**LECTURES**

**International Trade Law**

The World Trade Organization (WTO) is the only global international organization dealing with the rules of trade between nations. At its heart are the WTO agreements, negotiated and signed by the bulk of the world’s trading nations and ratified in their parliaments. The goal is to ensure that trade flows as smoothly, predictably and freely as possible.

There are a number of ways of looking at the World Trade Organization. It is an organization for trade opening. It is a forum for governments to negotiate trade agreements. It is a place for them to settle trade disputes. It operates a system of trade rules. Essentially, the WTO is a place where member governments try to sort out the trade problems they face with each other.

The WTO was born out of negotiations, and everything the WTO does is the result of negotiations. The bulk of the WTO’s current work comes from the 1986–94 negotiations called the Uruguay Round and earlier negotiations under the General Agreement on Tariffs and Trade (GATT). The WTO is currently the host to new negotiations, under the ‘Doha Development Agenda’ launched in 2001.

Where countries have faced trade barriers and wanted them lowered, the negotiations have helped to open markets for trade. But the WTO is not just about opening markets, and in some circumstances its rules support maintaining trade barriers — for example, to protect consumers or prevent the spread of disease.

At its heart are the WTO agreements, negotiated and signed by the bulk of the world’s trading nations. These documents provide the legal ground rules for international commerce. They are essentially contracts, binding governments to keep their trade policies within agreed limits. Although negotiated and signed by governments, the goal is to help producers of goods and services, exporters, and importers conduct their business, while allowing governments to meet social and environmental objectives.

The system’s overriding purpose is to help trade flow as freely as possible — so long as there are no undesirable side effects — because this is important for economic development and well-being. That partly means removing obstacles. It also means ensuring that individuals, companies and governments know what the trade rules are around the world, and giving them the confidence that there will be no sudden changes of policy. In other words, the rules have to be ‘transparent’ and predictable.

Trade relations often involve conflicting interests. Agreements, including those painstakingly negotiated in the WTO system, often need interpreting. The most harmonious way to settle these differences is through some neutral procedure based on an agreed legal foundation. That is the purpose behind the dispute settlement process written into the WTO agreements.

The WTO is run by its member governments. All major decisions are made by the membership as a whole, either by ministers (who usually meet at least once every two years) or by their ambassadors or delegates (who meet regularly in Geneva).

While the WTO is driven by its member states, it could not function without its Secretariat to coordinate the activities. The Secretariat employs over 600 staff, and its experts — lawyers, economists, statisticians and communications experts — assist WTO members on a daily basis to ensure, among other things, that negotiations progress smoothly, and that the rules of international trade are correctly applied and enforced.

Trade negotiations

The WTO agreements cover goods, services and intellectual property. They spell out the principles of liberalization, and the permitted exceptions. They include individual countries’ commitments to lower customs tariffs and other trade barriers, and to open and keep open services markets. They set procedures for settling disputes. These agreements are not static; they are renegotiated from time to time and new agreements can be added to the package. Many are now being negotiated under the Doha Development Agenda, launched by WTO trade ministers in Doha, Qatar, in November 2001.

Implementation and monitoring

WTO agreements require governments to make their trade policies transparent by notifying the WTO about laws in force and measures adopted. Various WTO councils and committees seek to ensure that these requirements are being followed and that WTO agreements are being properly implemented. All WTO members must undergo periodic scrutiny of their trade policies and practices, each review containing reports by the country concerned and the WTO Secretariat.

Dispute settlement

The WTO’s procedure for resolving trade quarrels under the Dispute Settlement Understanding is vital for enforcing the rules and therefore for ensuring that trade flows smoothly. Countries bring disputes to the WTO if they think their rights under the agreements are being infringed. Judgements by specially appointed independent experts are based on interpretations of the agreements and individual countries’ commitments.

Building trade capacity

WTO agreements contain special provision for developing countries, including longer time periods to implement agreements and commitments, measures to increase their trading opportunities, and support to help them build their trade capacity, to handle disputes and to implement technical standards. The WTO organizes hundreds of technical cooperation missions to developing countries annually. It also holds numerous courses each year in Geneva for government officials. Aid for Trade aims to help developing countries develop the skills and infrastructure needed to expand their trade.

Outreach

The WTO maintains regular dialogue with non-governmental organizations, parliamentarians, other international organizations, the media and the general public on various aspects of the WTO and the ongoing Doha negotiations, with the aim of enhancing cooperation and increasing awareness of WTO activities.

The WTO agreements are lengthy and complex because they are legal texts covering a wide range of activities. But a number of simple, fundamental principles run throughout all of these documents. These principles are the foundation of the multilateral trading system.

Non-discrimination

A country should not discriminate between its trading partners and it should not discriminate between its own and foreign products, services or nationals.

More open

Lowering trade barriers is one of the most obvious ways of encouraging trade; these barriers include customs duties (or tariffs) and measures such as import bans or quotas that restrict quantities selectively.

Predictable and transparent

Foreign companies, investors and governments should be confident that trade barriers should not be raised arbitrarily. With stability and predictability, investment is encouraged, jobs are created and consumers can fully enjoy the benefits of competition — choice and lower prices.

More competitive

Discouraging ‘unfair’ practices, such as export subsidies and dumping products at below cost to gain market share; the issues are complex, and the rules try to establish what is fair or unfair, and how governments can respond, in particular by charging additional import duties calculated to compensate for damage caused by unfair trade.

More beneficial for less developed countries

Giving them more time to adjust, greater flexibility and special privileges; over three-quarters of WTO members are developing countries and countries in transition to market economies. The WTO agreements give them transition periods to adjust to the more unfamiliar and, perhaps, difficult WTO provisions.

Protect the environment

The WTO’s agreements permit members to take measures to protect not only the environment but also public health, animal health and plant health. However, these measures must be applied in the same way to both national and foreign businesses. In other words, members must not use environmental protection measures as a means of disguising protectionist policies.

The World Trade Organization — the WTO — is the international organization whose primary purpose is to open trade for the benefit of all.

The WTO provides a forum for negotiating agreements aimed at reducing obstacles to international trade and ensuring a level playing field for all, thus contributing to economic growth and development. The WTO also provides a legal and institutional framework for the implementation and monitoring of these agreements, as well as for settling disputes arising from their interpretation and application. The current body of trade agreements comprising the WTO consists of 16 different multilateral agreements (to which all WTO members are parties) and two different plurilateral agreements (to which only some WTO members are parties).

Over the past 60 years, the WTO, which was established in 1995, and its predecessor organization the GATT have helped to create a strong and prosperous international trading system, thereby contributing to unprecedented global economic growth. The WTO currently has 164 members, of which 117 are developing countries or separate customs territories. WTO activities are supported by a Secretariat of some 700 staff, led by the WTO Director-General. The Secretariat is located in Geneva, Switzerland, and has an annual budget of approximately CHF 200 million ($180 million, €130 million). The three official languages of the WTO are English, French and Spanish.

Decisions in the WTO are generally taken by consensus of the entire membership. The highest institutional body is the [Ministerial Conference](https://www.wto.org/english/thewto_e/minist_e/minist_e.htm), which meets roughly every two years. A [General Council](https://www.wto.org/english/thewto_e/gcounc_e/gcounc_e.htm) conducts the organization's business in the intervals between Ministerial Conferences. Both of these bodies comprise all members. Specialised subsidiary bodies (Councils, Committees, Sub-committees), also comprising all members, administer and monitor the implementation by members of the various WTO agreements.

More specifically, the WTO's main activities are:

— negotiating the reduction or elimination of obstacles to trade (import tariffs, other barriers to trade) and agreeing on rules governing the conduct of international trade (e.g. antidumping, subsidies, product standards, etc.)  
— administering and monitoring the application of the WTO's agreed rules for trade in goods, trade in services, and trade-related intellectual property rights  
— monitoring and reviewing the trade policies of our members, as well as ensuring transparency of regional and bilateral trade agreements  
— settling disputes among our members regarding the interpretation and application of the agreements   
— building capacity of developing country government officials in international trade matters  
— assisting the process of accession of some 30 countries who are not yet members of the organization   
— conducting economic research and collecting and disseminating trade data in support of the WTO's other main activities  
— explaining to and educating the public about the WTO, its mission and its activities.

The WTO's founding and guiding principles remain the pursuit of open borders, the guarantee of most-favoured-nation principle and non-discriminatory treatment by and among members, and a commitment to transparency in the conduct of its activities. The opening of national markets to international trade, with justifiable exceptions or with adequate flexibilities, will encourage and contribute to sustainable development, raise people's welfare, reduce poverty, and foster peace and stability. At the same time, such market opening must be accompanied by sound domestic and international policies that contribute to economic growth and development according to each member's needs and aspirations.

From the early days of the Silk Road to the creation of the General Agreement on Tariffs and Trade (GATT) and the birth of the WTO, trade has played an important role in supporting economic development and promoting peaceful relations among nations. This page traces the history of trade, from its earliest roots to the present day.

## The early days of trade

Trade and foreign policy have been intertwined throughout history, with foreign policy often tailored to promote trade interests.  In the 3rd century BC, during the Han Dynasty, China used its military power to maintain the Silk Road for its value for trade.  In the year 30 BC, Rome conquered Egypt in large part to have a better supply of grain.

* [Trade and foreign policy have always been intertwined](https://www.wto.org/english/news_e/news18_e/ddgra_09feb18_e.htm) — speech delivered by DDG Wolff

## Before the GATT

A single page of text from 1941 is a powerful reminder that the desire for peace and security drove the creation of today’s global economic system. The global rules that underpin our multilateral economic system were a direct reaction to the Second World War and a desire for it to never be repeated.

* [Trade in War’s Darkest Hour — Churchill and Roosevelt’s daring 1941 Atlantic Meeting](https://www.wto.org/english/thewto_e/history_e/tradewardarkhour41_e.htm) — article by Hunter Nottage

## How the GATT came into being

The lead negotiators for the creation of the GATT profoundly disagreed on the level of ambition to be achieved but finally overcame their differences.

* [Clash of the GATT negotiators](https://www.wto.org/english/tratop_e/gatt_e/clash_gatt_negotiators_e.htm) article by Roy Santana
* [GATT 1947: How Stalin and the Marshall Plan helped to conclude the negotiations](https://www.wto.org/english/tratop_e/gatt_e/stalin_marshall_conclude_negotiations_e.htm) article by Roy Santana
* [GATT 1947 and the gruelling task of signing](https://www.wto.org/english/tratop_e/gatt_e/task_of_signing_e.htm) article by Roy Santana
* [1947 press release announcing the signing of the GATT](http://sul-derivatives.stanford.edu/derivative?CSNID=90260240&mediaType=application/pdf)
* [PIIE’s Trade Talks podcast: Happy 70th GATTiversary — The Origins of Multilateral Trade](https://www.wto.org/english/news_e/news17_e/gen_30oct17_e.htm)

## The GATT years

From 1948 to 1994, the GATT provided the rules for much of world trade and presided over periods that saw some of the highest growth rates in international commerce. It seemed well-established but throughout those 47 years, it was a provisional agreement and organization.

* [The GATT years: from Havana to Marrakesh](https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact4_e.htm)
* [The Uruguay Round](https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact5_e.htm)
* [GATT documents](https://www.wto.org/english/docs_e/gattdocs_e.htm)
* [GATT bilateral negotiating material](https://www.wto.org/english/docs_e/gattbilaterals_e/indexbyround_e.htm)
* [GATT disputes](https://www.wto.org/english/tratop_e/dispu_e/gt47ds_e.htm)

## Birth of the WTO

The WTO’s creation on 1 January 1995 marked the biggest reform of international trade since the end of the Second World War. Whereas the GATT mainly dealt with trade in goods, the WTO and its agreements also cover trade in services and intellectual property. The birth of the WTO also created new procedures for the settlement of disputes.

* [Renato Ruggiero succeeds Peter Sutherland as WTO Director-General](https://www.wto.org/english/news_e/pres95_e/3_8.htm)— March 1995

## 50th anniversary of the multilateral trading system

1998 marked the 50th anniversary of the multilateral trading system.

* [Golden jubilee of the multilateral trading system](https://www.wto.org/english/news_e/pres98_e/pr88_e.htm)
* [WTO holds 2nd Ministerial, celebrates 50th anniversary of trading system](https://www.wto.org/english/res_e/focus_e/focus30_e.pdf)

## Doha Round

The Doha Round was launched in 2001 to achieve major reform of the international trading system through the introduction of lower trade barriers and revised trade rules. A fundamental objective of the Doha Development Agenda is to improve the trading prospects of developing countries.

* [Launch of the Doha Round](https://www.wto.org/english/tratop_e/dda_e/dda_e.htm)

## Major achievements

Over the past 20 years, WTO members have agreed major updates to the WTO rulebook to improve the flow of global trade. The WTO's membership has expanded to [164 members](https://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm), representing over 98% of international trade. In 2015, the WTO reached a significant milestone with the receipt of its 500th trade dispute for settlement.

* [Revised WTO Agreement on Government Procurement enters into force](https://www.wto.org/english/news_e/news14_e/gpro_07apr14_e.htm)
* [WTO disputes reach 500 mark](https://www.wto.org/english/news_e/news15_e/ds500rfc_10nov15_e.htm)
* [Expansion of the Information Technology Agreement](https://www.wto.org/english/news_e/news15_e/ita_16dec15_e.htm)
* [TRIPS Agreement amended to ease access to affordable medicine](https://www.wto.org/english/news_e/news17_e/trip_23jan17_e.htm)
* [Trade Facilitation Agreement enters into force](https://www.wto.org/english/news_e/news17_e/fac_31jan17_e.htm)

## WTO ministerial conferences

The Ministerial Conference is the highest decision-making body of the WTO and usually meets every two years. The WTO's first Ministerial Conference was held in Singapore in December 1996. Its most recent — the 11th — was held in Buenos Aires in December 2017.

* [Ministerial conferences](https://www.wto.org/english/thewto_e/minist_e/minist_e.htm)

## GATT and WTO Directors-General

The first Director-General of the GATT was Eric Wyndham White, who held office from  1948 to 1968. The current Director-General of the WTO is Roberto Azevêdo, who began a second four-year term in September 2017.

* [WTO Director-General: Roberto Azevêdo](https://www.wto.org/english/thewto_e/dg_e/dg_e.htm)
* [Previous GATT and WTO Directors-General](https://www.wto.org/english/thewto_e/dg_e/exdgs_e.htm)

## 20th anniversary of the WTO

In 2015, the WTO commemorated its 20th anniversary. During the year, a series of events were held, such as book launches, conferences, exhibitions and other specially organized activities, focusing on various aspects of the WTO's work over the past two decades.

* [Azevêdo: WTO marks 20 years of helping boost trade growth](https://www.wto.org/english/news_e/news15_e/dgra_01jan15_e.htm)
* [20th anniversary activities](https://www.wto.org/english/thewto_e/20y_e/20y_e.htm)

Much of the history of those 47 years was written in Geneva. But it also traces a journey that spanned the continents, from that hesitant start in 1948 in Havana (Cuba), via Annecy (France), Torquay (UK), Tokyo (Japan), Punta del Este (Uruguay), Montreal (Canada), Brussels (Belgium) and finally to Marrakesh (Morocco) in 1994. During that period, the trading system came under GATT, salvaged from the aborted attempt to create the ITO. GATT helped establish a strong and prosperous multilateral trading system that became more and more liberal through [rounds of trade negotiations](https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact4_e.htm" \l "rounds). But by the 1980s the system needed a thorough overhaul. This led to the [Uruguay Round](https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact5_e.htm), and ultimately to the WTO.

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## GATT: ‘provisional’ for almost half a century

From 1948 to 1994, the General Agreement on Tariffs and Trade (GATT) provided the rules for much of world trade and presided over periods that saw some of the highest growth rates in international commerce. It seemed well-established, but throughout those 47 years, it was a provisional agreement and organization.

The original intention was to create a third institution to handle the trade side of international economic cooperation, joining the two “Bretton Woods” institutions, the World Bank and the International Monetary Fund. Over 50 countries participated in negotiations to create an International Trade Organization (ITO) as a specialized agency of the United Nations. The draft ITO Charter was ambitious. It extended beyond world trade disciplines, to include rules on employment, commodity agreements, restrictive business practices, international investment, and services. The aim was to create the ITO at a UN Conference on Trade and Employment in Havana, Cuba in 1947.

Meanwhile, 15 countries had begun talks in December 1945 to reduce and bind customs tariffs. With the Second World War only recently ended, they wanted to give an early boost to trade liberalization, and to begin to correct the legacy of protectionist measures which remained in place from the early 1930s.

This first round of negotiations resulted in a package of trade rules and 45,000 tariff concessions affecting $10 billion of trade, about one fifth of the world’s total. The group had expanded to 23 by the time the deal was signed on 30 October 1947. The tariff concessions came into effect by 30 June 1948 through a “Protocol of Provisional Application”. And so the new General Agreement on Tariffs and Trade was born, with 23 founding members (officially “contracting parties”).

The 23 were also part of the larger group negotiating the ITO Charter. One of the provisions of GATT says that they should accept some of the trade rules of the draft. This, they believed, should be done swiftly and “provisionally” in order to protect the value of the tariff concessions they had negotiated. They spelt out how they envisaged the relationship between GATT and the ITO Charter, but they also allowed for the possibility that the ITO might not be created. They were right.

The Havana conference began on 21 November 1947, less than a month after GATT was signed. The ITO Charter was finally agreed in Havana in March 1948, but ratification in some national legislatures proved impossible. The most serious opposition was in the US Congress, even though the US government had been one of the driving forces. In 1950, the United States government announced that it would not seek Congressional ratification of the Havana Charter, and the ITO was effectively dead. So, the GATT became the only multilateral instrument governing international trade from 1948 until the WTO was established in 1995.

For almost half a century, the GATT’s basic legal principles remained much as they were in 1948. There were additions in the form of a section on development added in the 1960s and “[plurilateral](https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm10_e.htm)” agreements (i.e. with voluntary membership) in the 1970s, and efforts to reduce tariffs further continued. Much of this was achieved through a series of multilateral negotiations known as “trade rounds” — the biggest leaps forward in international trade liberalization have come through these rounds which were held under GATT’s auspices.

In the early years, the GATT trade rounds concentrated on further reducing tariffs. Then, the Kennedy Round in the mid-sixties brought about a GATT Anti-Dumping Agreement and a section on development. The Tokyo Round during the seventies was the first major attempt to tackle trade barriers that do not take the form of tariffs, and to improve the system. The eighth, the Uruguay Round of 1986-94, was the last and most extensive of all. It led to the WTO and a new set of agreements.

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## The Tokyo Round: a first try to reform the system

The Tokyo Round lasted from 1973 to 1979, with 102 countries participating. It continued GATT’s efforts to progressively reduce tariffs. The results included an average one-third cut in customs duties in the world’s nine major industrial markets, bringing the average tariff on industrial products down to 4.7%. The tariff reductions, phased in over a period of eight years, involved an element of “harmonization” — the higher the tariff, the larger the cut, proportionally.

In other issues, the Tokyo Round had mixed results. It failed to come to grips with the fundamental problems affecting farm trade and also stopped short of providing a modified agreement on “safeguards” (emergency import measures). Nevertheless, a series of agreements on non-tariff barriers did emerge from the negotiations, in some cases interpreting existing GATT rules, in others breaking entirely new ground. In most cases, only a relatively small number of (mainly industrialized) GATT members subscribed to these agreements and arrangements. Because they were not accepted by the full GATT membership, they were often informally called “codes”.

They were not multilateral, but they were a beginning. Several codes were eventually amended in the Uruguay Round and turned into multilateral commitments accepted by all WTO members. Only four remained “plurilateral” — those on government procurement, bovine meat, civil aircraft and dairy products. In 1997 WTO members agreed to terminate the bovine meat and dairy agreements, leaving only two.

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## Did GATT succeed?

GATT was provisional with a limited field of action, but its success over 47 years in promoting and securing the liberalization of much of world trade is incontestable. Continual reductions in tariffs alone helped spur very high rates of world trade growth during the 1950s and 1960s — around 8% a year on average. And the momentum of trade liberalization helped ensure that trade growth consistently out-paced production growth throughout the GATT era, a measure of countries’ increasing ability to trade with each other and to reap the benefits of trade. The rush of new members during the Uruguay Round demonstrated that the multilateral trading system was recognized as an anchor for development and an instrument of economic and trade reform.

But all was not well. As time passed new problems arose. The Tokyo Round in the 1970s was an attempt to tackle some of these but its achievements were limited. This was a sign of difficult times to come.

GATT’s success in reducing tariffs to such a low level, combined with a series of economic recessions in the 1970s and early 1980s, drove governments to devise other forms of protection for sectors facing increased foreign competition. High rates of unemployment and constant factory closures led governments in Western Europe and North America to seek bilateral market-sharing arrangements with competitors and to embark on a subsidies race to maintain their holds on agricultural trade. Both these changes undermined GATT’s credibility and effectiveness.

The problem was not just a deteriorating trade policy environment. By the early 1980s the General Agreement was clearly no longer as relevant to the realities of world trade as it had been in the 1940s. For a start, world trade had become far more complex and important than 40 years before: the globalization of the world economy was underway, trade in services — not covered by GATT rules — was of major interest to more and more countries, and international investment had expanded. The expansion of services trade was also closely tied to further increases in world merchandise trade. In other respects, GATT had been found wanting. For instance, in agriculture, loopholes in the multilateral system were heavily exploited, and efforts at liberalizing agricultural trade met with little success. In the textiles and clothing sector, an exception to GATT’s normal disciplines was negotiated in the 1960s and early 1970s, leading to the [Multifibre Arrangement](https://www.wto.org/english/tratop_e/texti_e/texti_e.htm). Even GATT’s institutional structure and its dispute settlement system were causing concern.

These and other factors convinced GATT members that a new effort to reinforce and extend the multilateral system should be attempted. That effort resulted in the [Uruguay Round](https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact5_e.htm), the Marrakesh Declaration, and the creation of the WTO.

## GATT trade rounds

|  |  |  |  |
| --- | --- | --- | --- |
| **Year** | **Place/name** | **Subjects covered** | **Countries** |
| 1947 | **Geneva** | Tariffs | 23 |
| 1949 | **Annecy** | Tariffs | 13 |
| 1951 | **Torquay** | Tariffs | 38 |
| 1956 | **Geneva** | Tariffs | 26 |
| 1960-1961 | **Geneva** Dillon Round | Tariffs | 26 |
| 1964-1967 | **Geneva** Kennedy Round | Tariffs and anti-dumping measures | 62 |
| 1973-1979 | **Geneva** Tokyo Round | Tariffs, non-tariff measures, “framework” agreements | 102 |
| 1986-1994 | **Geneva** Uruguay Round | Tariffs, non-tariff measures, rules, services, intellectual property, dispute settlement, textiles, agriculture, creation of WTO, etc | 123 |

The WTO’s creation on 1 January 1995 marked the biggest reform of international trade since after the Second World War. It also brought to reality — in an updated form — the failed attempt in 1948 to create an International Trade Organization.

It took seven and a half years, almost twice the original schedule. By the end, 123 countries were taking part. It covered almost all trade, from toothbrushes to pleasure boats, from banking to telecommunications, from the genes of wild rice to AIDS treatments. It was quite simply the largest trade negotiation ever, and most probably the largest negotiation of any kind in history.

At times it seemed doomed to fail. But in the end, the Uruguay Round brought about the biggest reform of the world’s trading system since GATT was created at the end of the Second World War. And yet, despite its troubled progress, the Uruguay Round did see some early results. Within only two years, participants had agreed on a package of cuts in import duties on tropical products — which are mainly exported by developing countries. They had also revised the rules for settling disputes, with some measures implemented on the spot. And they called for regular reports on GATT members’ trade policies, a move considered important for making trade regimes transparent around the world.

The seeds of the Uruguay Round were sown in November 1982 at a ministerial meeting of GATT members in Geneva. Although the ministers intended to launch a major new negotiation, the conference stalled on agriculture and was widely regarded as a failure. In fact, the work programme that the ministers agreed formed the basis for what was to become the Uruguay Round negotiating agenda.

Nevertheless, it took four more years of exploring, clarifying issues and painstaking consensus-building, before ministers agreed to launch the new round. They did so in September 1986, in Punta del Este, Uruguay. They eventually accepted a negotiating agenda that covered virtually every outstanding trade policy issue. The talks were going to extend the trading system into several new areas, notably trade in services and intellectual property, and to reform trade in the sensitive sectors of agriculture and textiles. All the original GATT articles were up for review. It was the biggest negotiating mandate on trade ever agreed, and the ministers gave themselves four years to complete it.

Two years later, in December 1988, ministers met again in Montreal, Canada, for what was supposed to be an assessment of progress at the round’s half-way point. The purpose was to clarify the agenda for the remaining two years, but the talks ended in a deadlock that was not resolved until officials met more quietly in Geneva the following April.

Despite the difficulty, during the Montreal meeting, ministers did agree a package of early results. These included some concessions on market access for tropical products — aimed at assisting developing countries — as well as a streamlined [dispute settlement system](https://www.wto.org/english/thewto_e/whatis_e/tif_e/disp1_e.htm), and the [Trade Policy Review Mechanism](https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm11_e.htm) which provided for the first comprehensive, systematic and regular reviews of national trade policies and practices of GATT members. The round was supposed to end when ministers met once more in Brussels, in December 1990. But they disagreed on how to reform agricultural trade and decided to extend the talks. The Uruguay Round entered its bleakest period.

Despite the poor political outlook, a considerable amount of technical work continued, leading to the first draft of a final legal agreement. This draft “Final Act” was compiled by the then GATT director-general, Arthur Dunkel, who chaired the negotiations at officials’ level. It was put on the table in Geneva in December 1991. The text fulfilled every part of the Punta del Este mandate, with one exception — it did not contain the participating countries’ lists of commitments for cutting import duties and opening their services markets. The draft became the basis for the final agreement.

Over the following two years, the negotiations lurched between impending failure, to predictions of imminent success. Several deadlines came and went. New points of major conflict emerged to join agriculture: services, market access, anti-dumping rules, and the proposed creation of a new institution. Differences between the United States and European Union became central to hopes for a final, successful conclusion.

In November 1992, the US and EU settled most of their differences on agriculture in a deal known informally as the “Blair House accord”. By July 1993 the “Quad” (US, EU, Japan and Canada) announced significant progress in negotiations on tariffs and related subjects (“market access”). It took until 15 December 1993 for every issue to be finally resolved and for negotiations on market access for goods and services to be concluded (although some final touches were completed in talks on market access a few weeks later). On 15 April 1994, the deal was signed by ministers from most of the 123 participating governments at a meeting in Marrakesh, Morocco.

The delay had some merits. It allowed some negotiations to progress further than would have been possible in 1990: for example some aspects of services and intellectual property, and the creation of the WTO itself. But the task had been immense, and negotiation-fatigue was felt in trade bureaucracies around the world. The difficulty of reaching agreement on a complete package containing almost the entire range of current trade issues led some to conclude that a negotiation on this scale would never again be possible. Yet, the Uruguay Round agreements contain timetables for new negotiations on a number of topics. And by 1996, some countries were openly calling for a new round early in the next century. The response was mixed; but the Marrakesh agreement did already include commitments to reopen negotiations on agriculture and services at the turn of the century. These began in early 2000 and were incorporated into the Doha Development Agenda in late 2001.

## What happened to GATT?

The WTO replaced GATT as an international organization, but the General Agreement still exists as the WTO’s umbrella treaty for trade in goods, updated as a result of the Uruguay Round negotiations. Trade lawyers distinguish between GATT 1994, the updated parts of GATT, and GATT 1947, the original agreement which is still the heart of GATT 1994. Confusing? For most of us, it’s enough to refer simply to “GATT”.

The post-Uruguay Round built-in agenda

Many of the Uruguay Round agreements set timetables for future work. Part of this “built-in agenda” started almost immediately. In some areas, it included new or further negotiations. In other areas, it included assessments or reviews of the situation at specified times. Some negotiations were quickly completed, notably in basic telecommunications, financial services. (Member governments also swiftly agreed a deal for freer trade in information technology products, an issue outside the “built-in agenda”.)

The agenda originally built into the Uruguay Round agreements has seen additions and modifications. A number of items are now part of the Doha Agenda, some of them updated.

There were well over 30 items in the original built-in agenda. This is a selection of highlights:

1996

* Maritime services: market access negotiations to end (30 June 1996, suspended to 2000, now part of Doha Development Agenda)
* Services and environment: deadline for working party report (ministerial conference, December 1996)
* Government procurement of services: negotiations start

1997

* Basic telecoms: negotiations end (15 February)
* Financial services: negotiations end (30 December)
* Intellectual property, creating a multilateral system of notification and registration of geographical indications for wines: negotiations start, now part of Doha Development Agenda

1998

* Textiles and clothing: new phase begins 1 January
* Services (emergency safeguards): results of negotiations on emergency safeguards to take effect (by 1 January 1998, deadline now March 2004)
* Rules of origin: Work programme on harmonization of rules of origin to be completed (20 July 1998)
* Government procurement: further negotiations start, for improving rules and procedures (by end of 1998)
* Dispute settlement: full review of rules and procedures (to start by end of 1998)

1999

* Intellectual property: certain exceptions to patentability and protection of plant varieties: review starts

2000

* Agriculture: negotiations start, now part of Doha Development Agenda
* Services: new round of negotiations start, now part of Doha Development Agenda
* Tariff bindings: review of definition of “principle supplier” having negotiating rights under GATT Art 28 on modifying bindings
* Intellectual property: first of two-yearly reviews of the implementation of the agreement

2002

* Textiles and clothing: new phase begins 1 January

2005

* Textiles and clothing: full integration into GATT and agreement expires 1 January

# Membership, alliances and bureaucracy

All members have joined the system as a result of negotiation and therefore membership means a balance of rights and obligations. They enjoy the privileges that other member-countries give to them and the security that the trading rules provide. In return, they had to make commitments to open their markets and to abide by the rules — those commitments were the result of the membership (or “accession”) negotiations. Countries negotiating membership are WTO “observers”.

**What is the World Trade Organization?**

Simply put: Is it a bird, is it a plane?

There are a number of ways of looking at the WTO. It’s an organization for liberalizing trade. It’s a forum for governments to negotiate trade agreements. It’s a place for them to settle trade disputes. It operates a system of trade rules. (But it’s not Superman, just in case anyone thought it could solve — or cause — all the world’s problems!)

Above all, it’s a negotiating forum …  Essentially, the WTO is a place where member governments go, to try to sort out the trade problems they face with each other. The first step is to talk. The WTO was born out of negotiations, and everything the WTO does is the result of negotiations. The bulk of the WTO's current work comes from the 1986-94 negotiations called the Uruguay Round and earlier negotiations under the General Agreement on Tariffs and Trade (GATT). The WTO is currently the host to new negotiations, under the “Doha Development Agenda” launched in 2001.

Where countries have faced trade barriers and wanted them lowered, the negotiations have helped to liberalize trade. But the WTO is not just about liberalizing trade, and in some circumstances its rules support maintaining trade barriers — for example to protect consumers or prevent the spread of disease.

It’s a set of rules …  At its heart are the WTO agreements, negotiated and signed by the bulk of the world’s trading nations. These documents provide the legal ground-rules for international commerce. They are essentially contracts, binding governments to keep their trade policies within agreed limits. Although negotiated and signed by governments, the goal is to help producers of goods and services, exporters, and importers conduct their business, while allowing governments to meet social and environmental objectives.

The system’s overriding purpose is to help trade flow as freely as possible — so long as there are no undesirable side-effects — because this is important for economic development and well-being. That partly means removing obstacles. It also means ensuring that individuals, companies and governments know what the trade rules are around the world, and giving them the confidence that there will be no sudden changes of policy. In other words, the rules have to be “transparent” and predictable.

And it helps to settle disputes …  This is a third important side to the WTO’s work. Trade relations often involve conflicting interests. Agreements, including those painstakingly negotiated in the WTO system, often need interpreting. The most harmonious way to settle these differences is through some neutral procedure based on an agreed legal foundation. That is the purpose behind the dispute settlement process written into the WTO agreements.

Born in 1995, but not so young

The WTO began life on 1 January 1995, but its trading system is half a century older. Since 1948, the General Agreement on Tariffs and Trade (GATT) had provided the rules for the system. (The second WTO ministerial meeting, held in Geneva in May 1998, included a celebration of the 50th anniversary of the system.)

It did not take long for the General Agreement to give birth to an unofficial, de facto international organization, also known informally as GATT. Over the years GATT evolved through several rounds of negotiations.

The last and largest GATT round, was the Uruguay Round which lasted from 1986 to 1994 and led to the WTO’s creation. Whereas GATT had mainly dealt with trade in goods, the WTO and its agreements now cover trade in services, and in traded inventions, creations and designs (intellectual property).

# Principles of the trading system

The WTO agreements are lengthy and complex because they are legal texts covering a wide range of activities. They deal with: agriculture, textiles and clothing, banking, telecommunications, government purchases, industrial standards and product safety, food sanitation regulations, intellectual property, and much more. But a number of simple, fundamental principles run throughout all of these documents. These principles are the foundation of the multilateral trading system.

A closer look at these principles:

Trade without discrimination

1. Most-favoured-nation (MFN): treating other people equally  Under the WTO agreements, countries cannot normally discriminate between their trading partners. Grant someone a special favour (such as a lower customs duty rate for one of their products) and you have to do the same for all other WTO members.

This principle is known as most-favoured-nation (MFN) treatment ([see box](https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact2_e.htm" \l "seebox)). It is so important that it is the first article of the [General Agreement on Tariffs and Trade (GATT)](https://www.wto.org/english/docs_e/legal_e/legal_e.htm#GATT94), which governs trade in goods. MFN is also a priority in the [General Agreement on Trade in Services (GATS)](https://www.wto.org/english/docs_e/legal_e/26-gats_01_e.htm#ArticleII) (Article 2) and the [Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)](https://www.wto.org/english/docs_e/legal_e/27-trips_03_e.htm#art4) (Article 4), although in each agreement the principle is handled slightly differently. Together, those three agreements cover all three main areas of trade handled by the WTO.

Some exceptions are allowed. For example, countries can set up a free trade agreement that applies only to goods traded within the group —   discriminating against goods from outside. Or they can give developing countries special access to their markets. Or a country can raise barriers against products that are considered to be traded unfairly from specific countries. And in services, countries are allowed, in limited circumstances, to discriminate. But the agreements only permit these exceptions under strict conditions. In general, MFN means that every time a country lowers a trade barrier or opens up a market, it has to do so for the same goods or services from all its trading partners — whether rich or poor, weak or strong.

2. National treatment: Treating foreigners and locals equally  Imported and locally-produced goods should be treated equally — at least after the foreign goods have entered the market. The same should apply to foreign and domestic services, and to foreign and local trademarks, copyrights and patents. This principle of “national treatment” (giving others the same treatment as one’s own nationals) is also found in all the three main WTO agreements (Article 3 of [GATT](https://www.wto.org/english/docs_e/legal_e/legal_e.htm#GATT94), Article 17 of [GATS](https://www.wto.org/english/docs_e/legal_e/26-gats_01_e.htm#articleXVII) and Article 3 of [TRIPS](https://www.wto.org/english/docs_e/legal_e/27-trips_03_e.htm#art3)), although once again the principle is handled slightly differently in each of these.

National treatment only applies once a product, service or item of intellectual property has entered the market. Therefore, charging customs duty on an import is not a violation of national treatment even if locally-produced products are not charged an equivalent tax.

Freer trade: gradually, through negotiation

Lowering trade barriers is one of the most obvious means of encouraging trade. The barriers concerned include customs duties (or tariffs) and measures such as import bans or quotas that restrict quantities selectively. From time to time other issues such as red tape and exchange rate policies have also been discussed.

Since GATT’s creation in 1947-48 there have been [eight rounds of trade negotiations](https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact4_e.htm" \l "rounds). A ninth round, under the Doha Development Agenda, is now underway. At first these focused on lowering tariffs (customs duties) on imported goods. As a result of the negotiations, by the mid-1990s industrial countries’ tariff rates on industrial goods had fallen steadily to less than 4%.

But by the 1980s, the negotiations had expanded to cover non-tariff barriers on goods, and to the new areas such as services and intellectual property.

Opening markets can be beneficial, but it also requires adjustment. The WTO agreements allow countries to introduce changes gradually, through “progressive liberalization”. Developing countries are usually given longer to fulfil their obligations.

Predictability: through binding and transparency

Sometimes, promising not to raise a trade barrier can be as important as lowering one, because the promise gives businesses a clearer view of their future opportunities. With stability and predictability, investment is encouraged, jobs are created and consumers can fully enjoy the benefits of competition — choice and lower prices. The multilateral trading system is an attempt by governments to make the business environment stable and predictable.

The Uruguay Round increased bindings

Percentages of tariffs bound before and after the 1986-94 talks

|  |  |  |
| --- | --- | --- |
|  | Before | After |
| Developed countries | 78 | 99 |
| Developing countries | 21 | 73 |
| Transition economies | 73 | 98 |

(These are tariff lines, so percentages are not weighted according to trade volume or value)

In the WTO, when countries agree to open their markets for goods or services, they “bind” their commitments. For goods, these bindings amount to ceilings on customs tariff rates. Sometimes countries tax imports at rates that are lower than the bound rates. Frequently this is the case in developing countries. In developed countries the rates actually charged and the bound rates tend to be the same.

A country can change its bindings, but only after negotiating with its trading partners, which could mean compensating them for loss of trade. One of the achievements of the Uruguay Round of multilateral trade talks was to increase the amount of trade under binding commitments ([see table](https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact2_e.htm" \l "seetable)). In agriculture, 100% of products now have bound tariffs. The result of all this: a substantially higher degree of market security for traders and investors.

The system tries to improve predictability and stability in other ways as well. One way is to discourage the use of quotas and other measures used to set limits on quantities of imports — administering quotas can lead to more red-tape and accusations of unfair play. Another is to make countries’ trade rules as clear and public (“transparent”) as possible. Many WTO agreements require governments to disclose their policies and practices publicly within the country or by notifying the WTO. The regular surveillance of national trade policies through the [Trade Policy Review Mechanism](https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm11_e.htm) provides a further means of encouraging transparency both domestically and at the multilateral level.

Promoting fair competition

The WTO is sometimes described as a “free trade” institution, but that is not entirely accurate. The system does allow tariffs and, in limited circumstances, other forms of protection. More accurately, it is a system of rules dedicated to open, fair and undistorted competition.

The rules on non-discrimination — MFN and national treatment — are designed to secure fair conditions of trade. So too are those on dumping (exporting at below cost to gain market share) and subsidies. The issues are complex, and the rules try to establish what is fair or unfair, and how governments can respond, in particular by charging additional import duties calculated to compensate for damage caused by unfair trade.

Many of the other WTO agreements aim to support fair competition: in agriculture, intellectual property, services, for example. The agreement on government procurement (a “plurilateral” agreement because it is signed by only a few WTO members) extends competition rules to purchases by thousands of government entities in many countries. And so on.

Encouraging development and economic reform

The WTO system contributes to development. On the other hand, developing countries need flexibility in the time they take to implement the system’s agreements. And the agreements themselves inherit the earlier provisions of GATT that allow for special assistance and trade concessions for developing countries.

Over three quarters of WTO members are developing countries and countries in transition to market economies. During the seven and a half years of the Uruguay Round, over 60 of these countries implemented trade liberalization programmes autonomously. At the same time, developing countries and transition economies were much more active and influential in the Uruguay Round negotiations than in any previous round, and they are even more so in the current Doha Development Agenda.

At the end of the Uruguay Round, developing countries were prepared to take on most of the obligations that are required of developed countries. But the agreements did give them transition periods to adjust to the more unfamiliar and, perhaps, difficult WTO provisions — particularly so for the poorest, “least-developed” countries. A [ministerial decision](https://www.wto.org/english/thewto_e/whatis_e/tif_e/dev1_e.htm" \l "min)adopted at the end of the round says better-off countries should accelerate implementing market access commitments on goods exported by the least-developed countries, and it seeks increased technical assistance for them. More recently, developed countries have started to allow duty-free and quota-free imports for almost all products from least-developed countries. On all of this, the WTO and its members are still going through a learning process. The current Doha Development Agenda includes developing countries’ concerns about the difficulties they face in implementing the Uruguay Round agreements.

# The case for open trade

The economic case for an open trading system based on multilaterally agreed rules is simple enough and rests largely on commercial common sense. But it is also supported by evidence: the experience of world trade and economic growth since the Second World War. Tariffs on industrial products have fallen steeply and now average less than 5% in industrial countries. During the first 25 years after the war, world economic growth averaged about 5% per year, a high rate that was partly the result of lower trade barriers. World trade grew even faster, averaging about 8% during the period.

The data show a definite statistical link between freer trade and economic growth. Economic theory points to strong reasons for the link. All countries, including the poorest, have assets — human, industrial, natural, financial — which they can employ to produce goods and services for their domestic markets or to compete overseas. Economics tells us that we can benefit when these goods and services are traded. Simply put, the principle of “comparative advantage” says that countries prosper first by taking advantage of their assets in order to concentrate on what they can produce best, and then by trading these products for products that other countries produce best.

In other words, liberal trade policies — policies that allow the unrestricted flow of goods and services — sharpen competition, motivate innovation and breed success. They multiply the rewards that result from producing the best products, with the best design, at the best price.

But success in trade is not static. The ability to compete well in particular products can shift from company to company when the market changes or new technologies make cheaper and better products possible. Producers are encouraged to adapt gradually and in a relatively painless way. They can focus on new products, find a new “niche” in their current area or expand into new areas.

Experience shows that competitiveness can also shift between whole countries. A country that may have enjoyed an advantage because of lower labour costs or because it had good supplies of some natural resources, could also become uncompetitive in some goods or services as its economy develops. However, with the stimulus of an open economy, the country can move on to become competitive in some other goods or services. This is normally a gradual process.

Nevertheless, the temptation to ward off the challenge of competitive imports is always present. And richer governments are more likely to yield to the siren call of protectionism, for short term political gain — through subsidies, complicated red tape, and hiding behind legitimate policy objectives such as environmental preservation or consumer protection as an excuse to protect producers.

Protection ultimately leads to bloated, inefficient producers supplying consumers with outdated, unattractive products. In the end, factories close and jobs are lost despite the protection and subsidies. If other governments around the world pursue the same policies, markets contract and world economic activity is reduced. One of the objectives that governments bring to WTO negotiations is to prevent such a self-defeating and destructive drift into protectionism.

**Comparative advantage**

This is arguably the single most powerful insight into economics.

Suppose country A is better than country B at making automobiles, and country B is better than country A at making bread. It is obvious (the academics would say “trivial”) that both would benefit if A specialized in automobiles, B specialized in bread and they traded their products. That is a case of absolute advantage.

But what if a country is bad at making everything? Will trade drive all producers out of business? The answer, according to Ricardo, is no. The reason is the principle of comparative advantage.

It says, countries A and B still stand to benefit from trading with each other even if A is better than B at making everything. If A is much more superior at making automobiles and only slightly superior at making bread, then A should still invest resources in what it does best — producing automobiles — and export the product to B. B should still invest in what it does best — making bread — and export that product to A, even if it is not as efficient as A. Both would still benefit from the trade. A country does not have to be best at anything to gain from trade. That is comparative advantage.

The theory dates back to classical economist David Ricardo. It is one of the most widely accepted among economists. It is also one of the most misunderstood among non-economists because it is confused with absolute advantage.

It is often claimed, for example, that some countries have no comparative advantage in anything. That is virtually impossible.

Think about it ...

# The GATT years: from Havana to Marrakesh

The WTO’s creation on 1 January 1995 marked the biggest reform of international trade since after the Second World War. It also brought to reality — in an updated form — the failed attempt in 1948 to create an International Trade Organization.

Much of the history of those 47 years was written in Geneva. But it also traces a journey that spanned the continents, from that hesitant start in 1948 in Havana (Cuba), via Annecy (France), Torquay (UK), Tokyo (Japan), Punta del Este (Uruguay), Montreal (Canada), Brussels (Belgium) and finally to Marrakesh (Morocco) in 1994. During that period, the trading system came under GATT, salvaged from the aborted attempt to create the ITO. GATT helped establish a strong and prosperous multilateral trading system that became more and more liberal through [rounds of trade negotiations](https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact4_e.htm" \l "rounds). But by the 1980s the system needed a thorough overhaul. This led to the [Uruguay Round](https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact5_e.htm), and ultimately to the WTO.

GATT: ‘provisional’ for almost half a century

From 1948 to 1994, the General Agreement on Tariffs and Trade (GATT) provided the rules for much of world trade and presided over periods that saw some of the highest growth rates in international commerce. It seemed well-established, but throughout those 47 years, it was a provisional agreement and organization.

The original intention was to create a third institution to handle the trade side of international economic cooperation, joining the two “Bretton Woods” institutions, the World Bank and the International Monetary Fund. Over 50 countries participated in negotiations to create an International Trade Organization (ITO) as a specialized agency of the United Nations. The draft ITO Charter was ambitious. It extended beyond world trade disciplines, to include rules on employment, commodity agreements, restrictive business practices, international investment, and services. The aim was to create the ITO at a UN Conference on Trade and Employment in Havana, Cuba in 1947.

Meanwhile, 15 countries had begun talks in December 1945 to reduce and bind customs tariffs. With the Second World War only recently ended, they wanted to give an early boost to trade liberalization, and to begin to correct the legacy of protectionist measures which remained in place from the early 1930s.

This first round of negotiations resulted in a package of trade rules and 45,000 tariff concessions affecting $10 billion of trade, about one fifth of the world’s total. The group had expanded to 23 by the time the deal was signed on 30 October 1947. The tariff concessions came into effect by 30 June 1948 through a “Protocol of Provisional Application”. And so the new General Agreement on Tariffs and Trade was born, with 23 founding members (officially “contracting parties”).

The 23 were also part of the larger group negotiating the ITO Charter. One of the provisions of GATT says that they should accept some of the trade rules of the draft. This, they believed, should be done swiftly and “provisionally” in order to protect the value of the tariff concessions they had negotiated. They spelt out how they envisaged the relationship between GATT and the ITO Charter, but they also allowed for the possibility that the ITO might not be created. They were right.

The Havana conference began on 21 November 1947, less than a month after GATT was signed. The ITO Charter was finally agreed in Havana in March 1948, but ratification in some national legislatures proved impossible. The most serious opposition was in the US Congress, even though the US government had been one of the driving forces. In 1950, the United States government announced that it would not seek Congressional ratification of the Havana Charter, and the ITO was effectively dead. So, the GATT became the only multilateral instrument governing international trade from 1948 until the WTO was established in 1995.

For almost half a century, the GATT’s basic legal principles remained much as they were in 1948. There were additions in the form of a section on development added in the 1960s and “[plurilateral](https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm10_e.htm)” agreements (i.e. with voluntary membership) in the 1970s, and efforts to reduce tariffs further continued. Much of this was achieved through a series of multilateral negotiations known as “trade rounds” — the biggest leaps forward in international trade liberalization have come through these rounds which were held under GATT’s auspices.

In the early years, the GATT trade rounds concentrated on further reducing tariffs. Then, the Kennedy Round in the mid-sixties brought about a GATT Anti-Dumping Agreement and a section on development. The Tokyo Round during the seventies was the first major attempt to tackle trade barriers that do not take the form of tariffs, and to improve the system. The eighth, the Uruguay Round of 1986-94, was the last and most extensive of all. It led to the WTO and a new set of agreements.

**The Tokyo Round: a first try to reform the system**

The Tokyo Round lasted from 1973 to 1979, with 102 countries participating. It continued GATT’s efforts to progressively reduce tariffs. The results included an average one-third cut in customs duties in the world’s nine major industrial markets, bringing the average tariff on industrial products down to 4.7%. The tariff reductions, phased in over a period of eight years, involved an element of “harmonization” — the higher the tariff, the larger the cut, proportionally.

In other issues, the Tokyo Round had mixed results. It failed to come to grips with the fundamental problems affecting farm trade and also stopped short of providing a modified agreement on “safeguards” (emergency import measures). Nevertheless, a series of agreements on non-tariff barriers did emerge from the negotiations, in some cases interpreting existing GATT rules, in others breaking entirely new ground. In most cases, only a relatively small number of (mainly industrialized) GATT members subscribed to these agreements and arrangements. Because they were not accepted by the full GATT membership, they were often informally called “codes”.

They were not multilateral, but they were a beginning. Several codes were eventually amended in the Uruguay Round and turned into multilateral commitments accepted by all WTO members. Only four remained “plurilateral” — those on government procurement, bovine meat, civil aircraft and dairy products. In 1997 WTO members agreed to terminate the bovine meat and dairy agreements, leaving only two.

Did GATT succeed?

GATT was provisional with a limited field of action, but its success over 47 years in promoting and securing the liberalization of much of world trade is incontestable. Continual reductions in tariffs alone helped spur very high rates of world trade growth during the 1950s and 1960s — around 8% a year on average. And the momentum of trade liberalization helped ensure that trade growth consistently out-paced production growth throughout the GATT era, a measure of countries’ increasing ability to trade with each other and to reap the benefits of trade. The rush of new members during the Uruguay Round demonstrated that the multilateral trading system was recognized as an anchor for development and an instrument of economic and trade reform.

But all was not well. As time passed new problems arose. The Tokyo Round in the 1970s was an attempt to tackle some of these but its achievements were limited. This was a sign of difficult times to come.

GATT’s success in reducing tariffs to such a low level, combined with a series of economic recessions in the 1970s and early 1980s, drove governments to devise other forms of protection for sectors facing increased foreign competition. High rates of unemployment and constant factory closures led governments in Western Europe and North America to seek bilateral market-sharing arrangements with competitors and to embark on a subsidies race to maintain their holds on agricultural trade. Both these changes undermined GATT’s credibility and effectiveness.

The problem was not just a deteriorating trade policy environment. By the early 1980s the General Agreement was clearly no longer as relevant to the realities of world trade as it had been in the 1940s. For a start, world trade had become far more complex and important than 40 years before: the globalization of the world economy was underway, trade in services — not covered by GATT rules — was of major interest to more and more countries, and international investment had expanded. The expansion of services trade was also closely tied to further increases in world merchandise trade. In other respects, GATT had been found wanting. For instance, in agriculture, loopholes in the multilateral system were heavily exploited, and efforts at liberalizing agricultural trade met with little success. In the textiles and clothing sector, an exception to GATT’s normal disciplines was negotiated in the 1960s and early 1970s, leading to the [Multifibre Arrangement](https://www.wto.org/english/tratop_e/texti_e/texti_e.htm). Even GATT’s institutional structure and its dispute settlement system were causing concern.

These and other factors convinced GATT members that a new effort to reinforce and extend the multilateral system should be attempted. That effort resulted in the [Uruguay Round](https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact5_e.htm), the Marrakesh Declaration, and the creation of the WTO.

**GATT trade rounds**

|  |  |  |  |
| --- | --- | --- | --- |
| Year | Place/name | Subjects covered | Countries |
| 1947 | Geneva | Tariffs | 23 |
| 1949 | Annecy | Tariffs | 13 |
| 1951 | Torquay | Tariffs | 38 |
| 1956 | Geneva | Tariffs | 26 |
| 1960-1961 | Geneva Dillon Round | Tariffs | 26 |
| 1964-1967 | Geneva Kennedy Round | Tariffs and anti-dumping measures | 62 |
| 1973-1979 | Geneva Tokyo Round | Tariffs, non-tariff measures, “framework” agreements | 102 |
| 1986-1994 | Geneva Uruguay Round | Tariffs, non-tariff measures, rules, services, intellectual property, dispute settlement, textiles, agriculture, creation of WTO, etc | 123 |

# The Uruguay Round

It took seven and a half years, almost twice the original schedule. By the end, 123 countries were taking part. It covered almost all trade, from toothbrushes to pleasure boats, from banking to telecommunications, from the genes of wild rice to AIDS treatments. It was quite simply the largest trade negotiation ever, and most probably the largest negotiation of any kind in history.

At times it seemed doomed to fail. But in the end, the Uruguay Round brought about the biggest reform of the world’s trading system since GATT was created at the end of the Second World War. And yet, despite its troubled progress, the Uruguay Round did see some early results. Within only two years, participants had agreed on a package of cuts in import duties on tropical products — which are mainly exported by developing countries. They had also revised the rules for settling disputes, with some measures implemented on the spot. And they called for regular reports on GATT members’ trade policies, a move considered important for making trade regimes transparent around the world.

## A round to end all rounds?

The seeds of the Uruguay Round were sown in November 1982 at a ministerial meeting of GATT members in Geneva. Although the ministers intended to launch a major new negotiation, the conference stalled on agriculture and was widely regarded as a failure. In fact, the work programme that the ministers agreed formed the basis for what was to become the Uruguay Round negotiating agenda.

Nevertheless, it took four more years of exploring, clarifying issues and painstaking consensus-building, before ministers agreed to launch the new round. They did so in September 1986, in Punta del Este, Uruguay. They eventually accepted a negotiating agenda that covered virtually every outstanding trade policy issue. The talks were going to extend the trading system into several new areas, notably trade in services and intellectual property, and to reform trade in the sensitive sectors of agriculture and textiles. All the original GATT articles were up for review. It was the biggest negotiating mandate on trade ever agreed, and the ministers gave themselves four years to complete it.

Two years later, in December 1988, ministers met again in Montreal, Canada, for what was supposed to be an assessment of progress at the round’s half-way point. The purpose was to clarify the agenda for the remaining two years, but the talks ended in a deadlock that was not resolved until officials met more quietly in Geneva the following April.

Despite the difficulty, during the Montreal meeting, ministers did agree a package of early results. These included some concessions on market access for tropical products — aimed at assisting developing countries — as well as a streamlined [dispute settlement system](https://www.wto.org/english/thewto_e/whatis_e/tif_e/disp1_e.htm), and the [Trade Policy Review Mechanism](https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm11_e.htm) which provided for the first comprehensive, systematic and regular reviews of national trade policies and practices of GATT members. The round was supposed to end when ministers met once more in Brussels, in December 1990. But they disagreed on how to reform agricultural trade and decided to extend the talks. The Uruguay Round entered its bleakest period.

Despite the poor political outlook, a considerable amount of technical work continued, leading to the first draft of a final legal agreement. This draft “Final Act” was compiled by the then GATT director-general, Arthur Dunkel, who chaired the negotiations at officials’ level. It was put on the table in Geneva in December 1991. The text fulfilled every part of the Punta del Este mandate, with one exception — it did not contain the participating countries’ lists of commitments for cutting import duties and opening their services markets. The draft became the basis for the final agreement.

Over the following two years, the negotiations lurched between impending failure, to predictions of imminent success. Several deadlines came and went. New points of major conflict emerged to join agriculture: services, market access, anti-dumping rules, and the proposed creation of a new institution. Differences between the United States and European Union became central to hopes for a final, successful conclusion.

In November 1992, the US and EU settled most of their differences on agriculture in a deal known informally as the “Blair House accord”. By July 1993 the “Quad” (US, EU, Japan and Canada) announced significant progress in negotiations on tariffs and related subjects (“market access”). It took until 15 December 1993 for every issue to be finally resolved and for negotiations on market access for goods and services to be concluded (although some final touches were completed in talks on market access a few weeks later). On 15 April 1994, the deal was signed by ministers from most of the 123 participating governments at a meeting in Marrakesh, Morocco.

The delay had some merits. It allowed some negotiations to progress further than would have been possible in 1990: for example some aspects of services and intellectual property, and the creation of the WTO itself. But the task had been immense, and negotiation-fatigue was felt in trade bureaucracies around the world. The difficulty of reaching agreement on a complete package containing almost the entire range of current trade issues led some to conclude that a negotiation on this scale would never again be possible. Yet, the Uruguay Round agreements contain timetables for new negotiations on a number of topics. And by 1996, some countries were openly calling for a new round early in the next century. The response was mixed; but the Marrakesh agreement did already include commitments to reopen negotiations on agriculture and services at the turn of the century. These began in early 2000 and were incorporated into the Doha Development Agenda in late 2001.

## What happened to GATT?

The WTO replaced GATT as an international organization, but the General Agreement still exists as the WTO’s umbrella treaty for trade in goods, updated as a result of the Uruguay Round negotiations. Trade lawyers distinguish between GATT 1994, the updated parts of GATT, and GATT 1947, the original agreement which is still the heart of GATT 1994. Confusing? For most of us, it’s enough to refer simply to “GATT”.

## The post-Uruguay Round built-in agenda

Many of the Uruguay Round agreements set timetables for future work. Part of this “built-in agenda” started almost immediately. In some areas, it included new or further negotiations. In other areas, it included assessments or reviews of the situation at specified times. Some negotiations were quickly completed, notably in basic telecommunications, financial services. (Member governments also swiftly agreed a deal for freer trade in information technology products, an issue outside the “built-in agenda”.)

The agenda originally built into the Uruguay Round agreements has seen additions and modifications. A number of items are now part of the Doha Agenda, some of them updated.

There were well over 30 items in the original built-in agenda. This is a selection of highlights:

1996

* Maritime services: market access negotiations to end (30 June 1996, suspended to 2000, now part of Doha Development Agenda)
* Services and environment: deadline for working party report (ministerial conference, December 1996)
* Government procurement of services: negotiations start

1997

* Basic telecoms: negotiations end (15 February)
* Financial services: negotiations end (30 December)
* Intellectual property, creating a multilateral system of notification and registration of geographical indications for wines: negotiations start, now part of Doha Development Agenda

1998

* Textiles and clothing: new phase begins 1 January
* Services (emergency safeguards): results of negotiations on emergency safeguards to take effect (by 1 January 1998, deadline now March 2004)
* Rules of origin: Work programme on harmonization of rules of origin to be completed (20 July 1998)
* Government procurement: further negotiations start, for improving rules and procedures (by end of 1998)
* Dispute settlement: full review of rules and procedures (to start by end of 1998)

1999

* Intellectual property: certain exceptions to patentability and protection of plant varieties: review starts

2000

* Agriculture: negotiations start, now part of Doha Development Agenda
* Services: new round of negotiations start, now part of Doha Development Agenda
* Tariff bindings: review of definition of “principle supplier” having negotiating rights under GATT Art 28 on modifying bindings
* Intellectual property: first of two-yearly reviews of the implementation of the agreement

2002

* Textiles and clothing: new phase begins 1 January

2005

* Textiles and clothing: full integration into GATT and agreement expires 1 January

**The WTO is ‘rules-based’; its rules are negotiated agreements.**

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

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

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

**Six-part broad outline**

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

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

They start with broad principles: the [General Agreement on Tariffs and Trade](https://www.wto.org/english/docs_e/legal_e/legal_e.htm#GATT94) (GATT) (for goods), and the [General Agreement on Trade in Services](https://www.wto.org/english/docs_e/legal_e/legal_e.htm#services) (GATS). (The third area, [Trade-Related Aspects of Intellectual Property Rights](https://www.wto.org/english/docs_e/legal_e/legal_e.htm#TRIPs) (TRIPS), also falls into this category although at present it has no additional parts.)

Then come extra agreements and annexes dealing with the special requirements of specific sectors or issues.

Finally, there are the detailed and lengthy schedules (or lists) of commitments made by individual countries allowing specific foreign products or service-providers access to their markets. For GATT, these take the form of [binding commitments](https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact2_e.htm#bind) on tariffs for goods in general, and combinations of tariffs and quotas for some agricultural goods. For GATS, the commitments state how much access foreign service providers are allowed for specific sectors, and they include lists of types of services where individual countries say they are not applying the “most-favoured-nation” principle of non-discrimination.

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

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

# Tariffs: more bindings and closer to zero

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

**Tariff cuts**

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

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

The Uruguay Round package has been improved. On 26 March 1997, 40 countries accounting for more than 92% of world trade in [information technology products](https://www.wto.org/english/tratop_e/inftec_e/inftec_e.htm), agreed to eliminate import duties and other charges on these products by 2000 (by 2005 in a handful of cases). As with other tariff commitments, each participating country is applying its commitments equally to exports from all WTO members (i.e. on a [most-favoured-nation](https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact2_e.htm" \l "seebox) basis), even from members that did not make commitments.

## More bindings

Developed countries increased the number of imports whose tariff rates are “[bound](https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm2_e.htm" \l "con)” (committed and difficult to increase) from 78% of product lines to 99%. For developing countries, the increase was considerable: from 21% to 73%. Economies in transition from central planning increased their bindings from 73% to 98%. This all means a substantially higher degree of market security for traders and investors.

## And agriculture ...

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

In addition, the lists include countries’ commitments to reduce domestic support and export subsidies for agricultural products.

# Agriculture: fairer markets for farmers

The original GATT did apply to agricultural trade, but it contained loopholes. For example, it allowed countries to use some non-tariff measures such as import quotas, and to subsidize. Agricultural trade became highly distorted, especially with the use of export subsidies which would not normally have been allowed for industrial products. The Uruguay Round produced the first multilateral agreement dedicated to the sector. It was a significant first step towards order, fair competition and a less [distorted](https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm3_e.htm" \l "distorted)sector. It was implemented over a six year period (and is still being implemented by developing countries under their 10-year period), that began in 1995. The Uruguay Round agreement included a commitment to continue the reform through new negotiations. These were launched in 2000, as required by the Agriculture Agreement.

## The Agriculture Agreement: new rules and commitments

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

The new rules and commitments apply to:

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

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

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

## Market access: ‘tariffs only’, please

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

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

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

The other figures were targets used to calculate countries’ legally-binding “schedules” of commitments.

The tariffication package contained more. It ensured that quantities imported before the agreement took effect could continue to be imported, and it guaranteed that some new quantities were charged duty rates that were not prohibitive. This was achieved by a system of “[tariff-quotas](https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm3_e.htm" \l "tariffquota)” — lower tariff rates for specified quantities, higher (sometimes much higher) rates for quantities that exceed the quota.

The newly committed tariffs and tariff quotas, covering all agricultural products, took effect in 1995. Uruguay Round participants agreed that developed countries would cut the tariffs (the higher out-of-quota rates in the case of tariff-quotas) by an average of 36%, in equal steps over six years. Developing countries would make 24% cuts over 10 years. Several developing countries also used the option of offering ceiling tariff rates in cases where duties were not “[bound](https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm2_e.htm" \l "binding)” (i.e. committed under GATT or WTO regulations) before the Uruguay Round. Least-developed countries do not have to cut their tariffs. (These figures do not actually appear in the Agriculture Agreement. Participants used them to prepare their schedules — i.e. lists of commitments. It is the commitments listed in the schedules that are legally binding.)

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

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

**Domestic support: some you can, some you can’t**

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

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

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

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

**Export subsidies: limits on spending and quantities**

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

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

**The least-developed and those depending on food imports**

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

# Standards and safety

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

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

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

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

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

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

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

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

Technical regulations and standards

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

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

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

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

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

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

# Textiles: back in the mainstream

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

From 1974 until the end of the Uruguay Round, the trade was governed by the [Multifibre Arrangement (MFA)](https://www.wto.org/english/tratop_e/texti_e/texintro_e.htm" \l "MFA). This was a framework for bilateral agreements or unilateral actions that established quotas limiting imports into countries whose domestic industries were facing serious damage from rapidly increasing imports.

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

Since 1995, the WTO’s [Agreement on Textiles and Clothing (ATC)](https://www.wto.org/english/tratop_e/texti_e/texintro_e.htm#(ATC)) took over from the Mulltifibre Arrangement. By 1 January 2005, the sector was fully integrated into normal GATT rules. In particular, the quotas came to an end, and importing countries are  no longer be able to discriminate between exporters. The Agreement on Textiles and Clothing no longer exists: it’s the only WTO agreement that had self-destruction built in.

Integration: returning products gradually to GATT rules

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

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

|  |
| --- |
| Four steps over 10 years  The schedule for freeing textiles and garments products from import quotas (and returning them to GATT rules), and how fast remaining quotas had to be expanded.  The example is based on the commonly-used 6% annual expansion rate of the old Multifibre Arrangement. In practice, the rates used under the MFA varied from product to product. |

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

If further cases of damage to the industry arose during the transition, the agreement allowed additional restrictions to be imposed temporarily under strict conditions. These “transitional safeguards” were not the same as the safeguard measures normally allowed under GATT because they can be applied on imports from specific exporting countries. But the importing country had to show that its domestic industry was suffering serious damage or was threatened with serious damage. And it had to show that the damage was the result of two things: increased imports of the product in question from all sources, and a sharp and substantial increase from the specific exporting country. The safeguard restriction could be implemented either by mutual agreement following consultations, or unilaterally. It was subject to review by the [Textiles Monitoring Body](https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm5_e.htm" \l "tmb).

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

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

A Textiles Monitoring Body (TMB) supervised the agreement’s implementation. It consisted of a chairman and 10 members acting in their personal capacity. It monitored actions taken under the agreement to ensure that they were consistent, and it reported to the [Goods](https://www.wto.org/english/thewto_e/whatis_e/tif_e/org1_e.htm" \l "fourth)Council  which reviewed the operation of the agreement before each new step of the integration process. The Textiles Monitoring Body also dealt with disputes under the Agreement on Textiles and Clothing. If they remained unresolved, the disputes could be brought to the WTO’s regular Dispute Settlement Body. When the Textiles and Clothing Agreement expired on 1 January 2005, the Textiles Monitoring Body also ceased to exist.

# Services: rules for growth and investment

The [General Agreement on Trade in Services](https://www.wto.org/english/docs_e/legal_e/legal_e.htm#services) (GATS) is the first and only set of multilateral rules governing international trade in services. Negotiated in the Uruguay Round, it was developed in response to the huge growth of the services economy over the past 30 years and the greater potential for trading services brought about by the communications revolution.

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

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

GATS explained

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

General obligations and disciplines

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

 services supplied from one country to another (e.g. international telephone calls), officially known as “cross-border supply” (in WTO jargon, “mode 1”)

 consumers or firms making use of a service in another country (e.g. tourism), officially “consumption abroad” (“mode 2”)

 a foreign company setting up subsidiaries or branches to provide services in another country (e.g. foreign banks setting up operations in a country), officially “commercial presence” (“mode 3”)

 individuals travelling from their own country to supply services in another (e.g. fashion models or consultants), officially “presence of natural persons” (“mode 4”)

Most-favoured-nation (MFN) treatment

Favour one, favour all. [MFN](https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact2_e.htm#mfn) means treating one’s trading partners equally on the principle of non-discrimination. Under GATS, if a country allows foreign competition in a sector, equal opportunities in that sector should be given to service providers from all other WTO members. (This applies even if the country has made no specific commitment to provide foreign companies access to its markets under the WTO.)

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

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

These clearly defined commitments are “[bound](https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm2_e.htm" \l "binding)”: like bound tariffs for trade in goods, they can only be modified after negotiations with affected countries. Because “unbinding” is difficult, the commitments are virtually guaranteed conditions for foreign exporters and importers of services and investors in the sector to do business.

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

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

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

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

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

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

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

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

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

The annexes: services are not all the same

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

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

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

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

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

Current work

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

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

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

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

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

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

Work on domestic regulations (Article 6.4)  Work started in 1995 to establish disciplines on domestic regulations — i.e. the requirements foreign service suppliers have to meet in order to operate in a market. The focus is on qualification requirements and procedures, technical standards and licensing requirements. By December 1998, members had agreed disciplines on domestic regulations for the accountancy sector. Since then, members have been engaged in developing general disciplines for all professional services and, where necessary, additional sectoral disciplines. All the agreed disciplines will be integrated into GATS and become legally binding by the end of the current services negotiations.

MFN exemptions (Annex on Article 2)  Work on this subject started in 2000. When GATS came into force in 1995, members were allowed a once-only opportunity to take an exemption from the [MFN principle](https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact2_e.htm#mfn) of non-discrimination between a member’s trading partners. The measure for which the exemption was taken is described in a member’s MFN exemption list, indicating to which member the more favourable treatment applies, and specifying its duration. In principle, these exemptions should not last for more than ten years. As mandated by GATS, all these exemptions are currently being reviewed to examine whether the conditions which created the need for these exemptions in the first place still exist. And in any case, they are part of the current services negotiations.

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

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

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

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

# Intellectual property: protection and enforcement

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

Origins: into the rules-based trading system....

The idea of trade, and what makes trade valuable for societies, has evolved beyond simply shipping goods across borders. Innovation, creativity and branding represent a large amount of the value that changes hands in international trade today. How to enhance this value and how to facilitate the flow of knowledge-rich goods and services across borders have become integral considerations in development and trade policy.

The TRIPS Agreement plays a critical role in facilitating trade in knowledge and creativity, in resolving trade disputes over intellectual property, and in assuring WTO members the latitude to achieve their domestic objectives. The Agreement is legal recognition of the significance of links between intellectual property and trade.

"Intellectual property" refers to creations of the mind. These creations can take many different forms, such as artistic expressions, signs, symbols and names used in commerce, designs and inventions. Governments grant creators the right to prevent others from using their inventions, designs or other creations — and to use that right to negotiate payment in return for others using them. These are “intellectual property rights”. They take a number of forms. For example, books, paintings and films come under copyright; eligible inventions can be patented; brand names and product logos can be registered as trademarks; and so on. Governments grant creators these rights as an incentive to produce and spread ideas that will benefit society as a whole.

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

The Uruguay Round achieved that. The WTO’s [TRIPS Agreement](https://www.wto.org/english/docs_e/legal_e/legal_e.htm#TRIPs) is an attempt to narrow the gaps in the way these rights are protected and enforced around the world, and to bring them under common international rules. It establishes minimum standards of protection and enforcement that each government has to give to the intellectual property held by nationals of fellow WTO members.

Under the TRIPS Agreement, WTO members have considerable scope to tailor their approaches to IP protection and enforcement in order to suit their needs and achieve public policy goals. The Agreement provides ample room for members to strike a balance between the long term benefits of incentivising innovation and the possible short term costs of limiting access to creations of the mind. Members can reduce short term costs through various mechanisms allowed under TRIPS provisions, such as exclusions or exceptions to intellectual property rights. And, when there are trade disputes over the application of the TRIPS Agreement, the WTO’s dispute settlement system is available.

The TRIPS Agreement covers five broad areas:

  how general provisions and basic principles of the multilateral trading system apply to international intellectual property

  what the minimum standards of protection are for intellectual property rights that members should provide

  which procedures members should provide for the enforcement of those rights in their own territories

  how to settle disputes on intellectual property between members of the WTO

  special transitional arrangements for the implementation of TRIPS provisions.

Basic principles: national treatment, MFN, and balanced protection

As in the General Agreement on Tariffs and Trade (GATT) and the General Agreement on Trade in Services (GATS), the starting point of the TRIPS Agreement is basic principles. And as in the two other agreements, non-discrimination features prominently: national treatment (treating foreign nationals no less favourably than one’s own nationals), and most-favoured-nation (MFN) treatment (not discriminating among nationals of trading partners). National treatment is also a key principle in other intellectual property agreements outside the WTO.

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

How to protect intellectual property: common ground-rules

The second part of the TRIPS Agreement looks at different kinds of intellectual property rights and how to protect them. The purpose is to ensure that minimum standards of protection exist in all WTO members. Here the starting point is the obligations of the main international agreements of the [World Intellectual Property Organization (WIPO)](http://www.wipo.org/) that already existed before the WTO was created:

  the [Paris Convention for the Protection of Industrial Property](http://www.wipo.int/treaties/en/ip/paris/) (patents, industrial designs, etc)

  the [Berne Convention for the Protection of Literary and Artistic Works](http://www.wipo.int/treaties/en/ip/berne/) (copyright).

Some areas are not covered by these agreements. In some cases, the standards of protection prescribed were thought inadequate. So the TRIPS Agreement adds significantly to existing international standards.

Copyright

Copyright usually refers to the rights of authors in their literary and artistic works. In a wider sense, copyright also includes ‘related rights’: the rights of performers, producers of phonograms and broadcasting organizations.

During the Uruguay Round negotiations, members considered that the standards for copyright protection in the Berne Convention for the Protection of Literary and Artistic Works were largely satisfactory. The TRIPS Agreement provisions on copyright and related rights clarify or add obligations on a number of points:

* The TRIPS Agreement ensures that computer programs will be protected as literary works under the Berne Convention and outlines how databases must be protected under copyright;
* It also expands international copyright rules to cover rental rights. Authors of computer programs and producers of sound recordings must have the right to prohibit the commercial rental of their works to the public. A similar exclusive right applies to films where commercial rental has led to widespread copying, affecting copyright-owners’ potential earnings from their films; and
* It says performers must also have the right to prevent unauthorized recording, reproduction and broadcast of live performances (bootlegging) for no less than 50 years. Producers of sound recordings must have the right to prevent the unauthorized reproduction of recordings for a period of 50 years.

Trademarks

A trademark is a sign or a combination of signs used to distinguish the goods or services of one enterprise from another.

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

Geographical indications

A name or indication associated with a place is sometimes used to identify a product. This “geographical indication” does not only say where the product comes from. More importantly, it identifies the product’s special characteristics, which are the result of the product’s origins.

Well-known examples include “Champagne”, “Scotch Whiskey”, “Tequila”, "Darjeeling" and “Roquefort” cheese.

Using the indication when the product was made elsewhere or when it does not have the usual characteristics can mislead consumers, and can lead to unfair competition. The TRIPS Agreement says members have to provide ways to prevent such misuse of geographical indications.

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

Some exceptions are allowed, for example if the term in question is already protected as a trademark or if it has become a generic term.

The TRIPS Agreement provides for further negotiations in the WTO to establish a multilateral system of notification and registration of geographical indications for wines, which was subsequently extended to include spirits. The question of whether to negotiate extending this higher level of protection beyond wines and spirits is also being discussed in the WTO.

Industrial designs

Industrial design is generally understood to refer to the ornamental or aesthetic aspect of an article rather than its technical features.

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

Patents

 The TRIPS Agreement says patent protection must be available for eligible inventions in all fields of technology that are new, involve an inventive step and can be industrially applied. Eligible inventions includee both products and processes. They must be protected for at least 20 years. However, governments can refuse to issue a patent for an invention if its sale needs to be prohibited for reasons of public order or morality. They can also exclude diagnostic, therapeutic and surgical methods, plants and animals (other than micro-organisms), and biological processes for their production (other than microbiological processes) from patent protection.

Plant varieties, however, must be protectable by patents or by a special system (such as the breeder’s rights provided in the conventions of [UPOV — the International Union for the Protection of New Varieties of Plants](http://www.upov.int/)) or by both.

The TRIPS Agreement describes the minimum rights that a patent owner must enjoy, and defines the conditions under which exceptions to these rights are permitted. The Agreement permits governments to issue “compulsory licences”, which allow a competitor to produce the product or use the process under licence without the owner's consent. But this can only be done under specific conditions set out in the TRIPS Agreement aimed at safeguarding the interests of the patent-holder.

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

Layout designs of integrated circuits

An integrated circuit is an electronic device that incorporates individual electronic components within a single ‘integrated’ platform configured to perform an electronic function.

The protection of layout designs of integrated circuits (“topographies”) in the TRIPS Agreement is provided through the incorporation of the Washington Treaty on Intellectual Property in Respect of Integrated Circuits, a treaty that was concluded under the [World Intellectual Property Organization](http://www.wipo.org/) in 1989, but has not yet entered into force. The TRIPS Agreement adds a number of provisions: for example, protection must be available for at least 10 years.

In practice, layout designs of integrated circuits are commonly protected under patents.

Undisclosed information

Undisclosed information includes trade secrets and test data. Trade secrets must be protected against unauthorized use, including through breach of contract or confidence or other acts contrary to honest commercial practices. Such protection is conditional upon the information being secret, having commercial value and reasonable steps having  been taken by its owner to keep the information secret.

Test data submitted to governments in order to obtain marketing approval for new pharmaceutical or agricultural chemicals must also be protected against unfair commercial use and disclosure. Extended transition periods continue to apply to least developed country members (see section below on transitional arrangements).

Enforcement

In order for the protection of intellectual property rights to be meaningful, WTO members must give right holders the tools to ensure that their intellectual property rights are respected. Enforcement procedures to do so are covered in part III of the TRIPS Agreement. The Agreement says governments have to ensure that intellectual property rights can be enforced to prevent or deter violations. The procedures must be fair and equitable, and not unnecessarily complicated or costly. They must not entail unreasonable time-limits or unwarranted delays. People involved must be able to ask a court to review an administrative decision or to appeal a lower court’s ruling.

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

Technology transfer

Developing country members in particular see technology transfer as part of the bargain in which they have agreed to protect intellectual property rights. The TRIPS Agreement aims for the transfer of technology (see above) and requires developed country members to provide incentives for their companies to promote the transfer of technology to least-developed countries in order to enable them to create a sound and viable technological base. [More on technology transfer](https://www.wto.org/english/tratop_e/trips_e/techtransfer_e.htm).

Transitional arrangements: One year, 5 years or more

While the WTO agreements entered into force on 1 January 1995, the TRIPS Agreement allowed WTO members certain transition periods before they were obliged to apply all of its provisions. Developed country members were given one year to ensure that their laws and practices conform to the TRIPS Agreement. Developing country members and (under certain conditions) transition economies were given five years, until 2000. Least-developed countries initially had 11 years, until 2006 — now extended to 1 July 2021 in general.

In November 2015, the TRIPS Council agreed to further extend exemptions on pharmaceutical patent and undisclosed information protection for least-developed countries until 1 January 2033 or until such date when they cease to be a least-developed country member, whichever date is earlier. They are also exempted from the otherwise applicable obligations to accept the filing of patent applications and to grant exclusive marketing rights during the transition period.

Institutional arrangements

The main forum for work on the TRIPS Agreement is the Council for TRIPS, which was created by the WTO Agreement. The TRIPS Council is responsible for administering the TRIPS Agreement. In particular, it monitors the operation of the Agreement. In its regular sessions, the TRIPS Council mostly serves as a forum for discussion between WTO members on key issues. The TRIPS Council also meets in “special sessions”. These are for negotiations on a multilateral system for notifying and registering geographical indications for wines and spirits.

Cooperation with other intergovernmental organizations

The preamble to the TRIPS Agreement calls for a mutually supportive relationship between the WTO and WIPO as well as other relevant international organizations. Cooperation between the WTO and WIPO covers notifications of laws, technical assistance and implementing the TRIPS obligations that stem from Article 6ter of the Paris Convention for the Protection of Industrial Property.

The WTO also coordinates with a wide range of other international organizations, in particular as regards the organization of symposia, training activities and other events on intellectual property and trade and how these relate to other policy dimensions, such as public health and climate change.

Anti-dumping, subsidies, safeguards: contingencies, etc

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

 actions taken against dumping (selling at an unfairly low price)

 subsidies and special “countervailing” duties to offset the subsidies

 emergency measures to limit imports temporarily, designed to “safeguard” domestic industries.

## Anti-dumping actions

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

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

GATT (Article 6) allows countries to take action against dumping. The Anti-Dumping Agreement clarifies and expands Article 6, and the two operate together. They allow countries to act in a way that would normally break the GATT principles of [binding](https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact2_e.htm" \l "bind) a tariff and [not discriminating](https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact2_e.htm" \l "mfn) between trading partners — typically anti-dumping action means charging extra import duty on the particular product from the particular exporting country in order to bring its price closer to the “normal value” or to remove the injury to domestic industry in the importing country.

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

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

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

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

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

Subsidies and countervailing measures

This agreement does two things: it disciplines the use of subsidies, and it regulates the actions countries can take to counter the effects of subsidies. It says a country can use the WTO’s [dispute settlement procedure](https://www.wto.org/english/thewto_e/whatis_e/tif_e/disp1_e.htm) to seek the withdrawal of the subsidy or the removal of its adverse effects. Or the country can launch its own investigation and ultimately charge extra duty (known as “countervailing duty”) on subsidized imports that are found to be hurting domestic producers.

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

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

 Prohibited subsidies: subsidies that require recipients to meet certain export targets, or to use domestic goods instead of imported goods. They are prohibited because they are specifically designed to distort international trade, and are therefore likely to hurt other countries’ trade. They can be challenged in the WTO dispute settlement procedure where they are handled under an accelerated timetable. If the dispute settlement procedure confirms that the subsidy is prohibited, it must be withdrawn immediately. Otherwise, the complaining country can take counter measures. If domestic producers are hurt by imports of subsidized products, countervailing duty can be imposed.

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

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

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

Safeguards: emergency protection from imports

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

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

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

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

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

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

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

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

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

Anti-dumping, subsidies, safeguards: contingencies, etc

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

 actions taken against dumping (selling at an unfairly low price)

 subsidies and special “countervailing” duties to offset the subsidies

 emergency measures to limit imports temporarily, designed to “safeguard” domestic industries.

Anti-dumping actions

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

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

GATT (Article 6) allows countries to take action against dumping. The Anti-Dumping Agreement clarifies and expands Article 6, and the two operate together. They allow countries to act in a way that would normally break the GATT principles of [binding](https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact2_e.htm" \l "bind) a tariff and [not discriminating](https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact2_e.htm" \l "mfn) between trading partners — typically anti-dumping action means charging extra import duty on the particular product from the particular exporting country in order to bring its price closer to the “normal value” or to remove the injury to domestic industry in the importing country.

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

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

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

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

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

Subsidies and countervailing measures

This agreement does two things: it disciplines the use of subsidies, and it regulates the actions countries can take to counter the effects of subsidies. It says a country can use the WTO’s [dispute settlement procedure](https://www.wto.org/english/thewto_e/whatis_e/tif_e/disp1_e.htm) to seek the withdrawal of the subsidy or the removal of its adverse effects. Or the country can launch its own investigation and ultimately charge extra duty (known as “countervailing duty”) on subsidized imports that are found to be hurting domestic producers.

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

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

 Prohibited subsidies: subsidies that require recipients to meet certain export targets, or to use domestic goods instead of imported goods. They are prohibited because they are specifically designed to distort international trade, and are therefore likely to hurt other countries’ trade. They can be challenged in the WTO dispute settlement procedure where they are handled under an accelerated timetable. If the dispute settlement procedure confirms that the subsidy is prohibited, it must be withdrawn immediately. Otherwise, the complaining country can take counter measures. If domestic producers are hurt by imports of subsidized products, countervailing duty can be imposed.

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

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

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

Safeguards: emergency protection from imports

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

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

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

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

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Non-tariff barriers: red tape, etc

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

 import licensing

 rules for the valuation of goods at customs

 preshipment inspection: further checks on imports

 rules of origin: made in ... where?

 investment measures

Import licensing: keeping procedures clear

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

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

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

Plurilaterals: of minority interest

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

 trade in civil aircraft

 government procurement

 dairy products

 bovine meat.

The bovine meat and dairy agreements were terminated in 1997.

Air trade in civil aircraft

The [Agreement on Trade in Civil Aircraft](https://www.wto.org/english/docs_e/legal_e/legal_e.htm#civil) entered into force on 1 January 1980. It now has 32 signatories. The agreement eliminates import duties on all aircraft, other than military aircraft, as well as on all other products covered by the agreement — civil aircraft engines and their parts and components, all components and sub-assemblies of civil aircraft, and flight simulators and their parts and components. It contains disciplines on government-directed procurement of civil aircraft and inducements to purchase, as well as on government financial support for the civil aircraft sector.

Government procurement: opening up for competition

In most countries the government, and the agencies it controls, are together the biggest purchasers of goods of all kinds, ranging from basic commodities to high-technology equipment. They also buy large amounts of services and construction services, such as telecommunications, roads, airports and power stations, etc. Having in place a sound public procurement system based on principles of transparency, integrity and competition is vital in order to maximize the benefit arising from the procurement for citizens and businesses alike. At the same time, the political pressure to favour domestic suppliers over their foreign competitors can be very strong.

An [Agreement on Government Procurement](https://www.wto.org/english/docs_e/legal_e/legal_e.htm#procurement) was first negotiated during the Tokyo Round and entered into force on 1 January 1981. Its purpose is to open up as much of this business as possible to international competition. It is designed to make laws, regulations, procedures and practices regarding government procurement more transparent and to ensure they do not discriminate against foreign products or suppliers. During the Uruguay Round and later in parallel with the Doha Round, the Agreement was revised twice through negotiations among its signatories. Its latest version came into force on 6 April 2014.

The Agreement has two elements — general rules and obligations, and schedules of each participant's entities, whose procurements of listed goods, services and construction services are subject to the agreement if they exceed the threshold levels indicated in the schedules. The general rules and obligations mainly concern tendering procedures. They have evolved through different versions of the Agreement to enhance fair and non-discriminatory conditions of international competition and to reflect new developments in the procurement field, e.g. the wide use of electronic means in tendering. Governments are also required to put in place domestic procedures by which aggrieved private bidders can challenge procurement decisions and obtain redress in the event such decisions were made inconsistently with the rules of the agreement. The coverage schedules contained in the Agreement have expanded from central government entities to sub-central entities, public utilities and state-owned enterprises, and from goods to services and all types of construction services.

At present, the Agreement has 20 parties comprising 48 WTO members. Another 34 WTO members participate in the GPA Committee as observers. Out of these, 9 members are in the process of acceding to the Agreement.

Dairy and bovine meat agreements: ended in 1997

The [International Dairy Agreement](https://www.wto.org/english/docs_e/legal_e/legal_e.htm#dairy) and [International Bovine Meat Agreement](https://www.wto.org/english/docs_e/legal_e/legal_e.htm#bovine) were scrapped at the end of 1997. Countries that had signed the agreements decided that the sectors were better handled under the Agriculture and Sanitary and Phytosanitary agreements. Some aspects of their work had been handicapped by the small number of signatories. For example, some major exporters of dairy products did not sign the Dairy Agreement, and the attempt to cooperate on minimum prices therefore failed — minimum pricing was suspended in 1995.

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

The objectives are:

to increase the transparency and understanding of countries’ trade policies and practices, through regular monitoring

to improve the quality of public and intergovernmental debate on the issues

to enable a multilateral assessment of the effects of policies on the world trading system.

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

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

The four biggest traders — the European Union, the United States, Japan and China — are examined approximately once every two years.

The next 16 countries (in terms of their share of world trade) are reviewed every four years.

The remaining countries are reviewed every six years, with the possibility of a longer interim period for the least-developed countries.

As a result of an amendment to Annex 3 in July 2017, these review cycles will be three, five and seven years respectively, beginning on 1 January 2019.

For each review, two documents are prepared: a policy statement by the government under review, and a detailed report written independently by the WTO Secretariat. These two reports, together with the text of the TPRB Chairperson's Concluding Remarks delivered at the conclusion of the meeting are published shortly afterwards.

**Anti-dumping measures**

If a company exports a product at a price lower than the price it normally charges on its own home market, it is said to be “dumping” the product. The WTO Agreement does not regulate the actions of companies engaged in “dumping”. Its focus is on how governments can or cannot react to dumping — it disciplines anti-dumping actions, and it is often called the “Anti-dumping Agreement”.

Anti-dumping, subsidies, safeguards: contingencies, etc

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

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GATT (Article 6) allows countries to take action against dumping. The Anti-Dumping Agreement clarifies and expands Article 6, and the two operate together. They allow countries to act in a way that would normally break the GATT principles of [binding](https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact2_e.htm" \l "bind) a tariff and [not discriminating](https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact2_e.htm" \l "mfn) between trading partners — typically anti-dumping action means charging extra import duty on the particular product from the particular exporting country in order to bring its price closer to the “normal value” or to remove the injury to domestic industry in the importing country.

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

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

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

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

## Dumping in the GATT/WTO

What is dumping?

Dumping is, in general, a situation of international price discrimination, where the price of a product when sold in the importing country is less than the price of that product in the market of the exporting country. Thus, in the simplest of cases, one identifies dumping simply by comparing prices in two markets. However, the situation is rarely, if ever, that simple, and in most cases it is necessary to undertake a series of complex analytical steps in order to determine the appropriate price in the market of the exporting country (known as the “normal value”) and the appropriate price in the market of the importing country (known as the “export price”) so as to be able to undertake an appropriate comparison.

Article VI of GATT and the Anti-Dumping Agreement

The GATT 1994 sets forth a number of basic principles applicable in trade between Members of the WTO, including the “most favoured nation” principle. It also requires that imported products not be subject to internal taxes or other changes in excess of those imposed on domestic goods, and that imported goods in other respects be accorded treatment no less favourable than domestic goods under domestic laws and regulations, and establishes rules regarding quantitative restrictions, fees and formalities related to importation, and customs valuation. Members of the WTO also agreed to the establishment of schedules of bound tariff rates. Article VI of GATT 1994, on the other hand, explicitly authorizes the imposition of a specific anti-dumping duty on imports from a particular source, in excess of bound rates, in cases where dumping causes or threatens injury to a domestic industry, or materially retards the establishment of a domestic industry.  
  
The Agreement on Implementation of Article VI of GATT 1994, commonly known as the Anti-Dumping Agreement, provides further elaboration on the basic principles set forth in Article VI itself, to govern the investigation, determination, and application, of anti-dumping duties.

Previous Agreements

As tariff rates were lowered over time following the original GATT agreement, anti-dumping duties were increasingly imposed, and the inadequacy of Article VI to govern their imposition became ever more apparent. For instance, Article VI requires a determination of material injury, but does not contain any guidance as to criteria for determining whether such injury exists, and addresses the methodology for establishing the existence of dumping in only the most general fashion. Consequently, contracting parties to GATT negotiated more detailed Codes relating to anti-dumping. The first such Code, the Agreement on Anti-Dumping Practices, entered into force in 1967 as a result of the Kennedy Round. However, the United States never signed the Kennedy Round Code, and as a result the Code had little practical significance.  
  
The Tokyo Round Code, which entered into force in 1980, represented a quantum leap forward. Substantively, it provided enormously more guidance about the determination of dumping and of injury than did Article VI. Equally important, it set out in substantial detail certain procedural and due process requirements that must be fulfilled in the conduct of investigations. Nevertheless, the Code still represented no more than a general framework for countries to follow in conducting investigations and imposing duties. It was also marked by ambiguities on numerous controversial points, and was limited by the fact that only the 27 Parties to the Code were bound by its requirements.

## The UR Agreement

Basic principles

Dumping is defined in the Agreement on Implementation of Article VI of the GATT 1994 (The Anti-Dumping Agreement) as the introduction of a product into the commerce of another country at less than its normal value. Under Article VI of GATT 1994, and the Anti-Dumping Agreement, WTO Members can impose anti-dumping measures, if, after investigation in accordance with the Agreement, a determination is made (a) that dumping is occurring, (b) that the domestic industry producing the like product in the importing country is suffering material injury, and (c) that there is a causal link between the two. In addition to substantive rules governing the determination of dumping, injury, and causal link, the Agreement sets forth detailed procedural rules for the initiation and conduct of investigations, the imposition of measures, and the duration and review of measures.

Committee on Anti-Dumping Practices

The Committee, which meets at least twice a year, provides Members of the WTO the opportunity to discuss any matters relating to the Anti-Dumping Agreement (Article 16). The Committee has undertaken the review of national legislations notified to the WTO. This offers the opportunity to raise questions concerning the operation of national anti-dumping laws and regulations, and also questions concerning the consistency of national practice with the Anti-Dumping Agreement. The Committee also reviews notifications of anti-dumping actions taken by Members, providing the opportunity to discuss issues raised regarding particular cases.

The Committee has created a separate body, the Ad Hoc Group on Implementation, which is open to all Members of the WTO, and which is expected to focus on technical issues of implementation: that is, the “how to” questions that frequently arise in the administration of anti-dumping laws.

Disputes in the anti-dumping area are subject to binding dispute settlement before the Dispute Settlement Body of the WTO, in accordance with the provisions of the Dispute Settlement Understanding (“DSU”) (Article 17). Members may challenge the imposition of anti-dumping measures, in some cases may challenge the imposition of preliminary anti-dumping measures, and can raise all issues of compliance with the requirements of the Agreement, before a panel established under the DSU. In disputes under the Anti-Dumping Agreement, a special standard of review is applicable to a panel's review of the determination of the national authorities imposing the measure. The standard provides for a certain amount of deference to national authorities in their establishment of facts and interpretation of law, and is intended to prevent dispute settlement panels from making decisions based purely on their own views. The standard of review is only for anti-dumping disputes, and a Ministerial Decision provides that it shall be reviewed after three years to determine whether it is capable of general application.

All WTO Members are required to bring their anti-dumping legislation into conformity with the Anti-Dumping Agreement, and to notify that legislation to the Committee on Anti-Dumping Practices. While the Committee does not “approve” or “disapprove” any Members' legislation, the legislations are reviewed in the Committee, with questions posed by Members, and discussions about the consistency of a particular Member's implementation in national legislation of the requirements of the Agreement.  
  
In addition, Members are required to notify the Committee twice a year about all anti-dumping investigations, measures, and actions taken. The Committee has adopted a standard format for these notifications, which are subject to review in the Committee.  
  
Finally, Members are required to promptly notify the Committee of preliminary and final anti-dumping actions taken, including in their notification certain minimum information required by Guidelines agreed to by the Committee. These notifications are also subject to review in the Committee.

## Determination of normal value

The normal value is generally the price of the product at issue, in the ordinary course of trade, when destined for consumption in the exporting country market. In certain circumstances, for example when there are no sales in the domestic market, it may not be possible to determine normal value on this basis. The Agreement provides alternative methods for the determination of normal value in such cases.

Sales in the ordinary course of trade

One of the most complicated questions in anti-dumping investigations is the determination whether sales in the exporting country market are made in the “ordinary course of trade” or not. One of the bases on which countries may determine that sales are not made in the ordinary course of trade is if sales in the domestic market of the exporter are made below cost. The Agreement defines the specific circumstances in which home market sales at prices below the cost of production may be considered as not made in theordinary course of trade", and thus may be disregarded in the determination of normal value (Article 2). Those sales must be made at prices that are below per unit fixed and variable costs plus administrative, selling and general costs, they must be made within an extended period of time (normally one year, but in no case less than six months), and they must be made in substantial quantities. Sales are made in substantial quantities when (a)  the weighted average selling price is below the weighted average cost; of (b)  20% of the sales by volume were below cost. Finally, sales made below costs may only be disregarded in the determination of normal value where they do not allow for recovery of costs within a reasonable period of time. If sales are below cost when made but are above the weighted average cost over the period of the investigation, the Agreement provides that they allow for recovery of costs within a reasonable period of time.

Insufficient volume of sales

If there are sales below cost that meet the criteria set out in the Agreement, they can simply be ignored in the calculation of normal value, and normal value will be determined based on the remaining sales. However, exclusion of these below-cost sales may result in a level of sales insufficient to determine normal value based on home market prices. It is obvious that, in the case where there are no sales in the exporting country of the product under investigation, it is not possible to base normal value on such sales, and the Agreement recognizes this. However, it is also possible that, while there are some sales in the exporting country's market, the level of such sales is so low that its significance is questionable. Thus, the Agreement recognizes that in some cases sales in the home market may be so low in volume that they do not permit a proper comparison of home market and export prices. It provides that the level of home market sales is sufficient if home market sales constitute 5 per cent or more of the export sales in the country conducting the investigation, provided that a lower ratio “should” be accepted if the volume of domestic sales nevertheless is “of sufficient magnitude” to provide for a fair comparison.

Alternative bases for calculating normal value

Two alternatives are provided for the determination of normal value if sales in the exporting country market are not an appropriate basis. These are (a) the price at which the product is sold to a third country; and   
(b) the “constructed value” of the product, which is calculated on the basis of the cost of production, plus selling, general, and administrative expenses, and profits. The Agreement contains detailed and specific rules for the determination of a constructed value, governing the information to be used in determining the amounts for costs, expenses, and profits, the allocation of these elements of constructed value to the specific product in question, and adjustments for particular situations such as start-up costs and non-recurring cost items.

Constructed normal value

The determination of normal value based on cost of production, selling, general and administrative expenses, and profits is referred to as the “constructed normal value” The rules for determining whether sales are made below cost also apply to performing a constructed normal value calculation. The principal difference is the inclusion of a “reasonable amount for profits” in the constructed value.

Third country price as normal value

The other alternative method for determining normal value is to look at the comparable price of the like product when exported to an appropriate third country, provided that price is representative. The Agreement does not specify any criteria for determining what third country is appropriate.

Indirect exports

In the situation where products are not imported directly from the country of manufacture, but are exported from an intermediate country, the Agreement provides that the normal value shall be determined on the basis of sales in the market of the exporting country. However, the Agreement recognizes that this may result in an inappropriate or impossible comparison, for instance if the product is not produced in the exporting country, there is no comparable price for the product in the exporting country, or the product is merely transshipped through the exporting country. In such cases, the normal value may be determined on the basis of the price of the product in the country of origin, and not the price in the exporting country.

Non-market economies

In the particular situation of economies where the government has a complete or substantially complete monopoly of its trade and where all domestic prices are fixed by the State, GATT 1994 and the Agreement recognize that a strict comparison with home market prices may not be appropriate. Importing countries have thus exercised significant discretion in the calculation of normal value of products exported from non-market economies.

## Determination of export price

General rule

The export price will normally be based on the transaction price at which the foreign producer sells the product to an importer in the importing country. However, as is the case with normal value, the Agreement recognizes that this transaction price may not be appropriate for purposes of comparison.

Exceptions

There may be no export price for a given product, for instance, if the export transaction is an internal transfer, or if the product is exchanged in a barter transaction. In addition, the transaction price at which the exporter sells the product to the importing country may be unreliable because of an association or a compensatory arrangement between the exporter and the importer or a third party. In such a case, the transaction price may not be an arms-length market price, but may be manipulated, for instance for tax purposes. The Agreement recognizes that, in such cases, an alternative method of determining an appropriate export price for comparison is needed.

Alternative method of calculation

The Agreement provides that in circumstances where there is no export price, or where the export price is unreliable due to an association or compensatory arrangement between the exporter and the importer or a third party, an alternative method may be used to determine the export price. this results in a “constructed export price”, and is calculated on the basis of the price at which the imported products are first resold in an independent buyer. If the imported product is not resold to an independent buyer, or is not resold as imported, the authorities may determine a reasonable basis on which to calculate the export price.

## Fair comparison of normal value and export price

Basic requirements

The Agreement requires that a fair comparison of the export price and the normal value be made. The basic requirements for a fair comparison are that the prices being compared are those of sales made at the same level of trade, normally the ex-factory level, and of sales made at as nearly as possible the same time.   
  
As part of the Agreement's requirements regarding transparency and participation, the investigating authorities are required to inform parties of the information needed to ensure a fair comparison, for instance, information regarding adjustments, allowances, and currency conversion, and may not impose an “unreasonable burden of proof” on parties.

Allowance

To ensure that prices are comparable, the Agreement requires that adjustments be made to either the normal value, or the export price, or both, to account for differences in the product, or in the circumstances of sale, in the importing and exporting markets. These allowances must be made for differences in conditions and terms of sale, taxation, quantities, physical characteristics, and other differences demonstrated to affect price comparability.

Adjustments in case of constructed export price

The Agreement also provides specific rules on the adjustment to be made if the comparison of normal value is to a constructed export price. In those circumstances, allowance must be made for costs, including duties and taxes, incurred between the importation of the product and the resale to the first independent purchaser, as well as for profits accruing. If price comparability has been affected, the Agreement requires either that the normal value be established at a level of trade equivalent to that of the constructed export price, which is likely to require an adjustment, or allowance must be made for differences in conditions and terms of sale, taxation, quantities, physical characteristics, and other matters demonstrated to affect price comparability.

Conversion of currency

Where the comparison of normal value and export price requires conversion of currency, the Agreement provides specific rules governing that conversion (Article 2.4.1). Thus, the exchange rate used should be that in effect on the date of sale (date of contract, invoice, purchase order or order confirmation, whichever establishes material terms of sale). If a forward currency sale is directly linked to export sale, the exchange rate of forward currency sale must be used. Moreover, the Agreement requires that exchange rate fluctuations be ignored, and that exporters be allowed at least 60 days to adjust export prices for sustained exchange rate movements.

## Calculation of dumping margins and duty assessment

Calculation of dumping margins

The Agreement contains rules governing the calculation of dumping margins. In the usual case, the Agreement requires either the comparison of the weighted average normal value to the weighted average of all comparable export prices, or a transaction-to-transaction comparison of normal value and export price (Article 2.4.2). A different basis of comparison can be used if there is “targeted dumping”: that is, if a pattern exists of export prices differing significantly among different purchasers, regions or time periods. In this situation, if the investigating authorities provide an explanation as to why such differences cannot be taken into account in weighted average-to-weighted average or transaction-to-transaction comparisons, the weighted average normal value can be compared to the export prices on individual transactions.

Refund or reimbursement

The Agreement requires Members to collect duties on a non-discriminatory basis on imports from all sources found to be dumped and causing injury, except with respect to sources from which a price undertaking has been accepted. Moreover, the amount of the duty collected may not exceed the dumping margin, although it may be a lesser amount. The Agreement specifies two mechanisms to ensure that excessive duties are not collected. The choice of mechanism depends on the nature of the duty collection process. If a Member allows importation and collects an estimated anti-dumping duty, and only later calculates the specific amount of anti-dumping duty to be paid, the Agreement requires that the final determination of the amount must take place as soon as possible, upon request for a final assessment. In both cases, the Agreement provides that the final decision of the authorities must normally be made within 12  months of a request for refund or final assessment, and that any refund should be made within 90 days.

Individual exporter dumping margins

The Agreement requires that, when anti-dumping duties are imposed, a dumping margin be calculated for each exporter. However, it is recognized that this may not be possible in all cases, and thus the Agreement allows investigating authorities to limit the number of exporters, importers, or products individually considered, and impose an anti-dumping duty on uninvestigated sources on the basis of the weighted average dumping margin actually established for the exporters or producers actually examined. The investigating authorities are precluded from including in the calculation of that weighted average dumping margin any dumping margins that are de minimis, zero, or based on the facts available rather than a full investigation, and must calculate an individual margin for any exporter or producer who provides the necessary information during the course of the investigation.

New shippers

The Agreement makes provision for the assessment of anti-dumping duties on exports from producers or exporters who were not sources of imports considered during the period of investigation. In this circumstance, the investigating authorities are required to conduct an expedited review to determine a specific margin of dumping attributable to the exports of such a “new shipper”. While that review is in progress, the authorities may request guarantees or withhold appraisement on imports, but may not actually collect anti-dumping duties on those imports.

## Like product

Definition (Article 2.6)

 An important decision must be made early in each investigation to determine the domestic “like product”. Like product is defined in the Agreement as “a product which is identical, i.e. alike in all respects to the product under consideration or, in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration”. The determination involves first examining the imported product or products that are alleged to be dumped, and then establishing what domestically produced product or products are the appropriate “like product”. The decision regarding the like product is important because it is the basis of determining which companies constitute the domestic industry, and that determination in turn governs the scope of the investigation and determination of injury and causal link.

## Domestic industry

Definition (Article 4)

The Agreement defines the term “domestic industry” to mean “the domestic producers as a whole of the like products or those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products”.

Related domestic producers

The Agreement recognizes that in certain circumstances, it may not be appropriate to include all producers of the like product in the domestic industry. Thus, Members are permitted to exclude from the domestic industry producers related to the exporters or importers under investigation, and producers who are themselves importers of the allegedly dumped product. The Agreement provides that a producer can be deemed “related” to an exporter or importer of the allegedly dumped product if there is a relationship of control between them, and if there is reason to believe that the relationship causes the domestic producer to behave differently from non-related producers.

Regional domestic industry

The Agreement contains special rules that allow in exceptional circumstances, consideration of injury to producers comprising a “regional industry”. A regional industry may be found to exist in a separate competitive market if producers within that market sell all or almost all of their production of the like product in that market, and demand for the like product in that market is not to any substantial degree supplied by producers of the like product located outside that market. If this is the case, investigating authorities may find that injury exists, even if a major proportion of the entire domestic industry, including producers outside the region, is not materially injured. However, a finding of injury to the regional industry is only allowed if (1) there is a concentration of dumped imports into the market served by the regional industry, and (2) dumped imports are causing injury to the producers of all or almost all of the production within that market.

Imposition of duties in regional industry cases

If an affirmative determination is based on injury to a regional industry, the Agreement requires investigating authorities to limit the duties to products consigned for final consumption in the region in question, if constitutionally possible. If the Constitutional law of a Member precludes the collection of duties on imports to the region, the investigating authorities may levy duties on all imports of the product, without limitation, if anti-dumping duties cannot be limited to the imports from specific producers supplying the region. However, before imposing those duties, the investigating authorities must offer exporters an opportunity to cease dumping in the region or enter a price undertaking.

Types of injury

The Agreement provides that, in order to impose anti-dumping measures, the investigating authorities of the importing Member must make a determination of injury. The Agreement defines the term “injury” to mean either (i)  material injury to a domestic industry, (ii) threat of material injury to a domestic industry, or (iii) material retardation of the establishment of a domestic industry, but is silent on the evaluation of material retardation of the establishment of a domestic industry.

Basic requirements for determination of material injury

The Agreement does not define the notion of “material”. However, it does require that a determination of injury must be based on positive evidence and involve an objective examination of (i) the volume of dumped imports and the effect of the dumped imports on prices in the domestic market for like products, and (ii) the consequent impact of the dumped imports on domestic producers of the like product. Article 3 contains some specific additional factors to be considered in the evaluation of these two basic elements, but does not provide detailed guidance on how these factors are to be evaluated or weighed, or on how the determination of causal link is to be made.

Basic requirements for determination of threat of material injury

The Agreement sets forth factors to be considered in the evaluation of threat of material injury. These include the rate of increase of dumped imports, the capacity of the exporter(s), the likely effects of prices of dumped imports, and inventories. There is no further elaboration on these factors, or on how they are to be evaluated. The Agreement does, however, specify that a determination of threat of material injury shall be based on facts, and not merely on allegation, conjecture, or remote possibility, and moreover, that the change in circumstances which would create a situation where dumped imports caused material injury must be clearly foreseen and imminent.

## Elements of analysis

Consideration of volume effects of dumped imports

The Agreement requires investigating authorities to consider whether there has been a significant increase in the dumped imports, either in absolute terms or relative to production or consumption in the domestic industry.

Consideration of price effects of dumped imports

In addition, the Agreement requires investigating authorities to consider whether there has been significant price undercutting by the dumped imports as compared with the price of a like product of the importing Member. Investigating authorities are also required to consider whether the effect of dumped imports is “otherwise” to depress prices to a significant degree, or to prevent price increases, which otherwise would have occurred, to a significant degree.

Evaluation of volume and price effects of dumped imports

The Agreement provides that no one or several of these factors can necessarily give decisive guidance. It does not specify how the investigating authorities are to evaluate the volume and price effects of dumped imports: merely that consideration of these effects is required. Thus, investigating authorities have to develop analytical methods for undertaking the consideration of these factors. Moreover, since no single factor or combination of factors will necessarily result in either an affirmative or negative determination, in each case investigating authorities have to evaluate which factors are relevant, and which are important, in light of the circumstances of the particular case at issue.

Examination of impact of dumped imports on the domestic industry

The Agreement provides that, in examining the impact of dumped imports on the domestic industry, the authorities are to evaluate all relevant economic factors bearing upon the state of the domestic industry. The Agreement lists a number of factors which must be considered, including actual or potential declines in sales, profits, output, market share, productivity, return on investments, utilization of capacity, actual or potential effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments, and the magnitude of the margin of dumping. However, the list is not exhaustive, and other factors may be deemed relevant. In addition, the Agreement again specifies that no single factor or combination of factors will necessarily lead to either an affirmative or negative determination.

Demonstration of causal link

The Agreement requires a demonstration that there is a causal relationship between the dumped imports and the injury to the domestic industry. This demonstration must be based on an examination of all relevant evidence. The Agreement does not specify particular factors or give guidance in how relevant evidence is to be evaluated. Article 3.5 does require, however, that known factors other than dumped imports which may be causing injury must be examined, gives examples of factors (such as changes in the pattern of demand, and developments in technology) which may be relevant, and specifies that injury caused by such “other factors” must not be attributed to dumped imports. Thus, the investigating authorities must develop analytical methods for determining what evidence is or may be relevant in a particular case, and for evaluating that evidence, taking account of other factors which may be causing injury.

Cumulative analysis refers to the consideration of dumped imports from more than one country on a combined basis in assessing whether dumped imports cause injury to the domestic industry. Obviously, since such analysis will increase the volume of imports whose impact is being considered, there is a greater possibility of an affirmative determination in a case involving cumulative analysis. The practice of cumulative analysis was the subject of much controversy under the Tokyo Round Code, and in the negotiations for the Agreement. Article 3.3 of the Agreement establishes the conditions in which a cumulative evaluation of the effects of dumped imports from more than one country may be undertaken. The authorities must determine that the margin of dumping from each country is not de minimis, that the volume of imports from each country is not negligible, and that a cumulative assessment is appropriate in light of the conditions of competition among the imports and between the imports and the domestic like product. De minimis dumping margins and negligible import volumes are defined in the Agreement.

Agreement Article 5 of the Agreement establishes the requirements for the initiation of investigations. The Agreement specifies that investigations should generally be initiated on the basis of written request submitted “by or on behalf of” a domestic industry. This “standing” requirement includes numerical limits for determining whether there is sufficient support by domestic producers to conclude that the request is made by or on behalf of the domestic industry, and thereby warrants initiation. The Agreement establishes requirements for evidence of dumping, injury, and causality, as well as other information regarding the product, industry, importers, exporters, and other matters, in written applications for anti-dumping relief, and specifies that, in special circumstances when authorities initiate without a written application from a domestic industry, they shall proceed only if they have sufficient evidence of dumping, injury, and causality. In order to ensure that investigations without merit are not continued, potentially disrupting legitimate trade, Article 5.8 provides for immediate termination of investigations in the event the volume of imports is negligible or the margin of dumping is de minimis, and establishes numeric thresholds for these determinations. In order to minimize the trade-disruptive effect of investigations, Article 5.10 specifies that investigations should be completed within one year, and in no case more than 18 months, after initiation.

Article 6 of the Agreement sets forth detailed rules on the process of investigation, including the collection of evidence and the use of sampling techniques. It requires authorities to guarantee the confidentiality of sensitive information and verify the information on which determinations are based. In addition, to ensure the transparency of proceedings, authorities are required to disclose the information on which determinations are to be based to interested parties and provide them with adequate opportunity to comment. The Agreement establishes the rights of parties to participate in the investigation, including the right to meet with parties with adverse interests, for instance in a public hearing. Further guidance on the conduct of investigations is contained in two Annexes to the Agreement, which set forth rules for the on-the-spot investigations to verify information obtained from foreign parties, as well as rules for the use of best information available in the event a party refuses access to, or does not provide, requested information, or significantly impedes the investigation.

## Provisional measures and price undertakings

Imposition of provisional measures

Article 7 of the Agreement provides rules relating to the imposition of provisional measures. These include the requirement that authorities make a preliminary affirmative determination of dumping, injury, and causality before applying provisional measures, and the requirement that no provisional measures may be applied sooner than 60 days after initiation of an investigation. Provisional measures may take the form of a provisional duty or, preferably, a security by cash deposit or bond equal to the amount of the preliminarily determined margin of dumping. The Agreement also contains time limits for the imposition of provisional measures— generally four months, with a possible extension to six months at the request of exporters. If a Member, in its administration of anti-dumping duties, imposes duties lower than the margin of dumping when these are sufficient to remove injury, the period of provisional measures is generally six months, with a possible extension to nine months at the request of exporters.

Price undertakings

Article 8 of the Agreement contains rules on the offering and acceptance of price undertakings, in lieu of the imposition of anti-dumping duties. It establishes the principle that undertakings between any exporter and the importing Member, to revise prices, or cease exports at dumped prices, may be entered into to settle an investigation, but only after a preliminary affirmative determination of dumping, injury and causality has been made. It also establishes that undertakings are voluntary on the part of both exporters and investigating authorities. In addition, an exporter may request that the investigation be continued after an undertaking has been accepted, and if a final determination of no dumping, no injury, or no causality results, the undertaking shall automatically lapse.

Imposition and collection of duties

Article 9 of the Agreement establishes the general principle that imposition of anti-dumping duties is optional, even if all the requirements for imposition have been met. It also states the desirability of application of a “lesser duty” rule. Under a lesser duty rule, authorities impose duties at a level lower than the margin of dumping if this level is adequate to remove injury. In addition, the Agreement contains rules intended to ensure that duties in excess of the dumping margin are not collected, and rules for applying duties to new shippers.

Retroactive application of duties

The Agreement sets forth the general principle that both provisional and final anti-dumping duties may be applied only as of the date on which the determinations of dumping, injury and causality have been made. However, recognizing that injury may have occurred during the period of investigation, or that exporters may have taken actions to avoid the imposition of an anti-dumping duty, Article 10 contains rules for the retroactive imposition of dumping duties in specified circumstances. If the imposition of anti-dumping duties is based on a finding of material injury, as opposed to threat of material injury or material retardation of the establishment of a domestic industry, anti-dumping duties may be collected as of the date provisional measures were imposed. If provisional duties were collected in an amount greater than the amount of the final duty, or if the imposition of duties is based on a finding of threat of material injury or material retardation, a refund of provisional duties is required. Article 10.6 provides for retroactive application of final duties to a date not more than 90 days prior to the application of provisional measures in certain exceptional circumstances involving a history of dumping, massive dumped imports, and potential undermining of the remedial effects of the final duty.

## Review and public notice

Duration, termination, and review of anti-dumping measures

Article 11 of the Agreement establishes rules for the duration of anti-dumping duties, and requirements for periodic review of the continuing need, if any, for the imposition of anti-dumping duties or price undertakings. These requirements respond to the concern raised by the practice of some countries of leaving anti-dumping duties in place indefinitely. The “sunset” requirement establishes that dumping duties shall normally terminate no later than five years after first being applied, unless a review investigation prior to that date establishes that expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury. This five year “sunset” provision also applies to price undertakings. The Agreement requires authorities to review the need for the continued imposition of a duty upon request of an interested party.

Public notice

Article 12 sets forth detailed requirements for public notice by investigating authorities of the initiation of investigations, preliminary and final determinations, and undertakings. The public notice must disclose non-confidential information concerning the parties, the product, the margins of dumping, the facts revealed during the investigation, and the reasons for the determinations made by the authorities, including the reasons for accepting and rejecting relevant arguments or claims made by exporters or importers. These public notice requirements are intended to increase the transparency of determinations, with the hope that this will increase the extent to which determinations are based on fact and solid reasoning.

## 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.

The Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (the “AD Agreement”) governs the application of anti-dumping measures by Members of the WTO. Anti-dumping measures are unilateral remedies which may be applied by a Member after an investigation and determination by that Member, in accordance with the provisions of the AD Agreement, that an imported product is “dumped” and that the dumped imports are causing material injury to a domestic industry producing the like product.

The AD Agreement sets forth certain substantive requirements that must be fulfilled in order to impose an anti-dumping measure, as well as detailed procedural requirements regarding the conduct of anti-dumping investigations and the imposition and maintenance in place of anti-dumping measures. A failure to respect either the substantive or procedural requirements can be taken to dispute settlement and may be the basis for invalidation of the measure. Unlike the Agreement on Subsidies and Countervailing Measures, the AD Agreement does not establish any disciplines on dumping itself, primarily because dumping is a pricing practice engaged in by business enterprises, and thus not within the direct reach of multilateral disciplines.

## Substantive rules

Article 1 of the AD Agreement establishes the basic principle that a Member may not impose an anti-dumping measure unless it determines, pursuant to an investigation conducted in conformity with the provisions of the AD Agreement, that there are dumped imports, material injury to a domestic industry, and a causal link between the dumped imports and the injury.

Determination of dumping

Article 2 contains substantive rules for the determination of dumping. Dumping is calculated on the basis of a “fair comparison” between normal value (the price of the imported product in the “ordinary course of trade” in the country of origin or export) and export price(the price of the product in the country of import). Article 2 contains detailed provisions governing the calculation of normal value and export price, and elements of the fair comparison that must be made.

Determination of injury

Article 3 of the AD Agreement contains rules regarding the determination of material injury caused by dumped imports. Material injury is defined as material injury itself, threat of material injury, or material retardation of the establishment of a domestic industry. The basic requirement for determinations of injury, is that there be an objective examination, based on positive evidence of the volume and price effects of dumped imports and the consequent impact of dumped imports on the domestic industry. Article 3 contains specific rules regarding factors to be considered in making determinations of material injury, while specifying that no one or several of the factors which must be considered is determinative. Article 3.5 requires, in establishing the causal link between dumped imports and material injury, known factors other than dumped imports which may be causing injury must be examined, and that injury caused by these factors must not be attributed to dumped imports.

A significant new provision, Article 3.3, establishes the conditions in which a cumulative evaluation of the effects of dumped imports from more than one country may be undertaken. Under the rules, authorities must determine that the margin of dumping from each country is not de minimis, that the volume of imports from each country is not negligible, and that a cumulative assessment is appropriate in light of the conditions of competition among the imports and between the imports and the domestic like product.

Definition of industry

Article 4 of the AD Agreement sets forth a definition of the domestic industry to be considered for purposes of assessing injury and causation. The domestic industry is defined as producers of a “like product”, which term is defined in Article 2.6 as a product that is identical to, or in the absence of such a product, one that has characteristics closely resembling those of, the imported dumped product under consideration. Article 4 contains special rules for defining a “regional” domestic industry in exceptional circumstances where production and consumption in the importing country are geographically isolated, and for the evaluation of injury and assessment of duties in such cases. Article 4 also establishes that domestic producers may be excluded from consideration as part of the domestic industry if they are “related” (defined as a situation of legal or effective control) to exporters or importers of the dumped product.

## Procedural requirements

A principal objective of the procedural requirements of the AD Agreement is to ensure transparency of proceedings, a full opportunity for parties to defend their interests, and adequate explanations by investigating authorities of their determinations. The extensive and detailed procedural requirements relating to investigations focus on the sufficiency of petitions (through minimum information and “standing” requirements) to ensure that meritless investigations are not initiated, on the establishment of time periods for the completion of investigations, and on the provision of access to information to all interested parties, along with reasonable opportunities to present their views and arguments. Additional procedural requirements relate to the offering, acceptance, and administration of price undertakings by exporters in lieu of the imposition of anti-dumping measures. The AD Agreement requires investigating authorities to give public notice of and explain their determinations at various stages of the investigative process in substantial detail. It also establishes rules for the timing of the imposition of anti-dumping duties, the duration of such duties, and obliges Members to periodically review the continuing need for anti-dumping duties and price undertakings. There are detailed provisions guiding the imposition and collection of duties under various duty assessment systems, intended to ensure that anti-dumping duties in excess of the margin of dumping are not collected, and that individual exporters are not subjected to anti-dumping duties in excess of their individual margin of dumping. Article 13 of the AD Agreement requires Members to provide for judicial review of final determinations in anti-dumping investigations and reviews. Other provisions establish that Members may, at their discretion, take anti-dumping actions on behalf of and at the request of a third country, and recognise that “special regard” must be given by developed country Members to the situation of developing country Members when considering the application of anti-dumping duties.

Specific Provisions

Initiation and conduct of investigations

Article 5 establishes the requirements for the initiation of investigations. The AD Agreement specifies that investigations should generally be initiated based on a written request submitted “by or on behalf of” a domestic industry. This “standing” requirement is supported by numeric limits for determining whether there is sufficient support by domestic producers to conclude that the request is made by or on behalf of the domestic industry, and thereby warrants initiation. The AD Agreement establishes requirements for evidence of dumping, injury, and causality, as well as other information regarding the product, industry, importers, exporters, and other matters, in written applications for anti-dumping relief, and specifies that, in special circumstances when authorities initiate without a written application from a domestic industry, they shall proceed only if they have sufficient evidence of dumping, injury, and causality. In order to ensure that meritless investigations are not continued, potentially disrupting legitimate trade, Article 5.8 provides for immediate termination of investigations in the event the volume of imports is negligible or the margin of dumping is de minimis, and establishes numeric thresholds for these determinations. In order to minimize the trade disruptive effect of investigations, Article 5.10 specifies that investigations shall be completed within one year, and in no case more than 18 months, after initiation.

Article 6 sets forth detailed rules on the process of investigation, including the collection of evidence and the use of sampling techniques. It requires authorities to guarantee the confidentiality of sensitive information and verify the information on which determinations are based. In addition, to ensure the transparency of proceedings, authorities are required to disclose the information on which determinations are to be based to interested parties and provide them with adequate opportunity to comment, and establishes the rights of parties to participate in the investigation, including the right to meet with parties with adverse interests, for instance in a public hearing.

Imposition of provisional measures

Article 7 relates to the imposition of provisional measures. Article 7 includes the requirement that authorities make a preliminary affirmative determination of dumping, injury, and causality before applying provisional measures, and the requirement that no provisional measures may be applied sooner than 60 days after initiation of an investigation.

Price undertakings

Article 8 establishes the principle that undertakings to revise prices or cease exports at dumped prices may be entered into to settle an investigation, but only after a preliminary affirmative determination of dumping, injury, and causality has been made. It also establishes that undertakings are voluntary on the part of both exporters and investigating authorities. In addition, an exporter may request that the investigation be continued after an undertaking has been accepted, and if a final determination of no dumping, no injury, or no causality results, the undertaking shall automatically lapse.

Imposition and collection of duties

Article 9 establishes the general principle that imposition of anti-dumping duties is optional, even if all the requirements for imposition have been met, and establishes the desirability of application a “lesser duty” rule. Under a lesser duty rule, authorities impose duties at a level lower than the margin of dumping but adequate to remove injury. Article 9.3 establishes that anti-dumping duties may not exceed the dumping margin calculated during the investigation. In order to ensure that anti-dumping duties in excess of the margin of dumping are not collected, Article 9.3 requires procedures for determination of the actual amount of duty owed, or refund of excess duties paid, depending on the duty assessment system of a Member, normally within 12 months of a request, and in no case more than 18 months. Article 9.4 establishes rules for calculating the amount of duties to be imposed on exporters not individually examined during the investigation. Article 9.5 provides for expedited reviews to calculate individual margins of dumping for exporters or producers newly entering the market of the importing Member.

Article 10 establishes the general principle that both provisional and final anti-dumping duties may be applied only as of the date on which the determinations of dumping, injury, and causality have been made. However, recognizing that injury may have occurred during the period of investigation, or that exporters may have taken actions to avoid the imposition of an anti-dumping duty, Article 10 contains rules for theretroactive imposition of dumping duties in specified circumstances. If the imposition of anti-dumping duties is based on a finding of material injury, as opposed to threat of material injury or material retardation of the establishment of a domestic industry, anti-dumping duties may be collected as of the date provisional measures were imposed. If provisional duties were collected in an amount greater than the amount of the final duty, or if the imposition of duties is based on a finding of threat of material injury or material retardation, a refund of provisional duties is required. Article 10.6 provides for retroactive application of final duties to a date not more than 90 days prior to the application of provisional measures in certain exceptional circumstances involving a history of dumping, massive dumped imports, and potential undermining of the remedial effects of the final duty.

Duration, termination, and review of anti-dumping measures

Article 11 establishes rules for the duration of anti-dumping duties, and requirements for periodic review of the continuing need, if any, for the imposition of anti-dumping duties or price undertakings. These requirements respond to the concern raised by the practice of some countries of leaving anti-dumping duties in place indefinitely. The “sunset” requirement establishes that dumping duties shall normally terminate no later than five years after first being applied, unless a review investigation prior to that date establishes that expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury. This five year “sunset” provision also applies to price undertakings. The AD Agreement requires authorities to review the need for the continued imposition of a duty upon request of an interested party.

Public notice

Article 12 sets forth detailed requirements for public notice by investigating authorities of the initiation of investigations, preliminary and final determinations, and undertakings. The public notice must disclose non-confidential information concerning the parties, the product, the margins of dumping, the facts revealed during the investigation, and the reasons for the determinations made by the authorities, including the reasons for accepting and rejecting relevant arguments or claims made by exporters or importers. These public notice requirements are intended to increase the transparency of determinations, with the hope that this will increase the extent to which determinations are based on fact and solid reasoning.

## The committee and dispute settlement

Article 16 establishes the Committee on Anti-dumping Practices, and sets forth requirements for Members to notify without delay all preliminary and final actions taken in anti-dumping investigations, and notify semi-annually all actions taken during the relevant reporting period.

Article 17 establishes that the Dispute Settlement Understanding is applicable to disputes under the AD Agreement. However, Article 17.6 establishes a special standard of review to be applied by panels in examining disputes in anti-dumping cases with regard both to matters of fact and questions of interpretation of the Agreement. This standard gives a degree of deference to the factual decisions and legal interpretations of national authorities, and is intended to prevent dispute settlement panels from making decisions based purely on their own views. A Ministerial Decision, which is not part of the AD Agreement, regarding this provision establishes that its operation will be reviewed after three years with a view to consideration whether it is capable of general application.

## Final provisions

Article 18.3 establishes the effective date of the AD Agreement, providing that it is applicable to investigations and reviews of existing measures initiated pursuant to applications made on or after the entry into force of the AD Agreement. Article 18.4 requires Members to bring their laws into conformity with the AD Agreement by the date of entry into force of the AD Agreement. Under Article 18.5, Members are required to notify their anti-dumping laws and regulations to the Committee.

Annex I to the AD Agreement establishes procedures for “on-the-spot” investigations, which are generally undertaken in the territory of an exporting Member to verify information provided by foreign producers or exporters. Annex II to the AD Agreement sets forth provisions on the use of “best information available” in investigations, specifying the conditions under which investigating authorities may rely on information from a source other than the person concerned.

The Ministerial Decision on Anti-Circumvention, which is not part of the AD Agreement, noted that the negotiators had been unable to agree on a specific text dealing with the problem of anti-circumvention, recognized the desirability of applying uniform rules in this area as soon as possible, and referred the matter to the Committee for resolution. The Committee has established an Informal Group on Anti-Circumvention, which is open to participation by all Members, to carry out the task assigned by the Ministers.

The Anti-Dumping Agreement (“AD Agreement”) obliges WTO Members to submit several types of notification to the Committee on Anti-Dumping Practices (“ADP Committee”). Except where a notifying Member specifically requests the contrary, all notifications are issued as unrestricted documents and are fully accessible to the public. These notifications are available from [Documents Online](https://www.wto.org/english/tratop_e/adp_e/adp_e.htm" \l "dol). In order to assist the public in identifying and retrieving these documents, the types of notifications submitted to the ADP Committee and the document series in which they can be found are described below.

Notifications of Anti-Dumping legislation and/or regulations

Article 18.5 of the AD Agreement requires Members to notify their domestic laws and/or regulations relating to anti-dumping to the ADP Committee. Members that have no anti-dumping laws or regulations should notify that fact. These notifications are in the form of the full texts of the relevant laws and/or regulations, and are available in each of the three WTO languages (English, French, and Spanish). The notifications can be found in document series G/ADP/N/1/…, with the notifying Member identified at the end of the symbol by its three-letter ISO country code, followed by a number. As there may be corrections, revisions, and/or supplements to any given notification, the complete notification of a Member may include several documents with the same number, followed by additional letters to indicate the type of additional document in question. Thus, for example, the original legislation notification of Japan would be designated G/ADP/N/1/JPN/1. A correction to that document would be designated G/ADP/N/1/JPN/1/Corr.1. A supplemental notification, for instance of additional regulations or administrative provisions, would be designated G/ADP/N/1/JPN/1/Suppl.1. If a new legislation or regulation, replacing that originally notified, were to be submitted, the next higher number in sequence would be used to identify the notification as replacing all previous notifications by that Member. Thus, if Japan were to submit a notification of a new legislation, it would be designated G/ADP/N/1/JPN/2. Corrections, revisions, and supplements to the new notification would be numbered as described above. Thus, the document with the highest number, and any corrections, supplements, or revisions to that document, will contain the latest full text notification of a Member's anti-dumping legislation and/or regulations.

Notifications of legislation by Members are subject to review in the ADP Committee. Such review is reflected in written questions and answers, which can be found in the document series G/ADP/Q1/…, again followed by the three-letter ISO country code and a number indicating the sequence in which the documents were issued. These documents are initially issued as restricted, but are derestricted and become fully available to the public six months after circulation, unless a Member specifically requests the contrary. Thus, for example, questions and answers regarding the notification of legislation of Japan would be designated G/ADP/Q1/JPN/1, G/ADP/Q1/JPN/2, and so on.

Notifications of Anti-Dumping Actions

Article 16.4 requires Members to submit a report of all anti-dumping actions they have taken, as well as a list of all anti-dumping measures in force, twice a year. These reports are normally submitted in February, covering the period 1 July through 31 December of the previous calendar year, and in August, covering the period 1 January through 30 June of the current calendar year. A format for these reports, with explanations, can be found in document G/ADP/1. Members who have taken no actions are nonetheless required to make a notification, but such nil notifications are frequently in the form of a letter rather than the following the format. Such nil notifications are generally not circulated as documents, but are identified in the summary (see below).

Semi-annual reports for each six-month period have their own document number, with each Member's report identified with its three-letter ISO country code. For example, the semi-annual reports for the first half of 1998 can be found in document series G/ADP/N/41…. Thus, the semi-annual report of Canada for that period would be designated G/ADP/N/41/CAN. A summary of the status of semi-annual reports for that period, setting forth which Members notified actions taken, which Members notified no actions taken, and which Members have not yet submitted a semi-annual report, would be found in document G/ADP/N/41/Add.1. Updates to the summary, designated by higher numbers in sequence, are generally issued twice a year, in April and October. Thus, the addendum document with the highest number will contain the most recent information as to the status of these notifications.

Notifications of Preliminary and Final Actions

Article 16.4 requires Members to report without delay all preliminary or final actions taken. There is no specific format for these notifications. The notifications often are made by submitting the full text of a Member's public notice regarding the action, but in any event should contain the information described in the guidelines adopted by the ADP Committee, which can be found in document G/ADP/2. A list of such notifications submitted to the ADP Committee is circulated approximately monthly as a document in the G/ADP/N… series. The actual notifications are frequently lengthy and are thus not circulated in full, although they are made available at the WTO Secretariat for consultation by interested delegations.

Notifications of Competent Authorities

Article 16.5 requires Members to notify the ADP Committee which of its authorities are competent to initiate and conduct anti-dumping investigations. The list of such notifications includes addresses and contact numbers. It is periodically updated, and can be found in document G/ADP/N/14/Add…. The addendum document with the highest number will contain the most recent information.

**Subsidies and countervailing measures**

The WTO Agreement on Subsidies and Countervailing Measures disciplines the use of subsidies, and it regulates the actions countries can take to counter the effects of subsidies. Under the agreement, a country can use the WTO’s dispute-settlement procedure to seek the withdrawal of the subsidy or the removal of its adverse effects. Or the country can launch its own investigation and ultimately charge extra duty (“countervailing duty”) on subsidized imports that are found to be hurting domestic producers.

Anti-dumping, subsidies, safeguards: contingencies, etc

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

 actions taken against dumping (selling at an unfairly low price)

 subsidies and special “countervailing” duties to offset the subsidies

 emergency measures to limit imports temporarily, designed to “safeguard” domestic industries.

**Anti-dumping actions**

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

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

GATT (Article 6) allows countries to take action against dumping. The Anti-Dumping Agreement clarifies and expands Article 6, and the two operate together. They allow countries to act in a way that would normally break the GATT principles of [binding](https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact2_e.htm#bind) a tariff and [not discriminating](https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact2_e.htm#mfn) between trading partners — typically anti-dumping action means charging extra import duty on the particular product from the particular exporting country in order to bring its price closer to the “normal value” or to remove the injury to domestic industry in the importing country.

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

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

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

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

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

What is this agreement called?

[Agreement on the implementation of Article VI [i.e 6]of the General Agreement on Tariffs and Trade 1994](https://www.wto.org/english/docs_e/legal_e/legal_e.htm#antidump)

**Subsidies and countervailing measures**

This agreement does two things: it disciplines the use of subsidies, and it regulates the actions countries can take to counter the effects of subsidies. It says a country can use the WTO’s [dispute settlement procedure](https://www.wto.org/english/thewto_e/whatis_e/tif_e/disp1_e.htm) to seek the withdrawal of the subsidy or the removal of its adverse effects. Or the country can launch its own investigation and ultimately charge extra duty (known as “countervailing duty”) on subsidized imports that are found to be hurting domestic producers.

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

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

 Prohibited subsidies: subsidies that require recipients to meet certain export targets, or to use domestic goods instead of imported goods. They are prohibited because they are specifically designed to distort international trade, and are therefore likely to hurt other countries’ trade. They can be challenged in the WTO dispute settlement procedure where they are handled under an accelerated timetable. If the dispute settlement procedure confirms that the subsidy is prohibited, it must be withdrawn immediately. Otherwise, the complaining country can take counter measures. If domestic producers are hurt by imports of subsidized products, countervailing duty can be imposed.

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

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

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

Safeguards: emergency protection from imports

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

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

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

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

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

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

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

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

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

# WTO Analytical Index

## Interpretation and application of WTO agreements

The WTO Analytical Index: Guide to WTO Law and Practice is an article-by-article guide to the interpretation and application of the WTO agreements by WTO bodies. It covers the jurisprudence of the WTO Appellate Body, panels and arbitrators as well as related decisions and other significant actions taken by other relevant WTO bodies.