to establish contact points from which service providers in developing countries can obtain information on, *inter alia*, the availability of service technology and the commercial and technical aspects of the supply of services.

Increasing participation of developing countries

The Agreement recognizes that as service industries in developing countries are not fully developed, they may have to maintain higher levels of protection. It therefore provides that they should have the flexibility, when making liberalization commitments, to open fewer sectors to import competition and to impose on foreign suppliers wishing to invest or establish a branch or a subsidiary conditions that are necessary to secure transfer of technology or to achieve other developmental objectives.

Liberalization commitments

The specific liberalization commitments assumed by countries in the Uruguay Round are contained in each country's schedule of concessions. They indicate, on a sector-by-sector basis and for each of the four modes in which trade in services takes place, the conditions subject to which countries have agreed to improve market access and to extend national treatment by eliminating or reducing the treatment discriminating against foreign suppliers in comparison to domestic suppliers. Since the conclusion of the Uruguay Round, negotiations on further trade liberalization have been held in the sectors of telecommunications and financial services.

The Agreement further imposes on countries obligations, *inter alia*, not to apply restrictions on international transfers and payments (except when they are in balance-of-payments difficulties) in sectors where they have made specific liberalization commitments.

Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)

The nature of intellectual property

The Agreement on TRIPS forms with the Multilateral Agreements on Trade in Goods and GATS the tripod for the WTO legal system. The objects of intellectual property are the creations of the human mind. The rights of creators of innovative or artistic work are known as intellectual property rights. They include copyright (which protects the rights of authors of books and other artistic creations), patents (which protect the rights of inventors) and industrial designs (which protect rights to ornamental designs). They also cover trademarks and other signs that traders use to distinguish their products from those of others and thus build consumer loyalty and goodwill for their marks or brand names.

Background to the negotiations on TRIPS

The unauthorized use of intellectual property is an infringement of the right of the owner. The years before the Uruguay Round witnessed a considerable increase in the production of, and international trade in, counterfeit and pirated goods. This was largely due to the unsatisfactory enforcement of trademark and copyright laws in many countries. In addition, patented technology was being used by manufacturers without licensing from patent owners. The standards of protection as well as the periods for which rights were protected also varied widely from country to country. (*See* chapter 20.)

Main provisions of the Agreement

The Agreement on TRIPS complements agreements on the protection of intellectual property rights developed by the World Intellectual Property Organization (WIPO). In particular, it prescribes minimum standards and periods for which protection should be granted to different intellectual property rights. In doing so it takes on board the standards laid down in the WIPO Conventions and adds some more, particularly in the area of patents. Countries are further required not to discriminate among foreign nationals and between foreign and their own nationals in the acquisition, scope and maintenance of IPRs (extension of MFN and national treatment). An important feature of the TRIPS Agreement is that the standards of protection laid down in the WIPO Conventions have been made legally enforceable.

Categorization of WTO member countries

The WTO system envisages four groups of member countries: developed, developing, least developed and transitional economies. At the 1998 Geneva Ministerial Conference, mention was made for the first time of "certain small economies" within the overall group of developing countries.[2]

All countries identified as 'least developed' by the United Nations system are treated as least developed countries under the WTO system. There are at present 48 countries in this category. There is however no agreed and precise definition for identifying in which group the remaining countries fall. The determination of whether a country is 'developing' is made in accordance with the principle of 'self-election'. Countries which in the past had centrally

2 The Ministerial Declaration of the Geneva Conference states, *inter alia*, that "We remain deeply concerned over the marginalization of the least-developed countries and certain small economies and recognize the urgent need to address this issue which has been compounded by chronic foreign debt problem facing many of them."

planned economies (belonging mainly to Eastern and Central Europe and the former Soviet Union) and which are now taking steps to adopt systems based on a free market and democracy are treated as transitional economies. The remaining member countries are regarded as developed countries.

Single undertaking rule

The multilateral legal instruments which constitute the WTO system are treated as a single undertaking. All WTO member countries (whether they are developed, developing, least developed or transitional) are required to adopt national legislation and regulations to implement the rules prescribed by the Multilateral Agreements on Trade in Goods, viz. GATT 1994 and its associate Agreements, GATS and the Agreement on TRIPS. The obligation to abide by the discipline of the plurilateral Agreements, however, applies only to WTO member countries which choose to accede to these Agreements. (Box 1 lists the multilateral and plurilateral Agreements.)

Provisions for the special and differential treatment of developing and least developed countries

The multilateral Agreements recognize that developing, including least developed, countries may have difficulties in accepting all or some of the obligations which they impose and provide for the extension of special and differential treatment to these countries. These provisions can be broadly divided into three categories:

- Provisions requiring countries (developed and developing) to take measures facilitating the trade of developing and least developed countries.
- Flexibility available to developing and least developed countries in accepting the obligations which the WTO Agreements impose.
- Provision of technical assistance to developing and least developed countries to build their capacity for implementing the Agreements.

An analytical summary of these provisions is given in annex II.

Procedures for dispute settlement

The WTO system provides a mechanism for the settlement of disputes when a country finds that another country is in breach of the rules and efforts to find satisfactory solutions through bilateral consultations fail. Disputes brought to WTO are generally the result of the information provided by industries or their associations to their governments on the difficulties they are encountering in marketing their products in outside markets. (*See* chapter 1.)

Even though throughout the process of dispute settlement – bilateral consultations, examination by the dispute settlement panel and later by the Appellate Body – it is the governmental representatives who participate, they rely heavily on advice and support on a continuing basis from the industry and associations which have an interest in the subject matter under dispute. The ability of the governments to pursue a case effectively or to defend their interests in a case brought against them depends greatly on the assistance and support provided by the industry groups concerned.

Mechanism for trade policy review

In addition to providing a mechanism for settling disputes, WTO acts as a forum for the periodic review of the trade policies of member countries. The objectives of these reviews are twofold. First, they aim at finding out how far the

countries are following the disciplines of, and the commitments made under, the multilateral Agreements (and, where applicable, under the plurilateral Agreements). By carrying out such reviews periodically, WTO acts as a watch-dog to ensure that its rules are carried out and thus contributes to the prevention of trade friction. The provisions establishing the review mechanism, however, clarify that it is not intended to serve as a basis for enforcing obligations; nor should such reviews be used for the settlement of disputes. The second equally important objective of these reviews is to provide greater transparency and understanding of the trade policies and practices of member countries. (*See* chapter 1.)

Liberalization measures taken by countries as a result of commitments assumed in the Uruguay Round

Improvements in market access

In addition to providing a legal framework for the conduct of international trade, the multilateral trading system provides a forum for continuous negotiations for the liberalization of trade. As a result of successive rounds of negotiations in the past 50 years, a significant reduction in tariffs and other barriers to trade has been obtained. The Uruguay Round took important steps towards this reduction in barriers.

The industrial sector

Reductions in tariffs

As a result of reductions made in earlier rounds, the average tariff levels in developed countries on industrial products had come down from around 40% in 1948 when GATT was established to about 7% at the end of the Tokyo Round. In the Uruguay Round, these countries agreed to cut their tariffs by a further 40%, generally in five equal annual instalments. However, the percentage of tariff reductions on some products of export interest to developing countries, such as textiles and clothing and leather and leather products, is much lower than the average. A number of developing countries and economies in transition have also agreed to reduce their tariffs by nearly two-thirds of the percentage achieved by developed countries. As a result, the weighted level of tariffs applicable to industrial products is expected to fall as follows (*see* chapter 16):

- 6.3% to 3.8% in developed countries;
- 15.3% to 12.3% in developing countries;
- 8.6% to 6% in the transitional economies.

As a general rule, the process of staged reductions is to be completed by 1 January 2000, when the final rates resulting from percentage cuts agreed in the Uruguay Round will become fully applicable. In some cases a longer staging has been provided for by member countries.

Agreement on Textiles and Clothing

Another important achievement of the Uruguay Round is the decision to phase out restrictions on imports of textiles and clothing. These restrictions were imposed by certain developed countries mainly on imports from selected developing countries under bilateral agreements negotiated under the Multi-Fibre Arrangement (MFA), which provided an exception to the GATT

rules prohibiting the use of discriminatory quantitative restrictions. The Agreement on Textiles and Clothing (ATC), which replaces MFA, provides for the removal of restrictions on textiles in four phases over a period of 10 years. This phasing-out programme will end on 1 January 2005. From then on, the trade in textiles will be completely integrated into GATT 1994 and will be governed by its rules. (*See* chapter 14.)

Agreement on Agriculture

In the past, the rules of GATT on the agricultural sector were either less rigorous or were applied leniently. Some developed countries in particular protected their costly and inefficient production of temperate zone agricultural products (e.g. wheat and other grains, meat and dairy products) by imposing, in addition to high tariffs, quantitative restrictions and/or variable levies on imports. This level of protection often resulted in increased domestic production which, because of high prices, could not be disposed of in international markets without export subsidies. Such subsidized sales depressed international prices. They also took away from efficient producers their legitimate market shares. (*See* chapter 15.)

The reform programme adopted under the Agreement on Agriculture, negotiated in the Uruguay Round, aims at establishing a fair and market-oriented trading system in agriculture. The negotiations undertaken in pursuance of these rules have resulted in some progress in the liberalization of trade in these products.

All countries have agreed to replace quantitative restrictions and other non-tariff measures on agricultural products with tariffs. The new 'tariffied' rates (arrived at by adding the incidence of non-tariff measures to existing tariffs) as well as other tariffs are being reduced over a six-year period (10 years for developing countries) starting 1995 by a simple average of 36% for developed countries (24% for developing countries). No tariff reduction has to be made by LDCs. In addition, all countries have bound all tariffs applicable to agricultural products. In most cases, however, developing countries have given bindings at rates that are higher than their current applied or reduced rates. Member countries using subsidies have agreed to reduce both production and export subsidies by agreed percentages. (*See* chapter 15.)

Estimates of income and trade gains

For business enterprises deciding on marketing strategies, it is important to know what gains – in terms of income and trade – will flow from the liberalization of trade. As regards measures to remove tariffs and other barriers to trade in goods, WTO and other organizations have carried out a number of studies at the macroeconomic level to assess the impact of these measures on world income and trade. Broadly speaking the various estimates of the gains from the Uruguay Round concluded that, when fully implemented, the liberalization measures agreed by governments would boost world income by 1% per year or by US$ 200 billion to US$ 500 billion annually. Estimates of the increase in the volume of world trade varied according to the assumptions made in the studies, and ranged from 6% to 20% per annum. However, the studies cautioned that these gains would not be evenly shared by countries in different regions. The developed and some of the developing countries at higher stages of development would be the main beneficiaries. Countries in Africa and the least developed countries would benefit only marginally, if at all. (*See* chapter 16.)

Need for caution in interpreting macroeconomic studies

While macroeconomic studies provide guidelines that may be useful to the business community, their findings have to be used with caution, particularly in

planning for the future and in day-to-day decision-making. There are now definite indications that these estimates, which were made either before or immediately after the conclusion of the Uruguay Round, will have to be revised downwards substantially for two main reasons.

First, it has now become clear that, in certain areas, countries have implemented their liberalization commitments in form rather than in substance. For instance, most of the studies had estimated that the bulk of the trade gains would occur from the liberalization of trade in textiles. The studies had not foreseen that the countries maintaining restrictions would use the flexibility available under the rules to remove only a very small number of restrictions during the first seven years of the 10-year transitional period, and that consequently the bulk of restrictions would be removed only by 1 January 2005, when the transitional period ends.

Second, the studies had assumed that the world economy would grow at a normal pace and that there would not be any backsliding in growth. These expectations have been belied. The Asian financial crisis which began in mid-1997 and Japan's poor economic performance in 1998 have led to a general decline in demand, particularly in Asian markets, and a fall in the prices of oil and other commodities.

Liberalization may also have a varying impact on enterprises in different countries. Take the case of textiles, on which restrictions are applied on a discriminatory basis by importing countries. Enterprises in country A whose exports had been restricted may find that they can benefit from the removal of restrictions in their main markets and therefore adopt production and export strategies to take advantage of the improved opportunities for trade. By contrast, enterprises in country B whose exports had not been so restricted will have to prepare themselves to cope with the increased competition that will follow the removal of restrictions on imports from country A.

Likewise, enterprises from countries benefiting from preferential tariff access in their major developed markets may find this access cut back by the MFN reductions resulting from commitments made in the Uruguay Round. The macroeconomic studies indicated that the reductions in preferential margins might not have any overall negative effects on the trade of preference-receiving countries. However, individual exporting enterprises may find that the loss of these margins could, in fact, have adverse trade effects. This could happen if the preferential margins were meaningful in actual trade, taking into account such factors as the prices charged by other suppliers in the importing market.

It is therefore important for business enterprises to supplement macroeconomic studies with reviews of the impact of tariff reductions and the removal of barriers in their target markets on the products they export. As the lack of financial and technical resources may hamper enterprises, particularly SMEs, from carrying out such reviews themselves, national research institutions will have to take the initiative in this regard. International organizations like the Commonwealth Secretariat and ITC could also assist by undertaking such studies for products in which a number of developing and least developed countries have an export interest.

Developments since the establishment of WTO

WTO, as noted earlier, provides a forum for the consideration of issues of concern in international trade, for continuing negotiations on the further liberalization of trade and on the development of rules in new subject areas that

are considered by member countries to have an impact on international trade. A number of developments that have taken place in 1995-1998 are described below.

Trade problems of least developed countries

The alleviation of the trade problems of LDCs was one of the important issues to which WTO paid special attention during the 1995-1998 period. As noted earlier, the trade of LDCs was expected to benefit only marginally from the tariff reductions and the removal of barriers resulting from the Uruguay Round. This, combined with the steady deterioration in the prices of the commodities they export and their supply-side constraints to developing production for export, has contributed to their further marginalization in international trade. In order to find solutions to these problems, most developed countries have, in pursuance of the decisions taken at the High-Level Meeting on Integrated Initiatives for Least-Developed Countries' Trade Development, held in October 1997, improved their generalized systems of preferences to allow duty-free imports of products exported by LDCs. Steps to enhance imports from these countries on a preferential basis have also been taken by a few developing countries while others are considering the feasibility of introducing such schemes.

The High-Level Meeting also endorsed an integrated programme for trade-related assistance to LDCs. Under this programme, trade-related assistance is being provided on a coordinated basis by six agencies – ITC, WTO, UNCTAD, UNDP, IMF and the World Bank – on the basis of an assessment of needs by individual LDCs. The areas in which assistance is now being provided include compliance with WTO rules and obligations for the alleviation of supply-side constraints such as infrastructure, human and institutional capacity building, and the needs of the private sector. The programme visualizes the organization of trade-related round tables by individual LDCs; these will involve the participation of bilateral development partners, other multilateral agencies and regional organizations interested in financing or expanding the technical assistance programmes already drawn up.

Negotiations for the further liberalization of trade

Some steps for the further liberalization of the trade in both goods and services were taken during the period by member countries. Countries with trade interests in information technology products agreed, under the Ministerial Declaration on Trade in Information Technology Products (dated 13 December 1996, also known as the Information Technology Agreement or ITA), to eliminate tariffs on such products as computers, telecommunications equipment, semiconductors, semiconductor manufacturing equipment, software and scientific instruments. Likewise, countries having an export interest in pharmaceutical products have added 450 products to the list of products on which they had agreed in the Uruguay Round to eliminate tariffs. Even though these concessions were negotiated among a limited number of countries, the concessions are being extended on a most-favoured-nation (MFN) basis. (*See* chapter 16.)

In the area of services, negotiations were held in certain sectors where the progress achieved in the Uruguay Round was not considered satisfactory. These negotiations have resulted in the adoption of packages containing liberalization commitments (in addition to those exchanged in the Round) in two services sectors, viz. financial services and telecommunications. Some progress, though of a limited nature, was also made in the negotiations on the movement of

natural persons. In the area of professional services, the negotiations have resulted in the development of disciplines on domestic regulations in the accountancy sector.

Built-in agenda for the commencement of new negotiations

Some Agreements have built-in provisions for the commencement of new rounds of negotiations. Thus, GATS provides that negotiations for further trade liberalization in all services sectors should begin on 1 January 2000. The provisions of the Agreement on Agriculture also call on member countries to commence before the end of 1999 negotiations in the agricultural sector, also with a view to securing the further liberalization of trade in this sector. Preparatory work for the launching of negotiations in these sectors is currently underway in the relevant WTO committees.

Some Agreements further provide for the review of all or some of their provisions. The reviews are to be conducted on the basis of experience with implementation with the objective of determining whether any modifications to these provisions are necessary.

Decisions at the Ministerial Conference

As noted earlier, the main responsibility for taking actions and decisions to ensure the fulfilment of the objectives for which WTO was established rests with the biennial Ministerial Conference. WTO has had two Ministerial Conferences since its establishment. The first was held in Singapore in December 1996, and the second in Geneva in December 1998. The third is to be held in Seattle in November-December 1999.

At the Singapore and Geneva Ministerial Conferences, after reviewing developments in international trade and the problems and issues that have arisen in the implementation of the various WTO Agreements, the Ministers decided to include in the WTO work programme for study and analysis six new subject areas which, in the view of the countries suggesting their inclusion, have an impact on the development of international trade. These are:

- Trade and environment;
- Trade and investment;
- Trade and competition policy;
- Trade facilitation;
- Transparency in government procurement; and
- Electronic commerce.

The study and analysis of trade-related issues, problems and solutions in these subject areas are being undertaken by working groups or other bodies that have been specifically established for the purpose. It is important to note that there is no commitment at this stage on the part of member countries on the desirability or otherwise of engaging in WTO negotiations on rule-making in these areas. (*See* chapters 21-26.)

Launching new negotiations

The Geneva Ministerial Conference authorized the General Council to draw up a programme for possible future work and negotiations in WTO taking into account, *inter alia*:

- The issues and problems that have arisen in the implementation of the WTO Agreement;

- The provisions in the Agreement's built-in agenda;
- The new subjects on which analytical work is currently going on; and
- Any other subjects that may be suggested by member countries for inclusion in the agenda for negotiations.

The General Council will examine whether any new negotiations should be restricted to agriculture and services, negotiations on which are called for by the WTO's built-in agenda, or whether they should cover a larger number of subject areas, as did the previous Rounds.

The General Council expects to complete its work on drawing up a work programme well in advance of the third Ministerial Conference (scheduled to be held in Seattle from 30 November to 3 December 1999, as mentioned earlier) so that appropriate decisions on launching negotiations can be taken at that Conference.

Benefits to the business community of the WTO system

What is the relevance of the WTO system to the decisions that industries and business enterprises make in their international trade activities? When considering this question, one must bear in mind that governments have negotiated improved market access to enable business enterprises to convert trade concessions into trade opportunities. The objective behind the rule-based system is to ensure that the markets remain open and that this access is not disrupted by sudden and arbitrary impositions of import restrictions.

Business communities in a number of developing countries, however, continue not to be entirely aware of the advantages of the WTO trading system. The main reason for this is the immense complexity of the system, which has so far prevented these communities from taking an interest in, and getting acquainted with, its rules. It is, for instance, not widely known that the legal system not only confers benefits on producing industries and business enterprises but also creates rights in their favour.

Benefits conferred on the business community

The benefits which the legal system confers on business enterprises and the advantages they can derive from it can be viewed from two different perspectives:

- From the perspective of enterprises as exporters of goods and services;
- From the viewpoint of enterprises as importers of raw materials, and other inputs and services required for export production.

Benefits to exporters of goods and services

Security of access

In trade in goods, almost all tariffs of developed countries and a high proportion of those of developing and transitional economies have been bound against further increases in WTO. Binding ensures that the improved market access resulting from the tariff reductions agreed and incorporated into each country's schedule of concessions will not be disrupted by sudden increases in rates of duties or the imposition of other restrictions by importing countries. In trade in

services, countries have made binding commitments not to restrict access to service products and foreign service suppliers beyond the conditions and limitations specified in their national schedules.

The secured access to markets which bindings provide enables exporting industries to make investment and production plans under greater conditions of certainty.

Stability of access

The system also provides stability of access to export markets by requiring all countries to apply the uniform set of rules elaborated by the various Agreements. Thus countries are obliged to ensure that their rules for determining dutiable value for customs purposes, for inspecting products to ascertain conformity to mandatory standards, or for the issue of import licences, conform to the provisions of the relevant Agreements.

Benefits to importers of raw materials and other inputs

Enterprises often have to import raw materials, intermediate products and services for export production purposes. The basic rule requiring imports to be allowed in without further restrictions upon payment of duties, and the obligation to ensure that the other national regulations applied at the border conform to the uniform rules laid down by the Agreements facilitate importation. They give exporting industries some assurance that they can obtain their requirements without delay and at competitive costs. Furthermore, tariff bindings serve to assure importers that their importing costs will not be increased by the imposition of higher customs duties.

Rights conferred on the business community

In addition to conferring benefits, the legal system has created certain rights in favour of business enterprises. These rights can be divided into two categories. In the first category are the rights of domestic producers and importers *vis-à-vis* their own governments. In the second are the rights of exporting enterprises to defend their interests when authorities in importing countries contemplate action to curtail their exports.

Rights of domestic producers and importers

A number of Agreements require the legislation of member countries to provide certain rights to domestic producers and importers. Governments are obliged to enforce some of these rights under their legal systems. In regard to other rights, governments are merely asked to use their *best endeavours* to ensure that the parties concerned can benefit fully from them.

Enforceable rights include those provided for by the Agreement on Customs Valuation which oblige governments to legislate that importers have a right:

- To justify declared value, where Customs expresses doubts about the truth or accuracy of that value; and
- To require Customs to give them in writing its reasons for rejecting the declared value, so that they can appeal to higher authorities against the decision.

Rights requiring governments merely to use their best endeavours include those covered by provisions of the Agreement on Import Licensing which call for import licences to be issued within specified periods after receipt of application.

In this example, unless the national legislation provides otherwise, the importer has a right only to expect that the licence will be issued within the stipulated time.

The claim to such rights is often subject to conditions that the domestic industry or enterprise must fulfil. For instance, as noted earlier, an industry has a right to request its government to take safeguard actions or to levy anti-dumping or countervailing duties only if it is possible for the petitioning producing units to satisfy the investigating authorities that its request is supported by producers which account for a substantial proportion of total production. The investigating authorities are further required to ascertain whether the petitioner has such standing before commencing investigations.

Rights of exporting enterprises

An example of the rights which the Agreements create in favour of exporting enterprises is the right to give evidence during investigations in importing countries for the levy of anti-dumping or countervailing duties.

When the authorities in the importing countries fail to honour their rights, the exporting enterprises cannot approach them directly for redress. They must take the matter up with their own governments and leave it to the latter to pursue it on a bilateral basis with the government of the importing country and, if necessary, to raise it under WTO procedures for the settlement of differences and disputes.

Illustrative list of rights

Annex I presents an illustrative list of the benefits and rights which the various legal instruments confer on industry and the trading community. They are taken up in detail in the various chapters of this Guide.

Effective utilization of WTO dispute settlement procedures

Knowledge of the system will also enable the business and trading communities to help their governments to take full advantage of the WTO mechanism for the surveillance of the implementation of the Agreements and for the settlement of differences and disputes. Governments will be able to take up issues for discussion and solution in the appropriate committees only if the exporting enterprises bring marketing problems resulting from violation of the rules to their notice. Furthermore, governments can raise a complaint under the WTO dispute settlement procedures only if the affected industry first raises the complaint and provides the required information.

Influencing the future course of negotiations

The responsibility of producing and exporting enterprises, however, should not end with bringing to the notice of their governments the practical problems they are encountering. They and their national associations must exercise continuous vigilance and closely follow the ongoing work of WTO. It is important to note that negotiations do not cease with the adoption of Agreements. Further negotiations with important implications for trade are often held during the implementation stage, particularly during the reviews that are undertaken periodically to examine how the Agreements are operating and to determine whether any changes or modifications to their provisions are necessary. Feedback from the business community on the practical problems it has encountered (such as the technical regulations or sanitary and phytosanitary measures applied to imports by importing countries) would greatly assist governments in securing appropriate modifications to the Agreements.

In addition, analytical work on six new subject areas is currently being undertaken in WTO, with a view to finding out whether the elaboration of WTO rules in these areas would be appropriate. The views of the business communities on the desirability or otherwise of such rules and of how their interests and concerns can be taken into account if such rules are developed are of vital importance to governments in deciding on the policy approaches they should adopt in the related negotiations.

Business communities will be able to ensure that their interests and concerns are fully reflected by their governments only by closely following reviews of Agreements and negotiations on the adoption of rules in new subject areas. Among the difficulties these communities and other interest groups face in keeping abreast with developments in WTO work is the fact that WTO meetings are closed to the public; furthermore the documentation and reports on these meetings are restricted. Member countries have recently taken steps towards greater transparency by providing that documents should ordinarily be derestricted after a period of six months. The reports of the panels and of the Appellate Body in dispute settlement cases are derestricted at the time of their issue. All such documents are now available to the general public on the WTO Web site.

There is increasing recognition that non-governmental organizations (NGOs), representing different interests such as business, environment and development circles, consumers, trade unions and farmers, can play an important role in increasing public awareness of WTO activities, provided they are informed regularly and systematically on these activities. The WTO Secretariat has been seeking to improve its contacts with civil society by arranging periodic issue-specific symposia on subjects like trade and the environment, trade and development, and trade facilitation. NGOs are allowed to attend plenary sessions of the Ministerial Conferences, and are regularly briefed by the WTO Secretariat on the Conferences' working sessions. It is important to note in this context that one of the issues that will be addressed in the coming years is making WTO work more transparent by providing greater access to information on WTO activities.

Taking advantage of liberalization measures

In addition to assisting governments in developing the policy approaches they should adopt in discussions on the implementation of the rules of the Agreements and on negotiations on rule-making, the business community has primary responsibility for converting tariff reductions and liberalization commitments into opportunities for trade by adopting appropriate export promotion and development strategies. Detailed knowledge of the concessions obtained on goods and service products of actual and potential interest to the community would be necessary for evolving such strategies.

Summing up

It is important to note that trade does not expand automatically as a result of tariff reductions and the removal of trade barriers. This will happen only if business enterprises adopt appropriate export development strategies that take into account the impact of the liberalization measures on the products they export.

The implementation of current liberalization measures and those that may be agreed in the future creates both opportunities and challenges for the business community. The challenge comes from the increased competition in both domestic and foreign markets that follows the removal of tariffs and other barriers. The WTO system is expected to ensure that such increased

competition remains fair and equitable. The legal system has also created in favour of the business community a number of rights. As has been said repeatedly, the community's ability to benefit from the system and these rights will depend on its knowledge and understanding of the system's detailed rules.

The chapters that follow elaborate on the points made in this overview, explain in detail the rules of the Agreements and the progress made in improving market access, and provide an outline of the main issues that are under discussion in the subject areas that have been added to the WTO work programme for study and analysis.

Annex I

Illustrative list of benefits arising from the WTO system

Binding of concessions and commitments

Business implication	Security of access to foreign markets
Rights of exporters	*Trade in goods*. Right to expect that the exported product will not be subject to customs duties that are higher than the bound rates or that the value of the binding will be reduced by the imposition of quantitative and other restrictions. *Trade in services*. Right to expect that access of service products and of foreign service suppliers to a foreign market will not be made more restrictive than indicated by the terms and conditions given in the country's schedule of commitments.
Rights of importers	*Trade in goods*. Right to expect that imported raw materials and other inputs will not be subject to customs duties at rates higher than the bound rates. *Trade in services*. Right to expect that the domestic service industries will be permitted to enter into joint ventures or other collaboration arrangements, if the conditions provided in the schedule of commitments are complied with. (*See* chapter 2.)

Valuation of goods for customs purposes (Agreement on Customs Valuation)

Business implication	Assurance that the value declared by the importer will, as a rule, be accepted as a basis for determining the value of imported goods for customs purposes.
Rights of importers	Importers have a right: ❑ To expect that they will be consulted at all stages of the determination of values; ❑ To justify the declared value, where Customs expresses doubts about the truth or accuracy of the declared value or about the documents submitted; ❑ To require Customs to give in writing the reasons for rejecting the declared value, so that they can appeal to the higher authorities against the decision. (*See* chapter 3.)

Use of preshipment inspection services (Agreement on Preshipment Inspection)

Business implications

By assisting governments in controlling such malpractices as the overvaluation and undervaluation of imported goods, PSI services help improve the trading environment. Experience has shown that these services speed up clearance of goods through Customs and reduce customs-related corruption.

Rights of exporters

Exporters to developing countries using mandatory PSI services have a right:

- To be informed of the procedures that PSI companies follow for physical inspection and price verification;
- To expect that any complaint they may have regarding the prices determined by the inspectors is considered sympathetically by designated higher officials in the PSI company; and
- To appeal to the Independent Review Entity when they are not satisfied with the decisions of the above-mentioned senior officials.

Benefits to importers

Importers benefit as:

- The utilization of PSI services speeds up customs clearance and in some cases reduces customs-related corruption,
- The physical inspection carried out by PSI companies prior to price verification provides an assurance that imported products will conform to the quality and other terms of the contract.

(*See* chapter 4.)

Import licensing procedures (Agreement on Import Licensing Procedures)

Business implication

Assures importers and foreign suppliers that for products for which import licences are required these licences will be issued expeditiously.

Rights of importers

Importers and foreign suppliers have a right to expect:

- That the procedures adopted for the issue of licences at the national level conform to the guidelines prescribed by the Agreement;
- That they will not be penalized unduly for clerical and other minor errors in the application;
- That the licences will be issued within the time periods prescribed by the Agreement.

(*See* chapter 6.)

Rules applicable to exports

Reimbursement of indirect taxes borne by exported products

Rights of exporters

Exporters have a right to expect that they will be:

- Either exempted from payment of, or reimbursed for, customs duties on inputs used in the manufacture of exported products,
- Reimbursed for all indirect taxes borne by the exported products.

Export duties

In addition, exporters have a right to expect that where governments levy export duties for revenue or other considerations, these will be applied at the same rates to exports to all destinations.

(*See* chapter 7.)

Anti-dumping and countervailing actions

Rights of exporters	❑ Right to expect that exporters alleged to be dumping or exporting subsidized products will be notified immediately after the investigations begin. ❑ Right to give evidence to defend their interests in such investigations. ❑ Right to expect that procedures will be terminated when preliminary investigations establish that the dumping margin/subsidy element is *de minimis* and imports are negligible.
Rights of domestic producers	Right to petition for the levy of anti-dumping or countervailing duties where dumped or subsidized imports are causing material injury to the domestic industry, provided the petition is supported by producers accounting for at least 25% of the industry's production. (*See* chapter 11.)

ANNEX II

WTO Agreements: provisions on special and differential treatment of developing countries – An analytical summary

General

The WTO Agreements contain provisions for the extension of special and differential (S&D) treatment to developing countries. Under these provisions, developing countries are given "more favourable" treatment than developed countries.

These provisions can be broadly divided into three categories:

- Provisions requiring countries to take measures to facilitate the trade of developing and least developed countries (LDCs);
- Flexibility available to developing and least developed countries in accepting the obligations imposed by the WTO Agreements;
- Provisions for technical assistance to developing and least developed countries in building their capacity to implement the Agreements.

An illustrative and selective description of the nature and content of the most important provisions in each of these categories is given below.

Provisions requiring countries to take S&D measures to facilitate the trade of developing countries

The S&D measures falling in this category include:

- Unilateral measures taken by developed countries to allow imports on a preferential basis from developing countries;
- Giving priority in trade negotiations to the reduction and elimination of MFN tariffs on products of interest to developing countries and LDCs;
- Extension of S&D treatment to developing and least developed countries in the application of
  - Quota restrictions,
  - Import licensing procedures, and
  - Contingency protection measures, such as safeguard actions, and anti-dumping and countervailing measures.

Unilateral measures adopted by developed countries to allow imports on a preferential basis

Generalized System of Preferences (GSP)

Imports originating in developing and least developed countries are allowed entry, under GSP, on a duty-free or preferential duty basis. GSP covers almost all industrial products and selected agricultural products.

The legal basis for these preferential arrangements is provided by the Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries (adopted in 1979 and commonly known as the General Enabling Clause). However, GSP arrangements:

- Carry built-in restrictions like country quotas: imports up to quota limits are allowed on a preferential duty basis; imports exceeding quota limits are charged MFN duties.
- Deny preferential access to imports of certain products from countries which have become competitive (competitive need criteria).
- Deny preferential access to developing countries which have moved on to a higher stage of development or have failed to respect human rights. Countries reaching a certain per capita income level are said to have reached a higher stage of development.

More favourable treatment for LDCs

The General Enabling Clause provides that, under GSP, "special treatment" beyond that extended to developing countries may be given to LDCs. In pursuance of this, developed countries agreed at the October 1997 High-Level Meeting on Integrated Initiatives for Least-Developed Countries' Trade Development to allow imports of all products of interest to these countries on a duty-free preferential basis. Furthermore, the limitations built into GSP (e.g. quota limitations and competitive country criteria) are not generally applied to imports from LDCs.

Arrangements providing preferential access to a limited number of developing countries

These arrangements include:

- The Lomé Convention, under which the European Union allows imports from ACP countries on a preferential duty-free basis.
- The Caribbean Basin Initiative (CBI), under which imports from Caribbean countries are allowed into the United States on a duty-free preferential basis.

As there is no legal basis under WTO law for these arrangements, they are allowed to be implemented under waivers. The waiver period for the Lomé Convention, which expires on 1 January 2000, may be extended for a period of five years (i.e. up to 1 January 2005).

Priority in the reduction and elimination of tariffs in trade negotiations

Action by developed countries

Trade in goods

GATT's chapter on trade and development (Part IV) calls on developed countries to give high priority in trade negotiations to the reduction and, where

possible, the elimination of MFN tariffs on products of interest to developing and least developed countries and to the removal of non-tariff measures affecting trade in such products.

The reduction of MFN tariffs, however, narrows the preferential margins available to beneficiary developing countries under preferential arrangements. The ground rules adopted in the GATT rounds of negotiations have recognized the need to consider, on a case-by-case basis, the possibility of excluding from MFN reductions tariffs on identified products in which developing countries enjoy a preferential advantage that is meaningful in trade terms.

Trade in services

The General Agreement on Trade in Services provides that developed countries should give priority in trade negotiations to liberalizing the service sectors and modes of supply of special export interest to developing countries.

Action by developing countries

The GATT's Part IV also encourages developing countries to take measures similar to those which developed countries are expected to take and to give priority to the removal of tariffs and other barriers to trade on products of interest to other developing countries.

Further, the General Enabling Clause permits developing countries to extend special and more favourable treatment to imports from LDCs under the regional or global preferential arrangements adopted by them for the expansion of trade among themselves on a regional and global basis.

Quantitative and other restrictions

The Uruguay Round has brought about the removal of a large number of quantitative restrictions in the agricultural and industrial sectors and the elimination of restrictive measures such as voluntary export restraints and variable levies. The only quantitative restrictions permitted now include the following:

- Restrictions imposed under the provisions of the Agreement on Textiles and Clothing.
- Restrictions imposed by countries in balance-of-payments difficulties, provided they are consistent with Articles XII and XVIII of GATT 1994 and with the Understanding on Balance-of-Payments Provisions of GATT 1994 (adopted in the Uruguay Round).
- Restrictions imposed in accordance with the other exception provisions of GATT 1994, particularly those provided by Article XX.

It should be noted that the Agreement on Textiles and Clothing provides that countries maintaining restrictions (mainly developed countries) should remove them in four stages over a period of 10 years ending on 1 January 2005. Furthermore, in order to provide increased access to the textile products that remain subject to restrictions during the transition period, the Agreement stipulates that a mandatory growth factor should be applied to existing rates of growth in bilateral quotas. These rules provide for the special and more favourable treatment of "small suppliers" and LDCs in regard to base quota levels, growth rates and flexibility requirements, among other matters.

Import licensing procedures

The Agreement on Import Licensing Procedures lays down principles and rules to ensure that the import licensing procedures adopted by countries (for the

administration of quota restrictions and other purposes) do not create barriers to trade. These rules provide that special consideration should be given in the distribution of licences to imports from developing countries, particularly LDCs.

Contingency protection measures (safeguard actions, anti-dumping and countervailing measures)

Contingency protection measures are import restriction measures which countries are permitted to take in certain situations, provided specified conditions are met. The measures include:

- Safeguard actions to restrict imports where increased imports of a product are causing serious injury to domestic producers of like or competitive products.
- Levy of anti-dumping duties on dumped imports and countervailing duties on subsidized imports where such increased imports are causing injury to the domestic industry.

The rules provide for the extension of S&D treatment in the application of such measures. For instance:

- The Agreement on Safeguards provides that imports from a developing country should be exempt from safeguard measures if its share in the imports of the product concerned into the country taking the measure is less than 3%. This exemption does not apply if developing countries with individual shares in imports smaller than 3% collectively account for more than 7% of imports.
- The Agreement on Subsidies and Countervailing Measures requires the authorities to terminate investigations in the situations described below:
  - In the case of a product originating from a developed country where the amount of subsidy is *de minimis* (i.e. less than 1%), or the volume of subsidized imports or injury to domestic industry is negligible.
  - In the case of a product originating from a developing country when:
    - The level of subsidies granted does not exceed 2% of the value calculated on a per unit basis;
    - The subsidized imports are less than 4% of total imports into the importing country. However, the rules do not apply when developing countries with individual shares of less than 4% collectively account for more than 9% of total imports.

Provisions providing developing and least developed countries flexibility in accepting WTO obligations

These provisions can be broadly divided into the following groups:

- Flexibility in accepting binding obligations during trade negotiations;
- Flexibility for providing increased protection for temporary periods to encourage the development of new industries, and for taking restrictive measures when in balance-of-payments difficulties.
- Transition periods for accepting all or some of the obligations which the Agreements impose;
- Exemption of developing countries from certain specified obligations.

Flexibility in accepting binding obligations in trade negotiations

Trade in goods

According to GATT rules, negotiations on the reduction of tariffs and other barriers to trade should be conducted on a reciprocal and mutually advantageous basis. However, Part IV of GATT 1994 (which carries provisions on the promotion of economic development) provides that developing countries should not be required to make contributions in trade negotiations (in the form of tariff reductions and bindings) that are inconsistent with their trade, development and financial needs. The Part IV provisions are complemented by the General Enabling Clause which, *inter alia*, states that the capacity of countries to make contributions and negotiated concessions improves with the progressive development of their economies.

The rules thus visualize that the contributions which developing countries should be required to make should be related to their stage of development. This concept is often referred to as 'relative reciprocity'. During the Uruguay Round, developing countries thus reduced tariffs in both the industrial and agricultural sectors at percentage rates which were lower than those applied by developed countries.

The rule calling for across-the-board reductions in tariffs on a percentage basis was not applied to LDCs. In the industrial sector, these countries made a token reduction in tariffs on a very small number of products. In the agricultural sector they were not required to make any reductions.

Furthermore, developing and least developed countries could bind their tariffs at rates higher than their applied or reduced rates. Such ceiling bindings give them the flexibility to raise their tariffs to the higher bound rates, without infringing their GATT obligations, if they consider this necessary to provide increased protection to domestic industrial and agricultural production.

Trade in services

Article XIX of the General Agreement on Trade in Services gives developing countries the flexibility to open fewer sectors or to liberalize fewer types of transactions in trade negotiations, thus making explicit their right to take liberalization measures in line with their development situations. It also recognizes that offers of market access by developing countries may be subject to conditions aimed at strengthening their domestic services capacity and the transfer of technology on commercial terms. Article XIX further calls for special consideration to be given to LDCs.

Flexibility in providing increased protection for the development of new industries and in taking restrictive measures when in balance-of-payment difficulties

Protective measures for the development of new industries

Article XVIII:C of GATT 1994 permits developing countries to take trade restrictive measures (such as raising bound rates of duty or imposing quantitative restrictions) to promote the development of new industries or the further development of an established industry. However, such measures, which are inconsistent with the provisions of GATT, may be introduced only after approval by WTO member countries. GATT lays down procedures for consultations with countries whose trade interests may be adversely affected by the restrictive measures being contemplated.

Measures in balance-of-payment difficulties

The provisions permitting countries to take measures to restrict imports when they are in balance-of-payment difficulties are contained in Articles XII and XVIII of GATT. Article XII lays down the circumstances and conditions under which restrictions may be imposed by developed countries. Article XVIII applies to developing countries. It recognizes that, because of a number of factors (such as the failure of export earnings to grow while demand for imports is increasing), these countries may have to resort to trade restrictions to prevent a decline in its monetary reserves. It prescribes more flexible and less stringent criteria for the invocation of its provisions than those set out in Article XII.

Under Article XII, for instance, trade restrictive measures may be taken by a developed country when the threat of a serious decline in its monetary reserves is "imminent" or when their level is "very low". Under Article XVIII, a developing country may take restrictive actions when it considers that there is a threat of a serious decline in monetary reserves even though the threat may not be "imminent". Article XVIII further states that a developing country may take such actions if in its view its monetary reserves are "inadequate" to cover expected foreign exchange payments; by contrast, under Article XII such actions may be taken only if reserves are "very low".

Transition periods for accepting obligations

The multilateral Agreements constituting the WTO system are binding on all member countries. However, some of these Agreements recognize that it may not be possible for a number of developing countries and for LDCs to accept immediately all or some of the obligations they impose. These Agreements therefore provide for transition periods varying between 5 to 11 years to enable these countries to prepare themselves for accepting their obligations.

Here are some examples of the transition periods provided:

- Agreement on Customs Valuation: developing and least developed countries may delay the application of the Agreement by a period of five years, i.e. by 1 January 2000.
- Agreement on Trade-Related Aspects of Intellectual Property Rights: developing countries are expected to apply the provisions of the Agreement by 1 January 2000, and least developed countries by 1 January 2006.

The application of some obligations may be delayed, as illustrated below:

- Agreement on Customs Valuation: a developing country may request, over and above the five-year period of transition, an additional period of three years for the application of the provisions on the computed value methodology.
- Agreements on the Application of Sanitary and Phytosanitary Measures and Technical Barriers to Trade: these authorize their respective Committees to grant to a developing country time-limited exceptions, in whole or in part, from the obligations which the two Agreements impose.

Exemption of developing countries from specified obligations or additional flexibility in complying with obligations

Agreement on Subsidies and Countervailing Measures

An illustration of the exemption of developing countries from certain obligations is provided by the Agreement on Subsidies and Countervailing Measures. The Agreement's rule prohibiting member countries from using

export subsidies does not apply to least developed countries and developing countries with per capita incomes of US$1,000 per annum or less. The latter countries are listed in the Agreement.

Agreement on Agriculture

An example of the additional flexibility given to developing countries in complying with obligations is provided by the Agreement on Agriculture. The Agreement prohibits countries which have not made reduction commitments from granting export subsidies for agricultural products. As most developing countries have not given such commitments, the prohibition applies to them. However, the Agreement does allow them to grant two types of subsidies:

- Subsidies to reduce the costs of marketing exports, including handling, upgrading and other processing costs, and the costs of international transport; and
- Internal transport charges on export shipments on terms more favourable than for domestic shipments.

The Agreement further requires countries to reduce domestic support (i.e. subsidies other than export subsidies) by an agreed percentage. In order to encourage agricultural and rural development, developing countries are permitted to exclude from the Aggregate Measurement of Support which is calculated for this purpose the following subsidies:

- Investment subsidies generally available to agriculture in a developing country;
- Input subsidies generally available to low-income or resource-poor producers;
- Subsidies to encourage diversification from narcotic crops.

Technical assistance to build capacity for implementing the Agreements

A number of WTO Agreements carry provisions calling on all member countries (developed, developing and transitional), the WTO Secretariat and other international organizations having competence in the areas covered by them to provide technical assistance to developing and least developed countries for developing the institutional and legal framework and capacities for implementing the Agreements.