Chapter 2

THE AGREEMENTS

The WTO is 'rules-based';
its rules are negotiated agreements

1. Overview: a navigational guide

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

These agreements are often called the WTO's trade rules, and the WTO is often described as "rules-based", a system based on rules. But it's important to remember that the rules are actually agreements that governments negotiated.

This chapter focuses on the Uruguay Round agreements, which are the basis of the present WTO system. Additional work is also now underway in the WTO. This is the result of decisions taken at Ministerial Conferences, in particular the meeting in Doha, November 2001, when new negotiations and other work were launched. (More on the Doha Agenda, later.)

Six-part broad outline

The table of contents of "The Results of the Uruguay Round of Multilateral Trade Negotiations: The Legal Texts" is a daunting list of about 60 agreements, annexes, decisions and understandings. In fact, the agreements fall into a simple structure with six main parts: an umbrella agreement (the Agreement Establishing the WTO); agreements for each of the three broad areas of trade that the WTO covers (goods, services and intellectual property); dispute settlement; and reviews of governments' trade policies.

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

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

The 'additional details'

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

For **goods** (under GATT)

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

For **services** (the GATS annexes)

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

Underpinning these are dispute settlement, which is based on the agreements and commitments, and trade policy reviews, an exercise in transparency.

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

Additional agreements

Another group of agreements not included in the diagram is also important: the two "plurilateral" agreements not signed by all members: civil aircraft and government procurement.

Further changes on the horizon, the Doha Agenda

These agreements are not static; they are renegotiated from time to time and new agreements can be added to the package. Many are now being negotiated under the Doha Development Agenda, launched by WTO trade ministers in Doha, Qatar, in November 2001.

In a nutshell

The basic structure of the WTO agreements: how the six main areas fit together — the umbrella WTO Agreement, goods, services, intellectual property, disputes and trade policy reviews.

Umbrella	**AGREEMENT ESTABLISHING WTO**		
	Goods	Services	Intellectual property
Basic principles	**GATT**	**GATS**	**TRIPS**
Additional details	Other goods agreements and annexes	Services annexes	
Market access commitments	Countries' schedules of commitments	Countries' schedules of commitments (and MFN exemptions)	
Dispute settlement	**DISPUTE SETTLEMENT**		
Transparency	**TRADE POLICY REVIEWS**		

2. Tariffs: more bindings and closer to zero

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

ON THE WEBSITE:
www.wto.org > trade topics > goods > goods schedules
www.wto.org > trade topics > services > services schedules

Binding' tariffs

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

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

Tariff cuts

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

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

The Uruguay Round package has been improved. On 26 March 1997, 40 countries accounting for more than 92% of world trade in information technology products, agreed to eliminate import duties and other charges on these products by 2000 (by 2005 in a handful of cases). As with other tariff commitments, each participating country is applying its commitments equally to exports from all WTO members (i.e. on a most-favoured-nation basis), even from members that did not make commitments.

What is this agreement called? *There is no legally binding agreement that sets out the targets for tariff reductions (e.g. by what percentage they were to be cut as a result of the Uruguay Round). Instead, individual countries listed their commitments in schedules annexed to Marrakesh Protocol to the General Agreement on Tariffs and Trade 1994. This is the legally binding agreement for the reduced tariff rates. Since then, additional commitments were made under the 1997 Information Technology Agreement.*

More bindings

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

ON THE WEBSITE:
www.wto.org > trade topics > market access

> See also **Doha Agenda negotiations**

And agriculture …

Tariffs on all agricultural products are now bound. Almost all import restrictions that did not take the form of tariffs, such as quotas, have been converted to tariffs — a process known as "tariffication". This has made markets substantially more predictable for agriculture. Previously more than 30% of agricultural produce had faced quotas or import restrictions. The first step in "tariffication" was to replace these restrictions with tariffs that represented about the same level of protection. Then, over six years from 1995–2000, these tariffs were gradually reduced (the reduction period for developing countries ends in 2005). The market access commitments on agriculture also eliminate previous import bans on certain products.

In addition, the lists include countries' commitments to reduce domestic support and export subsidies for agricultural products. (*See section on agriculture.*)

> See also **Doha Agenda** chapter

3. Agriculture: fairer markets for farmers

The original GATT did apply to agricultural trade, but it contained loopholes. For example, it allowed countries to use some non-tariff measures such as import quotas, and to subsidize. Agricultural trade became highly distorted, especially with the use of export subsidies which would not normally have been allowed for industrial products. The Uruguay Round produced the first multilateral agreement dedicated to the sector. It was a significant first step towards order, fair competition and a less distorted sector. It was implemented over a six-year period (and is still being implemented by developing countries under their 10-year period), that began in 1995. The Uruguay Round agreement included a commitment to continue the reform through new negotiations. These were launched in 2000, as required by the Agriculture Agreement.

> See also **Doha Agenda negotiations**

What is 'distortion'?

This a key issue. Trade is distorted if prices are higher or lower than normal, and if quantities produced, bought, and sold are also higher or lower than norma — i.e. than the levels that would usually exist in a competitive market.

For example, import barriers and domestic subsidies can make crops more expensive on a country's internal market. The higher prices can encourage over-production. If the surplus is to be sold on world markets, where prices are lower, then export subsidies are needed. As a result, the subsidizing countries can be producing and exporting considerably more than they normally would.

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

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

But the policies have often been expensive, and they have created gluts leading to export subsidy wars. Countries with less money for subsidies have suffered. The debate in the negotiations is whether these objectives can be met without distorting trade.

The Agriculture Agreement: new rules and commitments

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

The new rules and commitments apply to:

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

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

"Peace" provisions within the agreement aim to reduce the likelihood of disputes or challenges on agricultural subsidies over a period of nine years, until the end of 2003.

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

Market access: 'tariffs only', please

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

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

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

Numerical targets for agriculture

The reductions in agricultural subsidies and protection agreed in the Uruguay Round.
Only the figures for cutting export subsidies appear in the agreement.

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

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

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

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

Agreement. Participants used them to prepare their schedules — i.e. lists of commitments. It is the commitments listed in the schedules that are legally binding.)

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

Four countries used "special treatment" provisions to restrict imports of particularly sensitive products (mainly rice) during the implementation period (to 2000 for developed countries, to 2004 for developing nations), but subject to strictly defined conditions, including minimum access for overseas suppliers. The four were: Japan, Rep. of Korea, and the Philippines for rice; and Israel for sheepmeat, wholemilk powder and certain cheeses. Japan and Israel have now given up this right, but Rep. of Korea and the Philippines have extended their special treatment for rice. A new member, Chinese Taipei, gave special treatment to rice in its first year of membership, 2002.

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

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

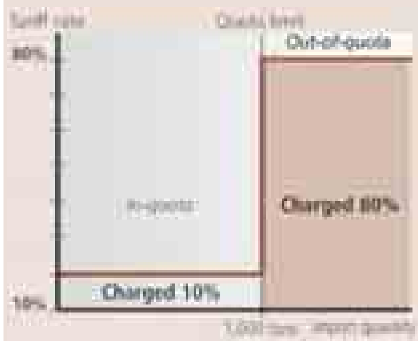
Domestic policies that do have a direct effect on production and trade have to be cut back. WTO members calculated how much support of this kind they were providing per year for the agricultural sector (using calculations known as "total aggregate measurement of support" or "Total AMS") in the base years of 1986–88. Developed countries agreed to reduce these figures by 20% over six years starting in 1995. Developing countries agreed to make 13% cuts over 10 years. Least-developed countries do not need to make any cuts. (This category of domestic support is sometimes called the "amber box", a reference to the amber colour of traffic lights, which means "slow down".)

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

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

A tariff-quota

This is what a tariff-quota might look like



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

Tariff quotas are also called "tariff-rate quotas".

Export subsidies: limits on spending and quantities

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

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

The least-developed and those depending on food imports

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

ON THE WEBSITE:
www.wto.org >trade topics > goods > agriculture

4. Standards and safety

Article 20 of the General Agreement on Tariffs and Trade (GATT) allows governments to act on trade in order to protect human, animal or plant life or health, provided they do not discriminate or use this as disguised protectionism. In addition, there are two specific WTO agreements dealing with food safety and animal and plant health and safety, and with product standards in general. Both try to identify how to meet the need to apply standards and at the same time avoid protectionism in disguise. These issues are becoming more important as tariff barriers fall — some compare this to seabed rocks appearing when the tide goes down. In both cases, if a country applies international standards, it is less likely to be challenged legally in the WTO than if it sets its own standards.

Whose international standards?

An annex to the Sanitary and Phytosanitary Measures Agreement names:

- the FAO/WHO Codex Alimentarius Commission: for food
- the International Animal Health Organization (Office International des Epizooties): for animal health
- the FAO's Secretariat of the International Plant Protection Convention: for plant health.

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

When members apply these standards, they are likely to be safe from legal challenge through a WTO dispute.

Food, animal and plant products: how safe is safe?

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

A separate agreement on food safety and animal and plant health standards (the **Sanitary and Phytosanitary Measures Agreement** or **SPS**) sets out the basic rules.

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

Member countries are encouraged to use international standards, guidelines and recommendations where they exist. When they do, they are unlikely to be challenged legally in a WTO dispute. However, members may use measures which result in higher standards if there is scientific justification. They can also set higher standards based on appropriate assessment of risks so long as the approach is consistent, not arbitrary. And they can to some extent apply the "precautionary principle", a kind of "safety first" approach to deal with scientific uncertainty. Article 5.7 of the SPS Agreement allows temporary "precautionary" measures.

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

ON THE WEBSITE:
www.wto.org > trade topics > goods > sanitary and phytosanitary measures

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

Technical regulations and standards

Technical regulations and standards are important, but they vary from country to country. Having too many different standards makes life difficult for producers and exporters. Standards can become obstacles to trade. But they are also necessary for a range of reasons, from environmental protection, safety, national security to consumer information. And they can help trade. Therefore the same basic question arises again: how to ensure that standards are genuinely useful, and not arbitrary or an excuse for protectionism.

The **Technical Barriers to Trade Agreement (TBT)** tries to ensure that regulations, standards, testing and certification procedures do not create unnecessary obstacles.

However, the agreement also recognizes countries'rights to adopt the standards they consider appropriate — for example, for human, animal or plant life or health, for the protection of the environment or to meet other consumer interests. Moreover, members are not prevented from taking measures necessary to ensure their standards are met. But that is counterbalanced with disciplines. A myriad of regulations can be a nightmare for manufacturers and exporters. Life can be simpler if governments apply international standards, and the agreement encourages them to do so. In any case, whatever regulations they use should not discriminate.

The agreement also sets out a code of good practice for both governments and non-governmental or industry bodies to prepare, adopt and apply voluntary standards. Over 200 standards-setting bodies apply the code.

The agreement says the procedures used to decide whether a product conforms with relevant standards have to be fair and equitable. It discourages any methods that would give domestically produced goods an unfair advantage. The agreement also encourages countries to recognize each other's procedures for assessing whether a product conforms. Without recognition, products might have to be tested twice, first by the exporting country and then by the importing country.

Manufacturers and exporters need to know what the standards are in their prospective markets. To help ensure that this information is made available conveniently, all WTO member governments are required to establish national enquiry points and to keep each other informed through the WTO — around 900 new or changed regulations are notified each year. The Technical Barriers to Trade Committee is the major clearing house for members to share the information and the major forum to discuss concerns about the regulations and their implementation.

ON THE WEBSITE:
www.wto.org > trade topics > goods > technical barriers to trade

5. Textiles: back in the mainstream

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

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

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

Since 1995, the WTO's **Agreement on Textiles and Clothing (ATC)** took over from the Mulltifibre Arrangement. By 1 January 2005, the sector was fully integrated into normal GATT rules. In particular, the quotas came to an end, and importing countries are no longer able to discriminate between exporters. The Agreement on Textiles and Clothing no longer exists: it's the only WTO agreement that had self-destruction built in.

Integration: returning products gradually to GATT rules

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

Four steps over 10 years

The schedule for freeing textiles and garment products from import quotas (and returning them to GATT rules), and how fast remaining quotas had to be expanded.

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

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

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

The agreement stated the percentage of products that had to be brought under GATT rules at each step. If any of these products came under quotas, then the quotas had to be removed at the same time. The percentages were applied to the importing country's textiles and clothing trade levels in 1990. The agreement also said the quantities of imports permitted under the quotas had to grow annually, and that the rate of expansion had to increase at each stage. How fast that expansion would be was set out in a formula based on the growth rate that existed under the old Multifibre Arrangement (*see table*).

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

If further cases of damage to the industry arose during the transition, the agreement allowed additional restrictions to be imposed temporarily under strict conditions.

These "transitional safeguards" were not the same as the safeguard measures normally allowed under GATT because they can be applied on imports from specific exporting countries. But the importing country had to show that its domestic industry was suffering serious damage or was threatened with serious damage. And it had to show that the damage was the result of two things: increased imports of the product in question from all sources, and a sharp and substantial increase from the specific exporting country. The safeguard restriction could be implemented either by mutual agreement following consultations, or unilaterally. It was subject to review by the Textiles Monitoring Body.

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

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

A **Textiles Monitoring Body (TMB)** supervised the agreement's implementation. It consisted of a chairman and 10 members acting in their personal capacity. It monitored actions taken under the agreement to ensure that they were consistent, and it reported to the Goods Council which reviewed the operation of the agreement before each new step of the integration process. The Textiles Monitoring Body also dealt with disputes under the Agreement on Textiles and Clothing. If they remained unresolved, the disputes could be brought to the WTO's regular Dispute Settlement Body. When the Textiles and Clothing Agreement expired on 1 January 2005, the Textiles Monitoring Body also ceased to exist.

ON THE WEBSITE:
www.wto.org
> trade topics > goods > textiles

6. Services: rules for growth and investment

The General Agreement on Trade in Services (GATS) is the first and only set of multilateral rules governing international trade in services. Negotiated in the Uruguay Round, it was developed in response to the huge growth of the services economy over the past 30 years and the greater potential for trading services brought about by the communications revolution.

Services represent the fastest growing sector of the global economy and account for two thirds of global output, one third of global employment and nearly 20% of global trade.

When the idea of bringing rules on services into the multilateral trading system was floated in the early to mid 1980s, a number of countries were sceptical and even opposed. They believed such an agreement could undermine governments' ability to pursue national policy objectives and constrain their regulatory powers. The agreement that was developed, however, allows a high degree of flexibility, both within the framework of rules and also in terms of the market access commitments.

Basic principles

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

GATS explained

The **General Agreement on Trade in Services** has three elements: the main text containing general obligations and disciplines; annexes dealing with rules for specific sectors; and individual countries' specific commitments to provide access to their markets, including indications of where countries are temporarily not applying the "most-favoured-nation" principle of non-discrimination.

General obligations and disciplines

Total coverage The agreement covers all internationally-traded services — for example, banking, telecommunications, tourism, professional services, etc. It also defines four ways (or "modes") of trading services:

- services supplied from one country to another (e.g. international telephone calls), officially known as "**cross-border supply**" (in WTO jargon, "mode 1")
- consumers or firms making use of a service in another country (e.g. tourism), officially "**consumption abroad**" ("mode 2")
- a foreign company setting up subsidiaries or branches to provide services in another country (e.g. foreign banks setting up operations in a country), officially "**commercial presence**" ("mode 3")
- individuals travelling from their own country to supply services in another (e.g. fashion models or consultants), officially "**presence of natural persons**" ("mode 4").

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

MFN applies to all services, but some special temporary exemptions have been allowed. When GATS came into force, a number of countries already had preferential agreements in services that they had signed with trading partners, either bilaterally or in small groups. WTO members felt it was necessary to maintain these preferences temporarily. They gave themselves the right to continue giving more favourable treatment to particular countries in particular services activities by listing "MFN exemptions" alongside their first sets of commitments. In order to protect the general MFN principle, the exemptions could only be made once; nothing can be added to the lists. They are currently being reviewed as mandated, and will normally last no more than ten years.

Commitments on market access and national treatment Individual countries' commitments to open markets in specific sectors — and how open those markets will be — are the outcome of negotiations. The commitments appear in "schedules" that list the sectors being opened, the extent of market access being given in those sectors (e.g. whether there are any restrictions on foreign ownership), and any limitations on national treatment (whether some rights granted to local companies will not be granted to foreign companies). So, for example, if a government commits itself to allow foreign banks to operate in its domestic market, that is a **market-access commitment.** And if the government limits the number of licences it will issue, then that is a **market-access limitation.** If it also says foreign banks are only allowed one branch while domestic banks are allowed numerous branches, that is an **exception to the national treatment** principle.

These clearly defined commitments are "bound": like bound tariffs for trade in goods, they can only be modified after negotiations with affected countries. Because "unbinding" is difficult, the commitments are virtually guaranteed conditions for foreign exporters and importers of services and investors in the sector to do business.

Governmental services are explicitly carved out of the agreement and there is nothing in GATS that forces a government to privatize service industries. In fact the word "privatize" does not even appear in GATS. Nor does it outlaw government or even private monopolies.

The carve-out is an explicit commitment by WTO governments to allow publicly funded services in core areas of their responsibility. Governmental services are defined in the agreement as those that are not supplied commercially and do not compete with other suppliers. These services are not subject to any GATS disciplines, they are not covered by the negotiations, and commitments on market access and national treatment (treating foreign and domestic companies equally) do not apply to them.

GATS' approach to making commitments means that members are not obliged to do so on the whole universe of services sectors. A government may not want to make a commitment on the level of foreign competition in a given sector, because it considers the sector to be a core governmental function or indeed for any other reason. In this case, the government's only obligations are minimal, for example to be transparent in regulating the sector, and not to discriminate between foreign suppliers.

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

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

GATS does not require any service to be deregulated. Commitments to liberalize do not affect governments' right to set levels of quality, safety, or price, or to introduce regulations to pursue any other policy objective they see fit. A commitment to national treatment, for example, would only mean that the same regulations would apply to foreign suppliers as to nationals. Governments naturally retain their right to set qualification requirements for doctors or lawyers, and to set standards to ensure consumer health and safety.

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

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

Progressive liberalization The Uruguay Round was only the beginning. GATS requires more negotiations, which began in early 2000 and are now part of the Doha Development Agenda. The goal is to take the liberalization process further by increasing the level of commitments in schedules.

The annexes: services are not all the same

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

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

Financial services Instability in the banking system affects the whole economy. The financial services annex gives governments very wide latitude to take prudential measures, such as those for the protection of investors, depositors and insurance policy holders, and to ensure the integrity and stability of the financial system. The annex also excludes from the agreement services provided when a government is exercising its authority over the financial system, for example central banks' services.

Telecommunications The telecommunications sector has a dual role: it is a distinct sector of economic activity; and it is an underlying means of supplying other economic activities (for example electronic money transfers). The annex says governments must ensure that foreign service suppliers are given access to the public telecommunications networks without discrimination.

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

Current work

GATS sets a heavy work programme covering a wide range of subjects. Work on some of the subjects started in 1995, as required, soon after GATS came into force in January 1995. Negotiations to further liberalize international trade in services started in 2000, along with other work involving study and review.

Negotiations (Article 19) Negotiations to further liberalize international trade in services started in early 2000 as mandated by GATS (Article 19).

The first phase of the negotiations ended successfully in March 2001 when members agreed on the guidelines and procedures for the negotiations, a key element in the negotiating mandate. By agreeing these guidelines, members set the objectives, scope and method for the negotiations in a clear and balanced manner.

They also unequivocally endorsed some of GATS' fundamental principles — i.e. members' right to regulate and to introduce new regulations on the supply of services in pursuit of national policy objectives; their right to specify which services they wish to open to foreign suppliers and under which conditions; and the overarching principle of flexibility for developing and least-developed countries. The guidelines are therefore sensitive to public policy concerns in important sectors such as healthcare, public education and cultural industries, while stressing the importance of liberalization in general, and ensuring foreign service providers have effective access to domestic markets.

The 2001 Doha Ministerial Declaration incorporated these negotiations into the "single undertaking" of the Doha Development Agenda. Since July 2002, a process of bilateral negotiations on market access has been underway.

Work on GATS rules (Articles 10, 13, and 15) Negotiations started in 1995 and are continuing on the development of possible disciplines that are not yet included in GATS: rules on emergency safeguard measures, government procurement and subsidies. Work so far has concentrated on safeguards. These are temporary limitations on market access to deal with market disruption, and the negotiations aim to set up procedures and disciplines for governments using these. Several deadlines have been missed. The present aim is for the results to come into effect at the same time as those of the current services negotiations.

Work on domestic regulations (Article 4.4) Work started in 1995 to establish disciplines on domestic regulations — i.e. the requirements foreign service suppliers have to meet in order to operate in a market. The focus is on qualification requirements and procedures, technical standards and licensing requirements. By December 1998, members had agreed disciplines on domestic regulations for the accountancy sector. Since then, members have been engaged in developing general disciplines for all professional services and, where necessary, additional sectoral disciplines. All the agreed disciplines will be integrated into GATS and become legally binding by the end of the current services negotiations.

MFN exemptions (Annex on Article 2) Work on this subject started in 2000. When GATS came into force in 1995, members were allowed a once-only opportunity to take an exemption from the MFN principle of non-discrimination between a member's trading partners. The measure for which the exemption was taken is described in a member's MFN exemption list, indicating to which member the more favourable treatment applies, and specifying its duration. In principle, these exemptions should not last for more than ten years. As mandated by GATS, all these exemptions are currently being reviewed to examine whether the conditions which created the need for these exemptions in the first place still exist. And in any case, they are part of the current services negotiations.

Taking account of "autonomous" liberalization (Article 19) Countries that have liberalized on their own initiative since the last multilateral negotiations want that to be taken into account when they negotiate market access in services. The negotiating guidelines and procedures that members agreed in March 2001 for the GATS negotiations also call for criteria for taking this "autonomous" or unilateral liberalization into account. These were agreed on 6 March 2003.

Special treatment for least-developed countries (Article 19) GATS mandates members to establish how to give special treatment to least-developed countries during the negotiations. (These "modalities" cover both the scope of the special treatment, and the methods to be used.) The least-developed countries began the discussions in March 2002. As a result of subsequent discussions, members agreed the modalities on 3 September 2003.

Assessment of trade in services (Article 19) Preparatory work on this subject started in early 1999. GATS mandates that members assess trade in services, including the GATS objective of increasing the developing countries' participation in services trade. The negotiating guidelines reiterate this, requiring the negotiations to be adjusted in response to the assessment. Members generally acknowledge that the shortage of statistical information and other methodological problems make it impossible to conduct an assessment based on full data. However, they are continuing their discussions with the assistance of several papers produced by the Secretariat.

Air transport services At present, most of the air transport sector — traffic rights and services directly related to traffic rights — is excluded from GATS' coverage. However, GATS mandates a review by members of this situation. The purpose of the review, which started in early 2000, is to decide whether additional air transport services should be covered by GATS. The review could develop into a negotiation in its own right, resulting in an amendment of GATS itself by adding new services to its coverage and by adding specific commitments on these new services to national schedules.

ON THE WEBSITE:
www.wto.org > trade topics > services

> See also **Doha Agenda negotiations**

7. Intellectual property: protection and enforcement

The WTO's **Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)**, negotiated in the 1986–94 Uruguay Round, introduced intellectual property rules into the multilateral trading system for the first time.

Types of intellectual property

The areas covered by the TRIPS Agreement

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

Origins: into the rule-based trade system

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

Creators can be given the right to prevent others from using their inventions, designs or other creations — and to use that right to negotiate payment in return for others using them. These are "intellectual property rights". They take a number of forms. For example books, paintings and films come under copyright; inventions can be patented; brandnames and product logos can be registered as trademarks; and so on. Governments and parliaments have given creators these rights as an incentive to produce ideas that will benefit society as a whole.

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

The Uruguay Round achieved that. The WTO's TRIPS Agreement is an attempt to narrow the gaps in the way these rights are protected around the world, and to bring them under common international rules. It establishes minimum levels of protection that each government has to give to the intellectual property of fellow WTO members. In doing so, it strikes a balance between the long term benefits and possible short term costs to society. Society benefits in the long term when intellectual property protection encourages creation and invention, especially when the period of protection expires and the creations and inventions enter the public domain. Governments are allowed to reduce any short term costs through various exceptions, for example to tackle public health problems. And, when there are trade disputes over intellectual property rights, the WTO's dispute settlement system is now available.

The agreement covers five broad issues:

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

What's the difference?

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

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

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

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

Basic principles: national treatment, MFN, balanced protection

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

The TRIPS Agreement has an additional important principle: intellectual property protection should contribute to technical innovation and the transfer of technology. Both producers and users should benefit, and economic and social welfare should be enhanced, the agreement says.

How to protect intellectual property: common ground-rules

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

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

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

Copyright

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

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

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

Trademarks

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

Geographical indications

A place name is sometimes used to identify a product. This "geographical indication" does not only say where the product was made. More importantly it identifies the products special characteristics, which are the result of the product's origins.

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

Using the place name when the product was made elsewhere or when it does not have the usual characteristics can mislead consumers, and it can lead to unfair competition. The TRIPS Agreement says countries have to prevent this misuse of place names.

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

Some exceptions are allowed, for example if the name is already protected as a trademark or if it has become a generic term. For example, "cheddar" now refers to a particular type of cheese not necessarily made in Cheddar, in the UK. But any country wanting to make an exception for these reasons must be willing to negotiate with the country which wants to protect the geographical indication in question.

The agreement provides for further negotiations in the WTO to establish a multilateral system of notification and registration of geographical indications for wines. These are now part of the Doha Development Agenda and they include spirits. Also debated in WTO, is whether to negotiate extending this higher level of protection beyond wines and spirits.

Industrial designs

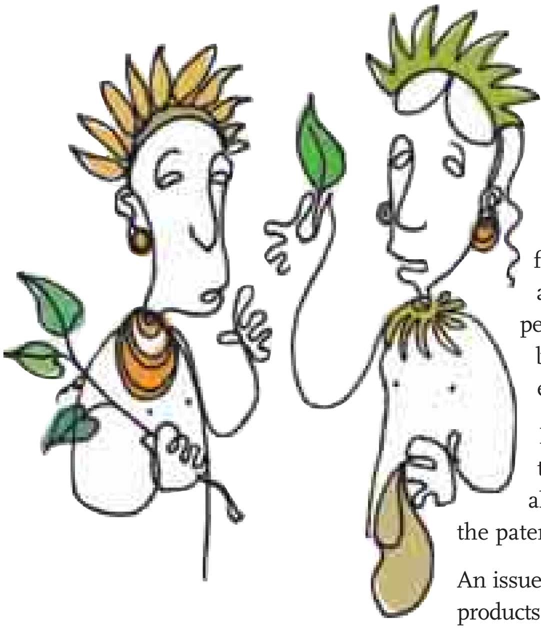
Under the TRIPS Agreement, industrial designs must be protected for at least 10 years. Owners of protected designs must be able to prevent the manufacture, sale or importation of articles bearing or embodying a design which is a copy of the protected design.

Patents

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

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

The agreement describes the minimum rights that a patent owner must enjoy. But it also allows certain exceptions. A patent owner could abuse his rights, for example by



failing to supply the product on the market. To deal with that possibility, the agreement says governments can issue "compulsory licences", allowing a competitor to produce the product or use the process under licence. But this can only be done under certain conditions aimed at safeguarding the legitimate interests of the patent-holder.

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

An issue that has arisen recently is how to ensure patent protection for pharmaceutical products does not prevent people in poor countries from having access to medicines — while at the same time maintaining the patent system's role in providing incentives for research and development into new medicines. Flexibilities such as compulsory licensing are written into the TRIPS Agreement, but some governments were unsure of how these would be interpreted, and how far their right to use them would be respected.

A large part of this was settled when WTO ministers issued a special declaration at the Doha Ministerial Conference in November 2001. They agreed that the TRIPS Agreement does not and should not prevent members from taking measures to protect public health. They underscored countries' ability to use the flexibilities that are built into the TRIPS Agreement. And they agreed to extend exemptions on pharmaceutical patent protection for least-developed countries until 2016. On one remaining question, they assigned further work to the TRIPS Council — to sort out how to provide extra flexibility, so that countries unable to produce pharmaceuticals domestically can import patented drugs made under compulsory licensing. A waiver providing this flexibility was agreed on 30 August 2003.

Integrated circuits layout designs

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

Undisclosed information and trade secrets

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

Curbing anti-competitive licensing contracts

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

Enforcement: tough but fair

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

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

Technology transfer

Developing countries in particular, see technology transfer as part of the bargain in which they have agreed to protect intellectual property rights. The TRIPS Agreement includes a number of provisions on this. For example, it requires developed-country governments to provide incentives for their companies to transfer technology to least-developed countries.

Transition arrangements: 1, 5 or 11 years or more

When the WTO agreements took effect on 1 January 1995, developed countries were given one year to ensure that their laws and practices conform with the TRIPS agreement. Developing countries and (under certain conditions) transition economies were given five years, until 2000. Least-developed countries have 11 years, until 2006 — now extended to 2016 for pharmaceutical patents.

ON THE WEBSITE:

www.wto.org
> trade topics > intellectual property

If a developing country did not provide product patent protection in a particular area of technology when the TRIPS Agreement came into force (1 January 1995), it had up to 10 years to introduce the protection. But for pharmaceutical and agricultural chemical products, the country had to accept the filing of patent applications from the beginning of the transitional period, though the patent did not need to be granted until the end of this period. If the government allowed the relevant pharmaceutical or agricultural chemical to be marketed during the transition period, it had to — subject to certain conditions — provide an exclusive marketing right for the product for five years, or until a product patent was granted, whichever was shorter.

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

> See also **Doha Development Agenda**

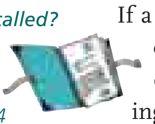
8. Anti-dumping, subsidies, safeguards: contingencies, etc

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

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

Anti-dumping actions

What is this agreement called?
Agreement on the implementation of Article VI [i.e 6] of the General Agreement on Tariffs and Trade 1994



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

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

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

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

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

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

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

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

ON THE WEBSITE:
www.wto.org > trade topics > goods > antidumping

> See also **Doha Agenda negotiations**

'AD-CVD'?

People sometimes refer to the two together — "AD-CVD" — but there are fundamental differences. Dumping and subsidies — together with anti-dumping (AD) measures and countervailing duties (CVD) — share a number of similarities. Many countries handle the two under a single law, apply a similar process to deal with them and give a single authority responsibility for investigations. Occasionally, the two WTO committees responsible for these issues meet jointly.

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

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

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

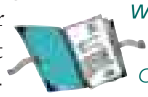
But the WTO is an organization of countries and their governments. The WTO does not deal with companies and cannot regulate companies' actions such as dumping. Therefore the Anti-Dumping Agreement only concerns the actions governments may take against dumping. With subsidies, governments act on both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

Subsidies and countervailing measures

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

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

The agreement defines two categories of subsidies: prohibited and actionable. It originally contained a third category: non-actionable subsidies. This category existed for five years, ending on 31 December 1999, and was not extended. The agreement applies to agricultural goods as well as industrial products, except when the subsidies are exempt under the Agriculture Agreement's "peace clause", due to expire at the end of 2003.



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

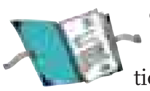
- **Prohibited subsidies:** subsidies that require recipients to meet certain export targets, or to use domestic goods instead of imported goods. They are prohibited because they are specifically designed to distort international trade, and are therefore likely to hurt other countries' trade. They can be challenged in the WTO dispute settlement procedure where they are handled under an

accelerated timetable. If the dispute settlement procedure confirms that the subsidy is prohibited, it must be withdrawn immediately. Otherwise, the complaining country can take counter measures. If domestic producers are hurt by imports of subsidized products, countervailing duty can be imposed.

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

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

What is this agreement called?
Agreement on Safeguards



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

ON THE WEBSITE:
www.wto.org > trade topics > goods > subsidies and countervailing measures

> See also **Doha Agenda negotiations**

Safeguards: emergency protection from imports

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

The WTO agreement broke new ground. It prohibits "grey-area" measures, and it sets time limits (a "sunset clause") on all safeguard actions. The agreement says members must not seek, take or maintain any voluntary export restraints, orderly marketing arrangements or any other similar measures on the export or the import side. The bilateral measures that were not modified to conform with the agreement were phased out at the end of 1998. Countries were allowed to keep one of these measures an extra year (until the end of 1999), but only the European Union — for restrictions on imports of cars from Japan — made use of this provision.

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

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

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

In principle, safeguard measures cannot be targeted at imports from a particular country. However, the agreement does describe how quotas can be allocated among supplying countries, including in the exceptional circumstance where imports from certain countries have increased disproportionately quickly. A safeguard measure should not last more than four years, although this can be extended up to eight years, subject to a determination by competent national authorities that the measure is needed and that there is evidence the industry is adjusting. Measures imposed for more than a year must be progressively liberalized.

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

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

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

ON THE WEBSITE:
www.wto.org > trade topics > goods > safeguards

9. Non-tariff barriers: red tape, etc

A number of agreements deal with various bureaucratic or legal issues that could involve hindrances to trade.

- import licensing
- rules for the valuation of goods at customs
- preshipment inspection: further checks on imports
- rules of origin: made in ... where?
- investment measures

Import licensing: keeping procedures clear

Although less widely used now than in the past, import licensing systems are subject to disciplines in the WTO. The **Agreement on Import Licensing Procedures** says import licensing should be simple, transparent and predictable. For example, the agreement requires governments to publish sufficient information for traders to know how and why the licences are granted. It also describes how countries should notify the WTO when they introduce new import licensing procedures or change existing procedures. The agreement offers guidance on how governments should assess applications for licences.

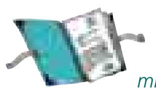
Some licences are issued automatically if certain conditions are met. The agreement sets criteria for automatic licensing so that the procedures used do not restrict trade.

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

Rules for the valuation of goods at customs

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

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



What is this agreement called?

Agreement on Implementation of Article VII (i.e. 7) of the General Agreement on Tariffs and Trade 1994; and related ministerial decisions: "Decision Regarding Cases Where Customs Administrations Have Reasons to Doubt the Truth or Accuracy of the Declared Value" and "Decisions on Texts Relating to Minimum Values and Imports by Sole Agents, Sole Distributors and Sole Concessionaires".

ON THE WEBSITE:

www.wto.org > trade topics > goods > customs valuation

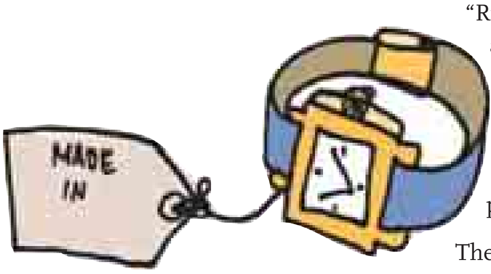
Preshipment inspection: a further check on imports

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

The **Preshipment Inspection Agreement** recognizes that GATT principles and obligations apply to the activities of preshipment inspection agencies mandated by governments. The obligations placed on governments which use preshipment inspections include non-discrimination, transparency, protection of confidential business information, avoiding unreasonable delay, the use of specific guidelines for conducting price verification and avoiding conflicts of interest by the inspection agencies. The obligations of exporting members towards countries using preshipment inspection include non-discrimination in the application of domestic laws and regulations, prompt publication of those laws and regulations and the provision of technical assistance where requested.

The agreement establishes an independent review procedure. This is administered jointly by the International Federation of Inspection Agencies (IFIA), representing inspection agencies, and the International Chamber of Commerce (ICC), representing exporters. Its purpose is to resolve disputes between an exporter and an inspection agency.

Rules of origin: made in ... where?



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

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

For the longer term, the agreement aims for common ("harmonized") rules of origin among all WTO members, except in some kinds of preferential trade — for example, countries setting up a free trade area are allowed to use different rules of origin for products traded under their free trade agreement. The agreement establishes a harmonization work programme, based upon a set of principles, including making rules of origin objective, understandable and predictable. The work was due to end in July 1998, but several deadlines have been missed. It is being conducted by a Committee on Rules of Origin in the WTO and a Technical Committee under the auspices of the World Customs Organization in Brussels. The outcome will be a single set of rules of origin to be applied under non-preferential trading conditions by all WTO members in all circumstances.

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

ON THE WEBSITE:
www.wto.org > trade topics > goods > rules of origin

Investment measures: reducing trade distortions

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

Under the agreement, countries must inform fellow-members through the WTO of all investment measures that do not conform with the agreement. Developed countries had to eliminate these in two years (by the end of 1996); developing countries had five years (to the end of 1999); and least-developed countries seven. In July 2001, the Goods Council agreed to extend this transition period for a number of requesting developing countries.

The agreement establishes a Committee on TRIMs to monitor the implementation of these commitments. The agreement also says that WTO members should consider, by 1 January 2000, whether there should also be provisions on investment policy and competition policy. This discussion is now part of the Doha Development Agenda.

ON THE WEBSITE:
www.wto.org > trade topics > investment

10. Plurilaterals: of minority interest

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

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

The bovine meat and dairy agreements were terminated in 1997.

Fair trade in civil aircraft

The **Agreement on Trade in Civil Aircraft** entered into force on 1 January 1980. It now has 30 signatories. The agreement eliminates import duties on all aircraft, other than military aircraft, as well as on all other products covered by the agreement — civil aircraft engines and their parts and components, all components and sub-assemblies of civil aircraft, and flight simulators and their parts and components. It contains disciplines on government-directed procurement of civil aircraft and inducements to purchase, as well as on government financial support for the civil aircraft sector.

ON THE WEBSITE:
www.wto.org
> trade topics > goods > civil aircraft

Government procurement: opening up for competition

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

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

The agreement has 28 members. It has two elements — general rules and obligations, and schedules of national entities in each member country whose procurement is subject to the agreement. A large part of the general rules and obligations concern tendering procedures.

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

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

ON THE WEBSITE:
www.wto.org > trade topics > goods > government procurement

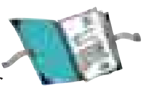
The agreement applies to contracts worth more than specified threshold values. For central government purchases of goods and services, the threshold is SDR 130,000 (some $185,000 in June 2003). For purchases of goods and services by sub-central government entities the threshold varies but is generally in the region of SDR 200,000. For utilities, thresholds for goods and services is generally in the area of SDR 400,000 and for construction contracts, in general the threshold value is SDR 5,000,000.

Dairy and bovine meat agreements: ended in 1997

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

11. Trade policy reviews: ensuring transparency

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



What is this agreement called?
Trade Policy Review Mechanism

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

The objectives are:

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

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

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

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

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

ON THE WEBSITE:
www.wto.org > trade topics > trade policy reviews