Module-6

An Introduction to the Multilateral Trading System

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Table of Contents

List of Tables

List of Boxes

List of Charts

Acronyms

CHF	Swiss Franc's
DDA	Doha Development Agenda
DSB	Dispute Settlement Body
EC	European Commission
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
ITO	International Trade Organisation
LDC	Least Developed Country
MC	Ministerial Conference
MFN	Most-Favoured Nation
S&DT	Special and Differential Treatment
TPRB	Trade Policy Review Body
TPRD	Trade Policy Review Division
TPRM	Trade Policy Review Mechanism
TRIPS	Trade Related Aspects of Intellectual Property Rights
UR	Uruguay Round
US	United States
WTO	World Trade Organisation

1. Introduction

The World Trade Organisation (WTO), which took over the General Agreement on Tariffs and Trade (GATT), is an international organisation that sets global rules of trade between nations. There are a number of ways of looking at the WTO. While some looks at it as an organisation for liberalising trade and operating a system for trade rules, others see it a place for governments to settle trade disputes. Even for others, it is a forum for the members to negotiate trade agreements.

Since 1948, when the multilateral trade system was designed, the GATT has presided over several rounds of international trade negotiations. The last and largest of these was the Uruguay Round, which was concluded in 1994. The round was negotiated over eight years culminating in the adoption of a list of about 60 agreements, annexes, decisions and understandings. It was during this Round that the WTO was set up to take over from GATT.

Now the trade negotiations through the WTO have long been the governments' priority in almost all the member countries. It is not only aimed towards improving the market access but also offering the best hope for reducing distortions to trade at the global level. Some issues like subsidies can only be effectively disciplined at the multilateral level. Thus small countries are heavily dependent on the existence of rules of conduct for the world trade that are laid down through joint negotiations. At the same time, small and large countries alike are dependent on liberal and the freest possible world trade to develop their economy and prosperity. Thus, GATT and later the WTO, have been and still are, a central pillar for the development of world trade as well as for a rule-based trade-policy system.

Before getting into the nitty-gritty of WTO, it is important to discipline ourselves through this Module on the basics regarding the formation of GATT and its subsequent take over by the WTO, including the various rounds of trade negotiations, trade policy reviews, dispute settlement procedures and many more.

1.1 History: From GATT to WTO

After the World War II many important lessons were learned – one of them was that a secure political future could not be built without greater economic security. On this premises, the hunt for the better international instruments of international cooperation began. This search bore fruit at a conference held in Bretton Woods in the US in 1944. In this conference, the International Monetary Fund (IMF) and the World Bank were created to deal with matters such as currency instability and the financing of post war reconstruction.

However, an effort to create a counterpart of International Trade Organisation (ITO) to deal with problems of international trade remained futile. Later, an interim agreement was agreed to between limited numbers of countries though it did not deal with the most important aspects of international trade. This arrangement took the form of GATT and came into being in 1948. GATT had 23 countries as its founding Members/Signatories.

Table 1: Founding Members of the GATT	
1. Australia	13. Lebanon
2. Belgium	14. Luxembourg
3. Brazil	15. The Netherlands
4. Burma (now Myanmar)	16. New Zealand
5. Canada	17. Norway
6. Ceylon (now Sri Lanka)	18. Pakistan
7. Chile	19. Southern Rhodesia (now Zimbabwe)
8. China	20. Syria
9. Cuba	21. South Africa
10. Czechoslovakia	22. UK
11. France	23. US
12. India	

Eight rounds of multilateral trade negotiations were carried out under the auspices of the GATT, with each round involving more countries than the one before. These trade negotiations did result in dramatic reductions in tariffs on industrial goods, viz. average tariffs among industrialised countries were progressively cut from between 40 and 50 percent to less than 4 percent. Also non-tariff restrictions like quantitative restrictions were abandoned. Yet GATT was an unsatisfactory instrument falling short of many vital provisions. Its arrangements for settling disputes were ineffective as the judgments were not binding on the parties to the dispute. Also, GATT applied only to trade in goods. Consequently, it was replaced by WTO.

It was with the successful conclusion of the eighth round of Uruguay Round negotiations, under the auspices of GATT that WTO entered into force on January 01, 1995. At the time of its establishment there were 128 members in the WTO but now this number has increased to 150 as on January 11, 2007. So while the WTO is young, the multilateral trading system originally set up under GATT is well over 50 years old.

Though replaced, the WTO still upholds several GATT principles that all contracting parties must obey. These principles are the basis behind every GATT agreement. No member country can develop trade policy that opposes these principles. The most well-know principles are Most Favoured Nation (MFN) and National Treatment. MFN states that a contracting party's trade policies must treat all GATT members equally. In other words, members have to treat the products and services of one country no less favourably than those from any other country. This is also referred to as non-discrimination.

National Treatment is another key principle whereby foreign goods, services, or investment are to be treated "no less favourably" within a nation's domestic markets than competing products or services produced locally. Once a good or service has entered the country, that goods or services shall not be treated as less favourably than its domestic equivalent. Some other principles of GATT are tariff protection wherein it favours the use of tariffs as a clear way to protect domestic industries, as opposed to non-tariff measures such as import quotas. Another principle behind GATT is to provide a stable basis for trade. This is achieved through binding all participating nations to agree upon tariff levels by listing, in "tariff schedules" the negotiated tariffs

for each country's products. The WTO comprises of a wide variety of legally binding multilateral trade agreements covering a vast area of international activity. The rules contained in these agreements are adhered to by almost 150 countries accounting for well over 90 percent of world trade.

The system's overriding purpose is to help trade flow as freely as possible, so long as there are no undesirable side-effects, because this is important for economic development and well-being. Thus the main purpose of such a global body is to ensure that trade flows as smoothly, predictably and freely as possible. It partly means removing obstacles. It also means ensuring that individuals, companies and governments know what the trade rules are around the world, and giving them the confidence that there will be no sudden changes of policy. In other words, the rules are "transparent" and predictable. So the WTO:

- is an international organisation that replaces GATT;
- deals with the rules of trade between nations;
- is a legal and institutional basis of the multilateral trading system;
- oversees global trade in goods, services and other issues such as intellectual property rights (IPRs);
- has 150 member countries (as on January 11, 2007);
- is not just about liberalising trade;
- protects the consumers; and
- ensures to prevent the spread of disease and protect the environment.

Moreover, WTO continues the practice of decision-making by consensus that was followed under GATT 1947. And where a decision cannot be arrived at by consensus, the matter at issue is decided by voting. Each Member of the WTO has one vote. This makes the WTO and its decision-making methods very different from other international organisations.

Table 2: The Differences between GATT and the WTO

GATT	WTO
GATT was *ad hoc* and provisional body	WTO has a sound legal basis, which has been created by an international treaty ratified by the governments and legislatures of member states.
GATT was a set of rules (a text with no legal organisation to back it up) and procedures relating to the multilateral agreements of a selective nature, which were not binding on contracting parties.	The agreements that form the WTO are permanent and binding for all members.
GATT dispute settlement system was slow and not binding for the parties to the dispute.	WTO dispute settlement mechanism is faster and binding. The saying goes that whereas GATT was toothless, WTO has teeth.
GATT was a forum where the contracting parties met to discuss and solve problems relating to international trade. There were long, protracted negotiating rounds, which took years to complete.	WTO is a properly established rules-based body, where decisions on agreements are time-bound. WTO Members are required to meet at least once every two years, in a session called the Ministerial Conference, which is the highest decision-making body of the organisation.

2. The Basic Principles

- **Trade Without Discrimination:** A country should not discriminate between its trading partners (giving them equal MFN status); and it should not discriminate between its own and foreign products, services or nationals (giving them "National Treatment"). Some exceptions are allowed. For example, countries can set up a free trade agreement (FTA) that applies only to goods traded within the group, discriminating against goods from outside. Or they can give developing countries special access to their markets. Or a country can raise barriers against products that are considered to be traded unfairly from specific countries. And in services, countries are allowed, in limited circumstances, to discriminate. But the agreements only permit these exceptions under strict conditions.
- **Freer Trade:** Barriers should come down through negotiation.
- **Predictability through Binding:** Foreign companies, investors and governments should be confident that trade barriers (including tariffs and NTBs) should not be raised arbitrarily; tariff rates and market-opening commitments are "bound" in the WTO.
- **Promoting Fair Competition:** It is aimed at discouraging "unfair" practices such as export subsidies and dumping products at below cost to gain market share.
- **Encouraging Development and Economic Reform:** It asks for giving the less developed countries more time to adjust, greater flexibility, and special privileges.

2.1 GATT Trade Rounds

GATT's basic legal principles remained much as they were in 1948 apart from a few additions in the form of a section on development added in the 1960s and "plurilateral" agreements in the 1970s. However, the efforts to reduce tariffs continued and much of it was achieved through a series of multilateral negotiations known as "trade rounds".† Some of the biggest soar in international trade liberalisation have been through these rounds. For instance, the Kennedy Round in the mid-1960s brought about a GATT Anti-Dumping Agreement and a section on development. The Tokyo Round during the 1970s was the first major attempt to tackle trade barriers that do not take the form of tariffs, and to improve the system. The eighth, i.e. the Uruguay Round of 1986-94, was the last and the most extensive of all. It led to the creation of WTO and a new set of agreements.

The Geneva Round

The first round, with 23 countries meeting in Geneva in 1947, led to the establishment of GATT itself. It also resulted in a package of trade rules and 45,000 tariff concessions affecting US$10bn of trade, which was about one fifth of the world's total trade. Negotiations were carried out mainly on a product-by-product, bilateral basis, and agreed-upon concessions were later extended to other nations under the MFN principle.

† Detail information on these Rounds are compiled from: <www.wto.org/English/thewto_e/whatis_e/tif_e/fact4_e.htm#rounds> & <www.eurofer.be/termsoftrade/GATTRounds.pdf>

The Annecy Round
In this second round in 1949, participants agreed to exchange some 5,000 tariff concessions, and 10 more countries signed the General Agreement. Nothing much happened during this round other than admitting some new members.

The Torquay Round
A year later, the negotiations moved to Torquay, England. This third round focused again on tariff reductions. The number of participants rose to 38.

The Geneva Round
Significant tariff reductions were negotiated in the Geneva Round initiated in 1956. This round was particularly important because of the Haberler Report, which first set guidelines for addressing the trade and development needs of developing countries and for dealing with the effects of agricultural protectionism in industrial economies. The report was prepared by a panel of experts led by Gottfried Haberler, a professor of economics at Harvard University.

The Dillon Round
The negotiation under this Round were launched in Geneva on September 01, 1960 and was known as the Dillon Round, after C Douglas Dillon, US Under Secretary of State under President Eisenhower, and Treasury Secretary under President Kennedy (who took office during the round in January 1961). Like the previous Rounds, negotiations in this Round were carried out mostly on a product-by-product basis. Tariff concessions covering US$4.9bn of trade were negotiated by the participating members. In this Round, it became evident that future negotiations would need to focus on non-tariff as well as tariff barriers, including the problems of trade in agricultural products.

The Kennedy Round
Kennedy Round was the sixth round of multilateral trade negotiations that was held under the auspices of GATT, commencing in 1964 and completed in 1967. Participation surged to more than 60 countries. It was the first that the member countries moved beyond negotiating only tariff reductions into such trade rules like anti-dumping. The developing countries played a more important role in this round and benefited from the concessions of the then new Part IV of GATT. Negotiations for cutting tariffs were, for the first time, carried out largely on an across-the-board, or linear, basis, and covered US$40bn in trade. An agreement was concluded on antidumping, but the US Congress refused to implement it.

The Tokyo Round
The Tokyo Round lasted from 1973 to 1979, with 102 countries participating in it. The Round sustained GATT's efforts to gradually reduce tariffs. The outcome was an average one-third cut in customs duties in the world's nine major industrial markets, bringing the average tariff on industrial products down to 4.7 percent. However, in other issues, this Round had mixed results. It failed to address the fundamental problems affecting farm trade and also to provide a modified agreement on 'safeguards'. Nevertheless, a series of agreements on NTBs did emerge from this negotiation though only a relatively small number of (mainly industrialised) GATT members subscribed to these agreements and arrangements. Since they were not accepted by the full GATT membership, they were often informally called "codes".

Most of these agreements were superseded by new agreements negotiated during the UR. Only four remained plurilateral — those on government procurement, bovine meat, civil aircraft and dairy products. In 1997 WTO members agreed to terminate the bovine meat and dairy agreements, leaving only two.

The Uruguay Round

This round of multilateral trade negotiations commenced in 1986 and was completed in 1994 with the creation of the WTO. It was for the first time a GATT round was launched in a developing country. In addition it broke new ground by negotiating over agriculture, textiles and apparel, services, and intellectual property. 123 countries participated in this round. By now developing countries had become the majority in the GATT system, and in this round they played an unprecedented active role in the talks, alongside their more powerful fellow-participants.

The round turned out to be the longest, most complicated, and the last of the GATT rounds. It took seven and a half years to complete, and it led to the most fundamental reform of world trade rules since GATT itself was created in 1948. Since the round was supposed to last four years, the Ministerial meeting in Montreal two years later, in December 1988, was called the Mid-Term Review. The objective was to set the agenda for the remaining two years of the round. Instead, the Montreal meeting ended in a deadlock that was not broken until April the following year. By the time ministers met again in Brussels in December 1990, the talks were considerably behind schedule. It was clear the round could not be ended as originally planned at that meeting.

It was not until December 15, 1993 that the negotiations finally came to an end. Thus the Uruguay Round package was signed in Marrakesh in April 1994; seven and a half years after it began. The fourth ministerial meeting of this round was held in Marrakesh's Palais des Congrès. The delay allowed participants to develop a clearer view of how world trade could be reformed. The final package was 23,000 pages long, the bulk being individual countries' commitments to lower trade barriers on an immense range of goods and services. At the signing ceremony, the agreement covered a large table. The most important result was the creation of the WTO, almost half a century after the failed attempt to create an ITO. With the WTO's creation, the multilateral rules were expanded to cover new areas of trade.

Table 3: GATT Trade Rounds

Year	Place/name	Subjects covered	Countries
1947	Geneva	Tariffs	23
1949	Annecy	Tariffs	13
1951	Torquay	Tariffs	38
1956	Geneva	Tariffs	26
1960-1961	Geneva Dillon Round	Tariffs	26
1964-1967	Geneva Kennedy Round	Tariffs and anti-dumping measures	62
1973-1979	Geneva Tokyo Round	Tariffs, non-tariff measures, "framework" agreements	102

Year	Place/name	Subjects covered	Countries
1986-1994	Geneva Uruguay Round	Tariffs, non-tariff measures, rules, services, intellectual property, dispute settlement, textiles, agriculture, creation of WTO, etc	123

2.2 Functions of the WTO

The main functions of the WTO can be described in very simple terms.‡ These are:

- To oversee implementing and administering WTO agreements;
- To provide a forum for negotiations;
- To provide a dispute settlement mechanism;
- To achieve greater coherence in global economic policy making; and
- To administer Trade Policy Review Mechanism (TPRM).

The goals behind these functions are set out in the preamble to the Marrakech Agreement. These include:

- Raising standards of living;
- Ensuring full employment;
- Ensuring large and steadily growing real incomes and demand; and
- Expanding the production of and trade in goods and services.

These objectives are to be achieved while allowing for the optimal use of the world's resources in accordance with the objective of sustainable development, and while seeking to protect and preserve the environment.§ The preamble also specifically mentions the need to assist developing countries, especially the LDCs, secure a growing share of international trade.

3. Mode of Operations**

The WTO has nearly 150 members, accounting for over 97 percent of world trade. The basic structure of the WTO includes the following bodies:

- ***Ministerial Conference:*** The WTO's top level decision making body is the Ministerial Conference which is composed of international trade ministers from all member countries. This is the governing body of the WTO, responsible for setting the strategic direction of the organisation and making all final decisions on agreements under its wings. It meets at least once every two years and provides political direction for the organisation. Although voting can take place, decisions are generally taken by consensus, a process that can at times be difficult, particularly in a body composed of 150 different members.

- ***General Council:*** Below Ministerial Conference is the General Council composed of senior representatives (normally ambassadors and heads of delegation in Geneva, but sometimes officials sent from members' capitals) who meet several times a year in the Geneva headquarters. It is responsible for overseeing the day-

‡ Article III, Agreement establishing the WTO, www.wto.org/english/docs_e/legal_e/04-wto.doc

§ Overview of WTO, Multimedia Training Package, http://events.streamlogics.com/wto/2004/index.html

** WTO Structure, www.wto.org/english/thewto_e/whatis_e/tif_e/organigram_e.pdf

to-day business and management of the WTO. In practice, this is the key decision making arm of the WTO for most issues. Several of the bodies described below report directly to the General Council.

- ***Goods Council, Services Council and Trade Related Aspects of Intellectual Property Rights (TRIPs) Council:*** At the next level, the Goods Council, Services Council and TRIPs Council report to the General Council. They operate under the mandate of the General Council and are composed of all members. Numerous specialised committees, working groups and working parties deal with the individual agreements and other areas such as the environment, development, membership applications and regional trade agreements. Thus they provide a mechanism to oversee the details of the general and specific agreements on trade in goods (such as those on textiles and agriculture) and trade in services and TRIPs.

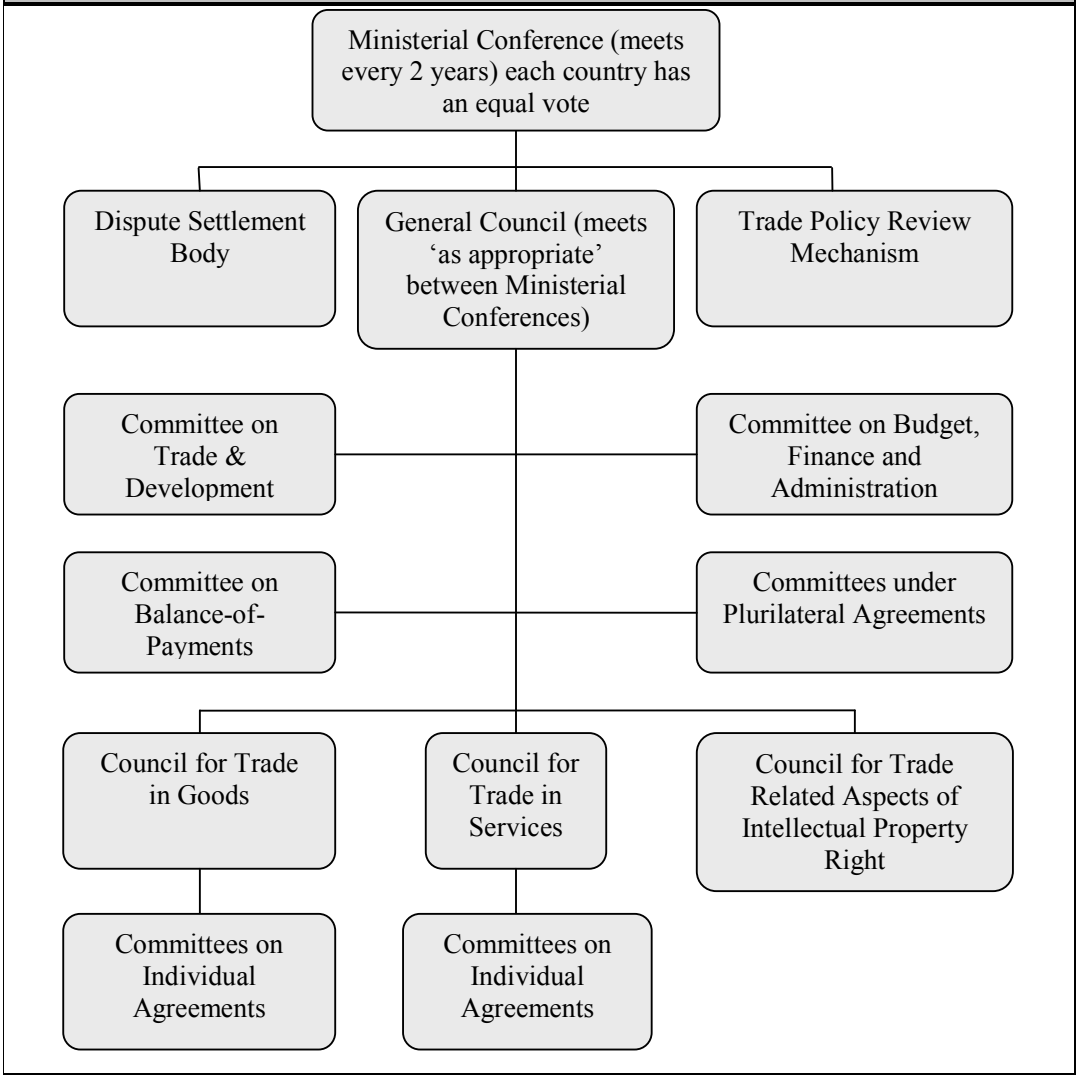
- ***Trade Policy Review Body (TPRB):*** TPRB is also composed of all the WTO members, and oversees the TPRM, a product of the Uruguay Round. It periodically reviews the trade policies and practices of all member states. These reviews are intended to provide a general indication of how states are implementing their obligations and to contribute to improved adherence by the WTO parties to their obligations.

- ***Dispute Settlement Body:*** The DSB is also composed of all the WTO members. It oversees the implementation and effectiveness of the dispute resolution process for all WTO agreements, and the implementation of the decisions on WTO disputes. A final decision of the Appellate Body can only be reversed by a full consensus of the DSB.

- ***Secretariat:*** The WTO Secretariat, based in Geneva, has around 600 staff and is headed by a Director-General. The Secretariat's main duties are to supply technical support for the various councils and committees and the Ministerial Conferences, to provide technical assistance for developing countries, to analyse world trade, and to explain WTO affairs to the public and media. The Secretariat also provides some forms of legal assistance in the dispute settlement process and advises governments wishing to become members of the WTO. They do not have the decision making role which other international bureaucracies usually have.

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

Chart 1: WTO's Organisational Set Up



4. Major WTO Agreements

The WTO's rules/agreements are the result of negotiations between the members. The current set of rules/agreements was the outcome of the Uruguay Round negotiations held between 1986-94, and which included a major revision of the original GATT. While GATT is now the WTO's principal rule-book for trade in goods, the Uruguay Round created new rules for dealing with trade in services, relevant aspects of intellectual property, dispute settlement, and trade policy reviews. Through these agreements, WTO members operate a non-discriminatory trading system that spells out their rights and their obligations.

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

- an umbrella agreement (the Agreement Establishing the WTO);
- agreements for each of the three broad areas of trade that the WTO covers;
    - goods
    - services
    - intellectual property
- dispute settlement; and
- reviews of governments' trade policies.

Table 4: WTO in A Nutshell			
The basic structure of the WTO agreements: how the six main areas fit together — the umbrella WTO Agreement, goods, services, intellectual property, disputes and trade policy reviews.			
Umbrella	**Agreement Establishing WTO**		
	Goods	Services	Intellectual property
Basic principles	**GATT**	**GATS**	**TRIPs**
Additional Details	Other goods agreements and annexes	Services annexes	
Market access commitments	Countries' schedules of commitments	Countries' schedules of commitments(and MFN exemptions)	
Dispute settlement	**Dispute Settlement**		
Transparency	**Trade Policy Reviews**		

Multilateral Agreements

Multilateral trade agreements are between many nations at one time. For this reason, they are very complicated to negotiate, but are very powerful once all parties sign the agreement. The primary benefit of multilateral agreements is that all nations get treated equally, and so it levels the playing field, especially for poorer nations that are less competitive by nature. Following multilateral agreements (see Annex I) of the WTO Agreement are given below:

- GATT 1994
    - Agreement on Agriculture (AoA)
    - Agreement on the Application of Sanitary and Phyto-sanitary (SPS) Measures
    - Agreement on Textiles and Clothing (T&C)
    - Agreement on Technical Barriers to Trade (TBT)
    - Agreement on Trade-Related Investment Measures (TRIMs)
    - Agreement on Pre-shipment Inspection (PSI)
    - Agreement on Rules of Origin
    - Agreement on Import Licensing Procedures
    - Agreement on Subsidies and Countervailing Measures (SCM)
    - Agreement on Safeguards
    - Agreement on Anti-Dumping (Agreement on Article VI)
    - Agreement on Customs Valuation (Agreement on Article VII)

- GATS
- Agreement on TRIPs

Single Undertaking

A major development in the Uruguay Round was the adoption of the principle of a "single undertaking", whereby negotiated outcomes in all areas would henceforth apply on a MFN treatment basis to all WTO members - current and prospective – subject to various transitional periods and selected special and differential treatment (S&DT) for developing countries. This makes the WTO much stronger institution than the GATT. The political translation of the single undertaking – whereby nothing is to be agreed until all is agreed – has had far-reaching implications for the governance of the WTO system. Almost all agreements under WTO are subject to single undertaking except plurilateral agreements.

Plurilateral Agreements

While all the WTO members subscribed to all the WTO agreements there are some that are not subscribed to all. After the Uruguay Round, there remained four agreements, originally negotiated in the Tokyo Round, which had a narrower group of signatories and are known as "plurilateral agreements". All other Tokyo Round agreements became multilateral obligations (i.e. obligations for all WTO members) when the WTO was established in 1995.

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

5. Trade Policy Review

While trading with a country, it is imperative to know as much as possible about the conditions of trade that exist in that country. Transparency will lead to predictability and will be of fundamental importance when conducting future negotiations with trading partners. Hence, the review has a number of advantages, i.e. on a global scale the review enables WTO Members to access accurate information on the trade polices and practices of other Members, while it also provides them with the opportunity to comment on these developments of the Member under review. On a national scale, Members are afforded the opportunity to assess the results of their own polices and practices and to utilise the comments of other Members to improve their policy formulation.

The Contracting Parties of the GATT established the Trade Policy Review Mechanism (TPRM) on a trial basis in April 1989 as a key accomplishment of the mid-term review of the Uruguay Round. TPRM was subsequently incorporated into the Marrakesh Agreement Establishing the WTO. The principal objective of the TPRM is to contribute to improved adherence by all Members to rules, disciplines and commitments made under the Multilateral Trade Agreements. This is to be accomplished by achieving greater transparency in, and understanding of, the trade policies and practices of Members.

Objective of TPRM are:[††]

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

After its successful provisional introduction, agreement was reached to incorporate the TPRM as a permanent part of the WTO in Annex 3 of the Agreement Establishing the WTO (WTO Agreement). The mandate of the TPRM was further extended to include services and intellectual property. This means that all of the WTO agreements are covered by the TPRM, as well as a variety of trade-related policies in fields such as investment, competition and agriculture policy. The frequency of the reviews depends on the country's size:

- The first four trading entities - EU, US, Japan and Canada (the "Quad") - will be subject to review every two years.
- The next sixteen will be reviewed every four years.
- All other Members will be reviewed every six years, except that a longer period may be fixed for LDC Members.

Exceptionally, in the event of changes in a Member's trade policies or practices which may have a significant impact on its trading partners, the Member concerned may be requested by the TPRB, after consultation, to bring forward its next review.

Bodies in the TPRM

The three main bodies involved in a trade policy review are the TPRB, the Trade Policy Review Division of the WTO Secretariat (TPRD) and the Government of the Member under review. The TPRB consists of those Members who choose to participate in another Member's review and formally has the responsibility to conduct the review. In advance of each review meeting, the TPRB will further elect two discussants from amongst the members to present an independent assessment and stimulate debate at the meetings.

The TPRD consists of a director and a group of economists and is in charge of research and drafting of the WTO Secretariat reports. Occasionally, the TPRD contracts trade policy consultants who assist with the drafting or supervision of a report.

5.1 The Government Report

Trade policy reviews are based on two documents – one prepared by the WTO Secretariat and the other prepared by the Member under review. The review process is initiated by the TPRD, which sends out a questionnaire on basic data and information to the Member selected for review, ten months before the expected review meeting. The questionnaire is fairly standardised and is organised according to the structure of the Secretariat Report. In addition to answering the questionnaire, Members are required to submit a Government Report, which takes the form of a policy statement.

†† Annex 3: Trade Policy Review Mechanism, www.wto.org/English/tratop_e/tpr_e/annex3_e.htm

This statement should emphasise recent and future policy strategies and their impact on trade and usually contains information on the following:‡‡

- Trade policy objectives;
- Domestic laws and regulation governing trade policies;
- Trade policy formulation process;
- Relevant international agreements; and
- Sectoral trade policies and development.

It does not matter, however, if a Member does not deal with all the issues in the above manner as there is no set structure for policy statements. Members have complete control over the composition of the Government Report and the flexibility to cover any issues considered relevant to the mission of the TPRB.

5.2 The Secretariat Report

The report prepared by the TPRD is considered to be the most important document in the review process. This report assembles information obtained from the Member's response to the questionnaire as well as the results of country visits during which interviews and consultations are conducted. This information is usually supplemented by a number of other sources, including publications of the government and agencies like the World Bank, IMF, the UN, regional and other associations of Members, development banks and foreign governments.

Although the following sources are inferior to the aforementioned, the Secretariat also has the discretion to consult reports of private agencies such as the Economist Intelligence Unit, Europa Publications, Transparency International, as well as press and other reports, either from the Member concerned or foreign sources. The TPRD team may make a preliminary visit for a few days to gather groundwork information from the Members under review. Typically, the TPRD team consists of a principal writer, the supervisor and one or two staff members. The completed Secretariat Report together with all additional information will first be sent to the Government of the Member under review for verification and confirmation before it is published.

Recent Secretariat Reports consist of the summary observations followed by the following four chapters:

- **Economic Environment**§§ – covering main features of the economy, recent economic developments, trade in goods and services, evolution of foreign investment as well as predictions for the future.
- **Trade and Investment regime***** – covering policy formulation and implementation, participation in regional and international agreements, the investment framework and trade related technical assistance.

‡‡ Paul Kruger, The WTO Trade Policy Review Mechanism: Application and benefit to SACU, tralac Trade Brief, No 4/2006, June 2006

§§ Refer Annex I for summary observations on Economic Environment from the Trade Policy Review of East African Community (EAC) - Report by the Secretariat – WT/TPR/S/171, 20 September 2006

*** Refer Annex II for summary observations on Trade and Investment Regimes from the Trade Policy Review of Central African Republic - Report by the Secretariat – WT/TPR/S/183, 7 May 2007

- **Trade Policies and Practice by Measure**[†††] – covering all types of measures directly affecting imports and exports as well as measures affecting production and trade.
- **Trade Policies and Practices by Sector**[‡‡‡] – covering sectors such as agriculture, mining, forestry, fishing, manufacturing and services.

The Review Meeting

While the review process lasts about 10 months or even longer if one takes into account the time for preparation, the review meeting is usually only held over two days in Geneva. This gives the participating Members a rare opportunity to question the Member under review about policies and practices directly affecting them. After adjournment of the two day long meeting, the TPRD compiles and releases the final product.

The Product

Since 1991, trade policy reviews have been presented as two separate volumes. The Secretariat Report, including its annexes, constitutes the first volume. The second volume contains the Chairperson's concluding remarks, the Government Report and the Minutes of Meeting. In 1995, it was decided that these two volumes need to be bound together to form a single complete volume. These are supplemented by a final separate chapter containing additional information in the form of an appendix, usually consisting of charts, tables and other data.

6. Dispute Settlement Procedures[§§§]

The best international agreement is not worth very much if its obligations cannot be enforced when one of the signatories fails to comply with such obligations. An effective mechanism to settle disputes thus increases the practical value of the commitments the signatories undertake in an international agreement.

Settling disputes in a timely and structured manner is important. It helps to prevent the detrimental effects of unresolved international trade conflicts and to mitigate the imbalances between stronger and weaker players by having their disputes settled on the basis of rules rather than having power determine the outcome. Most people consider the WTO dispute settlement system to be one of the major results of the Uruguay Round. After the entry into force of the WTO Agreement in 1995, the dispute settlement system soon gained practical importance as Members frequently resorted to using this system. The dispute settlement is:

- the central pillar of the multilateral trading system,
- WTO's unique contribution to the stability of the global economy.
- makes the trading system more secure and predictable.

However, the priority is not to pass a judgment but to settle disputes, through consultations if possible. By July 2005, only about 130 of the nearly 332 cases had

††† Refer Annex III for summary observations on Trade Policy Instruments from the Trade Policy Review of Republic of Congo - Report by the Secretariat – WT/TPR/S/169, 23 August 2006

‡‡‡ Refer Annex IV for summary observations on Trade Policies and Practices by Sector from the Trade Policy Review of Bangladesh - Report by the Secretariat – WT/TPR/S/168, 9 August 2006

§§§ Dispute settlement, www.wto.org/English/tratop_e/dispu_e/dispu_e.htm

reached the full panel process. Most of the rest have either been notified as settled "out of court" or remain in a prolonged consultation phase - some since 1995.

A procedure for settling disputes existed even under the old GATT, but it had no fixed timetables, rulings were easier to block, and many cases dragged on for a long time inconclusively. Thus under the previous GATT procedure, rulings could only be adopted by consensus, meaning that a single objection could block the ruling. Now under the WTO, rulings are automatically adopted unless there is a consensus to reject a ruling. Any country wanting to block a ruling has to persuade all other WTO members (including its adversary in the case) to share its view (see Annex V). This case is illustrated with exact time taken during each stage of the proceeding.

Table 5: How Long to Settle a Dispute at WTO? – Fixed Timetables	
These are approximate periods for each stage of a dispute settlement procedure; the countries can settle their dispute themselves at any stage.	
60 days	Consultations, mediation, etc
45 days	Panel set up and panelists appointed
6 months	Final panel report to parties
3 weeks	Final panel report to WTO members
60 days	DSB adopts report (if no appeal)
Total = 1 year	*(without appeal)*
60-90 days	Appeals report
30 days	DSB adopts appeals report
Total = 1year 3months (approx)	*(with appeal)*

6.1 How are Disputes Settled?[****]

Settling disputes is the responsibility of the DSB (the General Council in another guise), which consists of all WTO members. The DSB has the sole authority to establish 'panels' of experts to consider the case, and to accept or reject the panels' findings or the results of an appeal. It monitors the implementation of the rulings and recommendations, and has the power to authorise retaliation when a country does not comply with a ruling.

- ***First stage:*** consultation (up to 60 days). Before taking any other actions the countries in dispute have to talk to each other to see if they can settle their differences by themselves. If that fails, they can also ask the WTO director-general to mediate or try to help in any other way.
- ***Second stage:*** the panel (up to 45 days for a panel to be appointed, plus 6 months for the panel to conclude). If consultations fail, the complaining country can ask for a panel to be appointed. The country "in the dock" can block the creation of a panel once, but when the DSB meets for a second time, the appointment can no longer be blocked (unless there is a consensus against appointing the panel).

Within this stage there are various other sub-stages. These include the following:

- *Before the first hearing*: each side in the dispute presents its case in writing to the panel.

**** Understanding the WTO: Settling Disputes, - A unique contribution, www.wto.org/english/thewto_e/whatis_e/tif_e/disp1_e.htm

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

- ***Third Stage:*** Appeals have to be based on points of law such as legal interpretation. It cannot re-examine existing evidence or examine new issues. Each appeal is heard by three members of a permanent seven member Appellate Body set up by the DSB and broadly representing the range of WTO membership. The appeal can uphold, modify or reverse the panel's legal findings and conclusions. Normally appeals should not last more than 60 days, with an absolute maximum of 90 days. The DSB has to accept or reject the appeals report within 30 days - and rejection is only possible by consensus.

6.2 After Decision: What is Next?

Even once the case has been decided, there is more to do before trade sanctions (the conventional form of penalty) are imposed including:

- The losing country must follow the recommendations of the panel report or the appeals report and must state its intention to do so at a DSB meeting held within 30 days of the report's adoption. Failure to act within a reasonable period would end up in giving a mutually-acceptable compensation. For instance, tariff reductions in areas of particular interest to the complaining side.
- If no satisfactory compensation is agreed, the complaining side may ask the DSB for permission to impose limited trade sanctions against the other side. The DSB must grant this authorisation within 30 days of the expiry of the "reasonable period of time" unless there is a consensus against the request.

Box 1: WTO Dispute Settlement and South Asia

South Asia first invoked the WTO dispute settlement procedures when, on September 28, 1995, India requested consultations with Poland's preferential treatment of the EC in its tariff scheme on automobiles.

Bangladesh
Bangladesh, designated as a least developed country (LDC), is a founder-member of the WTO. With its January 28, 2004 request for consultations with India with respect to the imposition of definitive anti-dumping duties on imports of its lead acid batteries and certain aspects of the anti-dumping investigation, Bangladesh became the first LDC to invoke the WTO dispute settlement system. This landmark dispute is officially over now when the Indian finance ministry revoked the notification imposing the duty and both the countries submitted to the WTO DSB that a mutually satisfactory solution to the problem has been reached. The anti-dumping duties had already been withdrawn by the Indian government in January 2005 after Bangladesh complained to the DSB against the imposition of duties.

India
Also a founder-member of the WTO, India has been the most active South Asian member and the sixth biggest participant in the WTO dispute settlement system, following the US, the EC, Canada, Japan and Brazil. It has been a complainant in just as many disputes as it has been a respondent, 17 each as on 2005.

Nepal
Nepal acceded to the WTO on April 23, 2004. A land-locked mountainous country, this LDC faces the problems of poverty, weak institutional capacities, and financial constraints. It has not been involved in any WTO dispute.

Pakistan
Pakistan is also a founder-member of the WTO. It has been the second biggest South Asian participant in the WTO dispute settlement system. Five proceedings: thrice a complainant, twice a respondent.

Sri Lanka
Sri Lanka is also a founder-member of the WTO. It has been involved in only one dispute when, on February 23, 1996, it requested consultations with Brazil concerning Brazil's imposition of countervailing duties on its export of desiccated coconut and coconut milk powder.

Source: Ravindra Pratap, Dispute Settlement in the WTO and South Asia, South Asian Yearbook of Trade & Development, October 27, 2005

6.3 Cost of Dispute Settlement

The WTO dispute settlement system is sustained by the support of staff from the WTO Secretariat. Article 27.1 of the DSU requires the Secretariat to assist on the legal, procedural and historical aspects of the matters before the dispute settlement panels. The WTO Legal Affairs Division provides both legal services to the panels and at times some secretarial services as well. Where the issue of the dispute corresponds to a particular operational division of the Secretariat, then that operational division is also involved in assisting the panel with sectoral advice on the matters in the dispute. If and when a case reaches the appellate stage, the Appellate Body has its own Secretariat which supports the entire appellate process, excluding, therefore, the action of the Legal Affairs Division.

The operation of the dispute settlement process is financed by various allocations from the overall WTO budget to those divisions involved in the process. Indeed, there is no specific allocation for the dispute settlement process as a whole. It is, therefore, hard to provide exact figures on the cost of the dispute settlement system. The Budget for the WTO Secretariat for the year 2007 allocated CHF 1,317,000 for Dispute Settlement Panels while for the Appellate Body and its Secretariat CHF 5,111,200.

However the WTO Secretariat does not charge filing fees and costs for States are limited to the payment of the consultants and lawyers and to the gathering of its own evidence.[††††] While highly industrialised countries, like the US, the EU, Canada and Japan, are the most frequent users of the system, developing countries have resorted to the WTO dispute settlement mechanisms in a number of instances. Despite the limited costs for states to participate in a case before the WTO dispute settlement procedure, technical aid still play a role for the LDCs. This concern has been incorporated in the DSU. Article 24 states that "…at all stages of the determination of the causes of a dispute and of dispute settlement procedures involving a least-developed country Member, particular consideration shall be given to the special situation of least-developed country Members".

Box 2: WTO Dispute Settlement and Small Countries

Chile – EU Salmon Safeguards
On February 08, 2005, Chile submitted an official request for WTO consultations to the European Commission (EC) regarding new EU safeguard measures on farmed salmon that entered into force on February 06, 2006. The measures, which impose minimum import prices and tariff quotas, were implemented in response to pressure from the UK and Ireland to protect the Scottish and Irish salmon industry from cheap, primarily Norwegian imports. The EU on April 22, 2006 revoked the safeguard measures they imposed in February. The decision came four days after Chile had asked the WTO to establish an arbitration panel, following a failure of the two parties to resolve the issue during the two-month consultation period.

EU – Latin America Banana War
The EU had lost a WTO dispute with nine Latin American countries over its planned new tariffs on banana imports. Nine Latin American countries – Brazil, Costa Rica, Colombia, Ecuador, Guatemala, Honduras, Nicaragua, Panama and Venezuela -- had challenged the EU at the WTO. The ruling said the EU's planned change to its banana system "would not result in at least maintaining total market access for MFN (Most Favored Nation) banana suppliers." MFN refers to the WTO's basic principle of non-discrimination between trading partners.

7. Special and Differential Treatment and LDCs[‡‡‡‡]

The international consensus on the need for special international support measures in the field of trade for developing countries led to provisions for special and differential

†††† Refer Annex VI for the summary on raising of funds to contest the case at the DSB by Pakistan to contest the case filed by US on Combed Cotton Yarn Exports

‡‡‡‡ Work on S&D provisions,
www.wto.org/english/tratop_e/devel_e/dev_special_differential_provisions_e.htm

treatment (S&DT) within the GATT and WTO Agreements. The provisions of S&DT ensure flexibility in the implementation or application of agreements, and encourage the provision of technical assistance and market access preferences. Usually market access preferences are granted through the multilateral agreements directly, but in most instances, they are granted by individual countries or groups of countries. These measures are exceptions to the MFN principle, a core principle of the multilateral trading system, which requires all members of the system to treat one another alike.
Annex VII provides an indicative list of the S&D provisions for LDCs contained in the various WTO Agreements. As shown in that table of Annexe VIII, many of the agreements provide LDCs flexibility in the implementation of certain rules and commitments including longer implementation periods.[§§§§]

7.1 Ministerial Decisions and Declarations

In addition to the LDC specific S&DT provisions contained in the legal texts, there are a number of Ministerial decisions and declarations in favour of LDCs. For instance, the *Decision on Measures in favour of LDCs* states that LDCs will only be required to undertake commitments and concessions to the extent consistent with their individual development, financial and trade needs or their administrative and institutional capabilities. The Decision includes provisions that require the expeditious implementation of S&D provisions of LDCs; the need to accord special consideration to the export interests of LDCs; and the need for substantially increased technical assistance.

The *Decision on Implementation-Related Issues and Concerns* has a number of provisions for LDCs including provisions relating to: the Agreement on the Application of SPS Measures; Agreement on TBT; Agreement on Trade-Related Investment Measures; Agreement on Subsidies and Countervailing Measures; and the TRIPs Agreement.

In all the WTO Ministerial Declarations, there is special reference to the needs of LDCs. At the first WTO Ministerial Conference in Singapore in 1996, Ministers adopted the WTO Action Plan for LDCs. The Plan aims to improve the trade opportunities of the LDCs and their integration in the multilateral trading system. At the *Doha MC* in November 2001, Ministers recognised the particular vulnerability of the LDCs and committed themselves to "addressing the marginalisation of the LDCs in international trade and to improving their effective participation in the multilateral trading system".

7.2 Decisions of the General Council and Other Bodies

In 1979, the GATT Council adopted the Decision of the Contracting Parties on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries (The Enabling Clause). The decision allowed contracting parties to accord differential and more favourable treatment to developing countries without according such treatment to other contracting parties. The decision also recognised the special treatment of LDCs among the developing countries. In 1999, the General Council adopted the Decision on Waiver for Preferential Tariff Treatment of LDCs which allows developing country Members to offer preferential tariff

§§§§ The transitional periods began from the date the Agreements came into force. In some instances, the transitional periods may have expired.

treatment for products from LDCs. In Post Doha, there have been a number of decisions and measures taken in favour of LDCs. Some of these include the following:

- Adoption of the WTO Work Programme for LDCs[*****] by the General Council on February 13, 2002;
- Decision adopted by the Council for TRIPs on June 27, 2002, on the extension of the transition period under the TRIPs Agreement for LDC Members with respect to pharmaceutical products;[†††††]
- Modalities for the Treatment of Autonomous Liberalisation adopted by the Special Session of the Council for Trade in Services on March 06, 2003;[‡‡‡‡‡]
- Guidelines and Procedures for the Negotiations on Trade in Services adopted by the Special Session of the Council for Trade in Services on March 28, 2001;[§§§§§] and
- Modalities for the Special Treatment for LDC Members in the Negotiations on Trade in Services adopted by the Special Session of the Council for Trade in Services on September 03, 2003.[******]

In addition, there are a number of LDC specific provisions:

- On Agriculture, LDCs are not required to undertake reduction commitments.
- On Non-Agricultural Market Access, LDCs will not be required to apply the formula nor participate in the sectoral approach. Members are also encouraged to provide duty-free and quota-free market access for LDC agricultural and non agricultural products.
- On Trade Facilitation, LDCs will only be required to undertake commitments to the extent consistent with their individual development, financial and trade needs or their administrative and institutional capabilities.

7.3 Technical Assistance for LDCs

To assist LDCs to meaningfully draw on the benefits of the rules-based trading system and to participate effectively in the ongoing negotiations, the WTO Secretariat continues to give priority attention to capacity building for LDCs. The WTO Secretariat organises short-term introduction courses specifically for trade officials from LDC capitals. In addition to the technical assistance provided by the WTO, LDCs also benefit from the Integrated Framework (IF). The IF is an international initiative through which the IMF, ITC, UNCTAD, UNDP, the World Bank and WTO combine their efforts with those of LDCs and donors to respond to the trade development needs of LDCs. This integrated approach was launched in October 1997 at the High-Level Meeting on LDCs' Trade Development organised by the WTO.

LDCs also benefit from the WTO's partnership arrangements with multilateral institutions aimed at addressing the trade and development challenges of developing countries. These include, *inter alia*, the Joint Integrated Technical Assistance Programme (JITAP, 10 out of the 16 beneficiaries are LDCs); WTO-UNIDO

***** WT/COMTD/LDC/11

††††† IP/C/25

‡‡‡‡‡ TN/S/6

§§§§§ S/L/93

****** TN/S/13

Programme; Standards and Trade Development Facility (STDF); and the WTO - WIPO Joint Initiative on Technical Co-operation for LDCs.[††††††]

7.4 Critiques on S&D Provisions

Thus diverse provisions entrusting developing countries with some special rights and privileges are ensured within the multilateral trading system. But in recent years, such S&DT provisions have come under increasing scrutiny and criticism in recent years (see Annex VIII for a summary on the overview of S&DT provisions cited in the UNCTAD's - The LDCs Report 2004).

One criticism has been that most of the S&DT provisions are weak in their formulations, i.e., are expressed in the form of best endeavour clauses and hence non-enforceable. The other strand of argument is that in order for the S&DT provisions to be effective and enforceable they ought to be targeted to countries that are in need of them most and be applied not in general, but with discretion, by identifying and targeting select group of developing countries that require a particular type of support most.[‡‡‡‡‡‡] For example, the S&DT provisions of the AoA may respond to the need of some developing countries but would be irrelevant to others. The recognition of this fact has initiated considerable debate in the WTO particularly in relation to S&DT.

However it cannot be denied that many countries have achieved long-term economic growth through such opportunities offered by world markets. Hence a well-designed, effective, enforceable and time-bound S&DT is necessary for the successful integration of LDCs into the international trading system. One probable way to increase the utility and effectiveness of the different S&DT provisions is that such provisions be turned into rights for LDCs and obligations for other countries and that they be granted in an automatic manner to all LDCs that decide to become members of the multilateral trading system.[§§§§§§]

†††††† For more details see WTO TA Plan for 2005; and WT/COMTD/LDC/W/33.

‡‡‡‡‡‡ Mustafizur Rahman, Kazi Mahmudur Rahman, Proposed Changes to WTO Special and Differential Treatment Provisions: An Analysis from the Perspective of Asian LDCs, Asia-Pacific Research and Training Network on Trade, Working Paper Series, No. 13, April 2006

§§§§§§ The Least Developed Countries Report 2004, Improving the Trade–Poverty Relationship through the International Trade Regime, Part Two: Chapter 6, United Nations Conference on Trade and Development, Geneva

Annexure I

Summary observations on Economic Environment from the Trade Policy Review of East African Community (EAC) - Report by the Secretariat – WT/TPR/S/171, September 20, 2006

ECONOMIC ENVIRONMENT

Since their previous TPRs, held separately during 2000-01, the three East African Community (EAC) members (Kenya, Tanzania and Uganda) have continued their economic reform programmes aimed at addressing their common challenges, including poverty reduction; sustainable economic growth and development; more equitable income distribution; unemployment reduction; and full integration into the world economy. The reforms have resulted in real GDP growth rates of over four percent per year in 2004 and 2005, despite the negative impact of external shocks, notably droughts and low levels of investment.

Over the last few years, high oil prices have resulted in an increase in inflation rates for the three EAC members, and their fiscal deficits (including grants) have also risen. With the exception of Kenya in 2003, the EAC countries have registered external current account deficits since 2000. They continued to attract foreign direct investment throughout the 2000-05 period, though small by international standards, but significant to their economies.

Each EAC member currently has its own monetary and exchange rate policies: Kenya maintains a managed floating exchange rate regime to smooth out fluctuations of the Kenyan Shilling; the official exchange rate of the Tanzanian Shilling is determined by the national inter-bank market; and Uganda has an independently floating exchange rate regime for the Ugandan Shilling. The three exchange rate systems are free of restrictions on payments and transfers for current international transactions, the countries having accepted the obligations of Article VIII of the IMF agreement.

The full integration of EAC members will bring together two LDCs (Tanzania with per capita GDP of US$303, and Uganda with per capita GDP of US$220 in 2004) and a low-income developing country (Kenya with per capita GDP of US$416 in 2004), for a combined population of about 90 million people and GDP of around US$30bn. This is expected to provide a strong foundation for their participation in the world economy. The re-establishment of a monetary union, which was in place during the first few years after independence, is also expected to introduce more discipline into their monetary policy formulation and implementation.

Annexure II

Summary observations on Trade and Investment Regimes from the Trade Policy Review of Central African Republic - Report by the Secretariat – WT/TPR/S/183, May 07, 2007

TRADE AND INVESTMENT REGIMES

The Ministry in charge of trade is responsible for defining domestic and foreign trade policy. For the purposes of the trade negotiations, it is assisted by an inter-ministerial structure. The Ministry in charge of industry is responsible for industrial investment policy, while investment policy in the forestry and mining sub-sectors is defined by the ministries responsible for those areas. The Ministry in charge of finance handles customs and government procurement matters. The private sector would like to be more closely associated in defining trade and investment policy.

The Central African Republic inherited the status of GATT contracting party on 3 May 1963, and has been a member of the WTO since 31 May 1995. It is recognised as a LDC. It is not a party to the plurilateral agreements concluded under WTO auspices, nor to the agreements concluded since the end of the UR, i.e. the Agreement on Information Technology and the protocols on telecommunications and financial services. It grants most MFN treatment to all of its trading partners. It does not maintain a mission in Geneva, a fact which hinders its participation in the WTO's regular activities. It does, however, participate in the WTO ministerial conferences, and generally supports the positions adopted by the developing countries and the African Group.

The Central African Republic has a long history of regional integration with its neighbours in central Africa. It is a member of the Central African Economic and Monetary Community (CEMAC), whose common currency is pegged to the euro and whose common external tariff (CET) was established in 1993. In view of the cash flow problems it is experiencing, the Central African Republic has obtained a waiver on application of the CEMAC generalised preferential tariff (GPT). Consequently, it grants no tariff preferences to any country. The EU is currently negotiating with CEMAC and associated countries (Sao Tomé and Principe, and the Democratic Republic of the Congo) the economic partnership agreement (EPA), scheduled to come into force in January 2008. The Central African Republic also belongs to two larger economic areas: the Community of Sahelan-Saharan States (CEN-SAD), and the Economic Community of Central African States (ECCAS); however, their respective tariff reduction projects (for the purposes of creating free trade zones) have not yet been launched.

The new Investment Charter of the Central African Republic entered into force in 2001. Its main objective is the promotion of activities, in particular manufacturing activities. The authorisations granted to enterprises under this Charter provide for tax and customs exemptions, which are also available to enterprises operating under sectoral codes (forestry and mining), or which have concluded establishment agreements or bilateral agreements. For tax control purposes, all tax and customs exemptions granted before 1 January 2007 were suspended.

Within the framework of its PRSP, the Central African Republic intends to rationalise its trade policies (domestic and foreign) and its investments. To that end, it is relying on this trade policy review report and on the Diagnostic Trade Integration Study (DTIS) under the Integrated Framework. It also hopes to obtain further technical assistance in the areas of capacity building to enhance understanding of the WTO agreements; notifications; trade policy formulation and integration thereof in its development strategy; dismantling of supply-side constraints; and participation in trade negotiations, inter alia, in the context of the Doha Development Agenda.

Annexure III

Summary observations on Trade Policy Instruments from the Trade Policy Review of Republic of Congo - Report by the Secretariat – WT/TPR/S/169, August 23, 2006

TRADE POLICY INSTRUMENTS

The Congo applies the acts of the CEMAC with regard to the CET, the general preferential tariff (GPT), and internal taxes. The simple average applied MFN tariff is 18.7 percent, and the tariff protection for agricultural products (WTO definition) is considerably higher (23 percent). The tariff displays mixed escalation owing to the fairly high degree of protection afforded to unprocessed agricultural products. The Congo allows local (unprocessed) and handicrafts products, as well as manufactures that have received the necessary approval and originate in CEMAC member countries, to enter completely free of duty.

During the Uruguay Round, the Congo bound its tariffs on all agricultural products (like the other Members) at the ceiling rate of 30 percent, and on some one hundred non-agricultural tariff lines, generally at their applied rates. However, the 30 percent rate applied to imports of cool boxes is above the bound rate of 10 percent. Moreover, other duties and taxes are applied to imports even though the Congo has bound them at zero. These include: the automation fee of 2 percent; the CEMAC Community integration tax or levy of 1 percent; the statistical tax of 0.2 percent; the OHADA levy of 0.05 percent; and the Community integration contribution of 0.04 percent for CEEAC. These different charges bring the simple average rate of import duties and charges (including customs duties) to approximately 22 percent. The Congo has never resorted to contingency measures.

Internal taxes, such as the value added tax (VAT) of 18 percent and the excise duty (on certain products, including alcoholic beverages and tobacco) are levied on imports and local products. However, unlike imports, local products, such as mineral water (produced by the private company PLASCO – Mayo) and wheat flour (produced by the private company MINOCO) are exempted from VAT. At the same time, unlike for local products, the tax base for VAT on imports also includes the excise duty.

Customs procedures for the great majority of imports have been computerised. Pre-shipment inspection by the company COTECNA is required for most imports of at least CFAF 3 million - the fee (0.9 percent of the f.o.b. value) is charged to the importer. The Congo applies the WTO Agreement on Customs Valuation, but is experiencing difficulties in that respect.

The Congo has an import licensing regime for ten food products for mass consumption, whose prices are also subject to approval on the basis of margins established by regulation. The aim is to control the volume and price of the products concerned on the domestic market. The importation of wheat flour is subject to quotas at 12,000 tonnes per quarter. As part of its effort to combat avian influenza, the Congo has a general prohibition on the importation of live animals of avian species and all products deriving there from.

The Congo has launched an ambitious privatisation programme which has led, inter alia, to the opening up of its activities downstream of the hydrocarbon sub-sector (distribution and marketing) to competition. Most of the hotels, the banks, and the various manufacturing enterprises have also been privatised. However, electricity and water supply and fixed telecommunications, which are still the monopoly of State enterprises, remain inefficient. There is also a monopoly on sugar.

Intellectual property is protected, inter alia by the revised Bangui Agreement. Domestic legislation on copyright and related rights is obsolete, and needs to be brought up to date. The same applies to competition legislation. The Congo does not have any regulatory framework for standardisation, although it needs one in order to improve the quality of its products. The government procurement regime is being revised.

Annexure IV

Summary observations on Trade Policies and Practices by Sector from the Trade Policy Review of Bangladesh - Report by the Secretariat – WT/TPR/S/168, August 09, 2006

SECTORAL POLICY DEVELOPMENTS

Raising productivity in the labour-intensive agriculture sector is a concern in Bangladesh, which is prone to natural disasters. Despite an upsurge in cereal production, Bangladesh remains a food aid recipient (rice, wheat) with self-sufficiency and food security as major policy objectives (medium output targets have been set for wheat, maize, pulse, oilseed, sugarcane, and vegetables). Tariff and non-tariff protection has been reduced. To cut production costs and face competition from neighbouring countries, support to domestic production was strengthened through the subsidisation of agricultural inputs (i.e. seeds, fertilizer, irrigation, capital, through concessional interest rates, and electricity) and public procurement practices. Despite being a recipient of food aid, Bangladesh introduced a direct cash subsidy of up to 30% for certain agricultural and fisheries exports (i.e., frozen shrimp and fish, fruits, vegetables, agro-processed products) in 2003; according to Bangladesh's first notification to the WTO, its domestic support observed de minimis requirements established under the Agreement on Agriculture. As a result, in 2005/06 the budget allocation for subsidies and other assistance to the agriculture sector doubled and agricultural products are becoming an increasingly important component of Bangladesh's foreign trade. Efforts are being made to diversify products of the jute and revive the tea industries.

Gas transmission inadequacies and electric power shortages are still among the most important bottlenecks for economic development. During the period under review, reforms have focused on the regulatory and institutional framework as well as on the prices of energy products, which continue to lag behind world market prices. Natural gas, Bangladesh's dominant source of energy, remains mainly produced by the State and used for power generation and fertilizer production, for which tariffs are less than half of those charged to other activities. In 2001, the average electricity tariff remained lower than the cost of supply; agricultural pumping and high voltage (manufacturing) end-users benefit from rates substantially lower than those applied to commercial and residential users.

Manufacturing remains dependent on the labour-intensive ready-made garment (RMG) sub-sector and the large loss-making SOEs. Although the elimination of quotas in accordance with the ATC did not seem to have immediate negative effects on RMG exports, risks remain; a Development Strategy and an Action Programme are being implemented to facilitate the adjustment of the RMG sub-sector. Efforts were made to delay the elimination of cash grants for exports of local fabrics, and to expand preferential access of RMG exports to major developed country markets. In order to protect domestic production of backward linkage industries of the RMG sub-sector from competing industries in neighbouring SAARC countries, the authorities have not endorsed the EC's relaxed regional cumulation (rules of origin) criteria. A ban on imports of yarn/textiles entering over land from India was in place from March 2002 to December 2005. The 2005 industrial policy framework is aimed, inter alia, at raising sectoral productivity and employment. As a result of the domestic drug policy (updated in 2005), domestically produced medicines increased their market share, thus reducing imports by approximately US$600 million every year; exports of pharmaceuticals have increased fourfold since 2001.

Services account for more than half of Bangladesh's GDP. Inefficiencies and shortages in essential services hamper economic growth. Despite increased private sector involvement, banking remains dominated by state-owned institutions subject to a bank-by-bank (i.e. case by case) reform strategy. Micro-finance programmes have played an important role in

poverty alleviation. Banking supervision and mandatory loan repayment requirements have been strengthened. The spread between the lending and deposit interest rate has fallen, but remains wide reflecting the high level of non-performing loans, inadequate competition, and inefficiencies in bank operations. State involvement in insurance has declined though some insurance business remains reserved for the state insurance firm, Sadhran Birma Corporation (SBC); premiums are set by a central committee. The telecoms legal and institutional framework has been updated and policy targets revised; the state-owned Bangladesh Telegraph and Telephone Board (BTTB) and seven private sector operators have continued to run the network. Despite capacity constraints, national flag vessels are subject to local participation/ownership requirements, and part of the overseas sea-born cargo is reserved for them (unless a waiver is in place), except for foreign feeder operators (as from 2003). Following recent reform, the previously loss-making state-owned shipping company is to expand its fleet. Regulatory reforms were undertaken to improve private sector participation in the state-run ports; Private Sector Infrastructure Guidelines, passed in 2004 to provide investment guarantees, were issued to deal with the absence of foreign investment in port services.

Since its previous Review, Bangladesh has made no changes to its GATS commitments; the Schedule of Specific Commitments remains limited to the activities of five star hotel and lodging services, and telecommunication services; an MFN exemption remains in force in international telecommunications services to allow for different accounting rates as covered under international agreements with other operators or countries. Domestic routes are reserved for the national airlines; the state-owned operator is faced with loss-making domestic operations due to higher operating costs owing to its aging fleet compounded by the rise in aviation fuel prices.

Annexure V

Brief on the WTO Dispute involving South Asia - United States: Import Prohibition of Certain Shrimp and Shrimp Products.

Short title:	US — Shrimp
Complainant:	India; Malaysia; Pakistan; Thailand
Respondent:	United States
Third Parties:	Australia; Colombia; Costa Rica; European Communities; Ecuador; El Salvador; Guatemala; Hong Kong, China; Japan; Mexico; Nigeria; Pakistan; Philippines; Senegal; Singapore; Sri Lanka; Venezuela
Request for Consultations received:	October 08, 1996
Panel Report circulated:	May 15, 1998
Appellate Body Report circulated:	October 12, 1998
Article 21.5 Panel Report circulated:	June 15, 2001
Article 21.5 Appellate Body Report circulated:	October 22, 2001

1. MEASURE AND PRODUCT AT ISSUE

- Measure at issue: US import prohibition of shrimp and shrimp products from non-certified countries (i.e. countries that had not used a certain net in catching shrimp).
- Products at issue: Shrimp and shrimp products from the complainant countries.

2. SUMMARY OF KEY PANEL/AB FINDINGS

- GATT Art. XI (quantitative restrictions): The Panel found that the US prohibition, based on Section 609, on imported shrimp and shrimp products violated GATT Art. XI. The United States apparently conceded this violation of Art. XI because it did not put forward any defending arguments in this regard.
- GATT Art. XX (exceptions): The Appellate Body held that although the US import ban was related to the conservation of exhaustible natural resources and, thus, covered by Art. XX(g) exception, it could not be justified under Art. XX because the ban constituted "arbitrary and unjustifiable" discrimination under the chapeau of Art. XX. In reaching this conclusion, the Appellate Body reasoned, inter alia, that in its application the measure was "unjustifiably" discriminatory because of its intended and actual coercive effect on the specific policy decisions made by foreign governments that were Members of the WTO, also the measure constituted "arbitrary" discrimination because of the rigidity and inflexibility in its application, and the lack of transparency and procedural fairness in the administration of trade regulations.

While ultimately reaching the same finding on Art XX as the Panel, the Appellate Body, however, reversed the Panel's legal interpretation of Art XX with respect to the proper sequence of steps in analysing Art. XX. The proper sequence of steps is to first assess whether a measure can be provisionally justified as one of the categories under paragraphs (a)-(j), and, then, to further appraise the same measure under the Art XX chapeau.

3. OTHER ISSUES

- Amicus curiae briefs: The Appellate Body held that it could consider amicus curiae briefs attached to a party's submission since the attachment of a brief or other material to either party's submission renders that material at least prima facie an integral part of that party's submission. Based on the same rationale, the Appellate Body reversed the Panel and ruled that a panel has the "discretion either to accept and consider or to reject information and advice submitted to it, whether requested by a panel or not" under DSU Arts 12 and 13.

Annexure VI

Summary on raising of funds to contest the case at the DSB by Pakistan's to contest the case filed by US on Combed Cotton Yarn Exports

On December 24, 1998 the government of Pakistan received a Call Notice from the US government for consultation regarding the establishment of quantitative restraints on Pakistani exports of combed cotton yarn (Category 301). The basis of this was the allegation on the part of the United States that the exports of Pakistan were causing verifiable harm to the US textile sector.

As this was the first time Pakistan was contesting a case at the DSB level there was no institutional set-up or guidelines for the payment of the expenses involved. As with the Textile Monitoring Board (TMB) stage, All Pakistan Textile Mills Association (APTMA) and the Commerce Ministry had to come up with an agreement. APTMA's proposal of a cost-sharing formula was finally accepted in February 2000 by the Commerce Ministry. It was decided that out of the estimated total cost of $125,000 APTMA was to contribute the first $50,000, the balance to be given by the EPB using the revenue generated from the Export Development Fund (EDF).

The next stage for APTMA was to get the concerned exporters/ manufacturers to contribute their share so as to raise the agreed initial amount of $50,000. Unlike at the TMB stage, there was a problem within APTMA in getting the concerned business players to contribute a second time for the legal expenses at the DSB stage.

Some large manufacturers/exporters of combed cotton yarn saw beyond their immediate economic interest and understood the value of persisting with the case at this last and most important stage. These players were willing to contribute whatever was required of them. At the same time there were others who had contributed at the TMB stage but because of a lack of understanding of the mechanism of dispute settlement at the WTO and frustration owing to US non-compliance saw no reason to contribute in order to pursue the case further. It is safe to say that these players did not quite appreciate the significance of the case in terms of the long-term benefits of pursuing to the end a positive decision. The following excerpts are an example of the degree of divergence of views within the members of APTMA:

- Pakistan must move its case to the Dispute Settlement Board. In my opinion, however expensive and cumbersome these processes may be, we must do our utmost to fight these cases to protect our existing and potential markets. In this connection I would request you to call a meeting of the concerned members to develop a strategy to contest the above case. (From a letter written to APTMA by a co-operating large manufacturer/exporter)
- Please note that we already are the largest quota holders in this category from Pakistan. It is not in our interest to have this quota removed as its imposition creates a barrier to entry for others. It does not make any economic sense for us to 'pay to cut our own feet'. We therefore feel that it is unjust for APTMA to ask us to pay for this contribution. (From a letter written to APTMA by a non-co-operating large exporter/manufacturer)

These financing problems were eventually resolved and APTMA was able to meet its commitment of paying the initial $50,000 of the cost incurred at the DSB. In the words of Akbar Sheikh on the issue of financing at the DSB, 'Such disagreements within the association are quite common and thus were anticipated. The important thing was that in the end the business players, APTMA and the government got together to contest the case successfully at the DSB.'

Annexure VII

List of the S&D provisions for LDCs as contained in the various WTO Agreements:

WTO Agreement	S&D provisions for LDCs
Understanding on the Balance-of-Payments Provisions of the General Agreement on Tariffs and Trade 1994	Simplified consultation procedures may be used.
Agreement on Agriculture	LDCs exempt from undertaking reduction commitments.
Application of Sanitary and Phyto-sanitary Measures	LDCs had the possibility of delaying for up to five years, the implementation of the provisions of the Agreement with respect to their sanitary and phyto-sanitary measures affecting imports.
Agreement on Textiles and Clothing	LDCs are accorded significantly more favourable treatment than other groups in the application of the transitional safeguard.
Agreement on Technical Barriers to Trade	Particular account to be taken of LDCs in the provision of technical assistance and in the preparation of technical regulations.
Trade-related Investment Measures (TRIMS)	LDCs had a 7 year transitional period to eliminate TRIMS that are inconsistent with the Agreement.
Agreement on Import Licensing	In allocating non-automatic licences, special consideration to be given to importers who import products from LDCs.
Agreement on Subsides and Countervailing Measures	LDCs are exempted from prohibition on export subsidies. Prohibition on subsidies that are contingent upon export performance is not applicable to LDCs for eight years.
General Agreement on Trade in Services (GATS)	Special priority given to LDCs in implementing Article IV of GATS (Increasing Participation of Developing Countries) and difficulties encountered by LDCs in accepting negotiated commitments, owing to their particular needs. Special consideration is given to LDCs with regard to encouraging foreign suppliers to assist in technology transfers, training and other activities for developing telecommunications.
Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPs)	Delay for up to 10 years in implementing most of TRIPS obligations. Possibility of extension following duly motivated request. Members to provide incentives for

	encouraging transfer of technology to LDCs.
Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU)	Particular consideration should be given to the special situation of LDCs in all stages of a dispute involving an LDC. Members to exercise due restraint in raising matters involving an LDC. LDCs may request use of the good offices of the Director-General or the Chairman of the DSB.
Trade Policy Review Mechanism (TPRM)	Greater flexibility given to LDCs concerning the frequency of their reviews. Particular attention given to LDCs in the provision of technical assistance by the Secretariat.

Annexure VIII

Summary on the overview of S&DT provisions:

The different WTO Agreements contain about 124 separate articles or paragraphs containing around 160 provisions for S&DT (WTO, 2000a). An overview of these provisions, their binding nature and defined limits, and their applicability to different country groups, presents the following picture:[*******]

- *Recommended action:* 38 provisions encourage developed WTO members to take into account the special situation of least developed WTO members; 31 encourage different types of financial and/or technical assistance; 21 encourage flexibility in the implementation of agreements; 20 encourage flexibility in the application of agreements; 18 allow for different types of subsidies; 12 encourage the extension of market access preferences; eight encourage favourable treatment in safeguard actions; five allow for different types of import restrictions; one encourages paucity of the principle of full reciprocity; and another one encourage sanctions to stabilize commodity prices. In addition, there are five other provisions with diverse purposes.

- *Binding nature:* The majority of the provisions are best-endeavour provisions that do not have a binding nature. These include the 38 provisions that encourage the special consideration of difficulties, the 31 provisions that encourage the provision of technical and/or financial assistance, the 12 provisions that encourage the provision of market access preferences, one provision that encourages action to address commodity price problems, and five other provisions. The provisions that are binding generally include those that grant developing countries more flexibility in the implementation of WTO Agreements and/or flexibility in their application.

- *Time limits:* Of 124 articles and paragraphs in WTO Agreements that entail S&DT provisions, 19 articles and paragraphs of these agreements have explicitly or implicitly defined time limits, affecting 21 provisions for special and differential treatment. The majority of the provisions of limited duration are related to provisions granting flexibility in the implementation or application of agreements, but several such provisions are related to provisions granting flexibility in trade policies. Of the six articles and paragraphs imposing time limits on the use of trade policies, three impose limits with respect to the use of import restrictions, and the other three impose limits with respect to the use of export subsidies. This in effect means that three out of five provisions that grant flexibility with respect to import restrictions have time limits attached to them, whereas only three out of 18 provisions that grant flexibility with respect to subsidies have an expiration date. Other articles and paragraphs limiting the duration of special and differential treatment provisions relate to provisions that are concerned with special consideration of developing countries and provisions granting market access preferences to LDCs.

Within this complex field, there are relatively few provisions that are actually targeted at the LDCs. Of the 124 articles and paragraphs extending special and differential treatment, 104 apply to the group of developing countries, which includes all LDCs, and the remaining 20 apply to different sub-groups of developing countries, which also include many LDCs. But

[*******] The overview is based on provisions of special and differential treatment in WTO Agreements of 1994 and the "Decision on Waiver" of 1999. It does not consider provisions entailed in other subsequent Ministerial Declarations and Decisions. It is important to emphasize that although the different agreements, declarations and decisions are of a binding nature, the provisions of special and differential treatment within them are not necessarily of a binding nature.

though most S&DT provisions are also applicable to LDCs, only a very few such provisions are specifically targeted at the LDCs. This means that there are only a few provisions that are specifically designed to help this group of developing countries overcome their marginalisation in the world economy. In total, there are about 24 articles and paragraphs in the WTO Agreements that extend S&DT explicitly to LDCs. Of these provisions, 15 extend it to both developing countries and LDCs, six extend it exclusively to the group of LDCs, two extend it to LDCs and small suppliers, one extends it to LDCs and low-income countries, and one extends it to LDCs and net food-importing countries. A final provision is extended to all developing countries, including LDCs and net food-importing developing countries.

The majority of the articles and paragraphs that specifically refer to the group of LDCs, namely 14 out of 24, entail provisions that encourage consideration of the special challenges faced by LDCs, and a good number of those — 6 out of 14 — do nothing more than encourage special consideration of challenges faced by these countries.

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