SUCCESS!

The most comprehensive Round ever is concluded

In bringing his gavel down on seven years of negotiations, GATT Director-General called the successful conclusion of the Uruguay Round on December 15, 1993 “a defining moment in modern economic and political history.”

“Today the world has chosen openness and cooperation instead of uncertainty and conflict,” Sutherland told the Trade Negotiations Committee (TNC) in introducing the Final Act embodying the results of the negotiations. He described the Uruguay Round package as “truly a remarkable achievement, from any perspective,” pointing out that the results “will mean more trade, more investment, more jobs and large income growth for all.”

“In every sense, the Uruguay Round is a global negotiations with a global result,” said the TNC Chairman. He noted that for the first time, a negotiation under GATT auspices had covered “virtually every sector of world trade.” Participation had also been global, he said, pointing out that perhaps the most significant feature of the Round “has been the large number of developing countries taking part, and taking part actively.”

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TNC

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Sutherland said that the establishment of a World Trade Organization, with powers commensurate to the challenging tasks before it, would finally fill the gap in the post-war economic reconstruction established at Bretton Woods. "The confidence of producers, traders and consumers in the stability of the trade order will no doubt be enhanced by our decision to give that order a solid institutional basis," he said.

The TNC Chairman outlined the major achievements of the Round, which he said represented "a major renewal of the world trading system":

- The General Agreement on Trade in Services provides for a new set of multilateral rules for the conduct of services trade. It simultaneously creates a framework for a continuing process of liberalization. The outlook for job creation in this fast growing and dynamic sector, which accounts for over 60 per cent of world production, is now better than ever.

- Trade in intellectual property is also now the subject of a comprehensive set of new rules which should help to promote creative activities and innovation and to safeguard investments in intellectual property.

- Agriculture too becomes subject to new disciplines designed to establish a fair and market-oriented agricultural trading system. Reductions in subsidies should lead to more sustainable markets.

- Textiles and clothing also will be brought back under GATT disciplines, even if the process will take considerably longer than for other sectors.

- The results on market access for goods represent a major milestone in the history of the GATT. Tariffs are expected to have been reduced by around 40 per cent. Of equally far-reaching importance is the substantial rise in the security in the world trading system by virtue of the large increase in tariff bindings, not only but especially by developing countries, many of whom have undertaken wide-ranging economic reforms in recent years intended to achieve fuller integration with world markets.

- The Round has gone further than any previous negotiations to extend and strengthen the rule of law in international trade, both by bringing GATT principles to apply in areas where they have been lacking, and by strengthening the existing rules, especially by ensuring their application through a more effective dispute settlement system.

The TNC approved the Chairman's proposal that participants in the Uruguay Round agree that the texts contained in the Final Act (dated December 15, 1993), including the detailed schedules of market access in goods and services to be submitted to the Secretariat, embody the results of their negotiations; acknowledge that the texts may be subject to rectifications of a purely formal character that will not affect the substance or meaning of the texts in any way; and indicate their intention to submit the relevant texts or legal instruments to be formulated on the basis of the Final Act for the consideration of their respective authorities with a view to seeking approval of, or other decisions on, the relevant texts or instruments in accordance with appropriate procedures in their respective jurisdictions.

The TNC approved a work programme for the post Round period (see box). It also agreed to present a programme of work and recommendations on trade and environment for adoption as soon as possible and not later than at the Marrakesh Ministerial Conference in April 1994. Finally, it accepted an invitation by the Government of the Kingdom of Morocco to hold the Ministerial-level TNC meeting at Marrakesh in April 1994.

In concluding his statement, Sutherland paid tribute to his predecessor, Mr. Arthur Dunkel, as one "who did so much to shape the Final Act." He also expressed his gratitude to the Friends of the Chair, Mr. Germain Denis, Ambassador David Hawes, Ambassador Julio Lacarte and Mr. Michael Cartland. "Without their dedicated commitment, professionalism, skill and perseverance the quality of our results would not have been as great as they are," he said.

A landmark in trade history

Today we see a landmark in the history of the international trading system; in four months' time we will be putting the seal on our commitments in those documents that we have worked on so laboriously the last seven years," said Malaysia on behalf of the developing country participants in the Uruguay Round. It said the developing countries viewed the Round's conclusion as "a victory for international trade which will set a new era for our future generations, to benefit and contribute to the increased global welfare."

In looking at the overall results of the Round, Malaysia said it was no surprise that the developing country participants have found "areas of deficiency". These included a "general lack of commitment and the translation of the special and differential treatment by the developed countries." It expressed hope that in the period before the Marrakesh meeting, the market-access package could be expanded to give more consideration to developing country exports like agricultural and tropical products, wood products, fishery products, textiles and electronics. Malaysia also expressed concern over developments in the services area.

Malaysia said that the WTO should "facilitate and create the optimal environment for international trade amongst nations to flourish and reflecting also the
changing comparative advantages." It stressed that "developed countries therefore have a commitment to ensure that the rules of the playing field are observed and have a commitment to ensure that the WTO be truly representative of world trade through the widest membership willing to meet the obligations."

The countries concerned are: the least-developed countries that had been given an extra year to lodge their tariff schedules; the three countries which are full participants in the Round but had not yet completed their negotiations for entry into GATT (Algeria, China and Honduras); 12 countries which have been associated with the Round but are not yet members (including the Russian Federation and Chinese Taipei); and the 18 countries which apply GATT on a de facto basis and have not participated in the negotiations.

He also pointed out that the TNC would need to prepare a Ministerial Declaration to be approved at Marrakesh, which should be "a subject for careful consideration."

The Chairman noted that in the light of the results of the Round, the WTO would not be a successor agreement to GATT, as defined in the Vienna Convention. The two instruments were "legally distinct." This meant that insofar as governments put the Uruguay Round agreements into force and did not simultaneously withdraw from GATT under the Protocol of Provisional Application, they would be bound by the two most-favoured-nation clauses which would apply to different sets of commitments and countries. This fact and the need to launch the WTO "under the best auspices" would require intensive work on a number of areas, including:

- the accession negotiations for the countries mentioned above;
- technical assistance missions to a number of those countries to contribute to their participation in such negotiations;
- the questions which follow directly out of the contents of the WTO Agreements and which are specifically provided for therein. For these cases, which vary considerably in importance, timing and nature, implementation procedures would need to be worked out as appropriate;
- other substantive subjects that arise in terms of: the link between trade and environment; the contents of the Marrakesh Ministerial Declaration; and the fact that since the WTO would have a considerably larger scope and responsibilities than GATT, efficient coordination procedures and courses of action need to be established;
- the Rules of Procedures for the Ministerial Conference, General Council and subsidiary bodies that would need to be drafted;
- the administrative, personnel, budgetary and financial issues, which would be complex because of the "legally distinct" concept. GATT and the WTO are likely to co-exist for a period of time that is presently unforeseeable and this prospect will call for careful and thorough planning;
- the question of ICITO/GATT also needs to be considered;
- the preparation of the Implementation Conference.

Sutherland said that a possible institutional solution to cover these issues would be the establishment by the TNC at Marrakesh of an open-ended Interim Committee for the WTO, which would concentrate on the setting up of the new organization.

openness and free exchange and the kind of progress and prosperity that those qualities will produce," the United States said. "Having gone through a very real and difficult negotiating process, the hope that is here tonight is real and it is a real hope of better lives for people throughout the world," it added.

Australia pointed out that "the package charts a new direction for agriculture, both with respect to the elimination, after more than 40 years of effort, of quantitative restrictions on imports and negotiated reductions in export subsidies." It placed on record its appreciation for "the difficult political and economic decisions taken by a number of countries in the final days of the negotiations to accept comprehensive tariffication without exceptions."

The European Union recalled that the Round was launched "at a time when the world economy was in better shape...it is being concluded at a time of recession and great uncertainty." Thus the agreement, when "unemployment is ravaging the economies of many countries," was "a considerable achievement and will without doubt stimulate and generalize the economic recovery."

"The negotiations have been painful for all participants and none have achieved all their initial objectives," the EU said. However, "viewed globally, the Round has achieved its major aims." It added that "we are beginning to build a worldwide economic democracy in which each member is responsible for its rights and obligations in which both the private sector and consumers are concerned and with which they should be involved."

Difficult political decisions

Japan said it had made an "extremely difficult political decision on the question of rice in order to contribute to the successful conclusion of the Uruguay Round." It added that a major accomplishment was the strengthening of trade disciplines, including the establishment of an effective dispute settlement system. Japan expressed a strong wish that the WTO would lead to a further strengthening of the multilateral trading system.

Canada said its decision to accept tariffication without exception in agriculture "was not taken lightly, nor was it taken without political cost - it was taken only after it became unmistakably clear that this was the preferred choice of the participants." It expressed confidence that the agreement achieved in agriculture "will prove its worth to both developed and developing exporters of farm products."

The Republic of Korea said that its acceptance of comprehensive tariffication
was “a highly risky decision that would not have been possible without Korea’s sense of responsibility, and its will to cooperate for the success of the Round.” It pledged its continued cooperation for the smooth implementation of the Round package.

Sweden, speaking on behalf of the Nordic countries, said that “we have assembled a package of impressive proportions and content - this is truly history.” It believed that the Round had given an answer to the question of whether the world trading system was moving in the direction of regional trading blocs: “regional integration which is taking place in many parts of our planet - and where we are contributing actively at the European level - will be complemented by integration at the global level.” Sweden stressed that “there is not, and must never be, any contradiction between the two - they should both lead to more trade liberalization.”

Brazil said it was not the time to dwell on possible shortcomings of the package “but rather, to look ahead.” It pointed out that “we have increased and even acquired more difficult responsibilities as we have collectively allowed the GATT more than just a lease on life...this means a new management of world trade affairs in a totally new framework, in which the complexity of the fields covered poses an even greater challenge to our countries’ ability to cope with our individual and collective responsibilities.”
The Final Act of the Uruguay Round: A Summary

The Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations is 550 pages long and contains legal texts which spell out the results of the negotiations since the Round was launched in Punta del Este, Uruguay, in September 1986. In addition to the texts of the agreements, the Final Act also contains texts of Ministerial Decisions and Declarations which further clarify certain provisions of some of the agreements.

The following summarises all the components of the Final Act. These summaries are intended to provide an informal guide to the agreements and have no legal status.

The Final Act covers all the negotiating areas cited in the Punta del Este Declaration with two important exceptions. The first is the results of the "market access negotiations" in which individual countries have made binding commitments to reduce or eliminate specific tariffs and non-tariff barriers to merchandise trade. These concessions are to be recorded in national schedules which will form an integral part of the Final Act. The second is the "initial commitments" on liberalization of trade in services. These commitments on liberalization are also to be recorded in national schedules.

Agreement Establishing the World Trade Organization

The agreement establishing the World Trade Organization (WTO) envisages a single institutional framework encompassing the GATT, as modified by the Uruguay Round, all agreements and arrangements concluded under its auspices and the complete results of the Uruguay Round. Its structure will be headed by a Ministerial Conference meeting at least once every two years. A General Council will be established to oversee the operation of the agreement and ministerial decisions on a regular basis. This General Council will itself act as a Dispute Settlement Body and a Trade Policy Review Mechanism, which will concern themselves with the full range of trade issues covered by the WTO, and will also establish subsidiary bodies such as a Goods Council, a Services Council and a TRIPS Council. The WTO framework will ensure a "single undertaking approach" to the results of the Uruguay Round - thus, membership in the WTO will entail accepting all the results of the Round without exception.

General Agreement on Tariffs and Trade 1994

Texts on the interpretation of the following GATT Articles are included in the Final Act.

Understanding on the Interpretation of Article II:1(b) (Schedules of Concessions), Agreement to record in national schedules "other duties or charges" levied in addition to the recorded tariff and to bind them at the levels prevailing at the date established in the Uruguay Round Protocol.

Understanding on the Interpretation of Article XVII (State-trading Enterprises), Agreement increasing surveillance of their activities through stronger notification and review procedures.

Understanding on the Interpretation of Balance-of-Payments Provisions, Agreement that contracting parties imposing restrictions for balance-of-payments purposes should do so in the least trade-disruptive manner and should favour price-based measures, like import surcharges and import deposits, rather than quantitative restrictions. Agreement also on procedures for consultations by the GATT Balance-of-Payments Committee as well as for notification of BOP measures.

Understanding on the Interpretation of Article XXIV (Customs Unions and Free-Trade Areas), Agreement clarifying and reinforcing the criteria and procedures for the review of new or enlarged customs unions or free-trade areas and for the evaluation of their effects on third parties. The agreement also clarifies the procedure to be followed for achieving any necessary compensatory adjustment in the event of contracting parties forming a customs union seeking to increase a bound tariff. The obligations of contracting parties in regard to measures taken by regional or local governments or authorities within their territories are also clarified.

Understanding on the Interpretation of Article XXV (Waivers), Agreement of new procedures for the granting of waivers from GATT disciplines, to specify termination dates for any waivers to be granted in the future, and to fix expiry dates for existing waivers. The main provisions concerning the granting of waivers are, however, contained in the Agreement on the WTO.

Understanding on the Interpretation of Article XXVIII (Modification of GATT Schedules), Agreement on new procedures for the negotiation of compensation when tariff bindings are modified or withdrawn, including the creation of a new negotiating right for the country for which the product in question accounts for the highest proportion of its exports. This is intended to increase the ability of smaller and developing countries to participate in negotiations.

Understanding on the Interpretation of Article XXXV (Non-application of the General Agreement), Agreement to allow a contracting party or a newly acceding country to invoke GATT's non-application provisions vis-à-vis the other party after having entered into tariff negotiations with each other. The WTO Agreement foresees that any invocation of the non-application provisions under that Agreement must extend to all the multilateral agreements.

Uruguay Round Protocol GATT 1994

The results of the market access negotiations in which participants have made commitments to eliminate or reduce tariff rates and non-tariff measures applicable to trade in goods will be recorded in national schedules of concessions which will be annexed to the Uruguay Round Protocol that forms an integral part of the Final Act.

Members of the Informal Group on Institutional Issues, which was chaired by Ambassador Julio Lacarte-Muro, after agreement on a WTO and an integrated dispute-settlement system on 15 November 1993. (Photo by Ms. Tania Tang/GATT)
The Protocol has five appendices: Appendix I Section A: Agricultural Products - Tariff concessions on a Most-Favoured Nation basis, Section B: Agricultural Products - Tariff Quotas; Appendix II: Tariff Concessions on a Most-Favoured Nation Basis on Other Products; Appendix III: Preferential Tariff - Part II of Schedules (if applicable); Appendix IV: Concessions on Non-Tariff Measures - Part III of Schedules; and Appendix V: Agriculture Products: Commitments Limiting Subsidization - Part IV of Schedules (Section I: Domestic Support: Total AMS Commitments, Section II: Export Subsidies: Budgetary Outlay and Quantity Reduction Commitments and Section III: Commitments Limiting the Scope of Export Subsidies).

The schedule annexed to the Protocol relating to a Member shall become a Schedule to the GATT 1994 relating to that Member on the day on which the Agreement Establishing the WTO enters into force for that Member.

For non-agricultural products the tariff reduction agreed upon by each Member shall be implemented in five equal rate reductions, except as may be otherwise specified in a Member’s Schedule. The first such reduction shall be made effective on the date of entry into force of the Agreement Establishing the WTO. Each successive reduction shall be made effective on 1 January of each of the following years, and the final rate shall become effective no later than the date four years after the date of entry into force of the Agreement Establishing the WTO. However, participants may implement reduction in fewer stages or at earlier dates than those indicated in the Protocol, if they so wish.

For agricultural products, as defined in Article 2 of the Agreement on Agriculture, the staging of reductions shall be implemented as specified in the relevant parts of the schedules. Details are given in the section of this paper concerning the Agricultural Agreement.

A related Decision on Measures in Favour of Least-Developed Countries establishes, among other things, that these countries will not be required to undertake any commitments and concessions which are inconsistent with their individual development, financial and trade needs. Alongside other more specific provisions for flexible and favourable treatment, it also allows for the completion of their schedules of concessions and commitments in Market Access and in Services by April 1995 rather than 15 December 1993.

### Agreement on Agriculture

The negotiations have resulted in four main portions of the Agreement: the Agreement on Agriculture itself; the concessions and commitments Members are to undertake on market access, domestic support and export subsidies; the Agreement on Sanitary and Phytosanitary Measures; and the Ministerial Decision concerning Least-Developed and Net Food-Importing Developing countries.

Overall, the results of the negotiations provide a framework for the long-term reform of agricultural trade and domestic policies over the years to come. It makes a decisive move towards the objective of increased market orientation in agricultural trade. The rules governing agricultural trade are strengthened which will lead to improved predictability and stability for importing and exporting countries alike.

The agricultural package also addresses many other issues of vital economic and political importance to many Members. These include provisions that encourage the use of less trade-distorting domestic support policies to maintain the rural economy, that allow actions to be taken to ease any adjustment burden, and also the introduction of tightly prescribed provisions that allow some flexibility in the implementation of commitments. Specific concerns of developing countries have been addressed including the concerns of net-food importing countries and least-developed countries.

The agricultural package provides for commitments in the area of market access, domestic support and export competition. The text of the Agricultural Agreement is mirrored in the GATT Schedules of legal commitments relating to individual countries (as noted in the section of this paper that describes the Uruguay Round Protocol).

In the area of market access, non-tariff border measures are replaced by tariffs that provide substantially the same level of protection. Tariffs resulting from this “tarification” process, as well as other tariffs on agricultural products, are to be reduced by an average 36 per cent in the case of developed countries and 24 per cent in the case of developing countries, with minimum reductions for each tariff line being required. Reductions are to be undertaken over six years in the case of developed countries and over ten years in the case of developing countries. Least-developed countries are not required to reduce their tariffs.

The tarification package also provides for the maintenance of current access opportunities and the establishment of minimum access tariff quotas (at reduced-tariff rates) where current access is less than 3 per cent of domestic consumption. These minimum access tariff quotas are to be expanded to 5 per cent over the implementation period. In the case of “tariffed” products “special safeguard” provisions will allow additional duties to be applied in case shipments at prices denominated in domestic currencies below a certain reference level or in case of a surge of imports. The trigger in the safeguard for import surges depends on the “import penetration” currently existing in the market, i.e. where imports currently make up a large proportion of consumption, the import surge required to trigger the special safeguard action is lower.

In order to facilitate the implementation of tarification in particularly sensitive situations, a “special treatment” clause was introduced into the Agreement on Agriculture. The special treatment allows, under certain carefully and strictly defined conditions, a country to maintain import restrictions up to the end of the implementation period. The conditions are (i) that imports of the primary agricultural product, and its worked and/or prepared products, the so-called designated products, were less than 3 per cent of domestic consumption during the period 1986-88; (ii) no export subsidies have been provided for these products since 1986; (iii) effective production restricting measures are applied to the primary agricultural product; and (iv) minimum access opportunities are provided. The minimum access opportunities represent four per cent of domestic consumption of the designated products in the first year of the implementation period and...
increase annually to reach 8 per cent in the sixth year. However, the final figure is lower if the designated products are tariffed before the end of the implementation period. For example, if the designated products are tariffed at the beginning of the third year of the implementation period the final minimum access opportunities are 6.4 per cent of domestic consumption of the designated products. Negotiations among trading partners on the possibility and terms of any continuation of special treatment beyond the implementation period must be completed by the end of the sixth year following the entry into force of the Agreement on Agriculture. In case of any continuation beyond the sixth year, additional commitments have to be taken.

A separate section in this context reflects the special and differential treatment applied to developing countries which is an integral element of all commitments taken in the Uruguay Round, including in all areas of the Agreement on Agriculture. The provisions apply to a primary agricultural product that is the predominant staple in the traditional diet of the developing country which invokes this clause of the agreement.

Domestic support measures that have, at most, a minimal impact on trade ("green box" policies) are excluded from reduction commitments. Such policies include general government services, for example in the areas of research, disease control, infrastructure and food security. It also includes direct payments to producers, for example certain forms of "decoupled" (from production) income support, structural adjustment assistance, direct payments under environmental programmes and under regional assistance programmes.

In addition to the green box policies, other policies need not be included in the Total Aggregate Measurement of Support (Total AMS) reduction commitments. These policies are direct payments under production-limiting programmes, certain government assistance measures to encourage agricultural and rural development in developing countries and other support which makes up only a low proportion (5 per cent in the case of developed countries and 10 per cent in the case of developing countries) of the value of production of individual products or, in the case of non-product-specific support, the value of total agricultural production.

The Total AMS covers all support provided on either a product-specific or non-product-specific basis that does not qualify for exemption and is to be reduced by 20 per cent (13.3 per cent for developing countries with no reduction for least-developed countries) during the implementation period.

Members are required to reduce the value of mainly direct export subsidies to a level 36 per cent below the 1986-90 base period level over the six-year implementation period, and the quantity of subsidised exports by 21 per cent over the same period. In the case of developing countries, the reductions are two-thirds those of developed countries over a ten-year period (with no reductions applying to the least-developed countries) and subject to certain conditions, there are no commitments on subsidies to reduce the costs of marketing exports of agricultural products or internal transport and freight charges on export shipments. Where subsidised exports have increased since the base period, the reduction will be 21 per cent. However, if the designated products are tariffed, the reduction will be 28 per cent. In the case of non-product-specific support, the value of total agricultural production.

The package is conceived as part of a continuing process with the long-term objective of securing substantial progressive reductions in support and protection. In this light, it calls for further negotiations in the fifth year of implementation which, along with an assessment of the first five years, would take into account non-trade concerns, special and differential treatment for developing countries, the objective to establish a fair and market-oriented agricultural trading system and other concerns and objectives noted in the preface to the agreement.

Agreement on Sanitary and Phytosanitary Measures

This agreement concerns the application of sanitary and phytosanitary measures - in other words food safety and animal and plant health regulations. The agreement recognises that governments have the right to take sanitary and phytosanitary measures but that they should be applied only to the extent necessary to protect human, animal or plant life or health and should not arbitrarily or unjustifiably discriminate between Members where identical or similar conditions prevail.

In order to harmonize sanitary and phytosanitary measures on as wide a basis as possible, Members are encouraged to base their measures on international standards, guidelines and recommendations where they exist. However, Members may maintain or introduce measures which result in higher standards if there is scientific justification or as a consequence of consistent risk decisions based on an appropriate risk assessment. The Agreement spells out procedures and criteria for the assessment of risk and the determination of appropriate levels of sanitary or phytosanitary protection.

It is expected that Members would accept the sanitary and phytosanitary measures of others as equivalent if the exporting country demonstrates to the importing country that its measures achieve the importing country's appropriate level of health protection. The agreement includes provisions on control, inspection and approval procedures.

The agreement also contains requirements on transparency, including the publication of regulations, the establishment of national enquiry points and notification procedures. It would establish a Committee on Sanitary and Phytosanitary Measures which, among other things, would provide a forum for consultations, discuss matters with potential trade impacts, maintain contact with other relevant organizations and monitor the process of international harmonization.

The Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries

It is recognized that during the reform programme least-developed and net food-importing developing countries may experience negative effects with respect to supplies of food imports on reasonable terms and conditions. Therefore, a special Decision sets out objectives with regard to the provision of food aid, the provision of basic foodstuffs in full grant form and aid for
agricultural development. It also refers to the possibility of assistance from the International Monetary Fund and the World Bank with respect to the short-term financing of commercial food imports. The Committee of Agriculture, set up under the Agreement on Agriculture, will monitor the follow-up to the Decision.

Agreement on Textiles and Clothing

The object of this negotiation has been to secure the eventual integration of the textiles and clothing sector - where much of the trade is currently subject to bilateral quotas negotiated under the Multifibre Arrangement (MFA) - into the GATT on the basis of strengthened GATT rules and disciplines.

Integration of the sector into the GATT would take place as follows (on the assumption that the WTO enters into effect on 1 January 1995): first, on 1 January 1995; each party would integrate into the GATT products from the specific list in the Agreement which accounted for not less than 16 per cent of its total volume of imports in 1990. Integration means that trade in these products will be governed by the general rules of GATT.

At the beginning of Phase 2, on 1 January 1998, products which accounted for not less than 17 per cent of 1990 imports would be integrated. On 1 January 2002, products which accounted for not less than 18 per cent of 1990 imports would be integrated. All remaining products would be integrated at the end of the transition period on 1 January 2005. At each of the first three stages, products should be chosen from each of the following categories: tops and yarns, fabrics, made-up textile products, and clothing.

All MFA restrictions in place on 31 December 1994 would be carried over into the new agreement and maintained until such time as the restrictions are removed or the products integrated into GATT. For products remaining under restraint, at whatever stage, the agreement lays down a formula for increasing the existing growth rates. Thus, during Stage 1, and for each restriction previously under MFA bilateral agreements in force for 1994, annual growth should be not less than 16 per cent higher than the growth rate established for the previous MFA restriction. For Stage 2 (1998 to 2001 inclusive), annual growth rates should be 25 per cent higher than the Stage 1 rates. For Stage 3 (2002 to 2004 inclusive), annual growth rates should be 27 per cent higher than the Stage 2 rates.

While the agreement focuses largely on the phasing-out of MFA restrictions, it also recognizes that some members maintain non-MFA restrictions not justified under a GATT provision. These would also be brought into conformity with GATT within one year of the entry into force of the Agreement or phased out progressively during a period not exceeding the duration of the Agreement (that is, by 2005).

It also contains a specific transitional safeguard mechanism which could be applied to products not yet integrated into the GATT at any stage. Action under the safeguard mechanism could be taken against individual exporting countries if it were demonstrated by the importing country that overall imports of a product were entering the country in such increased quantities as to cause serious damage - or to threaten it - to the relevant domestic industry, and that there was a sharp and substantial increase of imports from the individual country concerned. Action under the safeguard mechanism could be taken either by mutual agreement, following consultations, or unilaterally but subject to review by the Textiles Monitoring Body. If taken, the level of restraints should be fixed at a level not lower than the actual level of imports or exports from the country concerned during the twelve-month period ending two months before the month in which a request for consultation was made. Safeguard restraints could remain in place for up to three years without extension or until the product is removed from the scope of the agreement (that is, integrated into the GATT), whichever comes first.

The agreement includes provisions to cope with possible circumvention of commitments through transshipment, re-routing, false declaration concerning country or place of origin and falsification of official documents.

The agreement also stipulates that, as part of the integration process, all members shall take such actions in the area of textiles and clothing as may be necessary to abide by GATT rules and disciplines so as to improve market access, ensure the application of policies relating to fair and equitable trading conditions, and avoid discrimination against imports when taking measures for general trade policy reasons.

In the context of a major review of the operation of the agreement to be conducted by the Council for Trade in Goods before the end of each stage of the integration process, the Council for Trade in Goods shall by consensus take such decisions as it deems appropriate to ensure that the balance of rights and obligations in this agreement is not upset. Moreover, the Dispute Settlement Body may authorize adjustments to the annual growth of quotas for the stage subsequent to the review with respect to Members it has found not to be complying with their obligations under this agreement.

A Textiles Monitoring Body (TMB) would be established to oversee the implementation of commitments and to prepare reports for the major reviews mentioned above. The agreement also has provisions for special treatment to certain categories of countries - for example, those which have not been MFA members since 1986, new entrants, small suppliers, and least-developed countries.

Agreement on Technical Barriers to Trade

This agreement will extend and clarify the Agreement on Technical Barriers to Trade reached in the Tokyo Round. It seeks to ensure that technical negotiations and standards, as well as testing and certification procedures, do not create unnecessary obstacles to trade. However, it recognizes that countries have the right to establish protection, at levels they consider appropriate, for example for human, animal or plant life or health or the environment, and should not be prevented from taking measures necessary to ensure those levels of protection are met. The agreement therefore encourages countries to use international standards where these are appropriate, but it does not require them to change their levels of protection as a result of standardization.

Innovative features of the revised agreement are that it covers processing and production methods related to the characteristics of the product itself. The coverage of conformity assessment procedures is enlarged and the disciplines made more precise. Notification provisions applying to local government and non-governmental bodies are elaborated in more detail than in the Tokyo Round agreement. A Code of Good Practice for the Preparation, Adoption and Application of Standards by standardizing bodies, which is open to acceptance by private sector bodies as well as the public sector, is included as an annex to the agreement.

Agreement on Trade-Related Investment Measures

The agreement recognizes that certain investment measures restrict and distort trade. It provides that no contracting party shall apply any TRIM inconsistent with Articles III (national treatment) and XI (prohibition of quantitative restrictions) of the GATT. To this end, an illustrative list of TRIMs agreed to be inconsistent with these articles is appended to the agreement. The list includes measures which require particular levels of local procurement by an enterprise ("local content requirements") or
which restrict the volume or value of imports such an enterprise can purchase or use to an amount related to the level of products it exports ("trade balancing requirements").

The agreement requires mandatory notification of all non-conforming TRIMs and their elimination within two years for developed countries, within five years for developing countries and within seven years for least-developed countries. It establishes a Committee on TRIMs which will, among other things, monitor the implementation of these commitments. The agreement also provides for consideration, at a later date, of whether it should be complemented with provisions on investment and competition policy more broadly.

**Agreement on Implementation of Article VI (Anti-Dumping)**

Article VI of the GATT provides for the right of contracting parties to apply anti-dumping measures, i.e. measures against imports of a product at an export price below its "normal value" (usually the price of the product in the domestic market of the exporting country) if such dumped imports cause injury to a domestic industry in the territory of the importing contracting party. More detailed rules governing the application of such measures are currently provided in an Anti-Dumping Agreement concluded at the end of the Tokyo Round. Negotiations in the Uruguay Round have resulted in a revision of this Agreement which addresses many areas in which the current Agreement lacks precision and detail.

In particular, the revised Agreement provides for greater clarity and more detailed rules in relation to the method of determining that a product is dumped, the criteria to be taken into account in a determination that dumped imports cause injury to a domestic industry, the procedures to be followed in initiating and conducting anti-dumping investigations, and the implementation and duration of anti-dumping measures. In addition, the new agreement clarifies the role of dispute settlement panels in disputes relating to anti-dumping actions taken by domestic authorities.

On the methodology for determining that a product is exported at a dumped price, the new Agreement adds relatively specific provisions on such issues as criteria for allocating costs when the export price is compared with a "constructed" normal value and rules to ensure that a fair comparison is made between the export price and the normal value of a product so as not to arbitrarily create or inflate margins of dumping.

The agreement strengthens the requirement for the importing country to establish a clear causal relationship between dumped imports and injury to the domestic industry. The examination of the dumped imports on the industry concerned must include an evaluation of all relevant economic factors bearing on the state of the industry concerned. The agreement confirms the existing interpretation of the term "domestic industry". Subject to a few exceptions, "domestic industry" refers to the domestic producers as a whole of the like products or to those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products.

Clear-cut procedures have been established on how anti-dumping cases are to be initiated and how such investigations are to be conducted. Conditions for ensuring that all interested parties are given an opportunity to present evidence are set out. Provisions on the application of provisional measures, the use of price undertakings in anti-dumping cases, and on the duration of anti-dumping measures have been strengthened. Thus, a significant improvement over the existing Agreement consists of the addition of a new provision under which anti-dumping measures shall expire five years after the date of imposition, unless a determination is made that, in the event of termination of the measures, dumping and injury would be likely to continue or recur.

A new provision requires the immediate termination of an anti-dumping investigation in cases where the authorities determine that the margin of dumping is de minimis (which is defined as less than 2 per cent, expressed as a percentage of the export price of the product) or that the volume of dumped imports is negligible (generally when the volume of dumped imports from an individual country accounts for less than 3 per cent of the imports of the product in question into the importing country).

The agreement calls for prompt and detailed notification of all preliminary or final anti-dumping actions to a Committee on Anti-Dumping Practices. The agreement will afford parties the opportunity of consulting on any matter relating to the operation of the agreement or the furtherance of its objectives, and to request the establishment of panels to examine disputes.

**Agreement on Implementation of Article VII (Customs Valuation)**

The Decision on Customs Valuation would give customs administrations the right to request further information of importers where they have reason to doubt the accuracy of the declared value of imported goods. If the administration maintains a reasonable doubt, despite any additional information, it may be deemed that the customs value of the imported goods cannot be determined on the basis of the declared value, and customs would need to establish the value taking into account the provisions of the Agreement. In addition, two accompanying texts further clarify certain of the Agreement's provisions relevant to developing countries and relating to minimum values and importations by sole agents, sole distributors and sole concessionalaires.

**Agreement on Pre-shipment Inspection**

Pre-shipment inspection (PSI) is the practice of employing specialized private companies to check shipment details - essentially price, quantity, quality - of goods ordered overseas. Used by governments of developing countries, the purpose is to safeguard national financial interests (prevention of capital flight and commercial fraud as well as customs duty evasion, for instance) and to compensate for inadequacies in administrative infrastructures.

The agreement recognizes that GATT principles and obligations apply to the activities of pre-shipment inspection agencies mandated by governments. The obligations placed on PSI-user governments include non-discrimination, transparency, protection of confidential business information, avoidance of unreasonable delay, the use of specific guidelines for conducting price verification and the avoidance of conflicts of interest by the PSI agencies.

The obligations of exporting Members towards PSI users include non-discrimination in the application of domestic laws and regulations, prompt publication of such laws and regulations and the provision of technical assistance where requested.

The agreement establishes an independent review procedure administered jointly by an organization representing PSI agencies and an organization representing exporters - to resolve disputes between an exporter and a PSI agency.

**Agreement on Rules of Origin**

The agreement aims at long-term harmonization of rules of origin, other than rules of origin relating to the granting of tariff preferences, and to ensure that such rules do not themselves create unnecessary obstacles to trade.

The agreement sets up a harmonization programme, to be initiated as soon as possible after the completion of the Uruguay Round and to be completed within three years of initiation. It would be based upon a set of principles, including making rules of origin objective, understandable and predictable. The work
would be conducted by a Committee on Rules of Origin in the GATT and a technical committee under the auspices of the Customs Cooperation Council in Brussels.

Until the completion of the harmonization programme, contracting parties would be expected to ensure that their rules of origin are transparent; that they do not have restricting, distorting or disruptive effects on international trade; that they are administered in a consistent, uniform, impartial and reasonable manner, and that they are based on a positive standard (in other words, they should state what does confer origin rather than what does not).

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

**Agreement on Import Licensing Procedures**

The revised agreement strengthens the disciplines on the users of import licensing systems - which, in any event, are much less widely used now than in the past - and increases transparency and predictability. For example, the agreement requires parties to publish sufficient information for traders to know the basis on which licences are granted. It contains strengthened rules for the notification of the institution of import licensing procedures or changes therein. It also offers guidance on the assessment of applications.

With respect to automatic licensing procedures, the revised agreement sets out criteria under which they are assumed not to have trade restrictive effects. With respect to non-automatic licensing procedures, their administrative burden for importers and exporters should be limited to what is absolutely necessary to administer the measures to which they apply. The revised agreement also sets a maximum of 60 days for applications to be considered.

**Agreement on Subsidies and Countervailing Measures**

The Agreement on Subsidies and Countervailing Measures is intended to build on the Agreement on Interpretation and Application of Articles VI, XVI and XXIII which was negotiated in the Tokyo Round.

Unlike its predecessor, the agreement contains a definition of subsidy and introduces the concept of a “specific” subsidy - for the most part, a subsidy available only to an enterprise or industry or group of enterprises or industries within the jurisdiction of the authority granting the subsidy. Only specific subsidies would be subject to the disciplines set out in the agreement.

The agreement establishes three categories of subsidies. First, it deems the following subsidies to be “prohibited”: those contingent, in law or in fact, whether solely or as one of several other conditions, upon export performance; and those contingent, whether solely or as one of several other conditions, upon the use of domestic over imported goods. Prohibited subsidies are subject to new dispute settlement procedures. The main features include an expedited timetable for action by the Dispute Settlement body, and if it is found that the subsidy is indeed prohibited, it must be immediately withdrawn. If this is not done within the specified time period, the complaining member is authorized to take countermeasures.

The second category is “actionable” subsidies. The agreement stipulates that no member should cause, through the use of subsidies, adverse effects to the interests of another member. “Serious prejudice” shall be presumed to exist for certain subsidies including when the total ad valorem subsidization of a product exceeds 5 per cent. In such a situation, the burden of proof is on the subsidizing member to show that the subsidies in question do not cause serious prejudice to the complaining member. Members affected by actionable subsidies may refer the matter to the Dispute Settlement body. In the event that it is determined that such adverse effects exist, the subsidizing member must withdraw the subsidy or remove the adverse effects.

The third category involves non-actionable subsidies, which could either be non-specific subsidies, or specific subsidies involving assistance to industrial research and pre-competitive development activity, assistance to disadvantaged regions, or certain type of assistance for adapting existing facilities to new environmental requirements imposed by law and/or regulations. Where another member believes that an otherwise non-actionable subsidy is resulting in serious adverse effects to a domestic industry, it may seek a determination and recommendation on the matter.

One part of the agreement concerns the use of countervailing measures on subsidized imports. It sets out disciplines on the initiation of countervailing cases, investigations by national authorities and rules of evidence to ensure that all interested parties can present information and argument. Certain disciplines on the calculation of the amount of a subsidy are outlined as is the basis for the determination of injury to the domestic industry. The agreement would require that all relevant economic factors be taken into account in assessing the state of the industry and that a causal link be established between the subsidized imports and the alleged injury. Countervailing investigations shall be terminated immediately in cases where the amount of a subsidy is de minimis (the subsidy is less than 1 per cent ad valorem) or where the volume of subsidized imports, actual or potential, or the injury is negligible. Except under exceptional circumstances, investigations shall be concluded within one year after their initiation and in no case more than 18 months. All countervailing duties have to be terminated within 5 years of their imposition unless the authorities determine on the basis of a review that the expiry of the duty would be likely to lead to continuation or recurrence of subsidization and injury.

The agreement recognizes that subsidies may play an important role in economic development programmes of developing countries, and in the transformation of centrally-planned economies to market economies. Least-developed countries and developing countries that have less than $1,000 per capita GNP are thus exempted from disciplines on prohibited export subsidies, and have a time-bound exemption from other prohibited subsidies. For other developing countries, the export subsidy prohibition would take effect 8 years after the entry into force of the agreement establishing the WTO, and they have a time-bound (though fewer years than for poorer developing countries) exemption from the other prohibited subsidies. Countervailing investigation of a product originating from a developing-country member would be terminated if the overall level of subsidies does not exceed 2 per cent (and from certain developing countries 3 per cent) of the value of the product, or if the volume of the subsidized imports represents less than 4 per cent of the total imports for the like product in the importing signatory. For countries in the process of transformation from a centrally-planned into a market economy, prohibited subsidies shall be phased out within a period of seven years from the date of entry into force of the agreement.

In anticipation of the negotiation of special rules in the civil aircraft sector, under the subsidies agreement, civil aircraft products are not subject to the presumption that ad valorem subsidization in excess of 5 per cent causes serious prejudice to
the interests of other Members. In addition, the Agreement provides that where repayment of financing in the civil aircraft sector is dependent on the level of sales of a product and sales fall below expectations, this does not in itself give rise to such presumption of serious prejudice.

**Agreement on Safeguards**

Article XIX of the General Agreement allows a member to take a “safeguard” action to protect a specific domestic industry from an unforeseen increase of imports of any product which is causing, or which is likely to cause, serious injury to the industry.

The agreement breaks major ground in establishing a prohibition against so-called “grey area” measures, and in setting a “sunset clause” on all safeguard actions. The agreement stipulates that a member shall not seek, take or maintain any voluntary export restraints, orderly marketing arrangements or any other similar measures on the export or the import side. Any such measure in effect at the time of entry into force of the agreement would be brought into conformity with this agreement, or would have to be phased out within four years after the entry into force of the agreement establishing the WTO. An exception could be made for one specific measure for each importing member, subject to mutual agreement with the directly concerned member, where the phase-out date would be 31 December 1999.

All existing safeguard measures taken under Article XIX of the General Agreement 1947 shall be terminated not later than eight years after the date on which they were first applied or five years after the date of entry into force of the agreement establishing the WTO, whichever comes later.

The agreement sets out requirements for safeguard investigations which include public notice for hearings and other appropriate means for interested parties to present evidence, including on whether a measure would be in the public interest. In the event of critical circumstances, a provisional safeguard measure may be imposed based upon a preliminary determination of serious injury. The duration of such a provisional measure would not exceed 200 days.

The agreement sets out the criteria for “serious injury” and the factors which must be considered in determining the impact of imports. The safeguard measure should be applied only to the extent necessary to prevent or remedy serious injury and to facilitate adjustment. Where quantitative restrictions are imposed, they normally should not reduce the quantities of imports below the annual average for the last three representative years for which statistics are available, unless clear justification is given that a different level is necessary to prevent or remedy serious injury.

In principle, safeguard measures have to be applied irrespective of source. In cases in which a quota is allocated among equitable to all suppliers. The duration of the safeguard measure for a period of up to two years beyond the normal maximum. It can also apply a safeguard measure again to a product that had been subject to such an action after a period equal to half of the duration of the previous measure, subject to a non-application period of at least two years.

The agreement envisages consultations on compensation for safeguard measures. Where consultations are not successful, the affected members may withdraw equivalent concessions or other obligations under GATT 1994. However, such action is not allowed for the first three years of the safeguard measure if it conforms to the provisions of the agreement, and is taken as a result of an absolute increase in imports.

Safeguard measures would not be applicable to a product from a developing country member, if the share of the developing country member in the imports of the product concerned does not exceed 3 per cent, and that developing country members with less than 3 per cent import share collectively account for no more than 9 per cent of total imports of the product concerned. A developing country member has the right to extend the period of application of a safeguard measure for a period of up to two years beyond the normal maximum. It can also apply a safeguard measure again to a product that had been subject to such an action after a period equal to half of the duration of the previous measure, subject to a non-application period of at least two years.

The agreement would establish a Safeguards Committee which would oversee the operation of its provisions and, in particular, be responsible for surveillance of its commitments.

**General Agreement on Trade in Services**

The Services Agreement which forms part of the Final Act rests on three pillars. The first is a Framework Agreement containing basic obligations which apply to all member countries. The second concerns national schedules of commitments containing specific further national commitments which will be the subject of a continuing process of liberalization. The third is a number of annexes addressing the special situations of individual services sectors.

Part I of the basic agreement defines its scope - specifically, services supplied from the territory of one party to the territory of another; services supplied in the territory of one party to the consumers of any other (for example, tourism); services provided through the presence of service providing entities of one party in the territory of any other (for example, banking); and services provided by nationals of one party in the territory of any other (for example, construction projects or consultancies).

Part II sets out general obligations and disciplines. A basic most-favoured-nation (m.f.n.) obligation states that each party “shall accord immediately and unconditionally to services and service providers of any other Party, treatment no less favourable than it accords to like services and service providers of any other country.” However, it is recognized that m.f.n. treatment may not be possible for every service activity and, therefore, it is envisaged that parties may indicate specific m.f.n. exemptions. Conditions for such exemptions are included as an annex and provide for reviews after five years and a normal limitation of 10 years on their duration.

Transparency requirements include publication of all relevant laws and regulations. Provisions to facilitate the increased participation of developing countries in world services trade envis-
age negotiated commitments on access to technology, improvements in access to distribution channels and information networks and the liberalization of market access in sectors and modes of supply of export interest. The provisions covering economic integration are analogous to those in Article XXIV of GATT, requiring arrangements to have "substantial sectoral coverage" and to "provide for the absence or elimination of substantially all discrimination" between the parties.

Since domestic regulations, not border measures, provide the most significant influence on services trade, provisions spell out that all such measures of general application should be administered in a reasonable, objective and impartial manner. There would be a requirement that parties establish the means for prompt reviews of administrative decisions relating to the supply of services.

The agreement contains obligations with respect to recognition requirements (educational background, for instance) for the purpose of securing authorizations, licenses or certification in the services area. It encourages recognition requirements achieved through harmonization and internationally-agreed criteria. Further provisions state that parties are required to ensure that monopolies and exclusive service providers do not abuse their positions. Restrictive business practices should be subject to consultations between parties with a view to their elimination.

While parties are normally obliged not to restrict international transfers and payments for current transactions relating to commitments under the agreement, there are provisions allowing limited restrictions in the event of balance-of-payments difficulties. However, where such restrictions are imposed they would be subject to conditions; including that they are non-discriminatory, that they avoid unnecessary commercial damage to other parties and that they are of a temporary nature.

The agreement contains both general exceptions and security exceptions provisions which are similar to Articles XX and XXI of the GATT. It also envisages negotiations to the develop disciplines on trade-distorting subsidies in the services area.

Part V of the agreement contains institutional provisions, including consultation and dispute settlement and the establishment of a Council on Services. The responsibilities of the Council are set out in a Ministerial Decision.

The first of the annexes to the agreement concerns the movement of labour. It permits parties to negotiate specific commitments applying to the movement of people providing services under the agreement. It requires that people covered by a specific commitment shall be allowed to provide the service in accordance with the terms of the commitment. Nevertheless, the agreement would not apply to measures affecting employment, citizenship, residence or employment on a permanent basis.

The annex on financial services (largely banking and insurance) lays down the right of parties, notwithstanding other provisions, to take prudential measures, including for the protection of investors, deposit holders and policy holders, and to ensure the integrity and stability of the financial system. However, a further understanding on financial services would allow those participants who choose to do so to undertake commitments on financial services through a different method. With respect to market access, the understanding contains more detailed obligations on, among other things, monopoly rights, cross-border trade (certain insurance and reinsurance policy writing as well as financial data processing and transfer), access to capital, and the temporary entry of personnel.

The provisions on national treatment refer explicitly to access to payments and clearing systems operated by public entities and to official funding and refinancing facilities. They also relate to membership of, or participation in, self-regulatory bodies, securities or futures exchanges and clearing agencies.

The annex on telecommunications relates to measures which affect access to and use of public telecommunications services and networks. In particular, it requires that such access be accorded to another party, on reasonable and non-discriminatory terms, to permit the supply of a service included in its schedule. Conditions attached to the use of public networks should be no more than is necessary to safeguard the public service responsibilities of their operators, to protect the technical integrity of the network and to ensure that foreign service suppliers do not supply services unless permitted to do so through a specific commitment.

The annex also encourages technical cooperation to assist developing countries in the strengthening of their own domestic telecommunications sectors.

The annex on air-transport services excludes from the agreement's coverage traffic rights and directly related activities which might affect the negotiation of traffic rights. Nevertheless, the annex, in its current form, also states that the agreement should apply to aircraft repair and maintenance services, the marketing of air-transport services and computer-reservation services. The operation of the annex would be reviewed at least every five years.

In the final days of the services negotiations, three Decisions were taken - on Financial Services, Professional Services and the Movement of Natural Persons. The Decision on Financial Services confirmed that commitments in this sector would be implemented on an MFN basis, and permits Members to revise and finalize their schedules of commitments and their MFN exemptions six months after the entry into force of the Agreement.

Contrary to some media reports, the audio-visual and maritime services annexes did not finalize their schedules of commitments and their MFN exemptions. The annex to the Agreement on Trade-Related Aspects of Intellectual Property Rights, Including Trade in Counterfeit Goods

The agreement recognizes that widely varying standards in the protection and enforcement of intellectual property rights and the lack of a multilateral framework of principles, rules and disci-
plines dealing with international trade in counterfeit goods have been a growing source of tension in international economic relations. Rules and disciplines were needed to cope with these tensions. To that end, the agreement addresses the applicability of basic GATT principles and those of relevant international intellectual property agreements; the provision of adequate intellectual property rights; the provision of effective enforcement measures for those rights; multilateral dispute settlement; and transitional arrangements.

Part I of the agreement sets out general provisions and basic principles, notably a national-treatment commitment under which the nationals of other parties must be given treatment no less favourable than that accorded to a party's own nationals with regard to the protection of intellectual property. It also contains a most-favoured-nation clause, a novelty in an international intellectual property agreement, under which any advantage a party gives to the nationals of another country must be extended immediately and unconditionally to the nationals of all other parties, even if such treatment is more favourable than which it gives to its own nationals.

Part II addresses each intellectual property right in succession. With respect to copyright, parties are required to comply with the substantive provisions of the Berne Convention for the protection of literary and artistic works, in its latest version (Paris 1971), though they will not be obliged to protect moral rights as stipulated in Article 6bis of that Convention. It ensures that computer programs will be protected as literary works under the Berne Convention and lays down on what basis data bases should be protected by copyright. Important additions to existing international rules in the area of copyright and related rights are the provisions on rental rights. The draft requires authors of computer programmes and producers of sound recordings to be given the right to authorize or prohibit the commercial rental of their works immediately and unconditionally to the nationals of all other parties, even if such treatment is more favourable than which it gives to its own nationals.

Industrial designs are also protected under the agreement for a period of 10 years. Owners of protected designs would be able to prevent the manufacture, sale or importation of articles bearing or embodying a design which is a copy of the protected design. As regards patents, there is a general obligation to comply with the substantive provisions of the Paris Convention (1967). In addition, the agreement requires that 20-year patent protection be available for all inventions, whether of products or processes, in almost all fields of technology. Inventions may be excluded from patentability if their commercial exploitation is prohibited for reasons of public order or morality; otherwise, the permitted exclusions are for diagnostic, therapeutic and surgical methods, and for plants and (other than microorganisms) animals and essentially biological processes for the production of plants or animals (other than microbiological processes). Plant varieties, however, must be protectable either by patents or by a sui generis system (such as the breeder's rights provided in a UPOV Convention). Detailed conditions are laid down for compulsory licensing or governmental use of patents without the authorization of the patent owner. Rights conferred in respect of patents for processes must extend to the products directly obtained by the process; under certain conditions alleged infringers may be ordered by a court to prove that they have not used the patented process.

With respect to the protection of layout designs of integrated circuits, the agreement requires parties to provide protection on the basis of the Washington Treaty on Intellectual Property in Respect of Integrated Circuits which was opened for signature in May 1989, but with a number of additions: protection must be available for a minimum period of 10 years; the rights must extend to articles incorporating infringing layout designs; innocent infringers must be allowed to use or sell stock in hand or ordered before learning of the infringement against a suitable royalty; and compulsory licensing and government use is only allowed under a number of strict conditions.

Trade secrets and know-how which have commercial value must be protected against breach of confidence and other acts contrary to honest commercial practices. Test data submitted to governments in order to obtain marketing approval for pharmaceutical or agricultural chemicals must also be protected against unfair commercial use. The final section in this part of the agreement concerns anti-competitive practices in contractual licences. It provides for consultations between governments where there is reason to believe that licensing practices or conditions pertaining to intellectual property rights constitute an abuse of these rights and have an adverse effect on competition. Remedies against such abuses must be consistent with the other provisions of the agreement.

Part III of the agreement sets out the obligations of member governments to provide procedures and remedies under their domestic law to ensure that intellectual property rights may be effectively enforced, by foreign right holders as well as by their own nationals. Procedures should permit effective action against infringement of intellectual property rights but should be fair and equitable, not unnecessarily complicated or costly, and should not entail unreasonable time-limits or unwarranted delays. They should allow for judicial review of final administrative decisions. There is no obligation to put in place a judicial system distinct from that for the enforcement of laws in general, nor to give priority to the enforcement of intellectual property rights in the allocation of resources or staff.

The civil and administrative procedures and remedies spelled out in the text include provisions on evidence of proof, injunctions, damages and other remedies which would include the right of judicial authorities to order the disposal or destruction of infringing goods. Judicial authorities must also have the authority to order prompt and effective provisional measures, in particular...
where any delay is likely to cause irreparable harm to the right holder, or where evidence is likely to be destroyed. Further provisions relate to measures to be taken at the border for the suspension by customs authorities of release, into domestic circulation, of counterfeit and pirated goods. Finally, parties should provide for criminal procedures and penalties at least in cases of willful trademark counterfeiting or copyright piracy on a commercial scale. Remedies should include imprisonment and fines sufficient to act as a deterrent.

The agreement would establish a Council for Trade-Related Aspects of Intellectual Property Rights to monitor the operation of the agreement and governments’ compliance with it. Dispute settlement would take place under the integrated GATT dispute-settlement procedures as revised in the Uruguay Round.

With respect to the implementation of the agreement, it envisages a one-year transition period for developed countries to bring their legislation and practices into conformity. Developing countries and countries in the process of transformation from a centrally-planned into a market economy would have a five-year transition period, and least-developed countries 11 years. Developing countries which do not at present provide product patent protection in an area of technology would have up to 10 years to introduce such protection. However, in the case of pharmaceutical and agricultural chemical products, they must accept the filing of patent applications from the beginning of the transitional period. Though the patent need not be granted until the end of this period, the novelty of the invention is preserved as of the date of filing the application. If authorization for the marketing of the relevant pharmaceutical or agricultural chemical is obtained during the transitional period, the developing country concerned must offer an exclusive marketing right for the product for five years, or until a product patent is granted, whichever is shorter.

Subject to certain exceptions, the general rule is that the obligations in the agreement would apply to existing intellectual property rights as well as to new ones.

**Understanding on Rules and Procedures Governing the Settlement of Disputes**

The dispute settlement system of the GATT is generally considered to be one of the cornerstones of the multilateral trade order. The system has already been strengthened and streamlined as a result of reforms agreed following the Mid-Term Review Ministerial Meeting held in Montreal in December 1988. Disputes currently being dealt with by the Council are subject to these new rules, which include greater automaticity in decisions on the establishment, terms of reference and composition of panels, such that these decisions are no longer dependent upon the consent of the parties to a dispute. The Uruguay Round Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) will further strengthen the existing system significantly, extending the greater automaticity agreed in the Mid-Term Review to the adoption of the panels’ and a new Appellate Body’s findings. Moreover, the DSU will establish an integrated system permitting WTO Members to base their claims on any of the multilateral trade agreements included in the Annexes to the Agreement establishing the WTO. For this purpose, a Dispute Settlement Body (DSB) will exercise the authority of the General Council and the Councils and committees of the covered agreements.

The DSU emphasizes the importance of consultations in securing dispute resolution, requiring a Member to enter into consultations within 30 days of a request for consultations from another Member. If after 60 days from the request for consultations there is no settlement, the complaining party may request the establishment of a panel. Where consultations are denied, the complaining party may move directly to request a panel. The parties may voluntarily agree to follow alternative means of dispute settlement, including good offices, conciliation, mediation and arbitration.

Where a dispute is not settled through consultations, the DSU requires the establishment of a panel, at the latest, at the meeting of the DSB following that at which a request is made, unless the DSB decides by consensus against establishment. The DSU also sets out specific rules and deadlines for deciding the terms of reference and composition of panels. Standard terms of reference will apply unless the parties agree to special terms within 20 days of the panel’s establishment. And where the parties do not agree on the composition of the panel within the same 20 days, this can be decided by the Director-General. Panels normally consist of three persons of appropriate background and experience from countries not party to the dispute. The Secretariat will maintain a list of experts satisfying the criteria.

Panel procedures are set out in detail in the DSU. It is envisaged that a panel will normally complete its work within six months or, in cases of urgency, within three months. Panel reports may be considered by the DSB for adoption 20 days after they are issued to Members. Within 60 days of their issuance, they will be adopted, unless the DSB decides by consensus not to adopt the report or one of the parties notifies the DSB of its intention to appeal.

The concept of appellate review is an important new feature of the DSU. An Appellate Body will be established, composed of seven members, three of whom will serve on any one case. An appeal will be limited to issues of law covered in the panel report and legal interpretations developed by the panel. Appellate proceedings shall not exceed 60 days from the date a party formally notifies its decision to appeal. The resulting report shall be adopted by the DSB and unconditionally accepted by the parties within 30 days following its issuance to Members, unless the DSB decides by consensus against its adoption.

Once the panel report or the Appellate Body report is adopted, the party concerned will have to notify its intentions with respect to implementation of adopted recommendations. If it is impracticable to comply immediately, the party concerned shall be given a reasonable period of time, the latter to be decided either by agreement of the parties and approval by the DSB within 45 days of adoption of the report or through arbitration within 90 days of adoption. In any event, the DSB will keep the implementation under regular surveillance until the issue is resolved.

Further provisions set out rules for compensation or the suspension of concessions in the event of non-implementation. Within a specified time-frame, parties can enter into negotiations to agree on mutually acceptable compensation. Where this has not been agreed, a party to the dispute may request authorization of the DSB to suspend concessions or other obligations to the other party concerned. The DSB will grant such authorization within 30 days of the expiry of the agreed time-frame for implementation. Disagreements over the proposed level of suspension may be referred to arbitration. In principle, concessions should be suspended in the same sector as that in issue in the panel case. If this is not practicable or effective, the suspension can be made in a different sector of the same agreement. In turn, if this is not effective or practicable and if the circumstances are serious enough, the suspension of concessions may be made under another agreement.

One of the central provisions of the DSU reaffirms that Members shall not themselves make determinations of violations or suspend concessions, but shall make use of the dispute settlement rules and procedures of the DSU.

The DSU contains a number of provisions taking into account the specific interests of the developing and the least-developed countries. It also provides some special rules for the resolution of disputes which do not involve a violation of obligations under a
covered agreement but where a Member believes nevertheless that benefits are being nullified or impaired. Special decisions to be adopted by Ministers in 1994 foresee that the Montreal Dispute Settlement Rules which would otherwise have expired at the time of the April 1994 meeting are extended until the entry into force of the WTO. Another decision foresees that the new rules and procedures will be reviewed within four years after the entry into force of the WTO.

**Decision on achieving greater coherence in global economic policy-making**

This Decision will set out concepts and proposals with respect to achieving greater coherence in global economic policy-making. Among other things, the text notes that greater exchange rate stability based on more orderly underlying economic and financial conditions should contribute to "the expansion of trade, sustainable growth and development, and the timely correction of external imbalances". It recognizes that while difficulties-

whose origins lie outside the trade field cannot be redressed through measures taken in the trade field alone, there are nevertheless interlinkages between the different aspects of economic policy. Therefore, WTO is called upon to develop its cooperation with the international organizations responsible for monetary and financial matters. In particular, the Director-General of WTO is called upon to review, with his opposite numbers in the World Bank and the International Monetary Fund, the implications of WTO's future responsibilities for its cooperation with the Bretton Woods institutions.

**Trade Policy Review Mechanism**

An agreement confirms the Trade Policy Review Mechanism, introduced at the time of the Mid-term Review, and encourages greater transparency in national trade policy-making. A further Ministerial decision reforms the notification requirements and procedures generally.

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**New Agreement on Government Procurement**

In parallel with the conclusion of the Uruguay Round, negotiators agreed on 15 December 1993 a new Agreement on Government Procurement which will open up to international competition government purchases worth several hundred billion dollars each year.

The new agreement will supersede the current Code which has in fact since 1981. It will, for the first time, cover services, including construction services; procurement at the sub-central level (e.g. States, Provinces, Departments and Prefectures); and procurement by public utilities. The new agreement expands by some ten-fold the current coverage.

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

**National treatment**

The cornerstone of the new rules is national treatment: foreign suppliers and foreign goods and services must be given no less favourable treatment in government procurement than national suppliers and goods and services. Thus, the agreement deals in some detail with tendering procedures; the use of technical specifications in invitations to bid; the conditions of the qualifications of suppliers eligible to bid; the publication of invitations to tender; time limits for tendering and delivery; the contents of tender documentation provided to potential suppliers; the submission, receipt and opening of tenders; and awarding of contracts and ex post information regarding the award of contracts.

In addition to the 35 or so pages containing these rules to secure open and non-discriminatory procurement, the Agreement contains in 200 pages of Annexes lists of the procuring entities of participating governments which will be subject to the rules of the Agreement. Annex 1 lists central government entities. Annex 2 lists covered entities at the sub-central government level and Annex 3 other entities subject to the rules of the Agreement, such as public utilities. Annexes 4 and 5 define the services and construction services whose procurement by the covered entities is subject to the Agreement's rules.

The Agreement applies to contracts which are above certain thresholds in value. In the case of central government purchases of goods and services, the threshold is SDR 130,000 (some $176,000). For purchases of goods and services by sub-central government entities, the threshold varies but is generally in the region of SDR 200,000. For utilities, the threshold is generally in the area of SDR 400,000. For construction contracts, in general the threshold is SDR 5 million.

Although the Agreement is considered a balanced package as it stands, participants intend to further expand the coverage of commitments prior to its signature in April 1994 and subsequently prior to its entry into force at the beginning of 1996. This applies in particular to a negotiated settlement commitments to each other in these areas. Improvements will be applied on a non-discriminatory basis to all participants.

The new Agreement will constitute part of the WTO, being a plurilateral agreement that not all WTO Members will be asked to accept. The participants in the negotiations were: Austria, Canada, the EC, Finland, Hong Kong, Israel, Japan, the Republic of Korea, Norway, Sweden, Switzerland and the United States. Other governments will of course be able to negotiate their accession to the new Agreement.

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*Members of the negotiating group on government procurement with Chairman David Hayes at centre after reaching agreement on December 15, 1993. At his right is Ms. Annet Blank, secretary of the Group, and at left, second row, is Mr. Adrian Otten, Director of the Policy Affairs Division. (T. Tang/GATT)*
**Fiji, Brunei and Bahrain join GATT**

GATT membership has risen to **114** with the accession of Fiji on 16 November, Brunei Darussalam on 9 December and Bahrain on 13 December after separate notifications by their Governments to the Director-General, Mr. Peter Sutherland. The three countries have acceded under the terms of Article XXVI:5(c) of the General Agreement. Fiji, Brunei and Bahrain became independent from the United Kingdom in 1970, 1983 and in 1971, respectively. As from those years, they have had full autonomy in the conduct of their external commercial relations and have applied the General Agreement on a **de facto** basis. Under these circumstances, they needed only to notify the GATT Director-General that they wished to be deemed contracting parties, having met the conditions required by Article XXVI:5(c).

The recent accessions brought the number of Uruguay Round participants to **117** (the 114 contracting parties minus the former Yugoslavia plus the 4 non-member participants - Algeria, China, Honduras and Paraguay).

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**December Council**

Armenia, Latvia, Moldova and the Ukraine seek GATT membership

Trade representatives, still wary from the round-the-clock negotiations preceding the conclusion of the Uruguay Round, managed to return their attention to the regular GATT agenda at the final Council meeting for the year. At the 17 December meeting, the Council made the following decisions:

- Established separate working parties to examine the membership applications of four former Soviet republics - Armenia, Latvia, Moldova and the Ukraine.
- Granted observer status to the Arab Monetary Fund, a regional inter-governmental institution.
- Forwarded a request by Brazil, Chile, Colombia, El Salvador, Guatemala, Thailand and Zimbabwe for a dispute settlement panel to examine a US legislation concerning tobacco (Section 1106 of the US Omnibus Budget Reconciliation Act of 1993) to the 49th Session of the Contracting Parties (scheduled for 25-27 January 1994.). These tobacco-producing countries said the requirement for US manufacturers to use yearly a minimum of 75 per cent of locally-produced tobacco in the manufacture of cigarettes contravened GATT provisions (see Focus No. 103). The United States hoped for a solution to emerge from the Administration's ongoing consultations with members of the US Congress on this matter.
- After a discussion in which the parties concerned maintained their previous positions, the Council referred to the 49th Session of the Contracting Parties for further consideration the panel report on EEC Member States’ import regimes for bananas (see Focus No. 100).
- Adopted the reports of working parties that had examined the following regional agreements: EFTA-Turkey Free Trade Agreement, Free-Trade Agreements between Norway and Estonia, Latvia and Lithuania, Free-Trade Agreements between Sweden and Estonia, Latvia and Lithuania, Temporary arrangements on Trade and Economic Cooperation between Finland and Estonia, Latvia and Lithuania.
- Adopted the report of the Committee on Tariff Concessions, which noted recent agreement on a proposal by the Nordic countries that the Committee report to the Council twice yearly on its activities and include in its report detailed factual information on the status of waivers (ongoing negotiations and the submission of Harmonized System documentation by contracting parties under waivers). The Council agreed to grant a waiver to Tunisia for a temporary suspension of bound duties, and made decisions concerning requests by a number of contracting parties for waivers or extension of waivers related to the HS negotiations.
- Adopted a report by the Committee on Balance-of-Payments Restrictions on the conclusion, on 24 November, of its consultations with Nigeria. Nigeria had reported that since 1982, the number of product groups affected by restrictions had been reduced from 90 to 14 and that it would continue to relax the remaining measures with a view to disinvoking the provisions of GATT Article XVIII:B. The Committee also made a follow-up of its 1993 consultations with the Philippines, Turkey and Israel.

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**GATT CALENDAR**

The following is a tentative schedule of meetings in GATT:

**January 1994**

<table>
<thead>
<tr>
<th>Date</th>
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<tbody>
<tr>
<td>17-18</td>
<td>Working Party on Accession of Ecuador</td>
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<td>19-20</td>
<td>Meat Market Analysis Group</td>
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<tr>
<td>20-21</td>
<td>Council TPRM: Turkey</td>
</tr>
<tr>
<td>25-26</td>
<td>Forty-Ninth Session of the Contracting Parties</td>
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**February 1994**

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<td>Council TPRM: Senegal</td>
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<td>1-2</td>
<td>WP on Acc of Mongolia</td>
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<td>2-3</td>
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<td>7-8</td>
<td>Council TPRM: Peru</td>
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<td>9-10</td>
<td>Council TPRM: Iceland</td>
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<tr>
<td>16-17</td>
<td>Council TPRM: United States</td>
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</tbody>
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**MFA extended**

The GATT Textiles Committee, on 9 December 1993, extended for another 12 months - until 31 December 1994 - the Multifibre Arrangement (MFA) in view of the fact that at that time, the Uruguay Round had not yet been completed.

The MFA has been governing most of world’s trade in textiles and clothing since 1974. The Uruguay Round agreement on textiles and clothing aims to integrate the sector back to GATT on the basis of strengthened rules and disciplines.

**Uruguay Round sweatshirts and t-shirts are available at the GATT Publications Office, SwF25, respectively.**

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