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The Implementation of the WTO Multilateral Trade Agreements, the 'Built-In' Agenda, New Issues, and the Developing Countries

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NOTE

The descriptions and classification of countries and territories in this study and the arrangement of the material do not imply the expression of any opinion whatsoever on the part of the Secretariat of the United Nations concerning the legal status of any country, territory, city or area, or of its authorities, or concerning the delimitation of its frontiers or boundaries, or regarding its economic system or degree of development.

1 Introduction

For many developing countries that have adopted export-oriented development models since the late 1970s and early 1980s, their principal objective in the Uruguay Round was to obtain a more liberal and secure access to the markets of the major developed countries. They have a major interest in the multilateral trading system. Their economic development and continued prosperity depend on the keeping open of the world markets and the strengthening of the rule-based multilateral trading system as achieved during the Uruguay Round. Since the entry into force of the World Trade Organization (WTO) Agreement on 1 January 1995, many developing countries have stood in the forefront of WTO activities of implementing the multilateral trade agreement (MTAs) and shaping the future orientations of the new multilateral trading system. The first WTO Ministerial Conference was held in Singapore on 9 – 13 December 1996.

This study is based on a presentation at a Third World Network seminar in Geneva, September 1996. (Some updating was done in May 1997, mainly on built-in agenda in Chapter 4.) The aims of this work are to provide an overview of the implementation of the WTO MTAs over the past two years, an examination of the main concerns of the developing countries, an identification of the key elements of the built-in agenda, and an examination of some of the proposals made within the context of the preparatory work for the Singapore Ministerial Conference concerning further liberalization in the area of tariffs, government procurement and the so-called 'new issues'.

2 Overview of the Implementation of the WTO Multilateral Trade Agreements

As far as the implementation of the multilateral trade agreements (MTAs) is concerned, WTO activities up to late 1996 mainly concentrated in the following areas:

(i) establishment of institutional mechanisms;
(ii) notifications and reviews;
(iii) ongoing negotiations of unfinished business;
(iv) dispute settlement;
(v) accession negotiations; and
(vi) preparation for the first Ministerial Conference.

(i) Establishment of institutional mechanisms

In this regard, a number of decisions were taken over the past two years to ensure that the institutional mechanisms of the WTO were set in place, including adoption of rules and procedures for the main WTO bodies and their subsidiary bodies. Among them, the most important one was the establishment of the Appellate Body, which enabled the WTO to become fully operational. The establishment of a Committee on Regional Trade Arrangements was also important.

(ii) Notifications and reviews

There are more than 200 notification requirements under the WTO MTAs.[1] Up to mid-February 1996, the various WTO committees and bodies received more than 1,500 notifications from WTO members, pursuant to their obligations in the MTAs and Understandings under the

General Agreement on Tariffs and Trade (GATT) 1994. Most of these notifications were made in relation to technical standards and regulations under the agreements on technical barriers and sanitary and phytosanitary measures, and to the agreements on subsidies, textiles and clothing, anti-dumping, safeguards and rules of origin.[2]

The WTO MTAs also contain some 74 provisions for reviews. With the submission of the notifications, many review meetings were organized by the various WTO committees and bodies. For example, the WTO committees on anti-dumping and subsidies and countervailing measures held four joint special meetings to conduct the preliminary exchange of views on notifications submitted by more than 60 members (both with and without legislation on anti-dumping/countervailing practices).

No doubt the fulfilment of notification obligations by all WTO members and the detailed review of notifications will increase greatly the degree of transparency of the system. At the same time, they will also facilitate the task of monitoring the complex process of implementation and the development of effective surveillance mechanisms to ensure that member countries comply with the WTO MTAs.

(iii) Ongoing negotiations of unfinished business

The MTAs specifically provided for continued negotiations in the areas of (a) financial services; (b) movement of natural persons; (c) basic telecommunications; (d) maritime services; (e) professional services; (f) General Agreement on Trade in Services (GATS) rules; (g) anti-circumvention measures in relation to anti-dumping duty measures; and (h) harmonization of non-preferential rules of origin. For more see Chapter 4.

(iv) Dispute settlement

Since the entry into force of the WTO Agreement on 1 January 1995, a rising number of disputes have been referred to the new dispute settlement mechanism. So far, the WTO Dispute Settlement Body has received 60 requests for consultations (including two brought originally under the Agreement on Textiles and Clothing), involving 42 separate matters. Among them 12 panels were established: three panel reports were circulated, two of which were appeals to the Appellate Body and the Appellate Body issued reports with respect to the two cases; three were settled without panel decisions being issued; and the remaining six cases are still under panel investigation.

With regard to the case of US standards for reformulated and conventional gasoline, the Appellate Body rejected the appeal lodged by the United States and affirmed the panel's rulings. However, it modified the panel's legal reasoning.

More recently, concerning the dispute over Japan's taxes on alcoholic beverages, the WTO panel findings confirmed and strengthened a 1987 GATT ruling that Japan's liquor taxes discriminated against imports, and the WTO Appellate Body has upheld the panel ruling.

For details of the state-of-play of WTO disputes see 'The State-of-play of WTO Disputes' at *http://www.wto.org/wto/dispute/bulletin.htm* on the Internet.

(v) Accession negotiations

Another equally important area of work is the integration of the 'outsiders' into the mainstream of international trade relations. Over the past two years, four countries have completed their WTO accession negotia-

tions. So far 28 countries and economies have formally applied to join the WTO.

3 Problems Deriving from the Implementation – Main Concerns to the Developing Countries

(i) Fulfilment of the notification requirements

The fulfilment of notification requirements is vital to ensure that market access and other commitments are carried out according to schedule, and that national laws are modified to conform with WTO rules. It is one of the fundamental obligations in the process of maintaining a credible WTO system. However, given the technical nature of the notifications many developing countries have voiced concerns about the burden of complying with the extensive requirements due to inadequate administrative and institutional capacities.

Although a great number of notifications were received by the various WTO committees and bodies, there is still much scope for improving compliance with the various notification requirements. One of the main concerns in this regard is the question of the completeness and comparability of notifications in some areas. There is thus a potential need for strengthened verification mechanisms to tackle the question of completeness and comparability of some of the notifications.

Concerns have also been raised about the attempts to impose undue stringency for notifications by developing countries making use of transitional periods. For example, where a developing country member is allowed a transitional period for implementation of an agreement or part of the agreement, certain members have been asking developing countries invoking such provisions to provide justifications.[3]

During the review of notifications in the WTO, the need for technical assistance was recognized, as well as the simplification of formats for compliance with notification obligations. The aim was to improve compliance by developing countries, particularly the least developed ones. This was confirmed at the Singapore Ministerial Conference (SMC).

(ii) Implementation of substantive commitments

While much attention has been devoted to the technical aspects of notification and review exercises, the process of implementation should be closely monitored, in particular with respect to

- implementing market access commitments concerning reduction of tariffs and elimination of non-tariff measures;

- bringing contingency trade protection measures into compliance with the relevant WTO MTAs;

- phasing out the Multi-Fibre Agreement (MFA) restrictions and integrating the textiles sector into the GATT;

- implementing the provisions of the Agriculture Agreement; etc.

For example, in implementing market access commitments with regard to tariffs and non-tariff measures, there is a need to address the problem of persistent tariff peaks and tariff escalation remaining in sectors/products of interest to developing countries.

The effectiveness of specific commitments under the General Agreement on Trade in Services (GATS) needs to be ensured, e.g. in the mode of supply of natural persons, application of the transparency obligation, operativeness of Article IV obligation on increasing participation of developing countries (such as, in providing market information), assess-

ment to be undertaken in accordance with Article XIX prior to the next round of services negotiations.

Although textiles and clothing accounted for a high percentage of developing countries' exports of manufactures, the implementation of the integration programme for the first phase has been disappointing. This is mainly due to these factors: 'end-loading' feature of the integration process, frequent resort to the 'transitional safeguard mechanism', the effectiveness of the Textiles Monitoring Body (TMB), the implication of the regional integration and special arrangements, as well as matters related to the application of rules of origin in the area of textiles and clothing.

In the implementation of the provisions of the Agriculture Agreement, improvements need to be made with respect to prohibitively high tariff rates in several products subject to tariffication and clarity in the tariff quota allocation mechanism and procedures in the importing countries.

The Agreement on Subsidies and Countervailing Measures has made some important improvements over its predecessor. However, there is still much room for differing interpretations of the provision of the Agreement e.g. the concept of specificity.

Under the Agreement on Trade-related Investment Measures (TRIMs), developing countries may have to defend the use of measures even though they are not on the prohibited list.

In the area of trade-related aspects of intellectual property rights (TRIPs), although developing countries are required to implement the TRIPs Agreement by 1 January 2000 (for least-developed countries, until 1 January 2006), they face pressure from developed countries to accelerate the process of implementation.

(iii) Special problems faced by the least-developed countries (LDCs)

LDCs are the least integrated into the multilateral trading system. Their participation in the Uruguay Round negotiations in greater numbers than witnessed in all previous rounds put together and their growing membership[4] in the WTO attest to their desire to seek a better and more meaningful integration into the trading system. However, over the past two years, the LDCs' efforts to implement the notification requirements have been hampered by the limited human resources and weak institutional infrastructure available to their governments. As a result, many LDCs have not or were not able to fulfil the notification requirements within the required time-limits.

Although many LDCs have accepted the WTO Agreement and are thus original WTO members, the reality is that a great majority of them are still grappling for a better understanding of the Uruguay Round Agreements and the rights and obligations arising therefrom.

Furthermore, there is concern that such weakness could also result in many LDCs failing to take advantage of transitional provisions as provided in some of the provisions of the WTO MTAs. For instance, of the 23 developing-country members who have made notifications of TRIMs under Article 5.1 in order to benefit from the transitional period (seven years for LDCs), not a single one is an LDC.[5]

In the area of implementing market access results, despite the Ministerial Decision on Measures in Favour of the Least-Developed Countries (which called for advancement of the implementation by developed countries of tariff and non-tariff concessions agreed in the Uruguay Round for products of export interest to the LDCs), it should be noted that there has been no autonomous advanced implementation of concessions on products of interest to the LDCs.[6]

On the import side, the implementation of the Marrakesh Ministerial Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on the Least-Developed and Net Food-Importing Developing Countries would be of interest to many of them as the great majority of them are food-deficit countries.

Most LDCs face a particularly acute problem of drawing up implementing domestic legislation as they have to adapt their trade regulatory regimes to the new rules arising from (but not limited to) the revised Tokyo Round Codes addressing non-tariff trade measures e.g. customs valuation, anti-dumping, subsidies and countervailing measures, import licensing procedures, sanitary and phytosanitary measures (SPS), technical barriers to trade (TBT), etc. As noted by the WTO, the implementation of transparency provisions under the SPS Agreement has been identified as a serious problem for many LDCs, due to infrastructure shortages as well as deficient functioning of regulatory bodies. This problem would apply in respect of other agreements. Yet with respect to the SPS Agreement, no LDC has requested any exemption from the obligations of the Agreement.[7]

In view of the above, the genuine problems faced by the LDCs should be recognized and the Marrakesh Ministerial Decision on Measures in Favour of the Least-Developed Countries should be reaffirmed and put into effect. Increased support to the joint and coordinated ITC/UNCTAD/WTO 'Integrated Programme of Technical Assistance Activities for Selected Least-developed and Other African Countries' would be one concrete way of giving practical meaning to this Decision.

It should also be noted that a number of LDCs (including Sudan and Yemen) are not yet members of the WTO.

(iv) Textiles and clothing

Textiles and clothing account for a high percentage of developing countries' exports of manufactures. However, the implementation of the integration programme for the first phase, as submitted by the major importing countries, has been very disappointing. The 'end-loading' feature of the integration process, which allows the major importing countries to integrate the products of meaningful export interest to many developing countries to the end of the transition period, has given rise to concern over the credibility of the whole integration programme.[8]

Another major concern in the area of textiles relates to frequent resort to the 'transitional safeguard mechanism'. Despite the agreement that 'the transitional safeguard should be applied as sparingly as possible', during the first six months of implementation one of the major importing countries made 24 'calls' for consultations. While questioning the effectiveness of the Textiles Monitoring Body (TMB) in resolving certain disputes, Costa Rica (cotton and man-made fibre underwear) and India (woven wool shirts and blouses) have referred their disputes with the United States to the WTO Dispute Settlement Body.

The disappointing situation in the textiles sector has been further complicated by factors such as the introduction of quantitative restrictions by Turkey as a result of its conclusion of a Customs Union Agreement with the European Union (EU) and the application of 'transitional safeguard measures' by a developing exporting country against imports of textiles from other developing exporting countries.[9]

At a recent meeting of the WTO Council for Trade in Goods, the problems deriving from the implementation of the Agreement on Textiles and Clothing were specifically discussed on the initiative of some developing countries. In a formal document submitted by the Association of Southeast Asian Nation (ASEAN) countries (that are WTO members) and Hong Kong, India, Korea, and Pakistan which was circulated at the

meeting,[10] a number of issues were raised and concerns were expressed. Apart from the above-mentioned ones, other matters mentioned related to the application of rules of origin, treatment of LDCs and small suppliers, particular interests of cotton-producing countries, and the use of trade measures for non-trade purposes. Developed countries mentioned access to developing-country markets and circumvention of quotas as their main concerns.

As required by Article 8.11 of the Agreement, the Goods Council should conduct a major review before the end of the first stage of integration (i.e., the end of 1997). Also the TMB should transmit to the Goods Council a comprehensive report on the implementation of the Agreement five months before the end of the first stage (i.e., at least by the end of July 1997). It is expected that this major review in 1997 will be an important exercise for members to assess the real progress of the integration process.

The Agreement (Article 2.11) also requires importing countries to notify the details of their second-stage integration programme to the TMB 12 months before its coming into effect (i.e. no later than 1 January 1997). Apart from the United States which has decided on the details of all stages of integration well in advance under the requirement of its national legislation,[11] so far there has been no clear indication from the European Union, Canada and Norway as to what selected products will be integrated into the GATT 1994 during the second stage.

(v) Anti-dumping and countervailing measures

As the trade of developing countries has increased in recent years, their exports have been more frequently faced with anti-dumping and countervailing duty actions. Over the period of 1 July 1994 to 30 June 1995, most of the 153 anti-dumping and countervailing investigations initiated or measures imposed (as reported to the WTO by its members) were targeted at developing countries.[12]

Although Article 18.1 of the Anti-Dumping Agreement provides that no specific action against dumping of exports from another member can be taken except in accordance with the provisions of GATT 1994 as interpreted by this Agreement, anti-circumvention investigations have already been initiated under the national law against some developing countries.[13] For example, the European Commission's decision in October 1995 to investigate the alleged circumvention of anti-dumping duties, imposed on microdisks from Japan, Chinese Taipei and China, by imports of microdisks originating in Hong Kong, Canada, Malaysia, Macau, Indonesia, Thailand, India, Singapore and the Philippines. Some details of the problem of circumvention of anti-dumping duty measures are discussed in the next chapter.

The small- and medium-sized firms in developing countries have difficulty in defending their interests because of the complexities of the system and the cost of compliance in investigation proceedings. The assistance that the governments of developing countries can provide to their exporting firms in defending their cases in the investigation processes in the importing countries is often very limited. As a result, the percentage of cases with restrictive final outcomes is usually higher for developing economies.[14]

The rapid opening of developing countries' markets has resulted in their governments being under increased pressure to protect domestic industry against injury from imports by using WTO consistent measures, such as anti-dumping and countervailing measures. However, effective use of anti-dumping and countervailing measures requires substantial financial and human resources. The problem of lack of personnel and expertise in many developing countries may pose a serious challenge to them.[15] Thus, more attention should be given to it.

(vi) Subsidies

For a long time, no international consensus existed as to the appropriate role of governments in supporting production and trade. Subsidies have been one of the main causes of trade tensions and disputes. The WTO Agreement on Subsidies and Countervailing Measures has made some important improvements over its predecessor, i.e., the special provision for developing countries (Article 27), the improvement in overall transparency, definition of specificity, what is permitted, etc. However, there is still much room for differing interpretations and manoeuvring which have created difficulties for effective implementation of the Agreement, for example:

- 'specificity', a concept derived from United States practice, is a central feature of the Subsidies and Countervailing Measures Agreement. Given the difficulties in determining whether a subsidy has specificity or not, members need to be familiar with the case laws of the developed countries, particularly the United States case laws which would require a lot of effort and could mean a time-consuming exercise for many developing countries;[16]

- subsidies contingent, in law or in fact, upon export performance are classified as prohibited subsidies (Article 3.1 [a]). However, it is not clear as to how to determine whether a subsidy is 'in fact' an export subsidy or not. This may lead to disputes particularly in a situation as foreseen in footnote 4 that 'a subsidy is granted to enterprises which export shall not for that reason alone be considered to be an export subsidy within the meaning of this provision';

- under Article 25.3 (v), members are required to notify the Committee on Subsidies of their subsidy programmes with statistical data permitting an assessment of the trade effects. The Committee's experience so far has shown that this turned out to be a very difficult task to perform;

- some countries do not notify the Committee of the subsidies programmes executed by their second-level (i.e., state or provincial) governments or local governments; and Article 8.2, footnote 25, requires a review of the exemption for specific R&D subsidies within 18 months of the entry into force of the WTO agreements (i.e., by the end of June 1996). In view of the lack of experience and no green subsidies notifications submitted, it was agreed that such review would be conducted at a future time if members wished to do so.

The review of the notifications submitted pursuant to Article XVI:1 of GATT 1994 and Article 25 of the Agreement on Subsidies and Countervailing Measures is currently underway. The notifications that are now under such review are related to subsidy as defined in Article 1.1 of the Agreement, which is specific within the meaning of Article 2 of the Agreement (that is 'specificity').[17] So far, 37 members have notified their subsidies maintained in this regard; 16 members have notified no such subsidies; while 69 have made no notification.[18]

(vii) Trade-related investment measures (TRIMs)

Under the TRIMs Agreement, developing countries are required to implement the Agreement with a five-year transition period (seven years for least-developed countries). However, there is no transition period for TRIMs introduced after the end of June 1994. Recently, some developed countries complained that some developing countries were trying to modify existing TRIMs to increase their inconsistency with the provisions of the Agreement. They also insisted that TRIMs subject to elimination should not be limited to the 'Illustrative List', but should include all trade-distorting investment requirements.[19] Also, there is an indication that a major developed country is initiating negotiation on bilateral investment treaties with some developing countries while completing negotiation on the multilateral agreement on investment (MAI) in the Organization for Economic Cooperation and Development (OECD) –

before making any breakthrough toward a WTO investment agreement.[20]

WTO members also face another problem in their implementation of the TRIMs Agreement: the issue of how to assess the degree of compliance with the notification requirements, particularly those of Article 5.1 of the Agreement. Article 5.1 provides for a 'one-time' notification, that members shall notify the WTO secretariat, within 90 days of the date of entry into force of the WTO agreements, of all TRIMs they are applying that do not conform with the provisions of the Agreement (despite the different elimination dates for different groups of members). However, so far the WTO secretariat has only received such notifications from 35 WTO members and some of them were made after the 90-day time-limit.

(viii) Trade-related aspects of intellectual property rights (TRIPs)

Under the TRIPs Agreement, developed countries were required to start the implementation by 1 January 1996. However, one of the major developed countries complained that, in its view, several other developed countries had not fully met their obligations by then.

Although developing countries are required to implement the TRIPs Agreement by 1 January 2000[21] (for least-developed countries, until 1 January 2006), there is a pressure from developed countries to accelerate the implementation by developing countries.[22]

(ix) Dispute settlement mechanism/unilateral measures

Since the entry into force of the WTO agreements, developing countries have effectively resisted the threat of unilateral measures or trade sanctions, including tariff increases, and insisted on resolving trade disputes through recourse to the WTO dispute settlement mechanism.[23] They chose this approach rather than that based on the judgement by one of the major trading nations that other countries' trade practices do not conform

with the international rules: this judgment is based solely upon the trading nation's own laws, without invoking WTO dispute settlement procedures or other multilateral rules. In this regard, it is important to keep in mind Article 23.2 (a) of the Understanding on Rules and Procedures Governing the Settlement of Disputes which requires that WTO members shall 'not make a determination to the effect that a violation has occurred, that benefits have been nullified or impaired or that the attainment of any objective of the covered agreements has been impeded, except through recourse to dispute settlement in accordance with the rules and procedures of this Understanding'.

The strengthening of the WTO dispute settlement provisions is one of the major achievements of the Uruguay Round. However, the new dispute settlement mechanism has yet to be fully tested. The effectiveness of the dispute settlement mechanism will be crucial to building confidence in the multilateral trading system. The key to the effectiveness of the dispute settlement mechanism will lie in the readiness of WTO members to submit disputes to the WTO and not resort to unilateral action against trading partners, and to comply with the rulings of the Dispute Settlement Body and the Appellate Body, to ensure that the multilateral nature of the WTO will continue to develop and thrive.

4 Key Elements of the WTO Built-In Agenda: Areas of Importance or Concern to the Developing Countries

The Uruguay Round of multilateral trade negotiations achieved historic results. Yet in many respects it is not yet over, in that negotiations on a number of issues are still continuing (e.g. basic telecommunications). In addition, some of the multilateral trade agreements (MTAs) provide for negotiations to be launched within a separate time frame (e.g., services and agriculture).

The built-in agenda of the WTO MTAs includes the following:

(a) the unfinished business in the areas of financial services, basic telecommunications services, maritime services, several articles of the General Agreement on Trade in Services, etc.;

(b) the commitments to launch new negotiations for progressive trade liberalization in services and continuation of reform process in the agricultural trade; and

(c) the reviews of the operation and implementation of certain specific provisions of the WTO MTAs.

As a matter of fact, the built-in agenda for further liberalization, specifically in respect of services, textiles and clothing, and agriculture is a major negotiation in itself. In addition, a large number of provisions of MTAs have potential for the reopening of issues and renegotiation of obligations.

Many of the built-in agenda issues were also referred to in the Singapore Ministerial Declaration (SMD) of the WTO. In general, it was agreed 'to a process of analysis and exchange of information, where provided for in the conclusions and recommendations of the relevant WTO bodies, on the Built-in Agenda issues, to allow Members to better understand the issues involved and identify their interests before undertaking the agreed negotiations and reviews'. It was agreed 'that

- the time frame established in the Agreements will be respected in each case;

- the work undertaken shall not prejudge the scope of future negotiations where such negotiations are called for; and

- the work undertaken shall not prejudice the nature of the activity agreed upon (i.e.negotiation or review).' (Paragraph 19 of the SMD) In some cases clearer instructions are provided. In addition, the SMD also gives some new mandates.

(i) Unfinished business

- Financial services (GATS Annex; Marrakesh Ministerial Decision)

  An interim agreement was reached at the end of July 1995 – with the exception of the United States, Colombia and Mauritius – which would be implemented for an initial period up to 1 November 1997. It was envisaged that another round (or a continuation) of the negotiations on financial services would take place before the interim agreement's expiry at the end of 1997. Up until that time, countries could withdraw. Details are provided in a separate paper on services.[24]

  The WTO SMD requested to 'resume financial services negotiations in April 1997 with the aim of achieving significantly

improved market access commitments with a broader level of participation in the agreed time frame'.

These negotiations are expected to conclude by the end of 1997. (Paragraph 17 of the SMD)

- Movement of natural persons (GATS Annex; Marrakesh Ministerial Decision)

Negotiations on the movement of natural persons were concluded on 28 July 1995. Six members submitted their revised schedules which would be annexed to the Third Protocol to the GATS and open for acceptance by members concerned until 30 November 1997.

- Basic telecommunications (GATS Annex; Marrakesh Ministerial Decision)

Negotiations on basic telecommunications were concluded and an Agreement on Basic Telecommunication Services was adopted by a Decision of the Council for Trade in Services on 15 February 1997. The Fourth Protocol and Decision on Commitments in Basic Telecommunications provided for 30 November 1997 as the deadline for acceptance of the Protocol and for 1 January 1998 as the date of entry into force of the Protocol and its attached schedules of commitments.

- Maritime services (GATS Annex; Marrakesh Ministerial Decision)

Negotiations on maritime services were suspended, to be resumed with the commencement of comprehensive negotiations on services under Article XIX of the GATS not later than 1 January 2000.

The SMD expected 'a successful conclusion of the negotiations on Maritime Transport Services in the next round of negotiations on services negotiations'. (Paragraph 17 of the SMD)

- Emergency safeguards for services (GATS Article X)

The discussions on this issue mainly focused on whether an emergency safeguard clause was in fact desirable. Several developed countries that are questioning the need for such a clause in GATS argued that specific commitments in the GATS schedules contain built-in safeguards by subjecting national treatment and market access to limitations and qualifications, such as economic needs tests, quotas, exclusion of sub-sectors, etc. They considered that such a clause could open a new track for protectionist trade remedies with unforeseen implications in the services sector and also pointed out its lack of feasibility. In their view, Article XXI of GATS (Modification of Schedules) was sufficient.

Certain developing countries felt that access to such a clause would encourage countries to make more ambitious commitments to liberalize (for example, by removing the requirement of an economic needs test in the area of movement of natural persons or allowing commercial presence in more sectors and fewer limitations under market access and national treatment), in the knowledge that resort to temporary safeguards would be available if the commitments were to result in injurious effects. Developing countries argued that the impact of service liberalization was difficult to foresee and that in the absence of such a clause they would tend to be excessively cautious in making further commitments. The crucial strategic and infrastructural role of services in the economy as a whole exacerbates this concern. Resort to Article XXI of GATS implies a permanent modification in the commitment, which may not be desired,

and the payment of compensation. On the question of whether an emergency safeguard clause to deal with trade in services would be feasible, it was noted that in practice the essential difference between trade in services (as defined in the GATS on the basis of supply of services through four modes, the nature of the commitments on services) as compared to trade in goods, implied that concepts, principles and mechanisms of the WTO Agreement on Safeguards could not be applied to trade in services *mutatis mutandis*. Instead, different safeguard mechanisms may be needed for each mode of supply. The means of restricting trade in services would differ from those restricting trade in goods and as between modes of supply.

A working party on GATS rules was established in 1995 to negotiate rules and disciplines in the areas of emergency safeguards, government procurement and subsidies for services. The results of the multilateral negotiations on emergency safeguards should enter into effect not later than 1 January 1998.

The SMD committed to 'undertake the necessary work with a view to completing the negotiations on safeguards by the end of 1997'. It also noted that 'more analytical work will be needed' on this issue. (Paragraph 17 of the SMD)

- Government procurement in services (GATS Article XIII)

While recognizing that GATS provisions do not apply to laws, regulations or requirements governing the government procurement of services, Article XIII:2 of GATS provides that '[t]here shall be multilateral negotiations on government procurement in services under this Agreement within two years from the date of entry into force of the WTO Agreement.' However, the question is not clear whether services will be integrated into the plurilateral Agreement on Government

Procurement (GPA) or whether it is possible to negotiate multilateral disciplines on government procurement within the GATS context. It should be noted that the main difference between the provisions on government procurement in the GATT and the GATS is that Article III:8 of GATT exempts government procurement from the national treatment obligation, whereas national treatment in the GATS is not an obligation. Under GATS, national treatment commitments are negotiable.

A working party on GATS rules was established in 1995 to negotiate rules and disciplines in these areas: emergency safeguards, government procurement and subsidies for services. The negotiations on government procurement 'should commence' within two years from the date of entry into force of the WTO Agreement, that is, not later than 1 January 1997.

The SMD noted that 'more analytical work will be needed' on this issue. (Paragraph 17 of the SMD)

- Subsidies in services (GATS Article XV)

The negotiations on Article XV of the GATS have important implications. As a definition of subsidies to trade in services would have to deal with subsidies to such trade affected through 'commercial presence', it would have implications for any future disciplines governing investment. In addition, any provision for countermeasures could open the door to the same type of trade harassment that has been observed in the resort to anti-dumping and countervailing measures. The negotiation of precise disciplines on subsidies also faced with difficulties such as the lack of disaggregated statistics and the absence of common nomenclature. It is clear that for many services it would be difficult to obtain adequate data with respect to

market shares and prices, and that the concept of 'unit of output', and consequently 'unit costs', might be somewhat inapplicable to many services sectors. For details, see a separate paper on services.[25]

A working party on GATS rules was established in 1995 to negotiate rules and disciplines in the areas of emergency safeguards, government procurement and subsidies for services. While the results of the multilateral negotiations on emergency safeguards should enter into effect not later than 1 January 1998 and the negotiations on government procurement 'should commence' within two years from the date of entry into force of the WTO agreements (i.e., not later than 1 January 1997), no timetable was set for the negotiations on subsidies.

The SMD noted that 'more analytical work will be needed' on this issue. (Paragraph 17 of the SMD)

- Development of disciplines in the area of professional services with a view to ensuring that domestic measures relating to qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade in services (Article VI.4 of the GATS and Marrakesh Ministerial Decision)

Under the GATS, a number of countries made specific commitments to allow cross-border provision of professional services, as well as commitments to enable market access through establishment of a local office. The GATS also provides for recognition of credentials of foreign professionals, including through negotiations of a mutual recognition agreement. A Marrakesh Ministerial Decision calls for the establishment of a Working Party on Professional Services to examine and report, with recommendations, the disciplines necessary to ensure that measures, technical standards and licensing requirements in

the field of professional services do not constitute unnecessary barriers to trade. A Working Party on Professional Services (WPPS) was established in 1995. Thus far the WPPS has given priority attention to the accountancy sector.

The SMD committed to 'continue to develop multilateral disciplines and guidelines'. (Paragraph 17 of the SMD)

- Elaboration of multilateral disciplines in the accountancy sector (Marrakesh Ministerial Decision)

So far, the WPPS has focused on the collection and clarification of the information for the elaboration of necessary multilateral disciplines. However, no timetable has been set for the conclusion of the working party's work.

The SMD committed to complete 'the work on accountancy sector by the end of 1997'. The SMD encouraged 'the successful completion of international standards in the accountancy sector by IFAC, IASC, and IOSCO'.[26] (Paragraph 17 of the SMD)

- Anti-circumvention measures in relation to anti-dumping duty measures (Marrakesh Ministerial Decision)

The anti-circumvention measures are directed against foreign firms established in the importing country which assemble from imported parts the product which would otherwise be subject to anti-dumping duties; or third-country circumvention – the transfer of assembly operations from the country covered by the measure to a third country (also including the input dumping and slightly altered merchandise). The matter was raised by the major developed countries for negotiations

and addressed unsuccessfully in the Uruguay Round. At the Marrakesh meeting, Ministers decided that the issue of circumvention of anti-dumping duties would be remitted to the WTO Committee on Anti-Dumping Practices. The informal consultations on this subject matter so far have been conducted within the context of the Committee on Anti-Dumping Practices with a view to reaching an agreement on a framework of understanding within which further informal consultations should be held.

- Trade in services and the environment (Marrakesh Ministerial Decision)

While acknowledging that measures necessary to protect the environment may conflict with the provisions of the GATS, the Marrakesh Ministerial Decision recommends to the WTO Council for Trade in Services that, at its first meeting, it should adopt a decision requesting the Committee on Trade and Environment (CTE) to examine GATS Article XIV (General Exceptions). Such an examination should be undertaken in order to determine whether any modification to Article XIV is required to take account of measures necessary to protect the environment, and whether recommendations should be made on the relationship between services trade and the environment, including the issues of sustainable development. The CTE should also examine the relevance of intergovernmental agreements on the environment and their relationship to the GATS. At its first meeting on 1 March 1995, the Council for Trade in Services decided to request the CTE to examine and report, with recommendations if any, these issues referred to above. The CTE was also asked to report the results of its work to the first WTO Ministerial Conference in Singapore, in December 1996.

- Harmonization of non-preferential rules of origin (Article 9 of the Agreement on Rules of Origin)

  Of the three basic customs laws (others are customs valuation, commodity description, and coding system) operating at national level, rules of origin remain neither regulated nor harmonized at the multilateral level. This fact has allowed some countries to apply rules of origin so as to attain certain trade policy objectives. As a first step, the WTO Agreement on Rules of Origin provides that the harmonized set of rules shall apply to all non-preferential commercial policy instruments, from MFN treatment to government procurement and trade statistics and that such a work programme should be completed within three years. Since the work programme of harmonization was initiated in July 1995, the WTO Committee on Rules of Origin has received three reports from the World Customs Organization's Technical Committee for consideration. In May 1996, the WTO Committee decided to establish an integrated negotiating text – a common working document with a view to enhancing efficiency and discipline in the negotiating process, and assisting delegations in assessing progress in the negotiations and problems that exist.

  The European Commission (EC) submitted a non-paper on rules of origin to the informal meeting of the heads of delegations in July 1996, in which, it suggested a setting up of one set of origin rules for all non-preferential trade and the use of the 'wholly obtained rule' and the rule of the last substantial transformation as origin-conferring criteria.

- Development of internationally agreed disciplines to govern the provision of export credits, export credit guarantees or insurance pro-

grammes and, after agreement on such disciplines, to provide export credits, export credit guarantees or insurance programmes only in conformity therewith (or to prevent the circumvention of export subsidy commitments) (Article 10 of the Agreement on Agriculture)

Export subsidies are among the most trade-distorting measures as they allow subsidizing countries to displace naturally efficient producers in world markets for agricultural products. Part V of the Agreement on Agriculture imposes multilateral disciplines on agricultural export subsidies for the first time (though it is very vague), beginning the process of reducing the use of export subsidies in agricultural trade. As part of its continuous work programme, Article 10.2 of the Agreement commits WTO members to work towards internationally agreed disciplines and to abide by those disciplines once they are established. This commitment provides an opportunity to establish additional limits on measures that can serve as indirect export subsidies with a view to preventing WTO members from circumventing the export subsidy commitments.

(ii) Special review

- Non-actionable research and development subsidies (Article 8.2(a), footnote 25 of the Agreement on Subsidies and Countervailing Measures or ASCVM)

Although such review should be conducted within 18 months after the entry into force of the WTO Agreement (i.e., by the end of June 1996), in view of the lack of experience and since no notifications of non-actionable research subsidies had been submitted, it was agreed that such review would be conducted at a future time if members wished to do so.

- Export-competitiveness provision for developing countries (Article 27.6 of the ASCVM)

  The operation of this provision should be reviewed five years from the date of the entry into force of the WTO Agreement.

- Article 6.1 on actionable subsidies and Articles 8 and 9 on non-actionable subsidies (Article 31 of the ASCVM)

  The operation of those provisions should be reviewed five years after the entry into force of the WTO Agreement with a view to deciding whether to extend their application. Such review should be conducted not later than 180 days before the end of this period.

- Geographical indications (Article 24.2 of the TRIPs Agreement)

  The Trade-related Intellectual Property Rights (TRIPs) Agreement establishes protection of the indications which identify goods as originating in a country, or a region or locality where a given quality, reputation or other characteristic of the goods is essentially attributed to their geographical origin. Article 24.2 of the Agreement commits WTO members to keep under review the application of the relevant provisions in the Council for TRIPs and the first such review shall take place within two years of the entry into force of the WTO Agreement.

- Patent or *sui generis* protection of plant varieties (Article 27.3 (b) of the TRIPs Agreement)

  Patentable subject-matter was one of the most difficult issues in the Uruguay Round TRIPs Agreement negotiations. One of the main reasons is because intellectual property protection in this

area of living matter is still in its early years of development. For that reason the TRIPs Agreement calls for a review four years after the date of entry into force of the WTO Agreement (i.e., not later than 1 January 1999).

- The non-application to TRIPs of GATT Article XXIII:1 (b) and (c) (i.e., non-violation provisions) with a view to examining the scope and modalities for complaints of the type provided for under GATT Article XXIII:1 (b) and (c) (Article 64 of the TRIPs Agreement)

While Article 64.1 of the TRIPs Agreement affirms the applicability of the Dispute Settlement Understanding (DSU) to the TRIPs Agreement, paragraphs 2 and 3 of Article 64 try to accommodate the inconclusive negotiations in the Uruguay Round regarding GATT Article XXIII:1 (b) and (c), which refer to non-violation and 'any other situation' respectively. In other words, GATT Article XXIII:1 (b) and (c) will not apply to the settlement of disputes under the TRIPs Agreement for a period of five years from the entry into force of the WTO Agreement. During this five-year period, the TRIPs Council will examine the scope and modalities for these complaints made pursuant to the TRIPs Agreement, and submit its recommendations to the Ministerial Conference for approval. Any decision of the Ministerial Conference to approve such recommendations or to extend the five-year period will be made only by consensus, and approved recommendations will be effective for all members without any further formal acceptance process. Therefore, unless a consensus develops over the five-year period on whatever is to be agreed for the future, paragraphs 1 (b) and (c) of GATT Article XXIII will cease to apply to the TRIPs Agreement.

- Standard of review for anti-dumping disputes, and consideration of the general application and the application to countervailing cases (Marrakesh Ministerial Decisions)

  The provision of standard review in the Anti-Dumping Agreement obliges dispute settlement panels to defer to the decisions of the administering authorities if an alternative interpretation of the Agreement is 'permissible'.

- GATS Article II MFN exemptions (GATS Annex)

  The major issue that has been settled in GATS Article II is that most-favoured-nation (MFN) treatment is unconditional and is to be treated as a general obligation. However, Article II.2 does provide for certain exceptions from this obligation, governed by the criteria of the Annex on Article II Exemptions. As regards MFN exemptions, members are allowed to benefit from an exemption for a period of not more than 10 years, with a review requirement after five years (i.e., 1 January 2000), although the possibilities of exception are rather broad. Given that the Annex on Article II Exemptions does not specify conditions and criteria on the basis of which the review can take place, thought has to be given to the establishment of guidelines for determining whether an exemption is reasonable, legitimate and does not nullify the benefits of the GATS.

- Operation of the Trade-related Investment Measures (TRIMs) Agreement and consideration of whether to complement it with provisions on investment policy and competition policy (Article 9 of the TRIMs Agreement)

  Although the scope and coverage of the TRIMs Agreement is circumscribed by Article 1 which stipulates that it relates to

trade in goods only and its application is limited only to those measures that are prohibited by GATT Articles III and XI, as provided for in Article 2, Article 9 of the TRIMs Agreement on review of the operation of the Agreement provides for consideration as to whether the Agreement should be complemented with provisions on investment policy and competition policy. This would mean that the TRIMs Agreement could be expanded to develop an investment regime and to have added provisions to address the problems of anti-competitive practices of the transnational corporations, such as restrictive business practices.

- Interpretation of the rules on modification and withdrawal of concession-negotiating rights (Understanding on the Interpretation of GATT Article XXVIII)

Under the provisions of Article XXVIII of GATT 1947, there was no precise definition of 'substantial interest' which is related to the 'initial negotiating rights'. The Understanding on the Interpretation of Article XXVIII (GATT 1994) created a new negotiating right for the country for which the product in question accounts for the highest proportion of its exports (or the so-called 'additional negotiating rights'). Such a country is deemed to have a principal supplying interest if it does not already have an initial negotiating right or a principal supplying interest (as provided for in Article XXVIII:1). Paragraph 1 of the Understanding provides for a review by the Council for Trade in Goods, five years after the entry into force of the WTO Agreement (i.e., by the end of 1999) to decide whether the criteria for determination of additional negotiating rights have worked satisfactorily in securing a redistribution of negotiating rights in favour of small- and medium-sized exporters.

• Waivers/grandfather clauses/exemptions (e.g. US Jones Act) (Paragraph 3 of GATT 1994)

Over the years of the GATT, a number of waivers (grandfather clauses or exemptions) were granted to some of the GATT Contracting Parties. GATT 1994 paragraph 1 (b) (iii), footnote 7, provides for the Ministerial Conference at its first session to establish a revised list of waivers, covered by this provision that adds any waivers granted under GATT 1947 after 15 December 1993 and before the date of entry into force of the WTO Agreement, and that deletes the waivers which will have expired by that time.

As provided in paragraph 3 of the GATT 1994, the Ministerial Conference is to undertake a review of the remaining waivers, not later than five years after the entry into force of the WTO Agreement (i.e., by the end of 1999), for the purpose of examining whether the conditions which had created the need for the exemption still existed.

• Implementation and operation of the TBT Agreement, including provisions relating to transparency with a view to recommending an adjustment of rights and obligations of the Agreement on Technical Barriers to Trade where necessary to ensure mutual economic advantage and balance of rights and obligations (Article 15.4 of the TBT Agreement)

While the TBT Committee is mandated to review annually the operation of the Agreement and its implementation by members, the Committee should also undertake the above-mentioned review and decide whether to submit proposals for amendments to the Agreement. According to the provisions of Article 15.4 of the TBT Agreement, such review should commence no later than three years from the entry into force of the

WTO Agreement (i.e., by the end of 1997). There seems to be some substantive policy interlinkages between the TBT and Sanitary and Phytosanitary (SPS) reviews.

The European Commission (EC) submitted a non-paper to the formal meeting of heads of delegations in July 1996 with a view to seeking from Ministers at the Singapore Ministerial Conference (SMC) reaffirmation of the importance they attached to the good operation and full implementation of the provisions of the TBT Agreement and a commitment to undertake the necessary work regarding the 1997 review. This was so as to ensure that a thorough examination of all aspects relevant to technical regulations, standards and conformance requirements could be carried out.

- Operation and implementation of the Sanitary and Phytosanitary Agreement (Article 12.7 of the SPS Agreement)

Such review should not be later than three years after the entry into force of the WTO Agreement (i.e., by the end of 1997). There seems to be some substantive policy interlinkages between the SPS and TBT reviews.

- Operation of the relevant regional agreements (Understanding on the Interpretation of Article XXIV of the GATT 1994)

Provisions concerning the review of the relevant regional agreements are contained in paragraphs 7 – 11 of the Understanding. However, in order to centralize such review and to assess the systemic implications of regional arrangements on the WTO and the multilateral trading system, a WTO Committee on Regional Trading Arrangements was created recently at the request of Canada.

- Implementation of commitments made in the area of agricultural trade (Article 18 of the Agreement on Agriculture)

  Article 18 of the Agreement on Agriculture requires the WTO Committee on Agriculture to monitor the progress of implementation of the commitments negotiated under the Uruguay Round. To this end, the Committee held several meetings to review progress in the implementation of commitments of the reform programme based on the notifications submitted by members in these areas: market access, domestic support, export subsidies, and export prohibitions and restrictions. Matters relevant to the implementation of commitments raised under Article 18.6 of the Agreement were also discussed. Such review will be conducted on an ongoing basis.

- The specific needs of the least-developed countries (LDCs) and the adoption of positive measures to facilitate the expansion of trading opportunities in favour of these countries (Marrakesh Ministerial Decision)

  LDCs are the least integrated into the multilateral trading system. Their participation in the Uruguay Round negotiations in greater numbers than witnessed in all previous rounds put together and their growing membership in the WTO attest to their desire to seek better and meaningful integration into the trading system. In order to ensure their effective participation in the trading system, the Ministerial Decision on Measures in Favour of the Least-Developed Countries calls for advancement of the implementation by developed countries of tariff and non-tariff concessions agreed in the Uruguay Round for products of export interest to the LDCs. It is agreed to keep under review the specific needs of the LDCs and to continue to seek the adoption of positive measures which facilitate the expansion of trading opportunities in favour of the LDCs.

The SMD agreed to a Plan of Action; to seek to give operational content to the plan; and to organize a special meeting on LDC problems with the United Nations Conference on Trade and Development (UNCTAD) and the International Trade Centre (UNCTAD/WTO) as soon as possible in 1997. (Paragraph 14 of the SMD)

- Implications of the WTO's responsibilities for its cooperation with the Bretton Woods institutions (the World Bank and the International Monetary Fund [IMF]), as well as the forms such cooperation might take, with a view to achieving greater coherence in global economic policy making (Marrakesh Ministerial Declaration)

The interlinkages between the different aspects of economic policy require that the international institutions with responsibilities in each of these areas follow consistent and mutually supportive policies. In order to achieve that the Declaration provides for the WTO to pursue and develop cooperation with the IMF and World Bank under certain conditions and for the Director-General to review with his counterparts the implications and forms of cooperation. There are no review requirements, reporting or timetables mentioned in this Declaration.

In this regard, it is important to note the adoption by the WTO General Council on 13 November 1996 of the formal agreements on cooperation between the WTO and the IMF and the World Bank respectively.

- Operation of the Trade Policy Review Mechanism or TPRM (Section F of TPRM)

Section F of TPRM requires an appraisal of the operation of the TPRM not more than five years after the entry into force of the WTO Agreement and a report of the results of the appraisal to

be submitted to the Ministerial Conference. Subsequent undertakings to appraise the TPRM at intervals are to be determined by the Trade Policy Review Body or as requested by the Ministerial Conference.

- Notification procedures (Section III of Marrakesh Ministerial Decision)

In accordance with the mandate provided for in the Marrakesh Ministerial Decision on Notification Procedures, a Working Group on Notification Obligations and Procedures was established by the Council for Trade in Goods on 20 February 1995. The work of this Working Group focuses on undertaking a thorough review of all existing notification obligations of WTO members established under the agreements in Annex 1A of the WTO Agreement, and making recommendations to the Council for Trade in Goods not later than two years after the entry into force of the WTO Agreement.

(iii) Regular review

- State trading (Understanding on Article XVII of GATT 1994)

In order to enhance transparency and surveillance of state trading enterprises, paragraph 5 of the Understanding provides for the establishment of a Working Party on State Trading Enterprises. On 20 February 1995, the Council for Trade in Goods established the Working Party with the responsibilities to review notifications in this regard, the adequacy of the questionnaire and the coverage of state trading enterprises, and to develop an illustrative list of enterprises and activities relevant to Article XVII. The Working Party is to meet at least annually and to report annually to the Council for Trade in Goods. So far the Working Party has held several meetings.

While the work of the Working Party is underway, there are no specific timetables for the review or its completion.

- Implementation and operation of the Agreement on Customs Valuation (Article 23)

As provided for in Article 23 of the Agreement, the Committee on Customs Valuations is required to undertake annual review of the implementation and operation of the Agreement and report to the Council for Trade in Goods.

- Implementation and operation of the Agreement on Import Licensing Procedures (Article 7)

As provided for in Article 7 of the Agreement, the Committee on Import Licensing is required to undertake review as necessary, but at least once every two years, of the implementation and operation of the Agreement and report to the Council for Trade in Goods. As a basis for such review, the WTO secretariat should prepare a factual report based on information provided in the notifications, responses to the annual questionnaire on import licensing procedures and other relevant reliable information. To this end, WTO members are required to complete the annual questionnaire on import licensing procedures promptly and in full.

- General implementation of the Agreement on Safeguards (Article 13.1 (a))

Under Article 13.1 (a) of the Agreement, the Committee on Safeguards is required to monitor and report annually to the Council for Trade in Goods on the general implementation of this Agreement and make recommendations towards its improvement.

- Implementation and operation of the Agreement on Subsidies and Countervailing Measures (Article 32.7 of the ASCVM)

Under Article 32.7 of the Agreement, the Committee on Subsidies and Countervailing Measures is required to undertake annual review and report to the Council for Trade in Goods on the implementation and operation of this Agreement.

- Implementation and operation of the Agreement on Anti-Dumping Practices (Article 18.6 of the AAD)

Under Article 18.6 of the Agreement, the Committee on Anti-Dumping Practices is required to undertake annual review and report to the Council for Trade in Goods on the implementation and operation of this Agreement.

- Implementation and operation of the Agreement on Technical Barriers to Trade (Article 15.3)

Under Article 15.3 of the Agreement, the Committee on Technical Barriers to Trade is required to undertake annual review of the implementation and operation of this Agreement.

- Implementation and operations of the Agreement on Rules of Origin (Articles 6 and 9)

Under Article 6.1 of the Agreement, the Committee on Rules of Origin is required to undertake annual review and report to the Council for Trade in Goods on the implementation and operation of Parts II and III of this Agreement.

As provided for in Article 6.2 of the Agreement, the Committee is required to review the provisions of Parts I, II and III and propose amendments as necessary to reflect the results of the harmonization work programme.

In Article 6.3 of the Agreement, the Committee is asked, in cooperation with the Technical Committee, to set up a mechanism to consider and propose amendments to the results of the harmonization work programme, taking into account the objective and principles set out in Article 9 of the Agreement.

Under Article 9 of the Agreement, the Ministerial Conference is asked to establish the results of the harmonization work programme (set out in Article 9.1) in an annex as an integral part of this Agreement. The Ministerial Conference shall establish a time frame for the entry into force of this annex (Article 9.4). At the same time, consideration shall be given to arrangements concerning the settlement of disputes relating to customs classification (footnote to Article 9.4).

- Preshipment inspection (Article 6 of the Agreement on Preshipment Inspection)

Under Article 6 of the Agreement, the Ministerial Conference shall, at the end of the second year from the date of entry into force of the WTO agreements and every three years thereafter, review the provisions, implementation and operation of this Agreement, taking into account the objectives thereof and experience gained in its operation. As a result of such review, the Ministerial Conference may amend the provisions of the Agreement.

- Dispute settlement rules and procedures (Marrakesh Ministerial Decision)

The Marrakesh Ministerial Decision on the Application and Review of the Understanding on Rules and Procedures Governing the Settlement of Disputes requires the Ministerial Conference to complete a full review of dispute settlement rules and

procedures under the WTO within four years after the entry into force of the WTO agreements and to take a decision on the occasion of its first meeting after the completion of the review, whether to continue, modify or terminate such dispute settlement rules and procedures.

- Operation and implementation of the TRIMs Agreement (Article 7.3 of the TRIMs Agreement)

  As provided for in Article 7.3 of the Agreement, the Committee on TRIMs is required to monitor the operation and implementation of the Agreement and report annually to the Council for Trade in Goods.

- Implementation of TRIPs Agreement (Article 71.1 of the TRIPs Agreement)

  Under Article 71.1 of the Agreement, the TRIPs Council is required to review the implementation of the TRIPs Agreement after the expiration of the transitional period (for developing countries, i.e., 1 January 2000). The TRIPs Council is also required, having regard to the experience gained in its implementation, to review it two years after that date, and at identical intervals thereafter. The Council may also undertake reviews in the light of any relevant new developments which might warrant modification or amendment of the TRIPs Agreement.

- To conduct a major review before the end of each stage of the integration process to oversee the implementation of the Agreement on Textiles and Clothing, in particular with regard to the integration process and the application of GATT 1994 rules and disciplines as defined in Articles 2, 3, 6 and 7 of the Agreement (Article 8.11 of the Agreement on Textiles and Clothing)

Under the integration programme of the Agreement on Textiles and Clothing (ATC), MFA and non-MFA restrictions shall be phased out in three stages. In order to oversee the implementation of the integration programme, the Council for Trade in Goods is required, as provided for in Article 8.11 of the ATC, to conduct a major review before the end of each stage of the integration process. The first of such review should be before the end of 1997. To assist the above-mentioned major review, the Textiles Monitoring Body (TMB) shall, at least five months before the end of each stage, transmit to the Council for Trade in Goods a comprehensive report on the implementation of the ATC during the stage under review, in particular, in matters with regard to the key provisions of the ATC. These provisions are contained in Article 2 (phasing out of MFA restrictions), Article 3 (phasing out of non-MFA restrictions), Article 6 (transitional safeguards) and Article 7 (additional obligations).

- Developments in air transport sector and operation of the Annex on Air Transport Services with a view to considering the possible further application of the GATS to this sector (GATS Annex on Air Transport Services)

The Annex on Air Transport Services applies to measures affecting trade in air transport services and ancillary services. It excludes from GATS coverage tariff rights and directly related activities that might affect the negotiation of traffic rights. The GATS applies, however, to aircraft repair and maintenance services, the marketing of air transport services and computer reservation system services. Paragraph 5 of the Annex requires the Council for Trade in Services to undertake periodical review, at least every five years, of the developments in the air transport sector and operation of this Annex with a view to considering the possible further application of the GATS in this sector.

- Possible negative effects of the reform programme in agricultural trade on least-developed and net food-importing countries (Marrakesh Ministerial Decision)

The Marrakesh Ministerial Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries sets out measures in recognition of the difficulties which may be faced by the LDCs and net food-importing developing countries during the implementation of the Agreement on Agriculture. Whereas the reform programme does not impose unmanageable obligations on the LDCs (apart from ceiling binding or binding at currently applied rates), the implementation of the agricultural reform programme by WTO members could result in possibly higher import bills for basic foodstuffs in the medium-term. In view of this, Ministers agreed 'to establish appropriate mechanisms to ensure that the implementation of the results of the Uruguay Round on trade in agriculture does not adversely affect the availability of food aid at a level which is sufficient to continue to provide assistance in meeting the food needs of developing countries, especially least-developed and net food-importing developing countries'. To this end Ministers have agreed on the following:

(i) to review the level of food aid established periodically by the Committee on Food Aid under the Food Aid Convention 1986 and to initiate negotiations in the appropriate forum to establish a level of food aid commitments sufficient to meet their legitimate needs during the reform programme;

(ii) to adopt guidelines to ensure that an increasing proportion of basic foodstuffs is provided to LDCs and net food-importing developing

countries in fully grant form and/or on appropriate concessional terms in line with Article IV of the Food Aid Convention 1986;

(iii) to provide technical and financial assistance to LDCs and net food-importing developing countries to improve their agricultural productivity and infrastructure.

Ministers have further agreed to ensure that any agreement relating to agricultural export credits makes appropriate provision for differential treatment in favour of LDCs and net food-importing developing countries.

In parallel to the work being undertaken in this connection in the WTO Committee on Agriculture, at UNCTAD IX, Member States requested that '[w]ithin the framework of its programme of cooperation with WTO, UNCTAD should provide analytical information relating to the decision on measures concerning the possible negative effects of the reform programme on least-developed countries and net food-importing developing countries.'

For the implementation of the Marrakesh Decision on LDCs and net food-importing developing countries, the WTO Committee on Agriculture established a list of net food-importing developing countries which comprises LDCs as recognized by the Economic and Social Council of the UN (ECOSOC) and 17 developing countries which have formally notified their decision to be listed as net food-importing country members of WTO. The Committee has also agreed on its recommendations for consideration by the Ministerial Conference with regard to the monitoring of the follow-up to the Marrakesh Decision on this issue.

(iv) New negotiations

- To continue the reform process in the agriculture sector (Article 20 of the Agreement on Agriculture)

The Agreement on Agriculture provides a framework for further negotiations aimed at more liberalization. In order to continue the reform process and to fulfil the long-term objective of substantial progressive reductions in support and protection, as provided for in Article 20 of the Agreement, negotiations to continue this process will be initiated by 1 January 2000 (i.e. one year before the end of the implementation period – 31 December 2000). Such negotiations could take the following into account:

(a) the experience to that date from implementing the reduction commitments;

(b) the effects of the reduction commitments on world trade in agriculture;

(c) non-trade concerns, special and differential treatment to developing countries members, and the objective to establish a fair and market-oriented agricultural trading system; and

(d) what further commitments are necessary to achieve the above-mentioned long-term objectives.

- On further liberalization of trade in services (Article XIX of the GATS)

As provided for under Article XIX of the GATS, another general round of multilateral negotiations on trade in services will start

before 2000 with a view to achieving a progressively higher level of liberalization. These negotiations shall

(a) aim at the reduction or elimination of measures as a means of providing effective market access, and

(b) be directed toward increasing the general level of specific commitments, while

(c) promoting the interest of all participating on a mutually advantageous basis and securing an overall balance of rights and obligations.

• On increased protection for geographical indications for wines and spirits (Article 23 of the TRIPs Agreement)

The TRIPs Agreement includes two provisions for continuing negotiations with respect to geographical indications for wines and spirits. First, WTO members agreed to negotiations to increase protection for geographical indications for wines and spirits (Article 23.1). Second, they also agreed to negotiations towards establishing a multilateral system of notification and registration of geographical indications for wines eligible for protection in those members participating in the system (Article 23.4).

• On further improvement (extending the coverage) of the Government Procurement Agreement (Article XXIV.7)

The Agreement on Government Procurement is a plurilateral agreement building upon Article III:8 of GATT, which excludes government procurement activities from the basic WTO rules on national treatment and MFN treatment. Since a substantial value of commercial activity now involves government pro-

curement in all countries, including developing countries, Article XXIV.7 (b) of the 1994 Government Procurement Agreement provides that further negotiations should be conducted three years after the entry into force of this Agreement, i.e. by the end of 1998, to extend its coverage in terms of both product/sector and membership.

The SMD agreed 'to establish a working group to conduct a study on transparency in government procurement practices, taking into account national policies, and based on this study, to develop elements for inclusion in an appropriate agreement'. (Paragraph 21 of the SMD)

(v) New mandate provided for in the SMD

- The SMD agreed 'to establish a working group to examine the relationship between trade and investment'. (Paragraph 20 of the SMD)

- The SMD agreed 'to establish a working group to study issues by Members relating to the interaction between trade and competition policy, including anti-competitive practices, in order to identify any areas that may merit further consideration in the WTO framework'. (Paragraph 20 of the SMD)

- The SMD agreed 'to direct the Council for Trade in Goods to undertake exploratory and analytical work, drawing on the work of other relevant international organizations, on the simplification of trade procedures in order to assess the scope for WTO rules in this area'. (Paragraph 21 of the SMD)

5 Further Liberalization in the Area of Tariffs

Despite the substantial general reduction of most-favoured-nation (MFN) tariffs on industrial goods, the problem of high MFN tariffs still remains in some industrial sectors. The degree of tariff cuts for products of interest to developing countries is to a lesser extent, for example, in the area of non-agricultural tropical products. The proportion of duty-free imports of textiles, clothing, travel goods, leather products and footwear into the Quad markets remains very low, and in general these products are not covered by preferential schemes. For example, the reduced level for the textiles and clothing sector still stands at more than triple the Uruguay Round average tariff for all industrial products. Tariff peaks and tariff escalation on a number of other products are also noticeable, such as, travel goods (European Union and North America), cork and wood products (Japan), automotive products (EU) and furniture (Canada).

There has been no agenda for any immediate future negotiations with regard to tariffs. However, the possibility for further improvements may be difficult so long as some of the major suppliers (such as China and Chinese Taipei) of the above-mentioned products are not yet WTO members. In the Uruguay Round, there was a tendency not to offer tariff reductions on products for which non-WTO members were major suppliers. At the informal heads of delegations meeting of 9 - 11 July 1996, Australia suggested starting further industrial tariff reduction negotiations in 2000 at the same time as further negotiations in agriculture and services. Canada also called for

- expansion of membership in existing zero for zero and chemical harmonization;

- initiation of new zero for zero in additional sectors;

- acceleration of Uruguay Round tariff reductions;

- elimination of tariffs already at much lower levels and providing LDCs with zero rates for all products. Improvements in Generalised System of Preferences (GSP) schemes or other preferences in terms of expanded product coverage and deeper cuts in GSP and other preferential rates of duty, especially for LDCs, are also possible.

What should be pursued is the WTO Director-General's appeal at the G7 Summit,[27] (and again more recently) to improve market access to LDCs and the Canadian proposal[28] for WTO members to 'agree on an objective of providing LDCs with zero rates for all products as well as explore other possible ways to further enhance market access for the least-developed countries'. Intensive consultations were held within the context of the WTO Committee on Trade and Development with a view to making a concrete proposal for considerations by the Ministers at their Singapore Conference.

It is important to note the proposal made by the United States and the European Union on the negotiation of an Information Technology Agreement (ITA). It aims at exploring possible new tariff reductions, including negotiations to eliminate tariffs on information technology products. Such initiative to negotiate an ITA may be seen as a continuation of 'Quad initiative' (put forward in July 1993) in the context of the Uruguay Round aimed at eliminating tariffs ('zero-for-zero') on specific products, as well as harmonizing tariffs on chemical products. The Quad Ministerial meeting in Kobe, Japan, April 1996, endorsed this initiative. The intention was to secure consent from other WTO members by the Singapore Conference so as to implement these tariff cuts by the year 2000.

It is reported that the Ministers at the 27 September Quad meeting were determined to provide the leadership necessary to complete the ITA with a view to concluding it by the Singapore Ministerial Conference.

On 7 October 1996, Canada tabled a paper in the WTO Committee on Market Access on further tariff liberalization which proposed a WTO work programme for the acceleration of Uruguay Round tariff reductions, expansion of membership and identification of additional sectors for existing zero-for-zero and harmonization initiatives.

On 8 October 1996, the European Union on behalf of the Quad countries submitted a paper to the WTO Committee on Market Access regarding the review of pharmaceutical product coverage that had taken place and resulted in extra products (465) receiving duty-free treatment in addition to the products (over 6,000) already covered.

Annex

The WTO 'Built-in' Agenda: A Checklist of Issues

The Uruguay Round of multilateral trade negotiations achieved historic results, yet in many respects it is not yet over. Negotiations on a number of issues are either continuing (e.g. basic telecommunications) or about to be launched within a time frame as provided in the various WTO agreements (e.g. services and agriculture).

The WTO 'built-in' agenda is composed of the following four types of activities:

(a) Unfinished business

- Financial services (GATS Annex; Marrakesh Ministerial Decision)[29]
- Movement of natural persons (GATS Annex; Marrakesh Ministerial Decision)[30]
- Basic telecommunications (GATS Annex; Marrakesh Ministerial Decision)
- Maritime services (GATS Annex; Marrakesh Ministerial Decision)
- Emergency safeguards for services (GATS Article X)
- Government procurement in services (GATS Article XIII)
- Subsidies in services (GATS Article XV)

- Development of disciplines in the area of professional services with a view to ensuring that domestic measures relating to qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade in services (Article VI.4 of the GATS and Marrakesh Ministerial Decision)

- Elaboration of multilateral disciplines in the accountancy sector (Marrakesh Ministerial Decision)

- Anti-circumvention measures in relation to anti-dumping duty measures (Marrakesh Ministerial Decision)

- Trade in services and the environment (Marrakesh Ministerial Decision)

- Harmonization of non-preferential rules of origin (Article 9 of the Agreement on Rules of Origin)

- Development of internationally agreed disciplines to govern the provision of export credits, export credit guarantees or insurance programmes and, after agreement on such disciplines, to provide export credits, export credit guarantees or insurance programmes only in conformity therewith (or to prevent the circumvention of export subsidy commitments) (Article 10 of the Agreement on Agriculture)

(b) Special review

- Non-actionable research and development subsidies (Article 8.2(a), footnote 25 of the ASCVM)

- Export-competitiveness provision for developing countries (Article 27.6 of the ASCVM)

- Article 6.1 on actionable subsidies and Articles 8 and 9 on non-actionable subsidies (Article 31 of the ASCVM)

- Geographical indications (Article 24.2 of the TRIPs Agreement)

- Patent or *sui generis* protection of plant varieties (Article 27.3 (b) of the TRIPs Agreement)

- The non-application to TRIPs of GATT Article XXIII:1 (b) and (c) (i.e., non-violation provisions) with a view to examining the scope and modalities for complaints of the type provided for under GATT Article XXIII:1 (b) and (c). (Article 64 of the TRIPs Agreement)

- Standard of review for anti-dumping disputes, and consideration of its application to countervailing cases (Marrakesh Ministerial Decisions)

- GATS Article II MFN exemptions (GATS Annex)

- Operation of TRIMs Agreement and consideration of whether to complement it with provisions on investment policy and competition policy (Article 9 of the TRIMs Agreement)

- Interpretation of the rules on modification and withdrawal of concessions (Understanding on the Interpretation of GATT Article XXVIII)

- Grandfather clauses/exemptions (e.g. US Jones Act) (Paragraph 3 of GATT 1994)

- Provisions relating to transparency with a view to recommending an adjustment of rights and obligations of the Agreement on Technical Barriers to Trade where necessary to ensure mutual economic

advantage and balance of rights and obligations (Article 15.4 of the TBT Agreement)

- Operation and implementation of the Sanitary and Phytosanitary Agreement (Article 12.7 of the SPS Agreement)

- Operation of the relevant regional agreements (Understanding on the Interpretation of Article XXIV of the GATT 1994)

- Implementation of commitments (Article 18 of the Agreement on Agriculture)

- The specific needs of the least-developed countries and the adoption of positive measures to facilitate the expansion of trading opportunities in favour of these countries (Marrakesh Ministerial Decision)

- Implications of the WTO's responsibilities for its cooperation with the Bretton Woods institutions (the World Bank and the IMF), as well as the forms such cooperation might take, with a view to achieving greater coherence in global economic policy making (Marrakesh Ministerial Decision)

- Operation of TPRM (Section F of TPRM)

- Notification procedures (Section III of the Marrakesh Ministerial Decision)

(c) Regular review

- Adequacy of notification procedures (Paragraph 2 of the Understanding on Article XVII of GATT 1994)

- Implementation and operation of the Agreement on Customs Valuation (Article 23)

- Implementation and operation of the Agreement on Import Licensing Procedures (Article 7)

- General implementation of the Agreement on Safeguards (Article 13.1 (a))

- Implementation and operation of the Agreement on Subsidies and Countervailing Measures (Article 32.7 of the ASCVM)

- Implementation and operation of the Agreement on Anti-Dumping Practices (Article 18.6 of the AAD)

- Implementation and operation of the Agreement on Technical Barriers to Trade (Article 15.3)

- Technical aspects of the implementation and operations of Parts II and III of the Agreement on Rules of Origin

- Preshipment inspection (Article 6 of the Agreement on Preshipment Inspection)

- Dispute settlement rules and procedures (Marrakesh Ministerial Decision)

- Operation and implementation of the TRIMs Agreement (Article 7.3 of the TRIMs Agreement)

- Implementation of TRIPs Agreement (Article 71.1 of the TRIPs Agreement)

- Conducting a major review before the end of each stage of the integration process to oversee the implementation of the Agreement on Textiles and Clothing (Article 8.11 of the Agreement on Textiles and Clothing)

- Integration process and the application of GATT 1994 rules and disciplines as defined in Articles 2, 3, 6 and 7 of the Agreement on Textiles and Clothing (Article 8.11 of the Agreement on Textiles and Clothing)

- Developments in air transport sector and operation of the Annex on Air Transport Services with a view to considering the possible further application of the GATS to this sector (GATS Annex)

- Possible negative effects of the reform programme in agricultural trade on least-developed and net food-importing countries (Marrakesh Ministerial Decision)

(d) New negotiations

- Continuation of the reform process in the agriculture sector (Article 20 of the Agreement on Agriculture)

- On further liberalization of trade in services (Article XIX of the GATS)

- On increased protection for geographical indications for wines and spirits (Articles 23.4 and 24.1 of the TRIPs Agreement)

- On further improvement (extending the coverage) of the Government Procurement Agreement (Article XXIV.7)

In addition, the Marrakesh Ministerial Decision mandated the WTO to address issues related to trade and environment that were not the subject of previous trade negotiations.

Endnotes

1. For details see WTO, Second WTO workshop on notification requirements: summary of presentations, Technical Cooperation and Training Division, February 1996, p. 3; and also, WTO document G/L/112 of 7 October 1996.
2. For details see WTO documents G/NOP/W/9 of 9 March 1996, and G/L/112 of 7 October 1996.
3. See WTO document, WT/GC(95)/ST/16 of 30 January 1996.
4. As of August 1996, out of the total of 123 WTO Members, 34 are African countries, representing more than a quarter of the entire membership. Three more African countries are negotiating their accession.
5. WTO document WT/COMTD/W/16/Add. 1 of 1 October 1996.
6. WTO document WT/COMTD/W/16 of 27 August 1996.
7. See WTO document WT/COMTD/W/16 of 27 August 1996: Implementation of Uruguay Round Provisions in Favour of Developing Country Members.
8. For details see UNCTAD documents, TD/B/WG.8/2 of 19 June 1995 and UNCTAD/ITD/17 of 6 October 1995.
9. The recent announcement by Brazil of imposing quotas on textile imports from two Asian WTO members.
10. WTO document G/L/92 of 10 July 1996.
11. For details of the United States integration programme for all stages, see Preliminary Analysis of Opportunities and Challenges resulting from the Uruguay Round Agreement on Textiles and Clothing, Report by the UNCTAD secretariat, UNCTAD/ITD/17 of 6 October 1995, pp. 13-14.
12. See WTO document, WT/TPR/OV/1 of 1 December 1995, Appendix Tables 4 and 6.
13. However, some WTO members argue that in the absence of any WTO decision, it cannot be assumed that these actions are not taken in accordance with the Agreement. Provisions to address circumvention of anti-dumping measures exist in several national laws. For example, in the case of the United States, Section 781, Title VII of the United States Tariff Act of 1930, as amended by Section 230 of the United States Uruguay Round Agreement Act of 8 December 1994; and in the case of the EU, Article 13 of the new EU Regulation No. 3283/94 of 22 December 1994. It also noted that many other countries, including Argentina, Mexico, Venezuela, Thailand and Malaysia, have some sort of anti-circumvention provisions.
14. See GATT, Trade Policy Review, United States 1994, Volume 1, June 1994, p. 66 and UNCTAD document TD/B/WG.8/6 of 15 November 1995, p. 19.
15. For details see UNCTAD documents, TD/B/WG.8/6 of 15 November 1995 and TD/B/WG.8/CRP.1 of 29 January 1996. See also the paper jointly prepared by UNCTAD and WTO, UNCTAD document TD/375 of 6 May 1996.

16. Although such difficulty may arise only regarding *de facto* specificity.
17. It should be noted that notifications are made also under Article XVI of the GATT where there is no requirement of specificity.
18. For details, see WTO document, G/SCM/N/3Add.1/Rev. 2 of 22 July 1996.
19. This perhaps should also include TRIMs that might be hidden in the developed countries via rules of origin indicating a requirement for domestic content. See The Impact of Trade-Related Investment Measures on Trade and Development, Theory, Evidence and Policy Implications, United Nations, New York, 1991.
20. See Report on WTO Implementation from the United States President's Advisory Committee for Trade Policy and Negotiations: Cementing and Improving Existing Agreements, 11 March 1996.
21. Those developing countries that do not provide patent protection for pharmaceutical and agricultural chemical products by 1 January 2000 may delay providing such protection until 1 January 2005.
22. See 1996 Trade Policy Report of the President of the United States on the Trade Agreement Program, USTR; Report on WTO Implementation from the US President's Advisory Committee for Trade Policy and Negotiations: Cementing and Improving Existing Agreements, 11 March 1996; and 'The Global Challenge of International Trade: A Market Access Strategy for the European Union', Communication to the European Commission from Sir Leon Brittan and Messrs Marin, Bangemann, van den Broek and Pinheiro.
23. For example, in the recent cases regarding Korea's agricultural products inspections, shelf-life and bottled water, the United States demonstrated its preference to submit these disputes to the WTO in contrast to the earlier cases of Korea's agriculture market access restrictions and Japan's autos and auto parts.
24. See Chapter 3, The General Agreement on Trade in Services Follow-up Negotiations, UN ESCAP Publication, 'Asian and Pacific Developing Economies and the First WTO Ministerial Conference, Issues of concern', Proceedings and papers presented at the ESCAP/UNCTAD/UNDP Meeting of Senior Officials to Assist in Preparation for the First Ministerial Conference, 4-8 September 1996, Jakarta, pp. 49-91.
25. See note 24.
26. The International Federation of Accountants, International Accounting Standards Committee, and the International Organization of Securities Commission, respectively.
27. See WTO Newsletter, No. 11, June-July 1996.
28. No-paper circulated to WTO members as part of the preparations for the WTO Ministerial Conference in Singapore.
29. An agreement was reached at the end of July 1995, with the exception of the United States, which would be implemented for an initial period up to 1

November 1997. It was agreed that another round (or a continuation) of the negotiations on financial services would take place before the end of 1997.

30. The negotiations on the movement of natural persons were concluded on 28 July 1995. Six members submitted their revised schedules which were annexed to the Third Protocol to the GATS and opened for acceptance by Members concerned until 30 June 1996.

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